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WHAT YOU NEED TO KNOW



2016 Election Results: The Potential Impact on Health and Welfare Benefits

Following the November 2016 election, Donald Trump (R) will be sworn in as the next President of the United States on January 20, 2017. The Republicans will also have the majority in the Senate (51 Republican, 47 Democrat) and in the House of Representatives (238 Republicans, 191 Democrat). As a result, the political atmosphere is favorable for the Trump Administration to begin implementing its healthcare [policy objectives](#). Representative Paul Ryan (R-Wis.) will likely remain the Speaker of the House. Known as an individual who is experienced in policy, it is expected that the Republican House will work to pass legislation that follows the health care policies in Speaker Ryan's "[A Better Way](#)" proposals. The success of any of these proposals remains to be seen.

Employers should be aware of the main tenets of President-elect Trump's proposals, as well as the policies outlined in Speaker Ryan's white paper. These proposals are likely to have an impact on employer sponsored health and welfare benefits. Repeal of the Patient Protection and Affordable Care Act (ACA) and capping the employer-sponsored insurance (ESI) exclusion for individuals would have a significant effect on employer sponsored group health plans.

Trump Policy Proposals

President-elect Trump's policy initiatives have seven main components:

- Repeal the ACA. President-elect Trump has vowed to completely repeal the ACA as his first order of Presidential business.
- Allow health insurance to be purchased across state lines.
- Allow individuals to fully deduct health insurance premium payments from their tax returns.
- Allow individuals to use health savings accounts (HSAs) in a more robust way than regulation currently allows. President-elect Trump's proposal specifically mentions allowing HSAs to be part of an individual's estate and allowing HSA funds to be spent by any member of the account owner's family.
- Require price transparency from all healthcare providers.
- Block-grant Medicaid to the states. This would remove federal provisions on how Medicaid dollars can and should be spent by the states.
- Remove barriers to entry into the free market for the pharmaceutical industry. This includes allowing American consumers access to imported drugs.

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President-elect Trump's proposal also notes that his immigration reform proposals would assist in lowering healthcare costs, due to the current amount of spending on healthcare for illegal immigrants. His proposal also states that the mental health programs and institutions in the United States are in need of reform, and that by providing more jobs to Americans we will reduce the reliance of Medicaid and the Children's Health Insurance Program (CHIP).

Speaker Ryan's "A Better Way" Proposal

In June 2016, Speaker Ryan released a series of white papers on national issues under the banner "A Better Way." With Republican control of the House and Senate, it would be plausible that elected officials will begin working to implement some, if not all, of the ideas proposed. The core tenants of Speaker Ryan's proposal are:

- Repeal the ACA in full.
- Expand consumer choice through consumer-directed health care. Speaker Ryan's proposal includes specific means for this expansion, namely by allowing spouses to make catch-up contributions to HSA accounts, allow qualified medical expenses incurred up to 60 days prior to the HSA-qualified coverage began to be reimbursed, set the maximum contribution of HSA accounts at the maximum combined and allowed annual high deductible health plan (HDHP) deductible and out-of-pocket expenses limits, and expand HSA access for groups such as those with TRICARE coverage. The proposal also recommends allowing individuals to use employer provided health reimbursement account (HRA) funds to purchase individual coverage.
- Support portable coverage. Speaker Ryan supports access to financial support for an insurance plan chosen by an individual through an advanceable, refundable tax credit for individuals and families, available at the beginning of every month and adjusted for age. The credit would be available to those without job-based coverage, Medicare, or Medicaid. It would be large enough to purchase a pre-ACA insurance policy. If the individual selected a plan that cost less than the financial support, the difference would be deposited into an "HSA-like" account and used toward other health care expenses.
- Cap the employer-sponsored insurance (ESI) exclusion for individuals. Speaker Ryan's proposal argues that the ESI exclusion raises premiums for employer-based coverage by 10 to 15 percent and holds down wages as workers substitute tax-free benefits for taxable income. Employee contributions to HSAs would not count toward the cost of coverage on the ESI cap.
- Allow health insurance to be purchased across state lines.
- Allow small businesses to band together an offer "association health plans" or AHPs. This would allow alumni organizations, trade associations, and other groups to pool together and improve bargaining power.
- Preserve employer wellness programs. Speaker Ryan's proposal would limit the Equal Employment Opportunity Commission (EEOC) oversight over wellness programs by finding that voluntary wellness programs do not violate the Americans with Disabilities Act of 1990 (ADA) and the collection of information would not violate the Genetic Information Nondiscrimination Act of 2008 (GINA).

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- Ensure self-insured employer sponsored group health coverage has robust access to stop-loss coverage by ensuring stop-loss coverage is not classified as group health insurance. This provision would also remove the ACA's Cadillac tax.
- Enact medical liability reform by implementing caps on non-economic damages in medical malpractice lawsuits and limiting contingency fees charged by plaintiff's attorneys.
- Address competition in insurance markets by charging the Government Accountability Office (GAO) to study the advantages and disadvantages of removing the limited McCarran-Ferguson antitrust exemption for health insurance carriers to increase competition and lower prices. The exemption allows insurers to pool historic loss information so they can project future losses and jointly develop policy.
- Provide for patient protections by continuing pre-existing condition protections, allow dependents to stay on their parents' plans until age 26, continue the prohibitions on rescissions of coverage, allow cost limitations on older Americans' plans to be based on a five to one ratio (currently the ratio is three to one under the ACA), provide for state innovation grants, and dedicate funding to high risk pools.

Speaker Ryan's white paper also addresses more robust protection of life by enforcing the Hyde Amendment (which prohibits federal taxpayer dollars from being used to pay for abortion or abortion coverage) and improved conscience protections for health care providers by enacting and expanding the [Weldon Amendment](#).

Speaker Ryan also proposes other initiatives including robust Medicaid reforms, strengthening Medicare Advantage, repealing the Independent Payment Advisory Board (IPAB) that was once referred to as "death panels," combine Medicare Part A and Part B, repealing the ban on physician-owned hospitals, and repealing the "[Bay State Boondoggle](#)."

Process of Repeal

Generally speaking, the process of repealing a law is the same as creating a law. A repeal can be a simple repeal, or legislators can try to pass legislation to repeal and replace. Bills can begin in the House of Representatives, and if passed by the House, they are referred to the Senate. If it passes the Senate, it is sent to the President for signature or veto. Bills that begin in the Senate and pass the Senate are sent to the House of Representatives, which can pass (and if they wish, amend) the bill. If the Senate agrees with the bill as it is received from the House, or after conference with the House regarding amendments, they enroll the bill and it is sent to the White House for signature or veto.

Although Republicans hold the majority in the Senate, they do not have enough party votes to allow them to overcome a potential filibuster. A filibuster is when debate over a proposed piece of legislation is extended, allowing a delay or completely preventing the legislation from coming to a vote. Filibusters can continue until "three-fifths of the Senators duly chosen and sworn" close the debate by invoking cloture, or a parliamentary procedure that brings a debate to an end. Three-fifths of the Senate is 60 votes.

There is potential to dismantle the ACA by using a budget tool known as reconciliation, which cannot be filibustered. If Congress can draft a reconciliation bill that meets the complex requirements of our budget rules, it would only need a simple majority of the Senate (51 votes) to pass.

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Neither President-elect Trump nor Speaker Ryan has given any indication as to whether a full repeal, or a repeal and replace, would be their preferred method of action.

The viability of any of these initiatives remains to be seen, but with a Republican President and a Republican-controlled House and Senate, if lawmakers are able to reach agreeable terms across the executive and legislative branches, some level of change is to be expected.

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