UNTANGLING THE KNOTS
What’s Possible for Health Reform Efforts

Post-Election ACA Update

January 30, 2017

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National Director Health Care Compliance

NCPERS 2017 Legislative Conference

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Agenda

- Election Results
- Legislative Action
- ACA
- Medicare/Medicaid
- Impact
2016 Senate Election Results
46 Democrats, 2 Independents, 52 Republicans

Source: http://www.politico.com/2016-election/results/map/senate
2016 House Election Results
194 Democrats 241 Republicans

Source: http://www.politico.com/2016-election/results/map/house
Current Status of State Medicaid Expansion Decisions

Adopted Medicaid Expansion

Segal Consulting
What do Americans Want?

Do you think President-elect Trump and the Republicans in Congress should repeal all of the Affordable Care Act, also known as Obamacare, should repeal parts of the healthcare law but keep other parts, or should not repeal any of the Affordable Care Act?

<table>
<thead>
<tr>
<th>Option</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repeal All</td>
<td>18%</td>
</tr>
<tr>
<td>Repeal Parts</td>
<td>47%</td>
</tr>
<tr>
<td>Should Not Repeal</td>
<td>31%</td>
</tr>
<tr>
<td>Don’t Know</td>
<td>4%</td>
</tr>
</tbody>
</table>

Quinnipiac University Poll January 12, 2017
What do State Governors Want?

- Of the 31 states which expanded Medicaid, 16 of them have Republican governors.

- Many governors support continuing Medicaid’s expanded eligibility provisions and funding.
Bipartisan Budget Act of 2015 repealed the ACA’s auto enrollment provision (Public Law 114-74, signed into law November 2, 2015)

Government funding/tax extenders bill signed into law on December 18, 2015 (Public Law 114-113) made the following changes:

- Moved effective date of 40% excise tax on high-cost health plans from 2018 to 2020
- Suspended the health insurance provider fee for 2017
- Suspended the medical device tax for 2016 and 2017
Using Budget Reconciliation, HR 3762 would have:

- Eliminated the individual mandate penalty, employer mandate penalty, premium assistance tax credit, reduced cost-sharing subsidy, transitional reinsurance program, small business tax credit, Medicaid expansion, excise tax on high cost employer-sponsored health coverage ("Cadillac tax"), and various taxes and fees
- Required individuals to pay back full amount of premium tax credit (overpayments)
- Restricted federal funding for Planned Parenthood
- Permitted plans to pay for over-the-counter medications without a prescription
- Lowered the HSA penalty for non-medical expenditures
- Removed $2,500 limit on health FSAs

Passed House on October 23, 2015; Passed Senate on December 3, 2015

House passed the Senate version on January 6, 2016

Vetoed by President Obama on January 8, 2016; House failed to override veto on February 2, 2016
Budget Reconciliation

- Budget Reconciliation was created by Congress to allow expedited consideration of certain tax, spending, and debt limit legislation.

- In the Senate, reconciliation bills are not subject to a filibuster and the scope of amendments is limited.

- So, the Senate can consider and pass reconciliation bills relatively quickly and with only a simple majority, rather than the 60 votes needed for other legislation. In addition, reconciliation bills can only be debated for 20 hours on the initial bill.

- Consequently, the budget reconciliation process has advantages when enacting controversial budget and tax measures.
Budget Reconciliation Process

Fiscal 2017 Budget Resolution
S. Con. Res. 3
Sets January 27 date for Committees to make recommendations

Develop a Reconciliation Bill

Senate
- Adopt Budget Resolution instructing Committees (passed January 12)
  - Senate Finance, HELP Committees
  - Senate Budget Committee
  - Vote on Reconciliation Bill
  - Conference or Pass Same Bill
  - Reconciliation Bill to President

House
- Adopt Budget Resolution instructing Committees (passed January 13)
  - House Energy & Commerce, Ways & Means
  - House Budget Committee
  - Vote on Reconciliation Bill
  - Conference or Pass Same Bill
  - Reconciliation Bill to President
Sources of Health Insurance Coverage

Percentage of People by Type of Health Insurance Coverage and Change From 2013 to 2015
(Population as of March of the following year)

<table>
<thead>
<tr>
<th>Type of Health Insurance Coverage</th>
<th>Percent in 2015</th>
<th>Percentage point change: 2014 to 2015</th>
<th>Percentage point change: 2013 to 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uninsured</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>With health insurance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any private plan</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employment-based</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Direct-purchase</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Any government plan</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicare</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicaid</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Military health care*</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Military health care includes TRICARE and CHAMPVA (Civilian Health and Medical Program of the Department of Veterans Affairs), as well as care provided by the Department of Veterans Affairs and the military.

