

## VIEWPOINT

# The Future of the ACA and Health Care Policy in the United States

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**On November 8, 2016**, Republicans won the presidency and retained control of the US House and Senate in Congress. The composition of the Senate shift will profoundly affect the passage of new legislation. With only 52 Republicans in the Senate, the Republican Senate leadership will have to ensure that all Republicans support any legislation because a few defections on an issue could push them into a minority position. More challenging is that except for budget-related legislation, which can pass with only a simple majority, other legislation, including much of an Affordable Care Act (ACA) replacement bill, will require the support of 60 votes in the Senate to circumvent a filibuster.

It is always useful after elections to review what presidents can do and what Congress needs to do. Presidential policies are important. They frequently set the tone or direction of future legislation and serve as the clearest voice of the party. The president is also able to make use of executive orders to put in place changes that are sometimes not possible to legislate. However, executive orders can be and sometimes are

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challenged in the courts and can be easily undone by another president.

President-elect Donald Trump is on record as supporting several traditional Republican policy measures, including expanded health savings accounts, turning Medicaid into a block-grant program, allowing insurance to be sold across state lines, protecting people with preexisting medical conditions as long as they maintain coverage (as HIPAA [Health Insurance Portability and Accountability Act] does now for people in plans of 2 or more), and allowing individuals who purchase their own health insurance to deduct their premiums from their income taxes.

Allowing people to deduct the premiums for individual plans has been a long-standing Republican policy as a way of equalizing the treatment of employer-sponsored insurance with individual purchased insurance, but it does not provide much assistance to the people who have benefited the most from the ACA. Of the 10 million individuals who have purchased insurance in the exchanges (some of whom have already been insured in the individual market), most had incomes below 250% of the poverty line and received substantial subsidies to purchase their insurance.<sup>1</sup> Individuals at this

level of income pay little or no income tax, which makes a deduction of limited value.

However, because only Congress can pass new legislation, it is especially important to understand the positions of the Republican House and Senate on health care reform. Republicans in both chambers have repeatedly advocated for the repeal of the ACA, and on numerous occasions they have voted for the repeal of all or portions of the ACA. The most relevant "repeal" legislation involved the reconciliation bill that passed the Senate in late 2015 (HR 3762) with a vote of 52-47 and the House 240-171 in January 2016.<sup>2</sup> The bill was not a full repeal of the ACA but eliminated the Medicaid expansion funding and the subsidies used to support the purchase of insurance in the exchanges, both to take effect in 2018. The bill also would eliminate various taxes on insurance, medical devices, the flexible spending contribution limit, and the employer mandate.

The reason last year's bill was crafted to focus only on the spending and other budgetary-related aspects of the ACA is that it is the only type of legislation that could be passed in the Senate with a simple majority vote. Such bills must be limited to changes that affect spending. Reconciliation bills are closely examined by the Senate parliamentarian to assess whether any provisions of the bill violate the requirements of the reconciliation rules, and if they do, those provisions are removed.

Republicans also may wish to alter a variety of insurance reform provisions or other nonbudgetary changes to the ACA, although not necessarily all of them. The president-elect has recently reaffirmed his support for protecting individuals with preexisting conditions from coverage exclusions or pricing penalties (that is, paying more for their insurance) and allowing adult children to receive coverage by remaining on their parents' policies until age 26. These types of provisions, however, can only be affected through the regular legislative process that will require bipartisan support for any changes from current law. In addition, as noted by many, this likely would be unacceptable to the insurance industry unless there were strong incentives to become and stay insured. HIPAA currently provides protection from preexisting condition exclusions for people in plans with at least 2 members who stay continuously covered, and the voluntary parts of Medicare (that pay for physicians and drugs) charge extra fees for seniors who delay signing up when they become Medicare eligible and then wish to enroll later.

