

## Health Reform Outlook for 2017: A Year of Major Uncertainty

*Moving to Repeal and Replace the Affordable Care Act*

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Fulfilling their promises, Congressional Republicans moved to repeal the Affordable Care Act (ACA) on the first day of the new Congress when Senate Budget Committee Chair Michael Enzi (R-WY) introduced “reconciliation instructions.” These instructions would enable Congress to substantially repeal the ACA through the budget reconciliation process, in which bills can be passed on a simple majority basis and cannot be filibustered.

Using the budget reconciliation process limits Congressional action to those aspects of the ACA that affect spending and revenue; this includes the ACA’s insurance subsidies, Medicaid expansion, tax increases, and the mandate to purchase coverage. Other aspects of the ACA would require standard legislation to modify or repeal.

The current debate among Republican leaders is not whether to repeal the ACA, but how much time following repeal would be needed to come up with a replacement for the ACA to keep 22 million Americans from losing their coverage. When incoming Secretary of Health and Human Services, Tom Price (R-GA), led the effort to pass an earlier repeal through the last Congress, his proposed bill would have delayed the repeal for two years. Senate Republicans are currently discussing the possibility of a three-year delay or longer, and some House Republicans are even arguing for a delay that extends until after the 2020 presidential election.

Another issue Republican leaders are tackling is whether to repeal the ACA in the absence of a plan to cover those people currently benefiting from coverage through the ACA. A few key Senate Republicans have voiced concerns over this approach, including Senators Lamar Alexander (R-TN), Bob Corker (R-TN), and Susan Collins (R-ME). Senator Alexander, in particular, will play a key role in this debate as he chairs the Senate Health, Education, Labor, and Pensions Committee, which must address and pass through the repeal bill before it reaches the Senate floor. If Senator Alexander insists on a replacement plan being available, it could significantly hinder the “repeal and delay” approach being advocated by House Republicans. President Obama and Democratic leaders have seized on this debate arguing that it would be irresponsible to repeal the ACA without an adequate replacement.

### *What Comes Next?*

As it stands, there continues to be much uncertainty around a replacement for the ACA among Republican leaders and the incoming administration. President-elect Trump has not been entirely clear whether he will side with Congressional Republicans on health reform. While he has indicated that repealing the ACA was one of his top three priorities once elected, he later omitted any mention of health reform in a video released on November 21, 2016, detailing his priorities for the first 100 days of his administration.<sup>1</sup> In fact, Trump has emphasized the need for universal coverage in his statements and discussed using “concepts of Medicare”

<sup>1</sup> [www.youtube.com/watch?v=7xX\\_KaStFT8](http://www.youtube.com/watch?v=7xX_KaStFT8)

to address the uninsured, proposed that Medicare be allowed to negotiate drug prices<sup>2</sup>, and indicated that he would not make changes to Medicare – each a significant deviation from traditional Republican approaches to reform.

However, a strong argument can be made that Trump will likely hew close to the priorities of the Republican Congress, given his choice of Representative Tom Price (R-GA), a physician and co-chair of Speaker Paul Ryan’s “A Better Way” task force on health care, to serve as his Secretary of Health and Human Services.

**Key aspects of Speaker Ryan’s “A Better Way” proposal include the following:**

- Offer individual, age-adjusted credit large enough to cover a typical pre-ACA health insurance premium
- Expand contributions to and uses for health savings accounts
- Enable the purchase of individual market policies across state lines
- Implement individual market age rating at 5:1 (versus 3:1, under current law), meaning that insurance companies can vary their premium costs five times greater for an older person versus a younger person
- Offer states more flexibility to design Medicaid programs and benefits (e.g., adding work requirements for able-bodied individuals and additional cost-sharing)<sup>3</sup>

Without a clearer picture of what might replace the ACA, major players in the industry are grappling with uncertainty. Hospitals have already begun cutting costs in anticipation of the ACA’s repeal and the probable increase in costs for uncompensated care.<sup>4</sup>

This uncertainty is particularly difficult for insurers who need stability of rules in order to price out their rates. Insurance analysts warn that any more uncertainty, in an already fragile marketplace, could easily prompt insurers to leave the individual market, putting at risk coverage for roughly 20 million people who gain coverage on the individual market.<sup>5</sup>

Republican leaders desire to bring down premium costs, reduce government spending, and give states more flexibility. But these goals, while laudable, require difficult compromises, a consensus among Republican lawmakers, and buy-in with the new administration, which is no easy feat.

If you have any questions about this topic, please contact one of the listed Roetzel attorneys.

<sup>2</sup> <http://money.cnn.com/2016/03/03/news/economy/trump-health-care/> cited in Carlton, Stephanie, Coe, Erica and Singhal, Shubham, “Navigating the uncertainty of potential ACA ‘repeal and replace’: A preliminary analysis.” Center for U.S. Health System Reform 08 Dec. 2016: McKinsey & Company. Web. 4 January 2017.

<sup>3</sup> Ryan, Paul. “A Better Way: Our Vision For A Confident America.” [www.speaker.gov](http://www.speaker.gov), 22 June 2016. Web. 4 Jan. 2017.

<sup>4</sup> Demko, Paul and Cancryn, Adam, “Obamacare repeal’s doomsday scenario.” Politico. Web. 09 Jan. 2017.

<sup>5</sup> Rovner, Julie “Vowing to Jettison Obamacare, Republicans Face Immediate Resistance and Risks.” Kaiser Health News. Web. 3 January 2017

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