

Recent Elections Will Bring Changes to Health Care

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Donald Trump's victory in the presidential election combined with Republicans maintaining control of both chambers of Congress has the potential to alter the health care landscape significantly. While little is certain in politics, President-elect Trump and Congressional Republicans have campaigned and pledged for health care reform to include the repeal and replacement of the Affordable Care Act (ACA).

While lacking the 60 Senate votes necessary to fully repeal and replace the ACA, a Republican Congress and President can utilize the budget reconciliation process to repeal significant portions of the law. Earlier this year, Congress passed, and President Barack Obama promptly vetoed, the Restoring Americans' Healthcare Freedom Reconciliation Act. This bill provides a possible roadmap for the initial Republican effort to repeal and disable portions of the ACA and included the following changes to the ACA:

- Restrict the federal government from operating health insurance exchanges;
- Phase out subsidy funding for individuals purchasing insurance through the health insurance exchanges;
- Eliminate tax penalties for employers who do not provide health insurance plans;
- Eliminate tax penalties for individuals who do not purchase health insurance;
- Eliminate the Cadillac tax on certain employer health care plans;
- Eliminate taxes on medical devices; and
- Phase out Medicaid expansion over a two year period.

This approach would destabilize many of the remaining provisions of the ACA that cannot be repealed through budget reconciliation. Many of the non-insurance provisions of the ACA, such as the 60-day return of overpayment rules, False Claims Act changes and support for Accountable Care Organizations and payment reform concepts would not be impacted by this approach. Popular insurance reforms, including allowing children to remain on their parents' health insurance until age 26, prohibiting the use

of pre-existing conditions to deny insurance coverage and barring lifetime limits on health care benefits also are unlikely to be affected by this budget reconciliation approach.

Aside from any changes to the statute, the ACA grants the Secretary of Health and Human Services significant discretionary authority to determine compliance or grant waivers to the ACA and approve state-based innovations. Combining the budget reconciliation approach with the Secretary's discretionary authority would effectively undermine the ACA's health insurance reforms, but would not provide a replacement structure. Any health care reform effort to replace the ACA cannot be accomplished through the budget reconciliation process and will require a serious legislative effort to be enacted.

The health care industry and markets have adjusted their business practices and models to comply with the ACA. The uncertainty associated with a piecemeal repeal of the ACA would destabilize the industry. The Republican Speaker of the House of Representatives, Paul Ryan, has proposed a plan to overhaul the nation's health care system to:

- Reform Medicare to permit younger Americans the opportunity to choose premium supports to purchase private insurance coverage;
- Reform Medicaid by allowing states the option to receive funding through a block grant along with greater flexibility to manage their Medicaid programs;
- Institute work requirements for able-bodied Medicaid recipients;
- Expand the use of Health Savings Accounts for employers; and
- Utilize tax credits to assist those without insurance coverage to obtain health insurance.

Speaker Ryan's proposed plan is likely a discussion-starter because any effort to pass an ACA replacement bill will require 60 votes in the Senate to overcome a filibuster.

The election results will also impact health reform efforts at the state level. It will make further legislative efforts to expand Medicaid in Virginia or North Carolina problematic. Certificate of Public Need and Certificate of Need reform efforts likely will continue to be front and center during Virginia and North Carolina's legislative sessions.

The only thing certain after this election cycle is that change is coming to health care. Williams Mullen will stay on top of federal or state actions impacting our clients and remain available to assist as we navigate uncharted waters together.

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