

## Health Care Reform Outlook

President-Elect Trump's successful bid for the White House has ensured that President Obama's signature healthcare reform law, the Affordable Care Act (ACA), will be a top reform priority during Trump's presidency and the 115<sup>th</sup> Congress. To date, the ACA enjoys a mixed legacy of success and although 20 million Americans gained coverage through the ACA's private insurance exchanges and state Medicaid expansions, approximately 28.5 million Americans remain [uninsured](#), and costs for healthcare services continue to rise at rates faster than general inflation. The incoming administration and Congress will be faced with the opportunity to dismantle aspects of the ACA, while facing pressures to preserve popular coverage gains and consumer protections as well identifying and adopting strategies to control healthcare costs that will in fact deliver better results than the ACA. Concern about the sustainability of the Medicare program beyond [2028](#) will also continue to loom large, as 10,000 thousand adults turn 65 every day and the number of people eligible for Medicare is projected to nearly [double](#) by 2050.

Since its passage in 2010, the ACA has been a political and policy target of congressional Republicans who seek to repeal and replace the bill. Throughout the Presidential campaign, President-Elect Trump adopted this view and campaigned on the promise to repeal and replace the ACA, but [pledged](#) to not cut Medicare or Medicaid. Over the last year, scrutiny of the ACA has intensified as United Healthcare and Aetna announced their departures from some state insurance exchanges and double digit premium increases for 2017 were made public. As a result, there is at least some bipartisan recognition surrounding the need to improve and reform the bill. The extent of which and the method for doing so will be a hotly contested political fight during the first year of Trump's Presidency. Due to the complexity of the law and the legislative procedures necessary to repeal and replace portions of the law, Republican lawmakers have resisted putting deadlines on reform but have stated that action is possible during the first 100 days of the next administration.

The newly unified Republican government which now controls the White House and both houses of Congress will offer Republicans the best chance to alter the ACA since its passage. President-Elect Trump, Speaker Paul Ryan (R-WI) and Senate Majority Leader Mitch McConnell (R-KY) are all in agreement on the need to reform the ACA. Speaker Paul Ryan (R-WI) has served as the chief policy architect for the Republican alternative to the ACA via the "[A Better Way Healthcare Proposal](#)" which was released in June. The "A Better Way" policy paper summarized in the aforementioned link offers the substantive policy blueprint that congressional Republicans will follow with respect to the individual insurance market, Medicare and Medicaid. In addition to offering changes to the ACA, the proposal outlines the Republican policy vision for Medicare and Medicaid which would transition Medicare to a premium support model and Medicaid into a state centric block grant program. This ambitious Republican reform effort will require significant legislative action and close coordination between the administration and Congress. Given Michael Best Strategies's (MBS) relationships with Speaker Ryan's office and the incoming administration, we are extremely well positioned to influence the upcoming reform effort.

### **The Administration:**

In the post-election political environment, President-Elect Trump's rhetoric regarding healthcare policy has ratcheted down significantly. While his campaign rhetoric suggested a full "repeal and replace" of the ACA, Trump and Republican leaders on Capitol Hill have already publically supported some of the patient protection provisions the ACA enacted including: coverage guarantees for individuals with preexisting conditions, allowances for young adults up until age 26 to remain on their parents' plans and fraud and abuse prevention provisions. To date, Trump's specific policy priorities for reform largely mimic Speaker Ryan's proposal and lend support for the expanded use of health savings accounts, allowing the purchase of insurance across state lines and the establishment of "high-risk pools" for individuals with exceptionally high healthcare costs.

