Politics, Policy, and Pathway for ACA Repeal in 2017

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Agenda

- Balance of Power in Washington
- Pathway and Timing of ACA Repeal
- ACA Policies that May be Repealed
- Potential ACA Replacements
- Non-ACA Policies on the Table for Reform
- Implications for NACPM
Pathways to ACA Repeal

- Considerable damage can be done through regulatory reversal and neglect
  - For example, they can halt appeal of the House v. Burwell case regarding cost-sharing subsidies
- Repeal of entire law requires 60 votes
  - 51 sitting Senate Republicans voted for recent repeal effort
- The key legislative route is “budget reconciliation”
  - Authorized by joint budget resolution
  - Only requires simple majority vote in Senate
  - To qualify, provisions must substantially impact the budget
  - Policies that increase the deficit must sunset in 10 years
New Administration Options for Prior Regulations

Finalized and Implemented
- Require fresh notice and comment rulemaking to reverse (6+ month process)
- E.g., cost-sharing subsidies

Finalized but not Implemented
- Effective date can be delayed to pursue fresh rulemaking
- E.g. (potentially), CY 2018 Notice of Benefit and Payment Parameters

Not Finalized
- Can be amended or withdrawn via final regulation without new round of rulemaking
- E.g. (potentially), CMMI Part B demo?

Trump has promised to “minimize disruption”
Congressional Review Act

Can rescind regs finalized up to 60 legislative days prior (Q2 2016)

One reg per congressional action

Can pass by simple majority in Senate

Has only been used successfully once
HHS Leadership

HHS Secretary Tom Price
- Current House Budget Committee Chairman
- Orthopedic surgeon
- ACA replacement plan more conservative than Speaker Paul Ryan’s
- Nomination battle likely

CMS Administrator Seema Verma
- Relatively unknown in Washington
- Consultant to red states that expanded Medicaid, including Indiana and Kentucky
- Close to VP-elect Mike Pence
The 115th Congress

Senate Seats

Democrats*: 52
Republicans: 48

House Seats

Democrats: 239
Republicans: 193
2018 Senate Dems in Red or Purple States

- **Joe Manchin**, West Virginia, Trump won by 42 percentage points
- **Heidi Heitkamp**, North Dakota, Trump by 36
- **Jon Tester**, Montana, Trump by 21
- **Joe Donnelly**, Indiana, Trump by 19
- **Claire McCaskill**, Missouri, Trump by 19
- **Sherrod Brown**, Ohio, Trump by 9
- **Bob Casey**, Pennsylvania, Trump by 1
- **Tammy Baldwin**, Wisconsin, Trump by 1
- **Debbie Stabenow**, Michigan, Trump by 1
- **Bill Nelson**, Florida, Trump by 1
- **Amy Klobuchar**, Minnesota, Clinton by 2
- **Angus King**, independent who aligns with Democrats, Maine, Clinton by 3
- **Tim Kaine**, Virginia, Clinton by 5
## Republicans in States Hillary Clinton Won

<table>
<thead>
<tr>
<th>Senator</th>
<th>State</th>
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<tbody>
<tr>
<td>Cory Gardner</td>
<td>Colorado</td>
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<tr>
<td>Susan Collins (*voted against H.R. 3762)</td>
<td>Maine</td>
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<tr>
<td>Dean Heller</td>
<td>Nevada</td>
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Additional Republicans with some moderate or bipartisan tendencies:
- Sen. Rob Portman (OH)
- Sen. Lamar Alexander (TN)
- Sen. Bob Corker (TN)
- Sen. Lindsey Graham (SC)
- Sen. Jeff Flake (AZ)
The “ACA Two-Step” ♬ ♬

1. Pass H.R. 3762-like repeal bill via reconciliation in Q1 2017
   - 1st must pass FY17 joint budget resolution with reconciliation instructions (targeted for January)
   - Implementation date of repeal delayed by two years (aligns with 2018 midterm elections)

2. Pass Speaker Ryan platform-like replacement legislation by 2018
   - Initial intent to pursue bipartisan, 60-vote package
   - Fallback could be to move replacement in FY18 reconciliation package currently planned for tax reform

- Plan bids for 2018 market due May 3, 2017
- Some must-pass healthcare items due September 30, 2017
Republican Playbook

*Circulated by the Senate Republican Policy Committee, 11/16/16*
Crosswinds Create Uncertainty

SCOTUS → ACA Repeal & Other Healthcare Priorities → Immigration
Key Targets for Repeal

