



**What Does the Election Mean for Health Reform and Other
Health Issues?
Alliance for Health Reform
November 12, 2010**

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform
11/12/10

[START RECORDING]

ED HOWARD: — Everybody who has gotten lunch. So why don't we get started? I'm Ed Howard with the Alliance for Health Reform. On behalf of Senator Rockefeller and Senator Collins and our honorary leadership and our board of directors, I want to welcome you to this session about how last week's election might affect the new health care reform law and other health care issues.

I also want to acknowledge the co-sponsorship of the Robert Wood Johnson Foundation. Unless you're brand new to health care as your beat, you know that RWJ is the largest philanthropy in America devoted exclusively to health and health care. The way they say it is they want Americans to lead healthier lives and get the care they need. Brian Quinn of the Foundation was planning to be with us today but had a late arising conflict. I know that he would be happy to try to steer you to what you need for any of the many programs that the Foundation has in both health and health care.

If you don't know him, I want to point out Bill Erwin, the Communications Director of the Alliance, former Charlotte Observer Reporter who'd be happy to help you identify sources, track down contact information, suggest story ideas. He is the go-to guy. I should tell you that the briefing is being broadcast by C-SPAN so please, when you're asking a question,

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

if you would wait for a microphone to arrive at your place and identify yourself and try to keep the question as brief as you can so that we can get to as many as possible.

We will have a transcript of this briefing available in a few days on our website at allhealth.org. That's all of the overhead that you need to get us into this discussion.

We have a high-powered panel here to respond to your questions today. I'm going to introduce them very briefly. There's more extensive information in your packets. I'll give them an initial question to chew on and then the show belongs to you.

So on my immediate right is Norm Ornstein. He is a resident scholar at the American Enterprise Institute. He knows more about Congress than members of Congress know about Congress -- not saying much, low bar. Well, he writes a weekly column for Roll Call that a lot of members of Congress read. He's an election analyst for CBS News. He's a student of, and an expert on, how government works.

At the far end is Dean Rosen. He's a partner in the public affairs firm of Mehlman Vogel Castagnetti where he advises a number of health care plans among others. He was the health policy advisor to then Senate Majority Leader Bill Frist at a time, by the way, when Bill Frist was the Vice Chairman of the Alliance for Health Reform.

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Next to Dean is John Rother, the Executive Vice President of Policy, Strategy, and International Affairs for AARP. He has also spent a number of years on the Hill working for folks like Jacob Javitz and John Hines. In the interest of full disclosure, I should say that John is a recently elected member of the Alliance board of directors. So he's sort of my boss and whatever you say I agree with.

Let me get started with an initial question and as I say, as soon as we get some responses from our panelists, we'll open it up to you. It's pretty general.

We've had a lot of successful Republican House and Senate candidates saying during the campaign that they wanted to repeal, or maybe repeal or replace, the new health reform law. Some others said well that's not going to be possible according to the Democratic-held Senate and the possibility of an Obama presidential veto of any repeal bill. They focus on, depending on who you listen to, defund and delay among other alliterative suggestions to try to slow down the implementation of the law.

Let's start with you Norm. What's your best guess about how this new Congress is going to deal with the reform plan that's already enacted? Are they going to try and strike it or are they going to try to starve it? Are they going to do something else?

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

NORM ORNSTEIN: Well, Ed let me start by saying that in the interest of time, I'll dispense with some of my usual comic monologue. But I will say that in a sluggish economy, it's a boom time for those of us who write jokes about politics and politicians.

Just to step back for a second, we've had these three wave elections in a row reflecting an enormous public dissatisfaction with the status quo and with all of the actors in Washington. Brace yourselves for a fourth wave sometime probably in two years. Who gets caught in the underwash remains to be seen.

That means a brittle and difficult environment for almost everybody out there in the political arena. In the short run, meaning the next two years, one of the real sets of tensions for President Obama now facing a very different combative Congress is also the challenge from his own base from the left.

I was particularly struck election eve when Russ Feingold, one of the two incumbent Senate losers, in his speech to his followers and supporters said it's on to the next battle in 2012, which could mean many things but the obvious one would be a challenge from the left of the president. That means every issue that comes up -- the most recent one being how to handle the tax, the Bush tax cuts as watched with close

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform

11/12/10

scrutiny by his base -- he's got to be a little bit careful on that front.

At the same time as we talk about the health care issue, the really interesting set of dynamics to watch is within Republican ranks. John Boehner has basically called the health reform package an abomination. He's called for repeal and replace in a speech that he gave at my institution a couple of weeks before the election. He talked mostly in very cautious and prudent terms about how we wanted to change the dynamic and atmosphere of the House but the second question that was asked was about health reform.

He got very animated and he said we're going to cut it off at the knees. We're going to cut the funding as much as we can. The first thing we're going to try and do is cut out or eliminate those \$550 billion of Medicare cuts that were a part of the legislation.

I, at the time, first laughed at myself because I remember the great debate in the Reagan years where Republicans went ballistic every time Democrats talked about cuts and said these aren't cuts, they're a slowdown in the rate of increase. Now they're cuts but also because it put Republicans, in a way as they were during the health care debate, in the funny position of defending every dollar of Medicare into perpetuity. That is going to come into conflict with the new members coming

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

in talking about balancing the budget, cutting spending, and fiscal discipline.

At the same time, the initial talk of repeal was replaced by repeal and replace but I think there is a real dilemma here because when you start to parse out the individual provisions, most of them are quite popular. The one that isn't popular at all is the individual mandate. But if you take out the individual mandate and do as most Republican candidates out there and as the leaders have said -- and make sure that of course you're going to keep the ban on pre-existing conditions -- you're left with an impossible situation.

It was striking when Karen Ignagni, the head of the American Association of Health Insurance Plans, made her first overture on the issue. She said insurers would go for guaranteed issue and do away with this abomination but it required universal coverage.

So how we get around that dilemma is going to be a very interesting one. It's going to leave some people disappointed. You can't defund the program. I think to do so you have to get appropriations bills that still pass that cut out funding including funding for administration and since most of it doesn't take effect for a while and get those bills through the Senate and approved and signed by the president. That won't happen.

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

You can retard the progress. You can end up with a showdown over the Labor HHS appropriations bill and we may see a number of shutdowns. One of the many shutdowns may be the selective one but of course if you shut down HHS, that means you shut down all of HHS. You shut down CMS, the Center for Medicare and Medicaid Services. You shut down NIH. You shut down a lot of things that people may not find very comforting.

Republican leaders who remember the last shutdown and the disaster are saying they don't want to have that happen. But they may not be able to control it or control the new members coming in to expect them to take a meat axe to the program.

Of course the other thing that they are going to do, to try to bollix up the implementation of the plan, is to call Kathleen Sibelius, the Secretary of HHS, Don Berwick the head of CMS, in to testify every other day. Darrell Issa, the incoming chairman of the Oversight Committee, has said he wants to do at least 280 hearings this year and we're going to see requests, subpoenas, not requests but demands for documents and for more documents.

