Health Care Reform: The Sequel

Katy Spangler
Senior Vice President, Health Policy
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Political Landscape
New Congress

U.S. House of Representatives

- Republicans: 241
- Democrats: 194

U.S. Senate

- Republicans: 52
- Democrats: 48
GOP Majority in Congress

- **Distinction between “majority” and “control”**
  - House of Representative: What have we learned the past two years?
  - Senate: Need 60 votes to advance majority party’s agenda

- **But there is an exception**

Legislative Process

- **Budget Resolutions for FY 2017 and 2018**

- **Budget reconciliation measure**
  - Cannot be filibustered, so it only requires a simple majority to pass
  - Congress used this process to pass portions of the Affordable Care Act
  - Provisions must have significant impact on federal revenue (e.g. ACA taxes, but not ACA insurance reforms)

- **Very possibly three budget reconciliation bills**
  - Repeal ACA
  - Comprehensive tax reform
  - Replace ACA
Legislative Changes

Health Policy

- Using budget reconciliation to repeal major pieces of the ACA:
  - “Zero out” individual & employer mandates
  - Repeal exchange subsidies
  - Repeal Medicaid expansion
  - Repeal ACA taxes?
- “Transition” timeline hotly debated
- But employer reporting in 2017 may still apply

Legislative Changes

Repeal…delay…replace?

- How long will the repeal of the subsidies and the Medicaid expansion be delayed?
- What happens to the ACA taxes?
- It is possible Congress will include some pieces of “replace” along with “repeal”?
- If Congress only “repeals”, how long until they pass “replace”?
- In the meantime, how do Congress and the new President avoid collapse of insurance marketplace?
Legislative & Regulatory Changes
*Preventing Market Collapse in 2017 and 2018*

- Congressional authorization of cost-sharing subsidies?
- Strengthen risk adjustment
- Require up-front verification of special enrollment periods
- Prohibit 3rd party payment of premiums
- Expand age rating from 3:1 to 5:1
- Copper or “catastrophic only” plans
- Allow employers to give workers pre-tax dollars to purchase coverage in the individual market

Legislative Changes
*A Better Way: Health Care*

- Repeals the ACA
- Reforms the individual market
- Caps the employee exclusion for employer-sponsored coverage
  - “At a level that ensures job-based coverage continues unchanged for the vast majority”
  - Includes geographic adjustment
  - Omits employee contributions to HSAs
- Health Care “Backpack”: tax credits for those without Medicare, Medicaid, or an offer of employer-sponsored coverage
**Legislative Changes**

*The Patient Choice Act*

- Repeals the ACA
- Prohibits lifetime limits, allows kids under 26 to stay on parents’ plan, 5:1 age rating, “continuous coverage” protection
- Caps the employee exclusion for employer-sponsored coverage
  - $12,000 for an individual and $30,000 for a family
  - Dollar amounts indexed to grow at an annual rate of CPI+1
- Tax credits for Americans working for businesses with 100 or fewer employees and for Americans without an offer of health insurance coverage
- Age-adjusted, advance able, refundable tax credits for low income individuals

**Trump’s Positions on Health Care**

- Repeal the ACA
  - Maintain requirement to cover pre-existing conditions
  - Maintain requirement to cover kids up to age 26
- Sell insurance across state lines
- Allow individuals to fully deduct health insurance premium payments
- Expand use of Health Savings Accounts
- Require price transparency from providers
- Block grant Medicaid to the states
- Allow prescription drug importation
- Allow Medicare to negotiate drug prices
Taxation of Health Benefits?

- Keep, but modify the Cadillac tax and create an actuarial value safe harbor
- Impose a cap on the existing employee exclusion for employer-sponsored coverage
- Limit exclusion based on actuarial level
- Will changes to tax treatment be linked to ACA repeal, ACA replace or comprehensive tax reform?
- Can stakeholders succeed in a campaign to ensure health benefits are not taxed?

Employer Priorities

*The Best Defense is a Good Offense*

- Repeal the 40% “Cadillac Tax” on health benefits
- Maintain the current “employee exclusion”
- Strengthen ERISA uniformity
- Minimize burdensome employer reporting
- Focus on decreasing costs (via payment reforms and shifting to value from volume?)
- Increase flexibility for Health Savings Accounts
- Increase flexibility for wellness programs
Regulatory Changes

Avenues for Regulatory Reform

- **Executive Orders**
  - Rescind previous Executive Orders

- **Congressional Disapproval**
  - Congressional Review Act
  - 60 legislative days (June 2016)
  - One at a time (proposed legislation)

- **Regulatory Moratorium**
  - Freezing and/or delaying

- **New Rulemakings to replace**