Repeal and replace:
The hard work begins
With the election of Donald J. Trump and Republican majorities in both the House and the Senate, it is likely that “repeal and replace” of President Obama’s signature health care law will be a priority for early consideration in the next Congress.

Repealing the Affordable Care Act (ACA) has been a longstanding campaign position of President-elect Trump and leaders of both the House and the Senate Republican majority have already signaled that they intend to move forward with some combination of “repeal and replace” legislation.

Despite their strong commitment to “repeal and replace”, the path to achieving these objectives is far from straightforward. There is no consensus yet among Republican leaders on what should replace the ACA and the specific policy positions of President-elect Trump continue to evolve. Indeed, President-elect Trump recently said that he favors keeping certain parts of the law, such as guaranteed issue and allowing children to be covered by their parents’ plans until age 26, suggesting that “amendment” of the ACA rather than a full “replacement” may be acceptable to him. At the same time, Senate and House plans for replacing the ACA are not clear, and Republican leaders are cautioning that the process for replacement will likely take some time as they would like to attract bi-partisan support for their approach.

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Opportunities to repeal the ACA

Vice-President-elect Mike Pence indicated that the Trump Administration would seek to repeal the ACA “right out of the gate” and replace it with “the kind of free-market solutions that he campaigned on.” However, a wholesale repeal of the ACA would likely fail in the Senate, given that Republicans do not hold a filibuster-proof majority. On the other hand, a partial repeal of revenue and outlay provisions of the ACA through a reconciliation process would require only a simple majority in the Senate. Given that majorities in both the House and Senate have already passed a more limited repeal (H.R. 3762, which was vetoed by President Obama in January 2016), it is likely that a more limited repeal could be passed again by both houses of Congress and signed into law by President Trump. That package included a repeal of, among other things, the individual and employer mandates, premium assistance tax credits, cost sharing reduction subsidies, various industry taxes, and Medicaid expansion funding. It also terminated the Prevention and Public Health Fund and increased funding for community health centers. The Congressional Budget Office (CBO) estimated that the 2015 reconciliation bill, without a replacement plan, would result in upwards of 22 million Americans losing health insurance coverage.

Senate Budget Chairman Mike Enzi and House Budget Chairman Tom Price (currently under consideration for HHS Secretary) have both indicated that the Republicans may try to pass two reconciliation bills next year; the first one would repeal the ACA and be ready for signature by President Trump shortly after he assumes office, while the second one would deal with overhauling the tax system. Although repeal is a priority for Republican Congressional leaders, they recognize that the process to replace will take time. House Majority Leader Kevin McCarthy has indicated that Obamacare would not be “shut right down” and while some Republicans want immediate termination of the ACA, many will want an adequate transition to a replacement to minimize disruption.

In addition, if Republicans choose the reconciliation path, other elements of the ACA could be repealed or changed under ‘regular order’ – such as attaching provisions within CHIP reauthorization, which is up for reauthorization as it expires in FY2017. One additional avenue may be the appropriations process, which can be used to reduce or defund certain programs. It can also be used to make policy changes.
Replacing the law

For a variety of good reasons, any replacement legislation will be approached with circumspection and deliberated in both the House and the Senate in what is likely to be a fairly exhaustive process.

The Trump campaign and transition team have provided limited signals about what a replacement of the ACA means to them; it is likely that their approach is evolving even as their healthcare policy team is being assembled. At the same time, some Members of the House (including Speaker Paul Ryan) and Senate have more developed ideas such as “A Better Way: A Vision for a Confident America” and “The Patient Choice, Affordability, Responsibility, and Empowerment (CARE) Act.” Republicans will be concerned with how best to proceed without creating chaos and disruption in healthcare markets that could jeopardize their ability to implement a Republican agenda after the 2018 midterm elections. Thus, for a variety of good reasons, any replacement legislation will be approached with circumspection and deliberated in both the House and the Senate in what is likely to be a fairly exhaustive process. Senate HELP Committee Chairman Lamar Alexander has emphasized that the replacement process could take “several years” to complete as Republicans “gradually move [healthcare] decisions back to states and to individuals…in a way that does no harm to people today.” Meanwhile, Congressman Tom Price has indicated that Republicans may not try to tackle larger Medicare reforms, such as premium support, for at least “six to eight months” into the Trump administration.

Therefore, no one knows today exactly what a replacement of the ACA actually means, beyond the direction suggested by the policy ideas floated by the president-elect and Congressional leaders. We anticipate that this “repeal and replace” process will begin with the new Congress that will be seated in January 2017. Senate Finance Committee Chairman Orrin Hatch is optimistic that ultimately “Democrats and Republicans will work together to get a better system.” At the same time, the Trump Administration may decide to quickly move to relax certain regulatory requirements of the ACA that they can accomplish through Executive Order, regulatory guidance (non-enforcement) or formal regulation. However, no additional information on their plans is available today.
Building on existing proposals

Despite the uncertainty of what a “replacement” may look like, there are clear parallels between some of the initial policy principles that President-elect Trump has laid out on his campaign website and transition website and the set of proposals released by House Speaker Paul Ryan in June 2016. The following table includes a list of key policy principles from president-elect Trump, along with page references to similar proposals from Ryan’s “A Better Way” policy document. Although there are some differences in how the two plans achieve a given outcome, many of Trump’s general principles could be achieved through the specific policies proposed by Ryan and other Republicans. Indeed Trump has suggested that his policy principles are only a starting point; he will likely confer with other Republican leaders to define and achieve his health policy objectives as President.