Let me just mention one final thing. I believe one of the first acts that we'll see in the new Congress is they're going to stop extending unemployment benefits. That's going to have real implications and repercussions for health out in the

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform

11/12/10

states. I suspect it's going to increase... you're going to get more people going to the emergency rooms. You're going to have the states, which are already strapped for funds, coming to Washington and saying hey if you're going to do this, you got to help us out. That includes, of course, a wave of new Republican governors and they're not going to find much help from their compatriots on the Hill who are focused more on slashing the federal budget than they are in providing welfare for their friends in states.

ED HOWARD: Pretty good calendar of things to attack and look for and now we'll turn to Dean Rosen who's going to tell us why all of this can be worked out.

DEAN ROSEN: Well, thank you very much. Thank you for inviting me. I'm not sure I'm going to tell you how it's all going to be worked out but I'm just happy I don't have to follow any of Norm's jokes. So that's the main thing.

Let me first say something broad about how health care reform played out in the elections and I'm sure we'll get into some of the bigger dynamics and then, Ed, I'll try to respond to your question, what I think, how Republicans are going to grapple with repeal/replace debate at least right now. Leadership elections will be next week.

So, I think all of this should be taken with a little bit of a grain of salt but I think the first thing if you look

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

at the election, I think this is how the new leadership in the House and returning Republican leadership in the Senate will look at it.

You can look at the polls and take different lessons from them. For me, I think the clear message of this election was about jobs and the economy but I don't completely buy the White House explanation that if it weren't for the poor economy and unemployment, we wouldn't be in the situation.

I think there were also some very strong messages about voter concern about government overreach, and the size and scope of government and deficit spending. If you look at some of the polls and you look at some of the outcomes, it was more significant than at any other time even back to 1992. If you look at the deficit as a percentage of GDP and also real dollars, you can see why people are concerned about it.

I think in terms of health care though, you can, depending on how you ask the question, you get sort of an even split when you ask voters do they want to repeal the law or something else. But when you ask people whether they were sending a message about health care pro and con and you look at the tremendous vote among independents and others who voted for Republicans, people were concerned about it.

I read the election results in general, I think Republicans will look at folks who voted for them and sent them

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

to Washington as a repudiation of the health care law or, at a minimum, significant concern about the direction. And yes, there are voters who want to grow it, want to add a public option, but I think the overwhelming message from independent voters and others is that they want to scale back if not completely repeal but I think in context, where does that fit in?

For me, health care reform -- and again I think the election was always translated into how folks will interpret those -- and how they might govern really were two things. One, I think they were symbolic of this overall message of a government that has grown too fast and is spending too much, that's trying to do too much. So while people were probably not voting over the particulars of health care reform although clearly -- and John will talk about this I'm sure -- some seniors were concerned about the Medicare cuts or reductions in growth of spending or whatever you want to call them.

But for most voters, I think it furthered the narrative of this is a big spending bill, a trillion dollar bill, even if it's offset by tax increases or spending cuts. It's still a big spending bill that grows government and it furthered the narrative.

The second thing for me is that, as I got outside of Washington and talked to real people, it also became the symbol

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

of an administration and a Congress that wasn't paying attention to what the American people felt were job one, which is to deal with jobs.

The President, for however particular he was during the campaign, never really seemed to hit on a message that connected health care in a meaningful way to the American people and to voters as addressing their concerns about the economy and about jobs. So it looked, to a lot of people, again it furthered this other narrative of overreach - yes, but you took your eye off the ball of what we want you to do.

So, when you look at it and you look at this new Congress coming in, you see a significant majority and there are some commentators -- and Norm, it'd be interesting to get your comment on this -- but when you looked at the Senate about a year ago, you would've said that Republicans had a real uphill battle. They were defending more seats and so in some cases, you can say that well, if we would have had this candidate here, we would've had a different candidate there, maybe they would've picked up another seat or two. I think that's probably true.

On the other hand, if you would've told me, as a Republican, a year and a half ago that we could've defended successfully all of our seats including by really big margins in places that have been close in the past, in Florida and

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Missouri and Ohio and of the 12 competitive races won six of those, I would have taken that bargain. That's exactly what happened in the House. At least right now, it looks like there's 62 new members with a couple of races undecided. Well, what I think folks focus on, and should focus on, is that because of retirements and other things, there are actually more than 80 new members of the Republican Caucus.

It's about a third of the Republican Caucus, the majority there is new. So of those people, I think in my count, there's at least 35 of them that have never held any kind of elective office before, not Congressmen, not dogcatcher. So these are people who come to Washington, maybe not with an attitude of let's kind of go along to get along, but they feel like they're here to make real change.

What they mostly campaigned on in terms of health care was repealing the law and replacing it with what they would say would be more common sense reform. So I look at that. I look at the pledge for America. I look at the outcome and I'm one of those people who believes, in this day and age, that what you campaign on, you say, you actually have to do.

So I think, Ed, to answer your question, my sense is that Republicans in the House are going to have to have some kind of a vote, whether it'll come in the first week or the first month or the first couple of months, I think they're

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

going to have to have a vote that essentially repeals the law. They may replace some of the provisions in that vote. They may have separate votes for separate bills that they point to, to show what they're for.

I'll remind all the reporters who write on this that there have been a number of Republican proposals, legislative proposals, that are introduced that have insurance reforms and other things that are in there but they will point to and I'm sure reintroduce. I think they'll have a vote in the Senate. I think there are a number of members in the Senate unlike this last election, there are now 23 Democrats. The majority of those up in the Senate are Democrats who are defending seats. A lot of them come from big square states in the middle of the country that voted for John McCain and George Bush.

So there may be, in a Senate that's 53 - 47 essentially, three or four or five with those folks who might vote for repeal if it came down to a repeal vote. And again, Senate amendments generally don't have to be attached to germane legislations. So it could come up on an energy bill or another bill or a tax bill.

So there will be that attempt. Clearly the President's going to veto that. Then I think the question is what do they do next? I kind of put it into three categories. I think rather than a either/or, they're going to do all three. I

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

think they're going to investigate, legislate in a different way and I think they're going to appropriate, dealing with the appropriations process. I take them in reverse order.

In terms of appropriations, there are things you can do. I think short of shutting down the entire government, you can attach riders to things and say for example that treasury funds shouldn't be spent to enforce the individual mandate.

Now that doesn't become enforceable until 2014, but there'll be ramping up and things like that. I also agree they've got to be very careful in how they couch it because there are a lot of popular programs in that. So I have personally not viewed the appropriations route as the most effective route but I think it's one route that people will look at.

In terms of investigating, we talked about this, there'll be a lot more oversight hearings. I think, as you all know, there was a lot of frustration that Secretary Sibelius didn't come up and testify before the House or the Senate except in one maybe limited circumstance on another matter. I think that will change.

I think Don Berwick, obviously there's a lot of frustration, he'll have a hearing next week in the Senate post-election. But even Max Baucus, the Democratic chairman of the

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Finance Committee said that he thought it was not a good use of the president's power to appoint him the recess appointment.