Note: Between 2014 and 2015, there was no statistically significant change in the percentage of people covered by employment-based health insurance, Medicaid, or military health care. Between 2013 and 2015, there was not a statistically significant change in the percentage of people covered by employment-based health insurance or military health care. For information on confidentiality protection, sampling error, nonsampling error, and definitions in the Current Population Survey, see <www2.census.gov/programs-surveys/cps/techdocs/cpsmar16.pdf>.

Effect on Budget

- CBO estimated that HR 3762 would reduce the deficit by 474 billion over ten year period (2016 – 2025) by repealing subsidies, Medicaid expansion, taxes and penalties

Effect on Insurance Coverage

- First full plan year following enactment, 18 million would become uninsured, mostly because of repeal of individual mandate penalties
  - 10 million fewer in nongroup market
  - 5 million fewer in Medicaid
  - 3 million fewer with employment-based coverage

Effect on Premiums

- Premiums in the nongroup market would be 20% – 25% higher than under current law once insurers incorporate changes into premiums in the first full year
  - Mostly because of change in the mix of people with insurance—insurers would raise premiums to cover cost of less-healthy people; and less competition
Two years after enactment
- Medicaid expansion and marketplace subsidies eliminated

Effect on Insurance Coverage in 2026
- 23 million fewer with coverage in the nongroup market
- 19 million fewer with Medicaid
- 11 million more in employment-based coverage

Effect on Participation by Insurance Issuers
- Repeal of mandate and subsidies, and not market reforms (e.g., pre-existing condition exclusions, rating rules), would destabilize the nongroup market

Effect on Premiums
- Premiums in the nongroup market would be about 50% higher in the first year after the subsidies were eliminated and would double by 2026
Affordable Care Act

Potentiallly Safe or At Risk

At Risk

- Individual Mandate
- Employer Mandate
- Federal and State Exchange/Marketplace structure
  - Subsidies to purchase coverage in the Exchange/Marketplace
  - The 3 Rs (risk adjustment, risk corridor, and transitional reinsurance)
- Small business tax credit
- Taxes:
  - 40% Excise Tax on High-Cost Plans
    » To be replaced with other caps on tax exclusion?
  - Medical device tax
  - Annual insurer tax
  - Medicare payroll tax for high income
  - Medicare tax on investment income

Potentially Safe

- Coverage mandates
  - No preexisting condition exclusions or dollar maximums
  - Preventive services, out-of-pocket maximums, and other non-grandfathered plan changes
- Extension of coverage to adult dependent children to age 26
- 90-day waiting period
- Section 1557 nondiscrimination rules
- Ratings rules (Medical Loss Ratios, guaranteed issue, age-based limits, M/F rating) for individual insurance and small group markets
Medicare and Medicaid
Potentially Safe or At Risk

At Risk
- Expansion of Medicaid Eligibility
- Medicare Independent Payment Advisory Board (IPAB)

Potentially Safe
- Medicare Advantage plans
- Employer Group Waiver Part D Prescription Drug Plans including discounts in the coverage gap
  - Could negotiations with drug manufacturers occur?
- Medicare beneficiary improvements
Affordable Care Act

New Proposals

- High-risk pools
- Selling insurance across state lines
- Expansion of Health Savings Accounts (HSAs)
- Age-based, refundable tax credits to purchase coverage (instead of income-based)
- Replace individual mandate with Medicare-like penalty
- Greater state flexibility
- Medicaid State Block Grants and vouchers
- Private Medicare plans and vouchers
- Work requirements for Medicaid
The exclusion from income of employer-sponsored health coverage is the largest tax expenditure for the federal government.

If the Excise Tax on High-Cost Plans (“Cadillac Tax”) is repealed, efforts will be made to address the exclusion.

Possible approaches could include a cap on the amount excluded or other limitations on exclusion from income.
Largest Tax Expenditures, Individual and Corporate, 2014 – 2018*

<table>
<thead>
<tr>
<th>INDIVIDUAL TAX EXPENDITURES</th>
<th>Total Amount (2014 – 2018) (Billions of dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual Tax Expenditure and Function</td>
<td></td>
</tr>
<tr>
<td>Exclusion of employer contributions for health care, health insurance premiums, and long-term care insurance premiums</td>
<td>785.1</td>
</tr>
<tr>
<td>Reduced rates of tax on dividends and long-term capital gains</td>
<td>632.8</td>
</tr>
<tr>
<td>Deduction for mortgage interest on owner-occupied residences</td>
<td>405.2</td>
</tr>
<tr>
<td>Net exclusion of pension contributions and earnings: Defined contribution plans</td>
<td>399.0</td>
</tr>
<tr>
<td>Earned income credit</td>
<td>352.8</td>
</tr>
<tr>
<td>Subsidies for insurance purchased through health benefit exchanges</td>
<td>318.1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CORPORATE TAX EXPENDITURES</th>
<th>Total Amount (2014 – 2018) (Billions of dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate Tax Expenditure and Function</td>
<td></td>
</tr>
<tr>
<td>Deferral of active income of controlled foreign corporations</td>
<td>418.0</td>
</tr>
<tr>
<td>Deferral of gain on like-kind exchanges</td>
<td>68.0</td>
</tr>
<tr>
<td>Deduction for income attributable to domestic production activities</td>
<td>65.1</td>
</tr>
<tr>
<td>Exclusion of interest on public purpose State and local government bonds</td>
<td>49.2</td>
</tr>
<tr>
<td>Tax credit for low-income housing</td>
<td>38.8</td>
</tr>
<tr>
<td>Deferral of gain on non-dealer installment sales</td>
<td>34.0</td>
</tr>
</tbody>
</table>


