

ACA and Trump Administration Dominate Conversation

Last week, Congress focused on the next chapter for the Affordable Care Act and President-elect Trump's cabinet nominees. Division between Republicans and Democrats, as well as divergent views among members within each caucus, suggest that the new congressional term is brimming with controversy and challenges for the advancement of legislation.

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ACA: Navigating the Process

Repealing and replacing the Affordable Care Act (ACA) has been the congressional Republicans' mantra since the law was passed in 2010. It is also boldly supported by President-elect Donald Trump. However, even with Republicans holding the majority in both the Senate and the House, there are significant obstacles to achieving this ambitious and clearly articulated goal. Specifically, getting GOP members to agree on a strategy is the primary obstacle.

Timing and Content

In terms of timing, the Republican caucus may not be able to garner enough votes to pass repeal legislation because some (but not all) believe that a replacement plan must be in place or ready to go when the ACA is repealed. In addition, if a replacement plan would not be implemented immediately upon repeal, there is a lack of consensus as to the appropriate or acceptable duration of a transition period until such a plan is put in place.

In terms of content, there is no unanimity among Republican lawmakers on a replacement plan. For example, there's no single view on how to fashion a replacement plan without (1) wreaking havoc on the health care insurance and health care markets, (2) disrupting the ACA insurance market reforms (such as protections for those with pre-existing conditions), and (3) increasing the federal deficit or causing a huge loss of federal revenue.



Process

Notwithstanding all the challenges, early steps to dismantle the ACA, but not replace it, are in motion. Specifically, the budget reconciliation process has begun with both chambers approving a resolution that includes instructions to draft a bill that would affect the ACA. Congress will now move to the next stage – namely, drafting legislation to repeal the provisions that can be addressed during this reconciliation process. In large part, the provisions most impacted will be those that relate to taxation, such as the so-called Cadillac tax, the medical device tax, and the penalties associated with failure to comply with individual mandate and the employer shared responsibility provisions.

HHS Secretary

The Senate Finance Committee has not set a confirmation hearing date as yet for President-elect Trump's nomination for secretary of Health and Human Services (HHS), Rep. Tom Price (R-GA). However, later this week Rep. Price is scheduled to appear at an information hearing before the Senate Health, Education, Labor and Pensions (HELP) Committee.

Comment. Democrats have voiced concern about Rep. Price's activity with health-related company stocks while working on health care legislation that could impact such companies. Despite that, he is likely to be confirmed by the Senate with the enthusiastic backing of his fellow Republicans.

Empowering Patients First

Rep. Price's views will be center stage if, as expected, he is confirmed. As such, there is likely to be a focus on the Empowering Patients First Act – the ACA replacement bill he previously sponsored in 2016.

Although this bill has not been re-introduced (perhaps just not yet) in the current Congress, like all similar bills, it would repeal the ACA's employer mandate. It also would implement a cap on the currently unlimited tax exclusion for employer-provided health care coverage. Presumably, the cap would help to offset the loss of almost \$1.7 billion in federal revenues that the Congressional Budget Office (CBO) projects would occur as a result of a repeal of the employer mandate.

Changes to ACA Regulations

Importantly, the incoming HHS secretary could take action independent of Congress that would affect the impact of the ACA on employers, among others. For example, the secretary could modify the rules on essential health benefits (EHBs). And, although the ACA does not require all plans to cover EHBs, any plan (including employer-provided, self-funded and insured plans) that does cover EHBs may not impose lifetime or annual dollar limits on the EHBs covered by the plan. In addition, the ACA imposes annual in-network, out-of-pocket maximums on the cost-sharing amount that a plan participant can be required to pay for EHBs. Thus, should HHS modify the EHB rules, the impact for employers and their plans could be material.

Looking Ahead

This week, Washington DC will be absorbed, in large part, by the upcoming inauguration. However, lawmakers from both caucuses will continue efforts to determine their priorities and create roadmaps to accomplish them.

Republican lawmakers will meet next week during a joint retreat to discuss their legislative and policy objectives and priorities. Consistent with the blueprint "A Better Way" – released by House Speaker Paul Ryan (R-WI) in 2016 – and the House Ways and Means Committee agenda outlined by Chairman Kevin Brady (R-TX), health care and

comprehensive tax reform are expected to be among their top priorities. (See our [July 5, 2016](#) and [June 27, 2016](#) issues of *Legislate* for more background on “A Better Way.”)

House and Senate Democrats will meet in February. Defending the ACA – and keeping select provisions from the repeal and replace process – is certain to be among their top priorities. Indeed, as noted by House Minority Leader Nancy Pelosi (D-CA), on the first day of this new Congress, Democratic caucus lawmakers vowed to protect Medicare, Medicaid, Social Security and the ACA.

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