So there'll clearly be more oversight and more investigation. I think other than the people, they'll focus on a range of issues like what are employers doing with their retiree coverage and other things in response to the law. So I think we'll see that.

I think the third thing will be in the legislative arena. The way I would look at it is that, rather than a strike and replace after they have their vote and they make their effort, I think what we'll see is a series of surgical strikes and maybe going after things -- Norm mentioned one of them, the individual mandate.

We can talk more about the substantive implications but that clearly is unpopular and more than that, there's state lawsuits that you can point to. I think they'll go after the Independent Payment Advisory Board potentially. I think they'll look at some of the industry fees and taxes, which you can argue will offset the cost of the bill but will very likely drive up premiums. If you tax the underlying cost of care, people's premiums are going to go up.

I think they'll look at some other programs, some of which will save money and others of which might harm the bill.

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform
11/12/10

Whether they're successful with a president who still wields the veto pen, obviously that's an uphill battle.

But my last comment will be I think that if anything, the next couple of years beyond what are legitimate, taking the Republicans at their word, legitimately what they'll do, in terms of trying to attack the law, are also going to be an attempt to keep alive in the minds of voters those things about this bill that they don't like.

For me the next couple of years, in some ways, become about the 2012 elections, which started on November 3rd and in part become about 2013 when there may be a new president in the White House and there may be more seats in the Senate that are in Republican hands and reminding all of us that many of the provisions, while they're underway, the insurance reforms but the significant Medicaid expansion, the new subsidies don't really take effect until 2014.

So I think that becomes a real focus is keeping this alive, even if they can't make changes this year because of the president trying to be in a position to really make some of those substantive changes in 2013. So I'll stop there.

ED HOWARD: Okay. John, how does this strike you either from the institutional point of view or from the political point of view or any other?

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

JOHN ROTHER: Well, thank you for the opportunity, Ed. It's a real pleasure to be here with Norm and Dean, both of whom I respect and today agree with. So now that everything has been said, I guess not everyone said it. So I'll try to put my own interpretation on this.

I do think it's easy to overinterpret the election results for several reasons and to overdramatize at the potential impact on health reform.

First of all, the people who voted last week are not the same as the people who will vote next time. There are many fewer of them. Many of the demographic groups were much less represented as is typical in mid-year. I think, to pick up where Dean left off, the election that matters for health reform isn't the one we just had. It's the one we will have in 2012 and it will be a different electorate.

The second point is most voters today, perhaps understandably, say they are confused by health care and what is in the act that would affect them. There were many messages during the campaign. Unfortunately, from my perspective, many were designed to scare people, especially seniors, but it's understandable that there's confusion. It's a complicated act. It comes into being piece by piece so that the next two years will be an opportunity to help people understand more clearly how it might affect them.

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

I don't think that you can say there's a mandate out of this election for Congress to spend a lot of energy on health care. I think there's a mandate to spend a lot of energy on the economy. I think there's a poll that's in the paper this morning that shows that a small minority want Congress to focus on health reform as opposed to the economy. I think that's going to play itself out the more that people try to focus on health care. The people at home might say well, okay, but what about jobs? Congress is going to have to respond.

I also think there's no mandate at all for an alternative approach to health reform. You can see that from the polls. Elements of alternatives are not particularly popular and many provisions of the Affordable Care Act are popular.

So you have an act that's very interdependent in its design. It would be extremely difficult to start pulling it apart without, as Dean said, either raising premiums or increasing the deficit substantially. I think as people start to confront that, we're going to see more caution about changes.

I also think that politically, provider groups are still quite supportive of the act -- doctors, hospitals, insurers, drug companies. We're still supportive of the act. I think that there's good reason for all of those people to be

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

supportive in those interests to be supportive. So I think that again that will tend to temper the debate.

I do think that the benefits of the act have not yet been appreciated, particularly for people who need improvements the most -- the people who are chronically ill, the people who are frail, children. I mean there are some very important advances in the legislation that would seriously improve the situation of people who are quite sympathetic to the public. And the more attention they get in terms of that improvement, I think the more impact that will have on the tone of this debate going forward.

So I would conclude in much the same way that Dean did, in that the real battle here is not so much about legislation in the next couple of years and not really about appropriations but really is a battle for the hearts and minds of the American public. Investigations are going to be a tool but that can happen on both sides of this debate. The election that matters is going to be 2012 when we'll know the answer after that as to what the future is for health reform.

ED HOWARD: Okay, thank you very much, John. We are now at the point where we are actively soliciting your questions. Let me just say we also have had, even before we knew that there would be C-SPAN coverage, we've arranged a teleconference for reporters who are outside of Washington,

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform
11/12/10

D.C. We have given them contact information so that if they have a question that they would like to have asked, we will try to get it responded to. I'll remind you that the email address to send your question is questions@allhealth.org -- allhealth is all one word. So I remind you make sure you have a microphone and please identify yourself and let's get the first question.

MARK MCCARTY: My name's Mark McCarty. I write for a trade publication called *Medical Device Daily*, which sort of tells you a little something about my orientation with this question.

The medical device tax of 2.3-percent sort of pales in comparison to a lot of some of the larger issues in connection with health care reform. And I guess the question here is whether it's just going to sort of disappear in the weeds or there. I mean some members of the Senate from Minnesota, for instance, [inaudible] and Franken have some obvious orientations on this due to their constituency. But is it just too small compared to the other things to garner any attention for the next two years?

NORM ORNSTEIN: I think one answer is Republicans are going to try and get some traction by having individual votes on individual pieces and that's one of them. Every part of the revenue component of this is going to be attacked and some of

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

it will be attacking tax increases. Clearly it was an attempt to lure some Democrats over.

We may get some votes. My guess is they're more symbolic than real votes, that either this will be in the context of bills that will end up possibly being filibustered by Democrats. In some cases, you may well get Republicans joining a handful of Democrats to support something and the core of Democrats will say we're not going to let that happen and others, they'll move it to a conference and try and take care of it there, which may mean yet again more potential gridlock and an ability to come to an agreement. Or it may get to a presidential veto. But I'd be mildly surprised if that medical device tax got removed.

DEAN ROSEN: I would just add, maybe I could add just two quick things. I think the medical device tax points out two interesting sort of broader questions, issues that Republican leadership's going to have to grapple with. One of which is how do any attempts to change the bill at all, how are they positioned?

So I think that Republicans and the Democrats who support modifying or repealing that will be probably less successful by portraying that as something that's going to help an individual industry by relieving a burden from devices or other folks. But as I sort of implied earlier, I think that a

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

number of those industry fees and the device taxes is one of the clear examples can be portrayed as things that are going to increase the cost of underlying products and therefore translate into higher as opposed to lower premiums, which is one of the goals of the bill. So I think how that kind of vote and others get positioned is really important.

I think the other thing that we don't completely know yet -- and Norm and John may have a view of this -- but in the past under at least Republican control for many tax cuts, pay as you go budget rules generally did not apply.

It'll be interesting because I think when you look at the Republican caucus now in the House, in the Senate, to me it's unclear. Will they say that they got to pay for tax cuts or not? If they don't and they hold the sort of traditional Republican view of pay-go, which is we have to pay for new spending but tax cuts are returning money to the American people.

