

EXPERT ANALYSIS

Republicans Chart New Course For U.S. Health Care System

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While President Donald Trump made repeal of the Affordable Care Act (ACA) a centerpiece of his 2016 presidential campaign, he offered few details about how he would replace it or address other health care issues. More recently, Trump has vowed to provide “insurance for everybody,” though it is unclear how his approach would achieve this goal, as he has said little beyond that he does not want a single-payer system.

Congressional Republicans, particularly in the House of Representatives, have mapped out a series of market-oriented health care reform proposals as part of their Way Forward agenda. These include plans to repeal and replace the ACA, speed drug innovation and enhance competition, and restructure Medicaid.

Despite enjoying control of the White House and both chambers of Congress, Republicans are likely to face stiff opposition to their repeal efforts from Democrats and powerful interest groups.

Meanwhile, President Trump has taken executive action to try to weaken certain parts of the law, though this will have a far more modest effect than the congressional Republicans’ legislative agenda.

REPEALING AND REPLACING THE ACA

President Trump and the Republican leadership in both the House and Senate have made repealing the ACA a top priority.

Many of the provisions of the ACA (those related to spending or tax measures) can be repealed by simple majority votes in the House and Senate under so-called reconciliation procedures. Other provisions, such as the coverage mandates on insurers, will require 60 votes in the Senate.

Congressional Republicans have begun the repeal process with a budget plan that uses reconciliation instructions to allow a simple majority repeal of large portions of the law. Provisions under consideration for repeal include the tax penalties for people who go without insurance and the penalties for larger employers that fail to offer coverage.

Republicans may also propose eliminating federal insurance subsidies and halting federal spending for the expansion of Medicaid.

Repealing other provisions of the law outside the reconciliation process will be more difficult. The rules governing insurance standards or the ability for dependents up to age 26 to be covered by their parents’ insurance, for example, will require 60 votes in the Senate to be repealed.

Recently, calls have grown to repeal the ACA and replace it with new legislation to occur simultaneously. This may mean that repeal occurs more slowly as the administration and Congress work to develop a replacement plan that includes more business-friendly and market-oriented proposals, such as expanded availability of high-deductible plans, allowing insurance companies to sell policies across state lines and medical malpractice liability reform.

Despite enjoying control of the White House and both chambers of Congress, Republicans are likely to face stiff opposition to their repeal efforts from Democrats and powerful interest groups.

If Congress decides to repeal before having replacement legislation, the strategy poses challenges. Repealing the funding mechanisms while leaving the regulations in place risks a breakdown of the market for individual insurance.

Without a penalty to pay, relatively healthy individuals, who subsidize the costs of older and sicker Americans, could exit the insurance pool; and hospitals may be required to treat a greater number of uninsured or underinsured individuals without receiving additional Medicaid funding.

DRUG PRICING AND INNOVATION

While President Trump and congressional Republicans are in sync on repeal of the ACA, Trump's populism may clash with the pro-business, market-friendly approach of Republican lawmakers on the issue of drug pricing.

During the campaign, President Trump endorsed giving Medicare the authority to negotiate drug prices and called for allowing the reimportation of lower-cost drugs from foreign countries.

After the election, he reiterated his position on Medicare drug price negotiations and called on pharmaceutical companies to manufacture their products in the United States.

Medicare negotiation authority and reimportation are anathema to the pharmaceutical and biotechnology industries and are not reflected in any congressional Republican reform package.

Instead, Republicans have called for speedier approval of new drugs and other pro-competition measures to lower drug prices without stifling innovation in the life sciences sector.

These priorities are reflected in the 21st Century Cures Act, which Congress passed and President Obama signed into law in December 2016. It remains to be seen whether these efforts will be enough to head off more populist measures.

A recent bipartisan report by the Senate Special Committee on Aging called attention to rising drug prices for off-patent medicines and proposed a series of reform measures.

Democrats are likely to offer amendments on reimportation and Medicare negotiation authority, and it is unclear whether President Trump will support such measures during the legislative process.

One thing is certain: Drug pricing and innovation are likely to receive considerable legislative and media attention this year.

MEDICAID REFORM

Republican lawmakers are likely to make Medicaid reform a top priority, including with proposals to transform the program from an entitlement to a block grant program subject to annual appropriations bills.

Although the notion of changing Medicaid to a block grant program has strong support, the devil may be in the details.

The 32 states that accepted federal funding to expand Medicaid under the ACA are likely to push for a formula that avoids dropping large numbers of current Medicaid beneficiaries off the rolls, while other states will argue that they should not be forced to accept lower block grant levels as a result of their decision not to receive funding from the ACA.

While fights over state-by-state formulas for many federal programs are common, the size of the federal portion of Medicaid (\$315 billion in fiscal 2015) means this fight may be particularly contentious and may slow Medicaid reform legislation.

In the meantime, we can expect the Centers for Medicare and Medicaid Services (CMS) under the Trump administration to grant Medicaid waivers liberally to states that want to experiment with new health care delivery and payment systems.

ENFORCING FEDERAL HEALTH CARE FRAUD AND ABUSE LAWS

The election results are unlikely to diminish the current focus on combating health care fraud and abuse, including civil and criminal prosecution of health care companies and their executives.

The new U.S. attorney general, former Sen. Jeff Sessions, R-Ala., prosecuted corporations and executives during the savings and loan crisis when he was a U.S. Attorney and has said that the behavior in the banking industry improved as a result of these prosecutions.

He also has stated that he believes whistleblowers play an important role in policing fraud in federal programs.

Although we cannot be certain of the attorney general's views given his limited record in the Senate on white collar crime issues, we believe he is unlikely to buck long-standing bipartisan support for efforts to combat waste, fraud and abuse in federal health care programs.

Moreover, even though turnover at the 93 U.S. Attorneys' offices around the country may slow the pace of some enforcement activity, the majority of civil and criminal enforcement decisions are in the hands of career prosecutors, many of whom have extensive health care fraud experience and are likely to continue their focus on health care cases.

TRUMP'S EARLY HEALTH CARE NOMINATIONS

If the old adage is true that personnel is policy, President Trump's early picks for key posts reflect a desire to pursue sweeping changes in the federal government's approach to health care.

Former Rep. Tom Price, R-Ga., Trump's recently confirmed secretary of the Department of Health and Human Services, was a conservative lawmaker who called for replacing the ACA with individual health savings accounts and age-adjusted tax credits for Medicare and Medicaid beneficiaries to purchase private health insurance.

A practicing orthopedic surgeon, when he was in Congress, Secretary Price brought a physician's perspective to the table and was an outspoken critic of reimbursement models (such as the Medicare Part B demonstration project) that he said attempt to restrict how physicians care for individual patients.

Instead, then-Rep. Price proposed to allow physicians to bill beyond Medicare's prescribed reimbursement limits and to curb medical malpractice lawsuits.

For the CMS, Trump has picked Seema Verma, who helped create both the Healthy Indiana Plan (HIP), the nation's first consumer-directed Medicaid program, under former Gov. Mitch Daniels of Indiana, and Vice President Mike Pence's HIP 2.0 waiver proposal.

Verma is likely to encourage and approve Medicaid waivers from other states that want to experiment with alternative delivery and payment models.

On the Food and Drug Administration (FDA) front, then-candidate Trump called for the FDA to have a "greater focus on the need of patients for new and innovative medical products."

The incoming FDA commissioner, who has yet to be nominated, will have a significant say in what role the agency plays on key issues, including implementation of the changes to the drug- and device-approval process recently enacted as part of the 21st Century Cures Act.

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