In principle, many of the changes Republicans would like to introduce could probably be accomplished by

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modifying the ACA rather than by repealing it. However, the political imperative for Republicans to be able to claim they have "repealed the ACA" may push them to pursue that route. Yet proceeding with attempts to repeal the ACA may complicate any later chances for bipartisan reform on non-budget-related issues. In addition, Republicans in both the Senate and the House have made it clear that Republicans are not going to repeal the ACA without having alternative strategies in place that will cover approximately similar numbers of the newly insured populations. The basic interest of congressional members in political survival suggests this as well.

The most likely scenario to achieve this combination of reform and coverage similar to what currently exists is to pass a reconciliation bill similar or identical to the bill passed approximately a year ago. This bill eliminated funding for the Medicaid expansion and the subsidies in the exchange and also includes a 2-year implementation delay. Since the majority of newly insured individuals have come from Medicaid rather than the exchanges, this portion of the repeal, unless accompanied by other changes such as a refundable tax credit, would have the largest effect on the newly insured.

The most developed alternative to the ACA currently available is the House Republican plan released last June, the "Better Way" proposal.<sup>3</sup> This plan includes several of the traditional Republican proposals that the president-elect has also supported, such as expanded use of health savings accounts, high-risk pools, and allowing the purchase of insurance across state lines. The plan also replaces existing premium subsidies with a refundable tax credit, which would be available to individuals not covered by Medicare, Medicaid, or employer-sponsored insurance. The proposed plan funds these credits by limiting the currently unlimited tax exclusion for employer-sponsored insurance. This is a more progressive form of the "Cadillac tax" because the latter imposes a tax of 40% that is passed along to employees, while limiting the exclusion imposes a tax on amounts above the threshold that vary with the employees' income. The House Republican plan was developed with active participation of the congressional committees on Ways and Means, Energy and Commerce, and Workforce, which means it should have broad House Republican support.

The Senate Republicans do not have something exactly comparable to the Better Way proposal, but the ideas are similar to proposals that have been made by various Senators.

If support for increasing revenue by limiting the tax exclusion for employer-sponsored insurance (which has been a challenge in

past years) is not included, part of the revenue could be made available by including some or all of the expanded Medicaid funding in the baseline and making the money available for Medicaid through block grants—a longtime proposal of Republicans. The Better Way plan would allow states to choose between a per-capita Medicaid grant, which varies with the number of people covered, or a block grant, which does not vary with the number of people covered and leaves states vulnerable to changes in poverty populations due to economic fluctuations.

In addition to removing the funding for the exchange subsidies and some or all of the expanded Medicaid funding, other strategies could further undermine the already unstable exchanges without literally defunding them. One strategy would involve withdrawing the challenge to *House v Burwell* litigation that would stop payments that fund cost-sharing reductions. Another strategy would involve discontinuation of risk corridor payments, due to expire at the end of 2016. Risk corridor payments are a mechanism to reimburse insurance companies for unexpected losses from the profits of other insurance companies that exceed a certain threshold.

Rather than directly challenging the funding of major components of the ACA, the ACA could be modified into a program that is more consistent with Republican principles—changing the subsidy to a refundable credit, modifying the requirements of the Essential Benefit Plan so that there are fewer mandated benefits, adopting Medicare's strategy of making late entrants to insurance pay a monthly fee for the time delayed rather than using a mandate, transforming Medicaid into a per-capita grant, limiting and verifying special enrollment periods, using only a 1-month grace period, and broadening the current age bands used in setting premiums.

Whether these types of changes, which together would produce a very different health care program, would satisfy Republicans and others who promised to repeal the ACA is unclear. It is also unclear if Democrats would be supportive of such changes or whether they will follow the "scorched earth" tactics being recommended by various Senators; that is, the Democrats would do everything within their legislative power to block any Republican policy objectives.

Repealing some or most of the funding for the ACA would be relatively easy to accomplish. But ensuring that 20 million newly insured individuals retain coverage will be more challenging. Moreover, it is unclear if the market-oriented reforms in the Republican plan will be any more successful in making health care more affordable for US residents than the ACA has been.

#### ARTICLE INFORMATION

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nonprofit organizations as well as a director on 2 public company boards. Dr Wilensky reports receiving personal fees from United Health Care and Quest Diagnostics.

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