Bloomberg VIEW

Resolved: Obamacare Is Now Beyond Rescue

By Megan McArdle, Jan 21, 2014

Last Wednesday, Scott Gottlieb and I **debated** Jonathan Chait and Douglas Kamerow at an Intelligence Squared event on this proposition: “Resolved: Obamacare Is Now Beyond Rescue.” I was feeling a little trepid, for three reasons: First, I’ve never done any formal debate; second, the resolution gave the “for” side a built-in handicap, as the “against” side just had to prove that Obamacare might not be completely beyond rescue; and third, we were debating on the Upper West Side. Now, I grew up on the Upper West Side and love it dearly. But for this particular resolution, it’s about the unfriendliest territory this side of Pyongyang.

Nonetheless, I greatly enjoyed the debate. I’m not ashamed to admit that the other side had a lot of powerful moments. Kamerow, a doctor who is also a former assistant surgeon general, made good points about the problems with the previous status quo. In the other seat, Chait was as passionate, witty and well-reasoned in his arguments as ever. (You can read his account of the debate **here**.) Given the various difficulties, we went in assuming that we would lose, so we were pretty surprised and pleased when we won.

What was the winning argument? We argued that the Patient Protection and Affordable Care Act is an unstable program that doesn't deliver what was expected. For a lot of people, that hardly needs proving, given all the recent technical and legal gyrations. But for others, it does, and because most of them weren’t at the debate, let me elaborate. Scott spoke eloquently about the ways in which narrow networks and the focus on Medicaid are going to deliver an unacceptable quality of care. I talked about why this, among other things, makes the system so unstable.

In a nutshell, Obamacare has so far fallen dramatically short of what was expected -- technically, and in almost every other way. Enrollment is below expectations: According to the data we have so far, **more than half** of the much-touted Medicaid expansion came from people who were already eligible before the health-care law passed, and this weekend, the Wall Street Journal **reported** that the overwhelming majority of people buying insurance through the exchanges seem to be folks who already had insurance. Coverage is less generous than many people expected, with narrower provider networks and higher deductibles. The promised $2,500 that the average family was told they could save on premiums has **predictably failed to materialize**. And of course, we now know that if you like your doctor and plan, there is no reason to think you can keep them. Which is one reason the law has not gotten any more popular since it passed.

The administration and its supporters have been counting on the coverage expansion to put Obamacare beyond repeal. So what if the coverage expansion is anemic, the plans bare-bones, the website sort of a disaster? It's a foundation upon which we can build -- and now that so many people have coverage, the thinking goes, Republicans will never dare to touch it. The inevitable problems can be fixed down the road.

But it's far from clear that this is true. The law is unpopular, not only with voters, but also apparently with the consumers who are supposed to buy insurance. The political forces that were supposed to guarantee its survival look weaker by the day. The Barack Obama administration is in emergency mode, pasting over political problems with administrative fixes of dubious legality, just to ensure the law's bare survival -- which is now their incredibly low bar for "success."

Although the fixes may solve the short-term political problems, however, they destabilize the markets, which also need to work to ensure the law's survival. The president is destroying his own law in order to save it.

Obamacare's exchange facility was conceived as a "three-legged stool": guaranteed issue, community rating, mandate. Guaranteed issue means that an insurer can't refuse to sell you a policy. And community rating means that they can't agree to sell you a policy -- for a million dollars. The problem is that if you set things up this way, it makes a lot of sense to wait to buy insurance until you get sick, at which point premiums start spiraling into the stratosphere and coverage drops. Enter the mandate: You can't wait. You have to buy when you're healthy or pay a fine.

There are actually other legs -- the subsidies, in particular, are needed so that you're not ordering people to buy a product they can't afford. But it doesn't really matter how many legs the stool has; what matters is that it needs all of them. Take one away, and the whole thing is in danger of collapsing.

Unfortunately, whenever someone has voiced discontent with the way things are going, the administration has taken a hacksaw to another leg. For example, some folks who had policies they liked before were being forced to drop them and buy new policies they didn't like so much. That caused an outcry, followed by an emergency grandfathering rule. Other major emergency fixes include:

· A one-year delay of the **employer mandate** (which our own Ezra Klein has shown is critical to both coverage expansion and cost control). It seems unclear that this will ever go into effect, as the regulatory difficulties of tracking compliance are enormous, and enforcing it will trigger unpopular changes in working hours and other conditions for many workers.

· Numerous extensions of enrollment and payment deadlines, even though these have led to consumer confusion.