- Individual and employer mandate penalties
- Premium tax credits and cost-sharing subsidies
- Medicaid expansion funding
  - Medicaid DSH cuts
- Premium stabilization programs
- Healthcare stakeholder taxes
- Cadillac tax
- Prevention fund & Planned Parenthood funding
- Independent Payment Advisory Board
Policies Likely Left Untouched

- Consumer protections
  - Ban on pre-ex condition exclusions
  - Guaranteed issue
  - Ban on coverage limits
- Medicaid coverage policies
- Coverage of approved preventive services
  - Potential exception for family planning
- Biosimilars pathway at the FDA
Policies on the Bubble

- Center for Medicare and Medicaid Innovation
- Medicare provider and plan cuts
- Ban on physician-owned specialty hospitals
- 2nd tier Medicaid reforms
- Health IT/meaningful Use
Potential Replacement Policies

- Expand HSA accounts and HDHPs
- Private exchanges with defined contribution from employers
- Premium tax credit subsidies
- Cap on deductibility of ESI
- High risk pools
Replacement Policies that Need “60”

- Allow purchase of insurance across state lines
- Expand association health plans (AHPs)
- Medical liability reform
- Expand age rating band
Medicare Reform

- Combining Parts A & B with unified deductible, OOP cap, and 20% coinsurance
- Restricting Medigap first dollar coverage
- Replace DSH with uncompensated care fund
- By 2024, premium support model, where private plans compete with FFS on Medicare Exchange
  - Defined contribution to enrollee
- Raise eligibility age
Medicaid Reform

- Convert entitlement to per capita allotment to states
- Benchmark set based on historical state funding level, but rate of growth capped
- New flexibility to states to impose work requirements, premiums, waiting lists, enrollment caps, etc.
- Implications for coverage provisions unclear
CHIP, Extenders, etc.

- Policy and timeline of CHIP funding extension in question
  - Maintenance of effort provision
  - Enhanced match
- Exceptions to Medicare therapy caps
- Medicare Advantage Special Needs Plans
- Rural and small provider add-on payments
- FQHC and NHSC funding
- CURES, Chronic Care, PDUFA, mental health...
## Deadlines and Expiration Dates

<table>
<thead>
<tr>
<th>Program/Deadline</th>
<th>Expiration Date</th>
<th>Notes</th>
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<tbody>
<tr>
<td>Tax Extenders</td>
<td>Dec. 31, 2016</td>
<td>There are 36 tax breaks that expire Dec. 31 but Congress can safely renew them anytime next year without harming tax filers. Renewable energy companies are hoping Congress extends these tax breaks in the lame duck in order to retroactively renew breaks on geothermal, fuel cells, and small wind projects that failed to gain permanent status in the 2015 tax extender package.</td>
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<td>Debt Ceiling</td>
<td>March 2017</td>
<td>The government hits its borrowing cap in March and Congress needs to raise it shortly thereafter, give-or-take “extraordinary measures” that the Treasury can take to push the expiration back to some point in the second quarter.</td>
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<td>CHIP</td>
<td>Sept. 30, 2017</td>
<td>Funding for the health insurance program for low-income families with children expires at the end of next September. Advocates are pushing for consideration earlier in the year to give state legislatures time to incorporate funding into their budgets for the year.</td>
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<td>PDUFA/MDUFA</td>
<td>Sept. 30, 2017</td>
<td>The authorization for the current user fee agreement could be a key vehicle for other health industry priorities.</td>
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<td>End of Fiscal Year</td>
<td>Sept. 30, 2017</td>
<td>As has become tradition, Congressional appropriators will spend the year hashing out agreements on how to fund government programs, before finally passing a last-minute bill to maintain current spending levels.</td>
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<td>Medicare Extenders</td>
<td>Dec. 30, 2017</td>
<td>Many Medicare “extenders” have repeatedly been addressed when Congress tackled the so-called “doc fix.” But Congress passed its permanent repeal of the SGR last year – without making permanent all of the extender provisions. Advocates will push for the provisions – including funding for community health centers and rural hospitals – to be extended with CHIP.</td>
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Key Implications for NACPM

- Don’t take anything for granted
- Multiple opportunities to advance midwifery message and expand coverage of services
- Delivery and payment reform efforts continue
- Birth center provision of ACA likely to stay in place in near term
  - Probability and impact of Medicaid reforms unclear
To Influence Policy, You have to *Know* Policy

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Thank You