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# Republican Health Care Reform: What the Repeal and Replacement of the Affordable Care Act Will Look Like

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*Note: This article focuses on major provisions of the expected Republican replacement plan for the Patient Protection and Affordable Care Act (ACA) that impact health insurers. The opinions expressed in this article are those of the authors and not necessarily those of Axene Health Partners LLC, the Society of Actuaries or the American Academy of Actuaries. This article was completed in early December 2016 and was based on information available at that time.*

In the early hours of November 9, 2016, billionaire real estate developer and reality TV show host Donald Trump became the president-elect of the United States of America. While much of the presidential campaign focused on the two candidates' legal and behavioral issues, President-elect Trump made it fairly clear that he intended to repeal President Obama's signature legislation, the Affordable Care Act (i.e., the ACA). President-elect Trump's presidential campaign website had a short policy paper on health care reform, which stated: "On day one of the Trump Administration, we will ask Congress to immediately deliver a full repeal of [the ACA]."<sup>1</sup> Additionally, Trump's health care plan included the following general policy prescriptions:<sup>2</sup>

- Eliminate the Individual mandate to purchase health insurance
- Allow insurers to sell plans across state lines
- Allow individuals to fully deduct health care premiums from their tax returns
- Expand the tax effectiveness of HSAs
- Require price transparency from health care providers
- Block-grant Medicaid funds to the states to allow the states to spend the money as they see fit
- Allow the importation of pharmaceuticals for sale in the United States

We consider President-elect Trump's plan to be a series of guiding principles rather than a comprehensive policy proposal

inclusive of necessary details to assess what a complete ACA replacement would entail. However, many Republican lawmakers and market-friendly think tanks have developed ACA replacement plans that, along with Trump's guiding principles, can be used to develop a reasonable estimate of what the repeal and replacement of the ACA will look like. Over the rest of this article we will provide our best estimate of how and when the ACA would be repealed, what Trump's replacement plan would be (i.e., the Republican health care reform plan), and what sort of disruption and risks health insurers would face as a result.

## REPEALING THE ACA

Under the current rules of the Senate, a full repeal of the ACA is unlikely without at least eight Democrats voting with the expected 52 Republican senators.<sup>3</sup> This is because the Senate allows for the filibuster, a tactic used to delay or entirely prevent a vote on a bill by extending debate. A vote can only be brought by having at least 60 senators invoke cloture to end the debate.<sup>4</sup> While the ability to filibuster a bill or judicial nomination can be overridden in some cases by the so-called nuclear option, which requires a simple majority,<sup>5</sup> we assume that the filibuster will be used by Senate Democrats to deny a majority vote on a full ACA replacement bill in early 2017.

However, major portions of the ACA can be rendered meaningless through a process called budget reconciliation. Budget reconciliation allows a simple majority vote to be used to defund the provisions of the ACA that are related to spending, revenues, and the federal debt limit.<sup>6</sup> Therefore, the Republicans could repeal the following provisions, among others, of the ACA through the budget reconciliation process:

- Premium and member cost-sharing subsidies
- The ACA insurer fee, the medical device tax and other ACA taxes
- Medicaid expansion
- The individual and employer mandates

While there is some disagreement, it appears that repealing the rating rules, plan design rules, and benefit mandates will not be possible without a full repeal of the law. Additionally, immediate elimination of the subsidies and mandates while still having the guaranteed issue requirement would mean the end of the individual insurance market in the United States. Combining that with a simultaneous rollback of Medicaid expansion would guide Republican lawmakers to the politically suicidal situation in which twenty million or more people would lose their health insurance under their watch. We don't expect this will happen for obvious reasons.

Instead, the most likely approach will be to repeal the ACA provisions listed earlier through budget reconciliation, while

sunsetting the coverage expansion provisions of the current law through the end of 2018 and providing transitional support to insurers so that they do not pull out of the ACA markets. This will give Republicans time to develop a suitable replacement for the ACA that incorporates market-based solutions while providing low-cost health insurance to as many people as possible. The conventional thinking is that such a bill will satisfy Republicans and enough Democrats to pass the Senate before the end of 2018.