https://www.jct.gov/publications.html?func=startdown&id=4705
In fiscal year (FY) 2015, about 8.4 million children were enrolled in the State Children’s Health Insurance Program (CHIP)

According to the MACPAC, CHIP serves children in families whose incomes are too high for Medicaid, but for whom employer-sponsored coverage is unavailable, unaffordable, or inadequate

CHIP is permanently authorized, but without congressional action, states will not receive any new federal funds for beyond September 30, 2017

Personalities

➢ **Tom Price** (HHS)
  • Orthopedic surgeon who has proposed various ACA repeal methods in the past
  • Could address other reforms limiting payment to physicians, such as accountable care organizations

➢ **Seema Verma** (CMS)
  • Medicaid expert specializing in work requirements, account based plans

➢ **Paul Ryan** (Speaker of the House)
  • A Better Way plan
  • Favors modifying Medicare toward a DC approach
Inauguration Day Executive Action #1

- On January 20, 2017, the new White House Chief of Staff Reince Priebus issued an Executive Order addressing regulatory actions by the federal government.

- The Order instructs the federal agencies to withhold any new regulations until they can be reviewed by the incoming Administration’s Secretaries and agency directors, and postpones regulations not effective prior to January 20, 2017.

- No significant employee benefits issues are affected by the Executive Order.

- This type of order has become a matter of course for new Administrations.
Inauguration Day Executive Action #2

➢ Also on January 20, 2017, President Trump also signed an Executive Order addressing the Affordable Care Act

➢ The Order is purely symbolic, as it does not change any of the statutory authority currently existing under the ACA

➢ The Order:
  • Directs the agencies to minimize the economic and regulatory burdens of the Act and to afford States more flexibility and control to create a more open health care market
  • Instructs Health and Human Services (HHS) and other Departments or agencies with responsibilities under the Act to waive, defer, grant exemptions from, or delay the implementation of any provision that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on various groups, including individuals, providers, purchasers of health insurance, and insurers
  • Instructs the agencies to encourage the development of a free and open market in interstate commerce for offering health care services and insurance
In general, final rules must be re-proposed with a notice and comment period

However, new administration could eliminate or change sub-regulatory ACA guidance

- 37 sets of FAQs as of 1/20/17
- Guidelines supporting some ACA-required women’s preventive services (e.g., contraception) were developed by HHS
Congressional Review Act (Enacted in 1996)

- Permits Congress to overturn final regulations; has only been used once to overturn a regulation (Clinton-era OSHA rule)
- Requires House and Senate to each pass a resolution of disapproval and present it to the president for signature
- If approved, it invalidates the rule in question and prohibits the department from issuing another rule in “substantially the same form”
- Regulations that were issued by the Obama administration from around the end of May 2016 onward could be the subject of such a resolution
- Detailed rules govern the process and the deadlines; a resolution can pass with simple majority in the Senate
- Congress could also seek to change the CRA, e.g., to make it possible to overturn multiple regulations in a single resolution
Midnight Rules Relief Act (H.R.21)

- The bill would allow Congress to disapprove multiple regulations issued during the final year of a president’s term, instead of the existing procedure of examining one regulation at a time.

- Passed in the House.

- Sen. Ron Johnson (R-WI) introduced a companion bill in the Senate (S.34).
Other Proposals to Modify Rulemaking Authority

- **REINS** (Regulations from the Executive In Need of Scrutiny Act) (H.R.427)
  - Would require any rule with an economic impact of at least $100 million to be submitted to Congress. If either chamber fails to approve the rule within 70 days, the rule would not take effect
  - Passed in House; Unclear if there will be action in the Senate

- **Regulatory Accountability Act** (H.R.185)
  - Would change the regulatory process by adding dozens of extra steps to the rule-making progress
  - Passed in the House; Unclear if there will be action in the Senate
Next Steps

- Look for confirmation of various Secretaries and deputies
- Watch for repeal/replace package: Senate HELP/Finance Committees and House Energy & Commerce/Ways & Means Committees to submit their recommendations on ACA reform to the respective Budget Committees by January 27 (suggested date)
- Monitor ongoing ACA litigation, including House v Burwell, where cost-sharing subsidies are being challenged
- Keep an eye on State activity, including Medicaid and innovation waivers
Thank you!

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