· **Changes in the rules** governing the "risk corridor" programs that cover excess losses at insurers, with more potentially in the works. This buys peace with the insurers, but is going to be incredibly politically difficult for the administration to defend when the costs become clear.

Why does this put the law beyond rescue?

First, let's define what we mean by "beyond rescue." Is Obamacare going to be repealed in its entirety? No. Some of the provisions, such as letting parents keep their kids on their insurance until they're 26 years old, have no chance of being repealed. Others, such as the Medicaid expansion, will almost certainly stand in some form, though I could see Medicaid being block-granted and then slowly whittled away under another administration. The fate of other pieces, such as the cost-control procedures and the exchanges, is still too cloudy to predict.

By "beyond rescue," I mean that the original vision of the law will not be fulfilled -- the cost-controlling, delivery-system-improving, health-enhancing, deficit-reducing, highly popular, tightly integrated (and smoothly functioning) system for ensuring that everyone who wants coverage can get it.

The law still lacks the political legitimacy to survive in the long term. And in a bid to increase that legitimacy, the administration has set two very dangerous precedents: It has convinced voters that no unpopular provisions should ever be allowed to take effect, and it has asserted an executive right to rewrite the law, which Republicans can just as easily use to unravel this tangled web altogether.

Many of the commentators I've read seem to think that the worst is over, as far as unpopular surprises. In fact, the worst is yet to come. Here's what's ahead:

· 2014: **Small-business policy cancellations**. This year, the small-business market is going to get hit with the policy cancellations that roiled the individual market last year. Some firms will get better deals, but others will find that their coverage is being canceled in favor of more expensive policies that don't cover as many of the doctors or procedures that they want. This is going to be a rolling problem throughout the year.

· Summer 2014: Insurers get a sizable chunk of money from the government to cover any excess losses. When the costs are published, this is going to be wildly unpopular: The administration has spent three years saying that Obamacare was the antidote to abuses by Big, Bad Insurance Companies, and suddenly it's a mechanism to funnel taxpayer money to them?

· Fall 2014: New premiums are announced.

· 2014 and onward: Medicare reimbursement cuts eat into hospital margins, triggering a lot of lobbying and sad ads about how Beloved Local Hospital may have to close.

· Spring 2015: The Internal Revenue Service starts collecting individual mandate penalties: 1 percent of income in the first year. That's going to be a nasty shock to folks who thought the penalty was just $95. I, like many other analysts, expect the administration to announce a temporary delay sometime after April 1, 2014.

· Spring 2015: The IRS demands that people whose income was higher than they projected pay back their excess subsidies. This could be thousands of dollars.

· Spring 2015: Cuts to Medicare Advantage, which the administration punted on in 2013, are scheduled to go into effect. This will reduce benefits currently enjoyed by millions of seniors, which is why they didn’t let them go into effect this year.

· Fall 2015: This is when expert Bob Laszewski **says** insurers will begin exiting the market if the exchange policies aren’t profitable.

· Fall 2017: Companies and unions start learning whether their plans will get hit by the “Cadillac tax,” a stiff excise tax on expensive policies that will hit plans with generous benefits or an older and sicker employee base. Expect a lot of companies and unions to radically decrease benefits and increase cost-sharing as a result.

· January 2018: The temporary risk-adjustment plans, which the administration is relying on to keep insurers in the marketplaces even if their customer pool is older and sicker than projected, run out. Now if insurers take losses, they just lose the money.

· Fall 2018: Buyers find out that subsidy growth is **capped** for next year’s premiums; instead of simply being pegged to the price of the second-cheapest silver plan, whatever that cost is, their growth is fixed. This will show up in higher premiums for families -- and, potentially, in an adverse-selection death spiral.

Each of these is likely to trigger either public outcry or providers leaving the market (leading to public outcry). Policy analysts can say that this is unfortunate but necessary -- that you can’t make an omelet without breaking eggs. Fair enough, but the administration has been manifestly unwilling to tell the eggs that. Instead, it’s emergency administrative fixes for everyone. And we sure can’t count on Republicans to save Obamacare by tackling the egg lobby.

Instead, I expect that the administration is going to issue “temporary” administrative fixes for most of the law’s unpopular bits -- just as it has so far. That’s not going to get any easier as midterms and then a presidential election creep closer. And then Republicans will make the “temporary” fixes permanent. And by the time everyone’s done “fixing” the original grand vision, not much of it will be left. This is why I argued that Obamacare, the vision, is now beyond rescue. And a surprising number of Upper West Siders apparently agreed with me.