### REPUBLICAN PROPOSALS TO REPLACE THE ACA

There are more than a dozen Republican plans to replace the ACA. Some of these plans have been submitted as legislative proposals in the House of Representatives and/or the Senate. Others were developed by Republican presidential candidates during the last election cycle. Finally, several right-leaning think tanks have developed health care reform proposals to replace the ACA.

Our review of the Republican proposals eventually focused on five specific plans. We chose these plans for our review because they are comprehensive (e.g., did not just deal with commercial market insurance, but also Medicare, Medicaid, and the overall cost of care), are championed by people who we expect to have power or influence in the new government, and are in alignment with President-elect Trump’s broad health care reform campaign proposal. While these plans are Republican plans and feature many free-market-type reforms, they still involve a heavy dose of federal government control and expenditures. We do not believe a plan that just repeals the ACA and returns to the pre-ACA status quo would ever pass. In other words, the repeal and replacement of the ACA will go hand-in-hand.

We considered in detail the following five Republican plans:

- “A Better Way,” by Speaker of the House of Representatives Paul Ryan<sup>7</sup>
- “Transcending Obamacare: A Patient-Centered Plan for Near-Universal Coverage and Permanent Fiscal Solvency,” by the Foundation for Research on Equal Opportunity<sup>8</sup>
- “Empowering Patients First Act,” by secretary of Health and Human Resources nominee Tom Price<sup>9</sup>
- “Improving Health and Health Care: An Agenda for Reform,” by the American Enterprise Institute<sup>10</sup>
- “The World’s Greatest Healthcare Plan,”<sup>11</sup> by Representative Pete Sessions (R-TX) and Senator Bill Cassidy (R-LA)

Our review of these plans found many common health care reform themes. In general, the Republican plans favor the lessening of federal control over insurance markets, the creation of interstate markets for health insurance, restrictions on the tax favorability of employer-sponsored insurance, the expanded use of HSAs and market-oriented reforms of Medicaid and Medicare.



### WHAT THE REPUBLICAN HEALTH CARE REFORM PLAN WOULD LOOK LIKE

The Republican health care reform plan that ultimately replaces the ACA will likely be based on the common policy provisions found in Republican and right-leaning health care reform proposals and the high-level guidelines provided by the Trump campaign health care reform position paper. It will likely also take into account current and near-term political realities; the desire to strengthen the private individual insurance market, Medicare, and Medicaid; and the long-term Republican goal of ensuring that single-payer health care never becomes a reality in the United States.

In our estimation, the Republican health care reform plan will contain the following major policy provisions.

#### Modified Guaranteed Issue

President-elect Trump stated in his postelection interview with “60 Minutes” Lesly Stahl that the Republican health care reform plan will not remove the most popular provisions of the ACA, including allowing child dependents to stay on their parents’ health plans until age 26 and the guaranteed issue requirement for health insurers.

While guaranteed issue is popular, it is also one of the main contributors to the rate and pool instability in the Individual ACA markets. Additionally, the Republican health care reform plan will not include an individual mandate provision, which will only exacerbate the adverse selection issue. To help offset the risk of adverse selection, the Republican health care reform plan will

contain a continuous coverage modification to its guaranteed issue provision. What this means is that if a person develops a condition while being continuously insured (e.g., no more than three months uninsured over the previous 36 months), insurers would be required to continue to offer him coverage and could not rate him based on his changed health status. People who do not maintain continuous coverage as the law defines it would still be able to obtain coverage but would be rated based on health status.

### **Permanent Risk Adjustment and Reinsurance Programs for the Individual Market**

Like the ACA, the Republican health care reform plan will utilize premium stabilization programs to offset excessive risks to health insurers selling insurance in the individual market. The first will be a risk adjustment program. Unlike the ACA's current risk adjustment program, the Republican health care reform plan's program will not be a zero-sum payment system between carriers. In other words, the government will provide additional risk adjustment payments to compensate insurers for non-ratable risk liabilities. Additionally, the Republican health care reform plan will utilize a reinsurance program and/or high-risk pool to protect insurers from the risk of very high cost individuals.

