

THOUGHTS ON HEALTH CARE REFORM

How the Presidential Election Can Impact Health Care Reform in 2017 and Beyond

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As a candidate, President-elect Donald Trump promised a full repeal and replacement of the Affordable Care Act (ACA), commonly referred to as ObamaCare.

Now that Donald Trump is taking office and has chosen Tom Price (a long-standing critic of the ACA) as Secretary of Health and Human Services, many incorrectly believe that the repeal and replacement is a foregone conclusion and will certainly happen as early as January 20th, the inauguration day for Mr. Trump's presidency.

The reality is not so simple. In order to "repeal and replace," Congress must pass legislation, which will require significant effort in drafting legislation that both repeals and replaces the existing law. While Republicans hold a majority in both houses of Congress, they do not have a "super majority" in the Senate, thus the Democratic senators can resist passing any repeal unless they find the replacement is adequate.

It is true that some aspects of the law — specifically those that have a financial impact on the government budget — can be changed or totally eliminated via reconciliation bills. A reconciliation bill can be passed with a simple majority of the Senate, or 51 votes.

But many features of the ACA, such as coverage for adult children and coverage of pre-existing conditions, are more regulatory in nature and have no direct financial impact on the government. These will need to be changed with approval from at least 60 votes from the Senate, a super majority.

While many believe that the only impact of the ACA was expanding Medicaid and regulating insurance programs, many sections of the ACA impact other health care-related areas that have nothing to do with paying for health care.

For instance, expansion of medical practitioner training and funding for such training are significant aspects of the law and are certainly necessary if changes to the delivery of health care are to have a stabilizing impact on the cost of health care. How to retain this aspect of ACA, even with some changes, will need to be part of any "repeal and replacement" discussion.

And, just as it has taken six years to implement the ACA, any major changes will require lead time to develop and implement new regulations. Thus, it is certainly reasonable to expect that current requirements will remain in place for at least 2017—and quite possibly 2018.

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Current ACA provisions that are likely to remain at least during 2017 include:

- Healthcare Exchanges and individual advance tax credits (premium subsidies).
- Insurer and employer reporting of coverage in force and employer offers of coverage on Forms 1094 and 1095.
- Payment of the 2016 Transition Reinsurance Contributions by insurers and self-insured plan sponsors. (This fee does not extend into 2017 and beyond, but payments due in 2017 for the 2016 fee will be payable.)
- Payment of Patient Centered Outcome Research Institute (PCORI) fees by insurers and self-insured plan sponsors due in July 2017, and probably for years beyond.

In short, while the election is likely to impact ACA considerably, it will take time in Congress to pass legislation and additional time for the Executive branch to implement any changes.

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