If they don't have to offset those, I think it makes it easier to have a vote that pulls over some Democrats to reduce the impact of those fees. But one thing none of us really talked about is -- I think one of the overriding messages coming out of this election and we saw this earlier this week with the initial proposal from the Entitlement Commission or the Deficit Commission -- is this concern about spending. I

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform
11/12/10

think that's going to have to be balanced against all these things that might need to be offset potentially.

ED HOWARD: Dean, do you think that the Republican rule changes that are now under consideration are going to make it easier to do that? Is that what you were alluding to?

DEAN ROSEN: I haven't been privy to that. Norm may know.

NORM ORNSTEIN: Yes. Well, they're talking about their own sort of, first of all, adaptation of the "You Cut" plan. So that they'll take advice from callers and listeners all around the country but they're clearly not going to have a pay-go that includes revenues.

How, in the end, you reconcile that with your desire to reduce deficits and debt remains a big question on the table for Republicans. It's a question that now has been brought into full relief, as have some of the issues over Social Security and Medicare of course, by the chairman's mark and the Deficit Commission. Alan Simpson and Erskine Bowles have put some issues out there that are creating some substantial level of discomfort in both parties.

ED HOWARD: We have someone here now.

JULIE MCDOWELL: Hi, I'm Julie McDowell. I'm the editor of *Statline*, the publication of the College of American

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Pathologists. Can you talk a little bit about how you see the new Congress dealing with the physician payment SGR issue?

JOHN ROTHER: Well, I'll take a crack at this since this is one of our top priorities -- to reassure seniors that they will have continued access to their physicians -- and we certainly hope that the lame duck session will tackle this. It's an area where because it's new spending, will probably have to be offset elsewhere.

I think the only reason I'm not more confident of the result is not because of the desire to extend the SGR. It's the uncertainty about what the offset would be and how possible it will be to go forward. But we are pushing very hard to get Congress to act very quickly on this because they need to do something by the end of November in order to prevent disruption.

NORM ORNSTEIN: The Democrats in Congress now in a lame duck are going to be tempted to kick this can off into January precisely for the reason that John mentioned. They can't just let it drop because it brings something close to catastrophe for physicians and for access in coming months. But I think they'd rather leave the very difficult choice because there will be a pay-go provision on spending for what to do with what is a substantial sum of money to the Republicans in the House to deal with.

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

ED HOWARD: Yes?

JIM GUTMAN: I'm Jim Gutman with *Health Reform Week*.

One of the provisions in the reform law that seemingly could be somewhat vulnerable would be the insurance exchanges since they don't start until 2014. I'd like to ask the panelists what they think are the chances of a Congress actually doing something, either by a funding or by other means, that would interfere or prevent the exchanges from starting up in that year.

DEAN ROSEN: I'll take a first crack at it. I mean I think again, to John's comment, that so much of this bill is interlocking and the exchanges are clearly one of those mechanisms.

Are they absolutely essential? Probably not, but they clearly are integrated with things like the mandate, the insurance reforms, the subsidies. So I start from the premise that almost any change other than things that I would view as sort of on the margins but important, like the 1099 reporting. The president's going to be extremely resistant to, and is going to veto, it even if it gets through the Senate and to his desk.

So I would say given that, there's some kind of wholesale repeal of even the exchange is going to be unlikely. But what I would say is that as the governors begin and they're

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

already underway to start to look at legislation, look at the guidance that may be coming from Washington.

And with Republican governors picking up more seats at the state level and Republicans controlling more legislatures at the state level, I think what you may well see -- and this is another very interesting area in terms of the role of the states because they have a huge role in terms of the implementation with the exchanges and Medicaid and other things -- that you might see a bubbling up from the state level of real concerns about some of the regulatory requirements and other things that might be dictated to the extent they have flexibility to make changes, to the extent they feel like they don't have flexibility to make changes.

I think what you might see, if the issues get ripe enough, is some again what I would say are surgical strikes or targeted attempts to maybe make some changes to the exchanges. I remind folks that again in the sort of the leading Republican House alternative, there was a form of exchanges there. So it's not necessarily a Democratic idea but the details, as in many of these things, are very different.

JOHN ROTHER: Just quickly, there are two states today with exchanges, Massachusetts and Utah. They're very different. One's a more regulatory approach. One's more passive and I think that's the question going forward is which

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

model. Since it is a state-by-state decision, I don't see this being re-litigated at the federal level.

DEAN ROSEN: I would just say the one caveat to that is again we're going to see some guidance, based on press reports and things, in the coming weeks from the administration. I think again to the extent that the governors feel that the requirements are too strict, the alternative is to just say we're not going to do this and let the federal government do it. That may be an option.

To the extent they want to do this and keep control, I think what you could see is them saying we think it's a good idea. We want to go forward but the rules that we're laboring under, which are coming down from the law or from the regulation or both are too onerous and we want to see those change.

ED HOWARD: Norm?

NORM ORNSTEIN: A couple of interesting political dynamics here. I mean, some of the new Republican governors coming in who campaigned in a very hostile way to the health plan have really talked about bollixing up the exchanges not using money, not using their discretion.

It's going to be an interesting challenge in many of the states to figure out how you can keep from disrupting your

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform

11/12/10

own citizens and make your political points beyond just either filing lawsuits or a [inaudible] briefs.

The second thing is that Dean said this is not a Democratic idea. It's actually more of a Republican idea in many ways. This was an attempt to bring competition in the marketplace in some fashion to bear. The main Republican alternative though has been we don't need any of this. We just have to let people shop across state lines, buy insurance across state lines. The real danger in that, of course, is it works the way the credit card process worked, the race to the bottom. You just look for the state that has the least cumbersome regulatory mechanism offer, the poorest plans.

The alternative to that might be if you did get some bipartisan give and take and cooperation on this is to return to the idea of a national exchange as one option here. That, in a world where parties actually talk to one another, might be on the table. Since they don't talk to each other, it's probably not.

ED HOWARD: Okay, we've got a gentleman right here. Then I got a couple of questions from around the country. Go ahead.

GREGORY TWACHTMAN: Gregory Twachtman from the *Pink Sheet*, which is a trade publication for the pharmaceutical industry. Two questions, one similar to the question on

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform
11/12/10

devices. What drug revisions do you see that might be targets going forward and second question, related to the Patient-Centered Outcomes Research Institute, how much of a target is that and do you see any potential changes that might be attempted to that body?

ED HOWARD: Let me just say to our panelists, we had a request from one of the reporters listening on the phone to identify the panelists as they begin to speak. Who would like to take the first crack at the drugs so to speak?

DEAN ROSEN: That would be me.

ED HOWARD: That would be Dean Rosen.

DEAN ROSEN: This is Dean Rosen. I think with respect to the [inaudible], for many members even during the debate if you looked at the Senate Finance Committee, there was general agreement even among Republicans looking at research but there were concerns about some of the individual provisions. I would say that probably is in the list but I'm not sure it's at the top of the list.

