

Affordable Care Act—What Next?

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Now that the election is over, it is widely expected that one of the first orders of business for the President-elect will be to significantly modify, replace, or eliminate many Affordable Care Act (ACA) provisions and/or corresponding regulations.

The President-elect and Republican leaders of the House and Senate have all expressed a desire to completely repeal and replace the ACA. However, a complete repeal is unlikely for several reasons. Republicans will have a simple majority in the Senate and will therefore need to work with Democrats to avoid a filibuster. A few important caveats to this is that Republicans may use the reconciliation process to modify ACA provisions considered budgetary in nature and the President-elect may work through his appointees to modify regulations that interpret the ACA. Second, the ACA has many popular provisions—such as the requirement that coverage extend to children up to age 26 and the prohibition on lifetime and annual limits—that many Americans strongly support. Finally, a complete elimination of the ACA would be highly disruptive to the health insurance market. Therefore, a meaningful alternative will likely need to be devised before the ACA is eliminated.

While details remain scarce, hints of what plan sponsors can expect may be gleaned from proposals on the President-elect's website and from a recent Congressional repeal bill. Importantly, given the lack of specific policy proposals, this summary should not be relied upon to take (or not take) any specific actions. Plan sponsors must continue to comply with existing laws and regulations.

Among the more concrete proposals on the President-elect's website:

- The complete repeal of the ACA and replacement with a solution that includes Health Savings Accounts. While the website does not get into the individual components of the ACA, a full repeal would include, among other changes, the elimination of the individual mandate, marketplace subsidies, employer “pay or play” rules, annual reporting requirements, Medicaid expansion, the “Cadillac” tax, design-based requirements (e.g., coverage of essential health benefits, annual and lifetime maximums, prohibition on pre-existing condition exclusions, and many other requirements), and limits on compensation paid to employees of health insurance providers.
- Permitting individuals to purchase insurance across state lines.
- Re-establishment of high-risk pools for individuals with significant medical expenses.

A prior version of the website emphasized additional proposals that may be of interest to plan sponsors:

- Allowing individuals to fully deduct health insurance premium payments.
- Allowing consumers access to imported drugs.

Early in 2016, Congressional Republicans passed a repeal measure that, in addition to repealing much of the ACA, included the following:

- Permitting the use of HSA, Health FSA, HRA, Archer MSA funds to pay for over-the-counter medications.
- Lowering the tax on distributions from HSAs and Archer MSAs that are not used for medical expenses.
- Eliminating limits on salary contributions to Health FSAs.

While it is much too early to tell how this will all play out, it is safe to say that significant changes are on the horizon. It is unlikely that the legal landscape will revert to where it was pre-ACA. However, until specific proposals are moved forward, plan sponsors will need to continue to comply with existing laws and take a wait-and-see approach as to any changes. Stay tuned.

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