### **Means-Tested, Defined-Contribution, Refundable Tax Credits for Individual Insurance**

Also like the ACA, the Republican health care reform plan will provide premium support subsidies for individual insurance for low-income individuals not able to, or who decline to, obtain coverage through Medicare, Medicaid, other government insurance programs, or through an employer-sponsored plan. The form of these subsidies will be fixed refundable tax credits, adjusted for income, age, and general (not medical) inflation. In this way the premium subsidies will be of a defined contribution, not the defined benefit subsidies linked to the premiums charged by insurers under the ACA. The expectation is that defined-contribution premium subsidies will reward recipients for selecting, and insurers for offering, cost-effective and sustainable products.

### **Medicaid Reform**

The Republican health care reform plan will probably end and roll back the ACA's Medicaid expansion. Instead, premium support subsidies will be made available to allow low-income individuals either not covered by, or who opt out of, other programs to obtain coverage in the individual market. For the remaining Medicaid population, there will likely be revisions to the current Federal Medical Assistance Program (FMAP) formula used to determine the portion of program expenses covered at the federal level. Under the current FMAP formula, federal Medicaid reimbursement varies between states based on

both state per capita income relative to the national level and a state's actual expenditures on the program.

Two common proposals to stabilize the federal budget for Medicaid are the use of either a per capita or a block-grant funding approach. Under a per capita funding arrangement, the federal government provides each state with a PMPM payment for each Medicaid enrollee. These PMPMs would vary by Medicaid eligibility category but would not vary between states. Under a block-grant approach, states would be eligible for a set amount based on historical costs and enrollment in a set base period and would be liable for cost and enrollment increases in the future. States would be given far greater discretion for both spending block-grant funds and setting eligibility requirements.

### **Medicare Reform**

We expect that President Trump and congressional Republicans will make an attempt to reform Medicare. While the details of such a reform effort are beyond the scope of this article, we expect the Republicans' Medicare reform plan will include some basic provisions. The first will be to move Medicare to a premium-support model. In this model, Medicare-eligible persons would be given premium subsidies to purchase private insurance, Medicare Advantage, or Medicare FFS plans. The premiums would be available to Medicare enrollees on an exchange that would allow the enrollee to compare and purchase different plan options. Additionally, a Republican Medicare reform plan would include a provision to gradually raise the Medicare eligibility age to at least 67. Finally, we also expect that any Republican Medicare reform will eliminate both the Independent Payment Advisory Board (IPAB) and the Center for Medicare and Medicaid Innovation (CMMI). The Republicans believe that both of these entities have too much discretionary power to make top-down decisions on Medicare reimbursements.

### **Expanded Use of HSAs to Encourage Consumerism**

The Republican health care reform plan will likely expand the tax-favored status and, therefore, the expected use, of health savings accounts (HSAs). Republicans see the use of HSAs as a necessary part of making the health care system more consumer-oriented. As such, the Republican health care reform plan will expand the use of HSAs by doing the following:

- Providing a one-time refundable tax credit for HSA contributions
- Increasing the maximum HSA annual contribution limit
- Allowing HSA rollovers to surviving children or parents (not just surviving spouses, as current law allows)
- Expanding the availability and use of HSAs in Medicare, Medicaid and other government insurance programs
- Providing contributions to people receiving premium-support tax credits in the individual market. This item is meant to serve as a replacement for the ACA's cost-sharing subsidies.



## Expansion of Pooling Vehicles for Individuals and Small Groups

It's probable that the Republican health care reform plan will establish independent health pools (IHPs) and association health plans (AHPs) to allow individuals and businesses to come together for the purpose of purchasing health insurance. These pools would not be subject to state mandates and would be expected to increase the bargaining power and lower the administrative costs of the pool's membership.

## Creation of Interstate Markets for the Purchase of Health Insurance

Under the Republican health care reform plan, much of the regulatory authority assigned to the federal government by the ACA could be returned to the states. As such, federal rating rules, benefit mandates, and plan design requirements would go away. Additionally, the Republican health care reform plan will allow for the purchase of insurance across state lines. Their expectation is that this will increase competition among insurers and state regulators, thus leading to lower-cost options for people across the country.

## Medical Liability Reform

Missing from the ACA, reforms on liability for medical malpractice will likely be included in a replacement plan. As tort laws are the domain of the individual states, reforms at the state level, such as establishing medical review tribunals, limiting damages based on proportional liability, and establishing a statute of limitations for malpractice cases, would be encouraged through federal grants. Direct reform at the federal level is also possible, including placing limits on noneconomic and punitive damages for patients receiving either premium support in the individual market or health care through a federally funded program.