I think if you look at the boards and commissions that are out there, I would put the Independent Payment Advisory Board above the Outcomes Research Institute as something that would be more likely to be targeted but again we'll see. New members are going to come to Washington in a couple of weeks and they'll have their views on how they want to proceed.

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform
11/12/10

With respect to the other provisions on drugs, I would say maybe two things -- and John, who is at the table on a lot of the bargaining and discussions might have a different view on this -- but I think that with the device tax, it was clear that that was really done not with the wholehearted agreement with the device industry. The fees on the pharmaceutical industry were a different matter. It was really part of a negotiated settlement, so to speak.

So I think that one may be less likely to be undone and certainly the industry might be less likely to go to Congress. And remember, we're still going to have a Democratic Senate, a Democratic president and those were really the two parties that drove the agreement and let's undo what we agreed to? So I think that's probably less likely.

What I would say is that -- there are a number of provisions in the past -- that one of the things the pharmaceutical industry was able to do very skillfully, which was to keep out of health reform a laundry list of things that could have hurt the industry more. I think one open question is whether some of those things, particularly given Republican control, are now maybe back on the table in the sense of there might be Democrats who are in Congress who might want to do it.

There might be new Republicans who have different positions than Republicans in the past have had or others in

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform

11/12/10

the name of deficit reduction that are maybe open to ideas that they might've foreclosed in the past.

For example, you saw that the Deficit Commission proposal, again just a proposal earlier this week proposed to extend the Medicaid rebates to the low-income population in the Medicare program. So maybe in the name of budget savings and others, there may be more receptivity to those kinds of ideas, even in a Congress that's now divided.

JOHN ROTHER: It's John Rother. I could just add I thought it was significant that the CEO of Glaxo came out basically calling for health reform to go forward. I certainly agree with Dean's point that this was a negotiation in which the industry won quite a few concessions. If this issue is reopened, I believe they may end up doing worse, particularly in light of recent price increases that are going to look unappetizing to anyone concerned about the deficit and the cost of health care. I think there'll be, if they reopen this, I think there will be more pressure on the industry rather than less.

ED HOWARD: Yes, Norm?

NORM ORNSTEIN: This is Norm Ornstein. Just one larger political point here. Always keep in mind that we're in a time of populist anger, which always happens with a bad economy. It's the search for scapegoats and it's a dicier, delicate time

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform

11/12/10

for almost everybody in the various industries, the danger that you'll be labeled the next scapegoat, that you're the greedy bastards that are sticking it to the American people. It doesn't necessarily happen because you are the greedy bastards. Sometimes it's you're the first one in the line of fire. To some degree, that's what happened to the health insurance industry.

It's also going to put some pressure on the White House because the temptation there is to push the blame off and sometimes it's deserved. But you can lose allies in this process who have helped you get through this if you're not a little bit careful.

But the industries, and I think the pharmaceutical industry, I think any objective observer would say, came out quite well in this. They were smart to get in early. They got a lot out of it. Billy Tauzin took a lot of flack from many within his own industry who, I think, just didn't understand that he knew what he was doing. I just would have a hard time imagining that they would be foolish enough to reopen this in a way that would bite right back at them.

ED HOWARD: Yes, sir?

MERRILL GOOZNER: Merrill Goozner with the *Fiscal Times*. You raised the possibility that there could be some tweaks and the president himself in his day-after press

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform

11/12/10

conference said that we may look at the 990 issue in terms of the \$600 that small businesses will have to file forms. Are there some other things? And I'm specifically thinking about the mandate that Democrats might decide might be worth taking a look at.

This is, after all, an economic issue in which the insurance industry is the primary beneficiary. And with the Republicans' pushes for repeal of the mandate as a stand-alone bill in order to satisfy their [inaudible] the possibility that some Democrats repeal off and actually do that. Let's not forget President Obama, as candidate Obama, actually didn't back the mandate.

NORM ORNSTEIN: Well, I do think that this actually is one of the biggest problems to start with -- that Republicans have -- because the temptation is going to be to go after the mandate. It is the least popular. Americans don't like mandates of any sort. But you can't do that and keep the other provisions that are popular without having a lot that unravels.

You may be right, some Democrats might join in partly out of reasons for mischief. The insurance industry will be the first up to the plate saying you just can't do something like this. But taking a look at the mandate and making some adjustments, including taking a look at whether the penalties for not getting insurance are adequate to the task, may be in

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

light of the Massachusetts experience and others. That's something that you may want to start to look at now even before you actually implement it and then do oversight.

DEAN ROSEN: This is Dean. I would say I have a different political take than Norm on it. I actually think the mandate is a bigger problem for the Democrats in the sense that if Republicans, in general, don't want the legislation to work, I'm not sure why they would care if one of the provisions that were really, really unpopular kind of unraveled the entire ball of yarn.

So I'm not sure that there's as much risk in that they're invested that may give them an opening to come in and do something more likely, more there like it in the future. So I'm not sure there's the huge political risk except to the extent that it may raise costs into the current structure but they're not buying in to the current structure.

I would just add that I think there are some other things in there. We talked about the individual mandate, and that's essentially a tax enforced, but there's also a whole series of corporate taxes in here, which are not in quite a mandate but a pay-or-play kind of requirement and even for those employers that are offering coverage.

I think those are going to be at the heart. Those are going to be the substantive provisions that are at the heart of

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform
11/12/10

some of these oversight hearings, which is what are employers doing in response to taxes in the future or maybe a penalty that's less than keeping their coverage and we've seen some of this already with retiree coverage and limited benefit plans.

I think to the extent that may be another area that might be vulnerable. Again the President may veto it but where you could see, in the name of corporate tax relief and overall cost of doing business, where there might be some attempts to go after those or to loosen restrictions on FSAs and HSAs and other things, which are constrained to an extent in the law.

JOHN ROTHER: Yes, John Rother. I just have a quick comment. I do not think the insurance industry is the major beneficiary of the mandate, when it's paired with a minimum loss ratio that will get tighter over time. I do think that the people who really win because of the mandate are older people who are age-rated against today, sick people who are excluded today, people who are suffering because of the failure to bring everybody into the same pool. If we eliminate the mechanism to do that, we're going to have a very difficult time protecting the people we most want to protect.

NORM ORNSTEIN: This is Norm, just getting back to Dean's comment. I think what I would be afraid about, if I were Republicans, is if you go after that provision and it unravels. That means that you take away the popular parts of the bill

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform
11/12/10

that people are looking for. You're the ones who did it. So it's a little bit of a danger there. It can unravel in a way that causes some level of chaos and it will be pretty clear what caused that chaos.

ED HOWARD: Would it unravel quickly enough to happen before the 2012 election, you think?

NORM ORNSTEIN: Well, some parts of it could. This bill was designed for a variety of reasons, of course, to try and provide some goodies before the disruption occurred. You can imagine, especially if you have a clever president, just as we saw with the way that the shutdown operated at the end of 1995. You can make sure that it's causing pain to people in a way that there's a direct connection with the actions that immediately precede it.

