

# Life After the ACA: What's Next for Employer-Sponsored Health Coverage?

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# AGENDA

- Trump's position on repeal/replacement of Affordable Care Act (ACA)
- Challenges of ACA repeal
- Procedure for Congressional action to repeal
- Trump's Executive Orders
- Other Republican positions on ACA repeal
- Gazing into the crystal ball
- Possible reactions by employers to ACA amendment/repeal

# TRUMP WEBSITE POSITIONS

- Trump campaign website stated: “On day one of the Trump Administration, we will ask Congress to immediately deliver a full repeal of Obamacare.”
- Trump transition website states:

It is clear to any objective observer that the Affordable Care Act (ACA), which has resulted in rapidly rising premiums and deductibles, narrow networks, and health insurance, has not been a success. A Trump Administration will work with Congress to repeal the ACA and replace it with a solution that includes Health Savings Accounts (HSAs), and returns the historic role in regulating health insurance to the States. The Administration’s goal will be to create a patient-centered healthcare system that promotes choice, quality and affordability with health insurance and healthcare, and take any needed action to alleviate the burdens imposed on American families and businesses by the law.

# TRUMP WEBSITE POSITION (CONT.)

- Will work with Congress to enable purchase of insurance across state lines
- Will re-establish high-risk pools for those with significant medical expenses who have not maintained continuous coverage
  - Does this mean repeal of no pre-existing condition exclusions?
- Administration will act to:
  - Protect individual conscience in health care
  - Protect innocent human life from conception to natural death, including the most defenseless and those Americans with disabilities

# TRUMP WEBSITE POSITION (CONT.)

- Administration will act to:
  - Advance research and development in health care
  - Reform the Food and Drug Administration (FDA), to put greater focus on the need of patients for new and innovative medical products
  - Modernize Medicare, so that it will be ready for the challenges with the coming retirement of the Baby Boom generation – and beyond
  - Maximize flexibility for states in administering Medicaid, to enable states to experiment with innovative methods to deliver health care to their low-income citizens
    - i.e., block grant Medicaid to the states

# OTHER TRUMP CAMPAIGN POSITIONS

- Cover pre-existing conditions
- Cover children up to age 26
- Import prescription drugs from foreign countries
- Allow individuals to fully deduct premium payments for health insurance
- Sell insurance across state lines
- Provider price transparency
- Six weeks of paid maternity leave

# CHALLENGES POSED BY ACA REPEAL

- Republican promise that “you will be able to keep your health insurance”
- No clear Republican replacement for ACA
- Need for some time to transition individuals on qualified health plan (QHP) Marketplace coverage to its replacement
- Avoiding complete collapse of health insurance market in America
- Republican retreat in Philadelphia: legislation on ACA replacement not likely until March
  - Recordings indicate worry over replacement plan and political fallout

# CHALLENGES POSED BY ACA REPEAL (CONT.)

- Finding affordable replacement coverage for:
  - 20 million people who currently have QHP coverage due to ACA
    - Including pre-65 retirees who are using QHP coverage as bridge to Medicare
  - 6-7 million individuals with Medicaid coverage due to ACA's Medicaid expansion
  - Employees whose employers will drop coverage if pay-or-play penalties are repealed

# CHALLENGES POSED BY ACA REPEAL (CONT.)

- Congressional Budget Office report on repeal
  - Partial repeal of ACA
    - 18M more uninsured Americans
    - Premiums for individual (nongroup) insurance would increase 20-25% in the first year
  - Complete repeal of ACA
    - 27M more uninsured Americans
    - Premiums for individual (nongroup) insurance would increase 50% in the first year

# CHANGING SENTIMENT ON ACA

- WSJ/NBC News Poll: 45% now believe ACA is a good idea, 41% believe ACA is a bad idea
  - Another poll shows approval rating for ACA at 47%, up from 41% at the beginning of January
    - 45% of voters disapprove of the ACA, down from 52%
- Only one in four Americans favor repeal of the ACA without replacement:
  - Kaiser Family Foundation health tracking poll from November
- 52% of Republican lawmakers favor complete repeal post-election, down from 69% pre-election
  - More now in favor of scaling back the ACA

# PROCEDURAL PROCESS FOR CHANGE

- Legislative action will be required
  - Republicans have insufficient majority in Senate to overcome filibuster
- Budget reconciliation process may be used to repeal some provisions of ACA
  - Cannot be filibustered: simple majority required
  - Repeal provisions that impact federal revenue
    - Individual mandate and pay-or-play penalties
    - Exchange subsidies
    - Medicaid expansion
    - Cadillac and other ACA taxes

# EXECUTIVE ORDERS

- Regulatory Moratorium Order
  - Freeze and/or delay proposed regulations
    - Proposed regulations on Form 5500
    - Federal poverty guidelines for January 2017
- ACA Order
  - Instructions to federal agencies that are a part of the executive branch
    - Example of HHS action: initially stopped ads for Exchange
    - Administration partially reversed suspension of ads
      - Automatic emails, phone calls and social media messages will continue