Moreover, Trump's choice of Rep. Tom Price (R-GA) for Health and Human Services Secretary signals Trump's seriousness on reforming the ACA and a clear indication that House Republicans will lead the ACA reform effort. Price is a vocal critic of the ACA has been the Chairman of the House Budget Committee since 2015 where he was the architect of House's budgets and legislation designed to repeal the ACA through a process known as budget reconciliation. Price worked closely with Speaker Ryan to craft the A Better Way reform agenda and will play a central role in Medicaid and Medicare reform as well. One critical storyline to watch for will be the political controversy surrounding changes to Medicare and Medicaid and Trump's campaign pledge not to touch the programs. Democrats will likely seize on the politics of the issue and seek to make it politically difficult for sweeping entitlement reform. Price's nomination can be interpreted as a sign that Trump trusts Congress to lead the ACA reform effort and that Price will be the key player in administration working with Congress to advance the effort. In addition to Price, Trump has also chosen Seema Verma, founder of the Indiana health policy consulting firm SVC Inc., as his pick for administrator of the Centers for Medicare and Medicaid Services. In Indiana, Verma worked with Governor Mike Pence, now the Vice President-Elect, on Medicaid issues and the implementation of the ACA.

Despite the momentum behind ACA reform and Congressional Republicans desire to push entitlement reform, the political and policy consequences behind repealing and replacing the law are difficult to predict. The ACA is moving into its seventh full year of implementation and during that time 20 million people have health insurance as a result of the ACA and 10 million of those people participate in the state based insurance exchanges whose future faces great uncertainty under Republican reform proposals.

### **Congress and the Budget Reconciliation Process:**

In Congress, the Senate's requirement of 60 votes to override a filibuster will dictate the course of congressional action as it relates to ACA reform. Republicans are projected to hold 52 Senate seats in the 115<sup>th</sup> Congress which is below the 60 required to override a Democratic filibuster. As a result, the same process that was used to pass the ACA in 2010 known as "budget

reconciliation” will be needed to repeal and replace parts of the ACA. The reconciliation process allows for legislation to be passed using a simple 50 vote majority. Senate rules stipulate that provisions included in reconciliation bills must be budgetary in nature. The chart below describes what pieces of the ACA are eligible for repeal under reconciliation and which parts would be require separate legislation subject to normal Senate rules.

Reconciliation-eligible changes	Provisions without budget effects
<p><b>Previously passed provisions:</b></p> <ul style="list-style-type: none"> <li>» Repeal individual &amp; employer mandate penalties</li> <li>» Roll back Medicaid expansion</li> <li>» Repeal ACA taxes               <ul style="list-style-type: none"> <li>• Medical Devices</li> <li>• “Cadillac” tax</li> <li>• Tanning tax</li> </ul> </li> <li>» Eliminate cost sharing subsidies</li> <li>» Limit medical liability</li> </ul> <p><b>FSA &amp; HSA changes have tax implications and could be eligible</b></p>	<p><b>Antidiscrimination provisions:</b></p> <ul style="list-style-type: none"> <li>» Pre-existing conditions</li> <li>» Gender-based cost differences</li> <li>» Meaningful access for disabled</li> <li>» Language assistance</li> </ul> <p><b>Kids age 26 and under on parents plans</b></p> <p><b>Mandates aren’t eligible on their own</b></p>

Source: Bloomberg Government

Under the reconciliation process, Republicans will likely attempt to pass separate bills that repeal the tax and revenue related portions of the ACA and a separate bill that addresses direct spending such as Medicaid and Medicare programs. The model legislation for the tax and revenue side will likely be Rep. Price’s Restoring Americans’ Healthcare Freedom Reconciliation Act ([H.R. 3762](#)), which passed Congress but was vetoed by President Obama last January. The bill provides for the repeal of many key components of the ACA, including the excise tax on high-premium, employer-sponsored health coverage (the “Cadillac Tax”); the tax on the sale of certain medical devices (the “Medical Device Tax”); the annual fee on health insurance providers; tax increases for higher-income individuals; the individual and employer mandates; the \$2,500 contribution limit on health flexible spending accounts; the small business tax credit; and premium tax credits. A second piece of reconciliation compliant legislation would have to be developed to alter entitlement programs like Medicare and Medicaid, as well as premium subsidies under the ACA. Other proposed reforms included in the A Better Way agenda such as changes to the state based insurance exchanges would require separate legislation.