DEAN ROSEN: I just add one thing that we haven't touched on either, which is the state lawsuits that are going forward. I think initially there were a lot of very smart legal scholars and others who discounted them, but the fact is a couple of those cases are still alive.

The one thing we don't know is that the courts are in an inherently unpredictable place. So you may well see the result of those lawsuits having some impact on how these are written. I think that would be a nightmare kind of scenario for the president too, to have the outcome of a court case

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform

11/12/10

thrust a really unpopular issue back and have them have to defend it.

I'm sure we'll probably see the larger repeal effort first and it may be that Republicans wait for the outcome. I'm not sure they will, but they may wait for the outcome or at least more clarity among the state-based lawsuits before acting on the individual mandate because I think we can't discount the potential impact that those might have too.

NORM ORNSTEIN: This is Norm Ornstein again. I agree with Dean and I do think we all ought to be looking ahead because here's one substantial possibility. Whatever happens at the district court level, this issue is going to the Supreme Court. We know that. The part of the bill where the constitutionality is, is most in danger, is the mandate. That's the core of the constitutional case that it's an overreach of the commerce clause to force people to do things that they don't want to do.

There's a strong case to be made that -- especially given that the burden for those who don't have insurance falls on the rest of us because it adds to the cost of health care that the rest of us have to pay -- but I can imagine a scenario where a five-to-four vote in the Supreme Court, with the predictable five, overturns a major act of Congress and an initiative of the president that takes us right back to the

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform
11/12/10

court of 1933-34, '35 and a constitutional confrontation in a way that has unpredictable outcomes, not just in terms of the policy but the politics, the idea that a slender majority of reflexive conservatives on the court do this is going to be portrayed in the political arena in a way that goes beyond whatever happens to the health care bill.

ED HOWARD: Let me take a question. This one's from Sara Kliff at *Politico* who's listening. It actually gets back to something Norm and Dean have mentioned in the past and that is the notion of the potential shutdown of the government agency like HHS for example. The question, as written, is we know that Mitch McConnell had said it would not come to that but she's curious if you think the influx of new members who want to repeal aggressively could lead to this kind of a situation. How likely is it?

DEAN ROSEN: This is Dean Rosen. Well, I guess my view is that I don't think it's likely but like everything else in divided government, it might be possible. But you may not have, one difference I would remind everyone is that in the last shutdown, Republicans controlled the House and the Senate. This time, there may be attempts to sort of work things out a little bit more out of necessity because you're going to, before it gets to the president, to force a shutdown, you're

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

going to have to have some agreement between the House and the Senate on what they're sending down Pennsylvania Avenue.

But I think I might answer and just take a bit of a broader view, which is I think one caveat for the whole discussion today is that to an extent, almost all of us in the room are focused on the health care issue and I think back to the lesson that Democrats have not quite gotten yet out of this election, which is it was about jobs. It was about the economy and I think Norm said this earlier.

So, health care is a very clear example of a lot of things that voters were reacting to in this election but it's not the only thing and it's probably not job one. So I think that we have to remember that.

I think as a result of that, I think that Leader McConnell and others were, had I thought a great deal of humility coming in and saying that we have to remember this election in part was a referendum on the president and not necessarily a vote for the Republicans.

So in the same way, I think Republicans, while they need to raise this, keep it alive and do what they said they were going to do, are going to have to balance the need to not look like we're focusing the entire next Congress on health care and having to vote every single day on that issue. Because

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform
11/12/10

there are also a lot of things that are not directly connected, which are a big deal as well.

ED HOWARD: Good, Norm.

NORM ORNSTEIN: This is Norm. I would weave a few potential scenarios here but let me start with what I thought was an extraordinary comment from the likely incoming speaker, John Boehner on election eve where he said, of course remember it's the president who sets the agenda for the nation.

Now either he hasn't read his Constitution in a while or didn't get terribly adequate civics education back when he was growing up in Ohio or he has a different point in mind because, of course, the Constitution says it's the Congress that sets the agenda and it's the president that disposes. But we're going to get into a kind of elaborate blame shifting game here over who's actually in charge and who's responsible for some of these problems.

We know that Republican leaders are trying to downplay those expectations not just for the public at large but for these new members coming in. They want to manage the new members rather than have the new members manage them. They don't want government shutdowns because usually the president has the advantage under those circumstances. But this year, the fiscal year that began October 1, not a single appropriations bill has been enacted into law.

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

**Alliance for Health Reform
11/12/10**

We have a continuing resolution that expires on December 3rd. It's not at all clear we're going to be able to even get through the lame duck session but move that into January or February and you're going to have a lot of pugnacious, determined new members who want to immediately take a meat axe to spending. And the idea that you just keep last year's levels going for a substantial period of time is not something that they're looking for. So that's one place to look for a potential shutdown or disruption. It might be a short one, it might not.

The debt limit, the ceiling will get reached sometime around March or April. We already have a substantial number of the new members coming in who pledge that they simply will not vote to increase the debt limit and others like Jim DeMint who said the only way he'll vote to increase the debt limit is if we've already radically cut the size of government. That's what precipitated the shutdown at the end of 1995 and it might come much earlier.

Then we get the issue of health care, which is not the dominant issue. Dean is absolutely right and I think we all agree on that, but as they attempt to use the appropriations process to limit the funding, limit the spending for implementation of different elements of the plan and you'll get a labor HHS appropriations bill that might well move through

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform
11/12/10

the House on that basis. It won't move through the Senate. So you move to a conference committee. The Democrats in the conference there are not going to yield on that one.

They're not going to let the plan be basically stopped dead in its tracks because no money can be spent to implement it. So more than likely what happens is that the Democrats in the Senate will then put through a continuing resolution for the labor HHS bill saying well we'll just keep this going until we can resolve it.

I can easily imagine the Republicans in the House, driven by their new members, saying we're not going to cave on this one. This just means that they're going to be able to keep going at the same level where you could get a shutdown of HHS and a number of other agencies.

If Obama managed it as cleverly as Clinton managed the shutdown, so that things that people really want are the ones that get disrupted, it could have some very interesting politics in play. A lot of people who don't want a shutdown may be forced through things that are really beyond their own individual control or because they can't control their own members into actually happening.

ED HOWARD: Good observations. The gentleman here would like to ask a question and she has the microphone, I'm sorry.

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform
11/12/10

LUCIA GRAVES: This is Lucia Graves with the *Huffington Post*. Some of you mentioned earlier the Deficit Commission's proposal, which was released on Wednesday, which called for, among other things, capping growth in federal health spending. Could any of you speak to how the Simpson and Bowles proposal might affect the future of health care?

ED HOWARD: Overwhelming response. [Laughter]

NORM ORNSTEIN: This is Norm Ornstein. It's hard to say. First of all keep in mind it's not the commission's proposal. It's the chairman's mark right now, which in part may reflect the fact that they don't have 14 votes at this point for anything. Of course, it would be a minor or maybe even a major miracle if they ever did get 14 votes out of the 18 members of this commission who really do span the entire political spectrum.

But there were a few things about it that were striking. One is an attempt to put a cap, as a percentage of GDP, on the spending and that health is included within it.