## Caps on the Tax-Favored Status of Employer-Sponsored Insurance

The Republican health care reform plan could place a cap on the tax-favored status of employer-sponsored insurance (ESI). The ESI tax exclusion allows employees to pay for their employer-sponsored health insurance coverage using pretax dollars and for employers to deduct their premium contributions from corporate taxes. As a result of the exclusion, there has been an incentive for employers to offer richer and costlier health plans. This "overinsurance" is believed to have led to an excessive increase in health care costs over the past 70 years. Under the Republican health care reform plan, if an employee's health insurance costs exceed a specified cap, then the portion of the cost exceeding the cap will no longer receive the ESI tax exclusion. The expectation is that incentivizing employers to offer less rich health plans will lead to lower future health care cost trends.

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## RISKS AND OPPORTUNITIES FOR INSURERS UNDER THE REPUBLICAN HEALTH CARE REFORM PLAN

Another important question is how all of the changes associated with the expected Republican health care reform plan will impact health insurers. The rollout of the ACA provided insurers with many challenges, and we expect the same for the Republican health care reform plan. We believe that insurers will also be presented with opportunities if the Republican plan is sustainable and effectively rolled out.

The first risk related to the Republican health care reform plan for health insurers concerns the effectiveness of new premium stabilization programs, given that health status rating will be limited and there will be a modified guaranteed issue requirement. Risk adjustment programs are great in theory but, in our opinion, have not worked well in the ACA markets. We do think that having mechanisms to pay for the costliest members outside of the risk adjustment program (i.e., the reinsurance programs and/or high-risk pools), along with making risk adjustment a non-zero-sum game, will help. However, we are unsure of how these programs will work in practice. If the Republicans do not establish effective risk mitigation programs, we expect the individual market to flounder under the Republican health care reform plan.

We believe that many of the Republican plan's reforms increase participation in the individual and group insurance markets. The premium-support program under the Republican health care reform plan, combined with the expansion of HSAs and the removal of the ACA's strict rating rules, should incentivize many previously uninsured people, including the so-called young invincibles, to enter the individual market. We also believe that the IHPs and AHPs will allow many previously un- or under-insured to obtain meaningful health insurance coverage. However, the defined-contribution nature of the premium subsidies, along with the change in the tax treatment of employer-sponsored insurance, have a very real chance of decreasing the amount of insurance coverage per contract that is purchased. In isolation, these changes could profoundly reduce revenue and profits earned by insurers.

We do not think that the selling of insurance across state lines will have much of an impact on insurance markets, at least not in the near term. Although increased competition usually leads to lower costs, we do not think that insurers can successfully enter out-of-state markets without great effort. The vast majority of commercial health insurance products utilize provider networks. Therefore, an entrant into a new market must develop an attractive network with meaningful discounts to offer competitive rates. Even with a competitive provider network, it takes time to build up a risk pool of enough size to gain the administrative efficiencies necessary for profitability. We expect that few insurers will be willing to undertake such a costly and time-consuming effort.

Finally, we expect that Medicaid and Medicare reforms will be a net positive for health insurers. The Republican efforts to reform Medicaid and Medicare will expand the markets for health insurers, since the reforms encourage a continued move away from traditional Medicaid and Medicare to private insurance alternatives for many enrollees. However, efforts to lower the expected cost increases in the two programs will similarly lower revenues and profits for health insurers on a per contract basis.

### WILL REPUBLICAN REFORM MAKE HEALTH CARE “GREAT AGAIN”?

While many of the provisions of the Republican health care reform plan will cause risk and opportunities for health insurers and participants in the health insurance market, many are optimistic that these reforms will be the first major step in addressing the shortcomings of the ACA. While we feel comfortable predicting what form the Republican health care reform plan will take, we are ultimately unsure of its impact. On a non-partisan note, we wish to point out the underlying goal of the Republican health care reform plan is the same as the ACA: to ensure affordable health care coverage for as many Americans as possible. Hopefully, this iteration of health care reform will meet that goal. ■



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#### ENDNOTES

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