With many key parts of the ACA eligible for repeal under the reconciliation process, which would render the existing ACA apparatus largely unworkable, the political calculation on crafting bipartisan reforms may change for some Democrats and could change the dynamic of the reform debate. However, in the wake of Rep. Price’s recent nomination announcement for HHS Secretary, several prominent Democrats including House Minority Leader Nancy Pelosi and

Senate Minority leader Senator Chuck Schumer have come out publically in opposition to the proposed changes to Medicare and Medicaid which are included in the A Better Way plan.

In Congress, the makeup of the congressional committees that will be ushering ACA reform packages through Congress will remain largely unchanged from the 114<sup>th</sup> Congress. In the Senate, Senator Lamar Alexander (R-TN) will remain Chairman of the Senate HELP Committee with Senator Patty Murray (D-WA) serving as Ranking Member. Senator Orrin Hatch (R-UT) is expected to remain the Chairman of the influential Senate Finance Committee, with Senator Ron Wyden (D-OR) staying on as Ranking Member.

In the House, Representative Greg Walden (R-OR) will Chair the House Energy and Commerce Committee in January replace Representative Fred Upton (R-MI) as Chairman, who is term limited. The House Ways and Means Committee will not see a change in leadership in the 115<sup>th</sup> Congress. Representative Kevin Brady (R-TX) who served as a coauthor of the A Better Way Agenda will continue to serve as Chairman and Rep. Richard Neal (D-MA) will succeed Rep. Sander Levin (D-MI) as Ranking Member. Given its jurisdiction over tax and revenue legislation, the Energy and Commerce and Ways and Means Committee will play a central role in the ACA reform effort.

### **Long Term Effort**

Ultimately, the process to reform and replace the ACA and proposing entitlement reforms using the framework established in the A Better Way proposal will be a complex and extended effort into Trump's first term in office. Six years into the ACA implementation process there are still many issues to be resolved and the prospect of a new direction raises entirely new questions. The healthcare industry has taken time to adjust and its plans for the future have been thrust into limbo with the prospect of wholesale ACA changes. For example, insurers looking to participate in state exchanges in 2018 are required to begin submitting their plan choices to state regulators later this spring. With the prospect of congressional action the future of the state based exchange system is likely to dramatically shift leaving industry uncertain of the future business environment.

A second consideration to understand during the ACA reform debate is that the rising cost of insurance premiums will not be solved overnight. Much of the A Better Way plan relies on private sector competition to bring down costs, arguably a very similar approach to the one adopted in constructing the insurance marketplaces under the ACA. However, issues related to premium increases are not likely to change immediately. Individual plan premiums on ACA exchanges are expected to increase by an average of [25%](#) in 2017 and HHS has reported that 8.4 million individuals will receive [significant](#) premium hikes. Additionally, employers have experienced significant increases for employee insurance plans which cover approximately 155 million Americans. State government budgets are also under significant pressure due to expanded Medicaid eligibility and enrollment, and the impending reduction in federal Medicaid match either as part of proposals to transition to Medicaid block grants. These cost and affordability problems are likely to persist into the Trump presidency, and it remains to be seen whether the proposed reforms, if adopted, will have a significant impact on healthcare cost inflation. Lastly, a lingering tension remains between promises to preserve coverage

guarantees and price limits on people with chronic and preexisting conditions with the repeal of the individual mandate. This situation promises to continue the adverse selection problem that has occurred in many state exchanges and would likely continue the upward pressure on premium prices.

Given the complexity of these policy questions, the complex nature of the legislative procedures used to enact them and the critical need from private industry to plan for the future, MBS will continue to update our clients and stakeholders as the healthcare reform effort continues to take shape. For more information about healthcare reform in the next Congress and Administration, please contact Kevin Swanson in Michael Best Strategies's DC office at 202-747-9578.

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