The other is that it basically accepts the health care plan and moves to make some adjustments from within that. That's one of the main reasons that some of the Republican and conservative members of the commission and people outside have been critical of it. Within that, it also tries to take some

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform
11/12/10

of the provisions that are in the bill designed to bend the cost curve and tighten them up and make them more firm.

From that perspective, I would view it as a very constructive approach. It takes some things that perhaps weren't as tough in the bill as they could have been and made them tougher. But there are going to be a lot of people who don't like the approach to health care who don't like the idea that you start by accepting that status quo.

ED HOWARD: Didn't I see somewhere in there that there was a public option?

NORM ORNSTEIN: They recommend a public option as part of it as well, yes.

ED HOWARD: That should sail right through.

DEAN ROSEN: But I think that Norm's right about that, about the fact that it may not even, it probably won't make it out of the commission. But I think the one thing to kind of keep our eye on is that just because it doesn't get a super majority vote doesn't mean that these ideas are dead forever.

If we look at the Medicare Commission that came out of the '97 Balanced Budget Act and some of the proposals there, including the drug benefit and some of the competitive elements of Medicare raising the Part B premium and other things, were things that lived on and a number of legislators who participated in that became invested in those ideas.

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Here it's hard for me to see this all hang together. I think, as Norm pointed out, one of the fundamental flaws, probably from a number of Republican standpoints, is that it does sort of deal with some of these other things like speeding up or putting more teeth in [inaudible] but doesn't deal with things like should we be expanding Medicaid to 133-percent of poverty and tacking on a trillion dollars of subsidies to new health care spending at a time of fiscal concern. I think that will be an issue.

On the Democratic side, you saw Jan Schakowsky and others come out in opposition already for the entire plan. So it'll be interesting though to see whether some of these ideas of caps and other things on a macro level do continue to be part of the debate.

ED HOWARD: John, do you want to?

JOHN ROTHER: Yes, I have two add-ons here. One is you cannot deal with the deficit without dealing with health care long-term. Health care is the problem long-term. The sooner we get serious about it the better.

The Affordable Care Act made some important steps but it's by no means the whole answer. So I do give the two co-chairs some credit for at least not ducking on the issue.

However, I do object to the specific proposals they made, particularly the ones that would just cost shift more on

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

to beneficiaries because that doesn't do anything to lower the burden of health care in the economy.

It just shifts who pays from taxpayers on to sick people, which is really regressive and not the way to keep health care affordable for people going forward. In fact, it's just the opposite of the intent behind the Affordable Care Act. So I think while they should get some credit for being willing to take on health care, I really think they made a misstep in how they recommended doing it.

ED HOWARD: We've got this gentleman and we've got somebody over here too. Yes go ahead.

DAVID VAN DEN BERG: Hi, I'm David van den Berg from *Tax Analyst*. I wanted to follow up on something you have quickly discussed earlier and that's the 1099 filing requirement. The president has indicated a willingness to revisit it. Do you anticipate anything being done about this in the lame duck or in the 112th and talk about that.

NORM ORNSTEIN: I think that's a goner but the interesting question that remains is how do you replace the revenue? I think the preference -- it's not clear how much they're going to be able to do in the lame duck. They're already talking about narrowing the focus.

There's some big issues that are going to have to come up because Harry Reid promised it during his campaign, to bring

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform
11/12/10

up the Dream Act. There are some other things that are very close to the finish line where there's actually been broad support, for the Safety Act for example, maybe the Disclose Act as well. They'd like to do this one now. They just like to get something that's widely viewed as noxious off the table but they've got to find some other funding source for it. I haven't heard much on that front.

ED HOWARD: Okay. Yes?

DOUG TRAPP: Hi, Doug Trapp with *American Medical News*. This might be a good closing question. The Republicans played the role of the minority much of the last Congress. Can they still do that when they get to the next elections? Or do they actually have to produce some results to justify having more numbers in 2012?

NORM ORNSTEIN: Actually we have a couple of models here that are going to be interesting ones to see which one actually prevails. One is the 1995-1996 model and that's a model where Republicans started having swept back into power for the first time in the House in 40 years. Newt Gingrich viewed himself, at the beginning, as a parallel or even replacement president.

We saw a year of confrontation, of acrimony that culminated in the shutdown then the blowback and then basically a year of harmony and cooperation where Newt persuaded his

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform

11/12/10

colleagues that their primary goal was to get a second consecutive term in the majority in the House. And if that meant working with the president and making things better for him, so be it. They both won.

Now you could imagine another model and that other model is one which is basically 2008. Democrats took back the majority in Congress in 2006. We had a couple of years where not much happened. It was the Democrats who pushed proposals out there. They were either filibustered in the Senate by Republicans or vetoed by the president but the unhappiness over a lack of significant action continued to focus on the president. It was the President's party, despite the fact that the other party had Congress that suffered massively in the election.

I don't know how this works out. My guess is that we may find a third model developing. It may be one where voters say, for the fourth time in a row, take all the ins and throw them all out and bring the outs in. It could well be one where the president basically is able to portray the Republican party in a split Congress in a -- here's the third model, 1948 where Harry Truman, after Republicans had won massively -- 55 seats in the House taking the majority in 1946 -- portrayed them as the do-nothing Congress. He won election and they lost 75 seats. Which of those three models prevails I don't know.

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Some of it will depend on what happens in the economy. Some of it will depend on who's [inaudible] in the leadership and whether Obama can fend off his own left, because of what characterizes one-term presidents -- they're challenged from their base in primaries. They're weakened in that sense. It is very much an open question as to whether the Republican leaders can fend off the Rottweilers who are on their right is going to be another challenge.

DEAN ROSEN: This is Dean. I would just add that I think that we will see a number of things, a number of proposals that will come from the House. And this is one of the reasons I began with the importance of how you read the election mandates, messages, whatever you want to call them. And I think one of the clear lessons that came through, as I said, is limited spending, limited government. One of the advantages for Republicans of the tea party being so aggressive and animated and the candidates really running within the Republican Party was it helped sharpen the focus of the message.

I think that's part of the message that'll come out. I think you'll see these proposals. They already said that they're going to vote once a week on something to trim the size of government. I agree with Norm and John, there is going to be this balancing act as there is with any leadership and as

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

there was with the Democratic leadership when you have a majority, it means you got a more diverse caucus. They'll have to deal with that. But I think as long as they're responsive, it will be interesting to see whether some of those proposals get blocked by a Democratic Senate or get vetoed by the president.

The one thing that I would say is that as much of that has to do with how the president either forces the issue or reacts. And at least from what I've seen in the last couple years, I think that this president is a very different president than President Clinton.

I wasn't around in the Truman Administration [laughter], President Truman, it'll be interesting to see how he reacts and takes this lesson as well because I think as much is going to depend on how he's able to shape the issues. I think Republicans will try to force legislation using the House, when they do have the majority, to try to put forward things that they view as responsive to the electorate.

ED HOWARD: John?