# ACA EXECUTIVE ORDER

- Seek prompt repeal of ACA
- Take all legal actions to minimize “the unwarranted economic and regulatory burdens of the Act”
- Support giving states more flexibility and control over healthcare markets
- Waive, defer, grant exemptions from, or delay the implementation of ACA provisions that impose a fiscal burden
- Adopt regulations consistent with the Order
  - Waiting for Trump cabinet nominees to be confirmed

# TRUMP NOMINEE TO LEAD HHS: TOM PRICE

- Confirmation hearing held January 24, 2017
- Ardent opponent of the ACA
- 242-page “Empowering Patients First” plan
  - Tax credits to offset cost of individual health coverage based on age, not income
  - Allow those on Medicare and Medicaid to get tax credit for opting out to purchase a different plan
  - Expanded use of HSAs
  - Sale of health insurance across state lines
  - Grants for state-level high-risk pools and allowing new pooling arrangements

# TRUMP NOMINEE TO LEAD HHS: TOM PRICE (CONT.)

- Believes lawsuits against medical professionals and regulatory burden drive medical costs higher
- Noted any changes to ACA would bear a “significant resemblance” to the legislation that the Republican Congress sent to Obama last January
  - Removed the shared responsibility payment
  - Eliminated medical device tax
  - Ended advance premium tax credit and cost sharing reductions
  - Ended Medicaid expansion
  - Would have delayed or phased-in implementation

# REPUBLICAN PROPOSAL

- Position paper released in June called “A Better Way”
  - Draws strongly on Price’s “Empowering Patients First” plan
  - A refundable tax credit for individuals not covered by employer plans
  - Expanded use of HSAs
  - Restructure of Medicaid and Medicare
    - Combine Medicare Parts A and B
    - Delay Medicare until full SSA retirement age (for example, age 67 for persons born after 1959)

# REPUBLICAN PROPOSAL (CONT.)

- Position paper released in June called “A Better Way” (cont.)
  - Allow purchase of health insurance across state lines
  - Medical malpractice reform
  - Keep some key parts of the ACA
    - Cover children to age 26
    - Ban on pre-existing condition exclusions
    - Impose a tax similar to the Cadillac tax

# GAZING INTO THE CRYSTAL BALL

- Repeal Cadillac tax
  - Both parties support repeal, never popular
  - However, recent Republican and Trump comments suggest possibility of retaining tax in different form
- Repeal or defund enforcement of individual mandate and employer shared responsibility payments
- Easier for religious organizations to refuse to provide contraceptives as preventive care

# GAZING INTO THE CRYSTAL BALL (CONT.)

- Provisions with support across party lines
  - Maintain coverage for children up to age 26
  - No copayments for many preventive services
  - Closing the Medicare prescription drug coverage gap “doughnut hole”
  - Barring insurance companies from denying coverage due to a person’s medical history
  - Increased Medicare payroll taxes

# GAZING INTO THE CRYSTAL BALL (CONT.)

- Questionable
  - Pre-existing conditions?
  - Repeal Medicaid expansion?
  - ERISA preemption at risk?
  - Changes to Medicare?
  - Elimination of ACA reporting requirements?
  - Adding cap on exclusion for employer-provided health insurance to fund Republican proposal?
  - Increased HHS waivers to individuals who claim the mandate to buy insurance is a hardship?

# REPEAL OF ACA: EXAMPLES OF POSSIBLE IMPACTS ON EMPLOYERS

- Dropping health plan coverage for all employees
  - Especially if viable other option available to employees
- Changing eligibility rules
  - Restricting eligibility for coverage to employees who work 40 (rather than 30) hours a week
  - Denying eligibility to all seasonal/temporary employees
    - Dropping of initial and standard measurement periods
- Requiring higher employee contributions
  - No “affordability” concerns

# REPEAL OF ACA: EXAMPLES OF POSSIBLE IMPACTS ON EMPLOYERS (CONT.)

- Higher utilization of employer-provided coverage by employees and dependents
- Renegotiation of union contracts
- Increased flexibility for plan design
  - Reinstating lifetime/annual dollar maximums
  - Imposing waiting periods longer than 90 days
  - Rebundling vision/dental plans into major medical plan
  - Elimination of essential health benefit mandates and maximum out-of-pocket rules

# REPEAL OF ACA: EXAMPLES OF POSSIBLE IMPACTS ON EMPLOYERS (CONT.)

- Reinstating catastrophic plans for part-timers
- Reevaluation of pre-65 retiree coverage
- Greater use of HSAs
- Amend COBRA documents
  - Currently have descriptions of Marketplace coverage
- Possible higher costs for employer-provided coverage if number of uninsured individuals increases dramatically
  - Insured individuals indirectly pay for charity care

# QUESTIONS?

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