<table>
<thead>
<tr>
<th>Trump policy principle</th>
<th>Paul Ryan Plan “A Better Way”</th>
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<tr>
<td>Repeal the ACA and replace it with solutions such as HSAs and return of health insurance regulation to the states</td>
<td>Page 5</td>
</tr>
<tr>
<td>Permit the sale of insurance across state lines</td>
<td>Page 16</td>
</tr>
<tr>
<td>Re-establish high risk pools</td>
<td>Page 21</td>
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<tr>
<td>Protect individual conscience in healthcare</td>
<td>Page 22</td>
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<td>Protect innocent human life from conception to natural death, including the most defenseless and those Americans with disabilities</td>
<td>Page 22</td>
</tr>
<tr>
<td>Advance research and development in healthcare</td>
<td>Page 5</td>
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<tr>
<td>Reform the Food and Drug Administration, to put greater focus on the needs of patients and new and innovative medical products</td>
<td>Page 29</td>
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<tr>
<td>Modernize Medicare</td>
<td>Pages 6, 31-35</td>
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<tr>
<td>Maximize flexibility for states in administering Medicaid</td>
<td>Pages 25-28</td>
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Some existing health reform efforts will continue

**Bending the cost curve**

Despite the high likelihood of a repeal and replace approach advocated by the President-elect and Republican-led Congress, there are some ongoing healthcare reforms that are expected to continue, most notably the move to value-based payment arrangements. Politicians across the political spectrum agree that spending will continue to grow at an unsustainable rate and systemic changes are needed to both control healthcare costs and improve the quality of care delivered to patients. These value-based payment efforts, including the development of alternative payment models (APMs), continue to grow and are expected to remain on an upward trajectory, particularly as a result of the Medicare Access and CHIP Reauthorization Act (MACRA), which created the Medicare Quality Payment Program (QPP). MACRA passed in 2015 with overwhelming bipartisan support (92-8 in the Senate and 392-37 in the House) and most industry experts expect Republicans will not try to dismantle the QPP.

On the other hand, Republicans may choose to defund the Center for Medicare and Medicaid Innovation (CMMI), which has served as an incubator for numerous Medicare demonstration programs (some of which have been heavily scrutinized). Republican lawmakers have demanded that CMMI stop mandatory programs such as the Comprehensive Care for Joint Replacement (CJR) Model, Episode Payment Model for card care, and Part B Drugs Payment Model and may seek to curtail its authority to implement mandatory model demonstrations. Despite growing concerns about the long-term impact and authority of CMMI, it is quite likely that Republicans would continue to support the development of new value-based payment models in Medicare and Medicaid as a way to control costs and create a more patient-centered healthcare system. In other words, the vehicles for payment reform may change, but the demand for greater innovation in payment and delivery is not likely to decrease as a result of changes in leadership.

**Aligning patient-centeredness with consumer demand**

Republican leaders will also continue to support, and likely increase, the role of market competition and consumer choice in driving changes. Centralized government control of healthcare coverage and options will likely be replaced by features that empower patients to choose the insurance products, providers and sites of care that best fit their needs; provide patients with more transparent cost and quality data on insurance coverage and providers; offer more health plan choices, including high deductible plans paired with health savings accounts (HSAs); and accelerate the use of telemedicine and other virtual care approaches. Similar to the Ryan plan, the Patient CARE Act seeks to help stabilize the market and encourage it to be more competitive and transparent by providing for tax credits for small businesses and individuals to directly choose health coverage in the small group and individual markets. Numerous plans, such as that from the American Enterprise Institute, call for increasing the transparency of information on the costs, quality and value of healthcare coverage and provider services to facilitate direct consumer choice. Many of the plans call for increasing consumer access to healthcare innovation, such as the plan from Avik Roy and the Foundation for Research on Equal Opportunity that proposes removing regulatory barriers to the use of the internet, mobile devices, and digital technology in health care. These consumer-focused approaches that include increasing transparency of information about the market and leveraging the use of new technologies will likely continue to evolve.
Looking ahead

Although there is a great deal of uncertainty as to how and what parts of the ACA President-elect Trump and Congressional Republicans will seek to repeal, the past is perhaps the best guide for the future. President-elect Trump and Republican Congressional leaders will need to work together in order to make good on campaign promises to repeal the ACA, and they are likely to use past reconciliation efforts as a starting point. However, no consensus yet exists between Republican leaders as to what replacement of the ACA will include. There are differences, some significant, between the various replacement plans being put forth by Republicans, so we expect that this will take time and deliberation. Moreover, some Republican leaders have publicly stated that bi-partisan support will be necessary for the sustainability of whatever replacement package emerges. In any case, replacement legislation will require close scrutiny and debate to fully assess the potential financial and healthcare system-wide impact.

No matter how the legislative repeal and replace agenda plays out in the short term, increasing cost pressures on the healthcare system will necessitate reform efforts that continue to focus on payment arrangements that move the system away from volume-based reimbursement toward one that rewards high-value, coordinated, patient-centered care. A greater focus on consumer-directed priorities suggests that consumer-driven healthcare will continue to thrive and mature. The high—and high-profile—costs of healthcare, coupled with the trend toward increased patient cost sharing, are driving increased consumer involvement in decisions about where and how both healthcare and health insurance coverage are procured and delivered. Thus the increased emphasis on competitive market-based policy solutions will likely result in an increasingly retail-like healthcare marketplace where patient-centeredness meets consumer demand.

References


iv  H.R.3762: To provide for reconciliation pursuant to section 202 of the concurrent resolution on the budget for fiscal year 2016. Available at https://www.gpo.gov/fdsys/pkg/BILLS-114hr3762es/pdf/BILLS-114hr3762es.pdf


xi  Donald Trump for President. “Healthcare Reform to Make America Great Again” Available at https://www.donaldjtrump.com/positions/healthcare-reform


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