JOHN ROTHER: Just one footnote here. Every elected official's going to be judged on one thing in two years and that's whether they helped get the economy back and helped people get jobs back. If that doesn't go well, I don't think any of the rest of this really matters.

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform

11/12/10

So I think that let's get real here. Health care is not going to be the main reason people are elected or not the next time around. That's going to be about the economy and that's going to matter a lot -- who looks like they've been constructive and who has not.

DEAN ROSEN: Although I will say just to add that I think it's worth remembering that the two parties have a very, very different definition even on jobs of what the response is. So I don't think what we'll see this time around is Republicans agreeing that the way to quote/unquote get the country moving again or create jobs is by spending a lot more government money to do that in the form of stimulus or other things.

So I think they will have a set of proposals but they will look very different from what the Democratic Congress has done will have to do with things like lower taxes. So whether there's any room to meet in the middle on those will be an open question.

ED HOWARD: Norm?

NORM ORNSTEIN: Well, let me paint just one rosy scenario on that front. I could actually see an agreement on the stimulus package that would cut across the lines. The agreement that I would imagine is one where we set up an infrastructure bank, a public-private partnership that's already got some broad bipartisan support. It's the only way

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform

11/12/10

you're going to get an infrastructure the business community really wants, an investment in this area, and couple that with a payroll tax holiday. And you could actually get broad bipartisan support for something that might or might not work but that would not just have dramatically contrasting views of how you deal with the economy.

Whether any of that works in an economy, that I suspect is going to continue to move slowly just because that's what happens when economies go down with a financial crisis. It doesn't create the kind of recovery and job growth that you have if it's the traditional recession it's anybody's guess.

ED HOWARD: Okay, we have time for one more quick question before we let you out of here.

KENT HOOVER: Yes, Kent Hoover, *American City Business Journals*. I got a question about the 2012 election as well. Going back to what you all were saying in the beginning, let's assume that President Obama loses re-election. There's a Republican president. Let's assume that Republicans control both the House and the Senate and then let's also assume that in the meantime, health care reform has proceeded according to plan.

What would then happen in 2013? Would there be a full-scale repeal? Would they roll back what it has already been done or how would that play out under that political dynamic?

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform
11/12/10

ED HOWARD: How's your vision around the corner or to
reframe it Dean, what would President Romney do? [Laughter]

DEAN ROSEN: Well, I'm not sure we'll have a President
Romney. I'm not sure who we'll have. Two years is a long time
but under the rosy scenario that you just painted with
Republicans in control of everything—

MALE SPEAKER: Secretary of HHS Rosen.

DEAN ROSEN: Yes or somebody qualified, whatever, but I
think that two years is a long time but I think the depth of
concern and opposition to the current health reform law is hard
to overstate within the party. Just look at what all the
candidates campaigned on, what the leadership is saying. They
are relatively in-sync. So I would suspect that there would be
attempts to scale back outright repeal and scale back major
portions. Again, I would remind folks that that doesn't
necessarily mean for Republicans that there's no health reform,
that there's no subsidies, there's no insurance reform.

I think that will be the case that the president would
try to make. But I think again if you look at the proposals
they have in for insurance reform, they have in it for
purchasing across state lines, medical liability, some of the
other things. You can debate those ideas and whether they work
and whether they're popular or not popular but they do have a

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform
11/12/10

set of ideas. My sense is that they would try to replace those ideas for the ones that are now on the table.

I think that the challenge that they will have politically if they're in the majority and this is how we, I don't think, know how the issue mix will change over that time is at least right now you have this resounding message about spending. And I think therefore it makes it easier to portray a significant Medicaid expansion, for example, at a time when states are already under enormous fiscal pressure as something that, if you were to repeal that expansion or scale back that expansion, as something that could be done in the name of fiscal relief for the states or something that could be done to address the deficit but that will be a message challenge.

That'll be a substantive challenge and there will still be great need obviously to people who don't have coverage who need subsidies at lower income. So what is the alternative then becomes important. The repeal part, in some ways, is easy. It's the replace part that becomes the challenge. But I would end where you began, which is that I would take the Republicans, at least, at their word and while two years is a long time, I suspect that they would look to continue the effort to repeal it and replace it with something else.

NORM ORNSTEIN: Let me take a crack at that. It's an interesting question in a couple of ways. One, we already see

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform

11/12/10

that issue playing out on the Republican side with a number of putative candidates ripping into Mitt Romney for the Massachusetts plan. We have an overlay, what I would do is of course the great irony because I view the Affordable Care act as basically an amalgam of Romney care and the Durenberger, Grassley, Dole, Chaffey, moderate Republican alternative to the Clinton plan in 1993-1994.

This is a moderate Republican plan of what used to be with a group of people, who are now under the Endangered Species Act I suspect, but it'll play out through the primaries. But what we also know is that in the process of going after the Democrats' plan, Obama's plan and what we're seeing now, we've had Republicans move into a position of not only defending every dime of Medicare spending into perpetuity but also defending the employers and the coverage that they're now providing to people where the plan that John McCain put on the table, which has been the core conservative Republican plan, knocks the pins out from under employer-provided coverage by turning that tax deduction into a voucher and then letting people go out and buy insurance. It's moving away from the employer-provided system.

There are a lot of good substantive reasons to want to do that but I think what you're going to find is that Republicans in the process of trying to block or discredit the

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform

11/12/10

Obama plan have boxed themselves into a little bit of a corner in terms of what alternatives they can pursue without creating a very significant blowback probably the most efficient way that you could do things. If you notice, the Simpson - Bowles plan deals with taxes by broadening the base dramatically and removing that tax break and dramatically lowering rates, so that's out on the table. It's probably a good thing to do.

I think a lot of people would say if you step back objectively and were creating a new health care system, you wouldn't run it through employers who really have no expertise in or interest in being intermediaries here.

But when you're out there saying that what the Obama plan is going to do is remove that precious, wonderful employer protection, how do you move back to that or segue way into that quickly? So I think you'd find some struggle at the beginning of a Republican-run government to figure out what approach they would take. Do they go with what they really want to do, which contradicts what they've been saying for the last couple of years? Or do they go with some incremental changes, the kinds of things that we're seeing out there now, allow insurance across state lines, provide a few subsidies and vouchers here and there? It's not an easy place to be.

ED HOWARD: We're going to reconvene, these three gentlemen, two-and-a-half years from now to follow up on this

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.

Alliance for Health Reform

11/12/10

conversation and find out which direction that the rosy
scenario in either direction might take.

Let me just thank you all for being here and thank
those of you who are watching and listening around the country.
A special thanks to our colleagues at the Robert Wood Johnson
Foundation for making it all possible and I'd ask you to join
me in thanking our panelists for a really insightful and mind-
stretching look at the future of the health care reform plan in
the 112th Congress. [Applause]

[END RECORDING]

¹ The Alliance makes every effort to ensure the accuracy of written transcripts, but due to the nature of transcribing recorded material, this transcript may contain errors or incomplete content. The Alliance cannot be held responsible for the consequences of the use of the transcript. If you wish to take direct quotes from the transcript, please use the webcast of this briefing to confirm their accuracy.