Updates on Reconciliation, Repeal and Replace

Colin Roskey
March 2017
The 2018 Mid-term election season is already being felt in the background of the early Trump initiatives and the ACA and tax reform deliberations.

The following political realities will influence the policy outcomes.
Congressional Refresher: Where Things Stand At the Moment...

Party control at beginning of 115th Congress (2017-2018)

- Democrat
- Republican
- Independent (caucusing with Dems)

**Republican House Majority**
- 194 - 241

**Republican Senate Majority**
- 48 - 52
Congressional Refresher: Where Things Stand At the Moment...

States with 2018 Senate elections

- Democrats will be defending 25 seats in 2018, while Republicans are defending only 8.
- Of the eight Republican seats, just Nevada, held by freshman Sen. Dean Heller, is in a state won by Democrats in the 2012 or 2016 presidential elections.
- No other GOP-held seat appears in danger, which means Republicans are likely to hold onto their majority.
- States Democrats will have to work hard to hold onto include Indiana, Missouri, Montana, and North Dakota.
The House...

✓ The House in 2018 is not expected to bring much change even if Democrats gain a few seats.

✓ 10 Republicans sitting in districts carried by Hillary Clinton & 8 Democrats sitting in districts carried by Donald Trump

✓ Democrats depend on younger and minority voters, who tend to sit out the mid-term elections

✓ However: there are 3 House seats to fill in 2017 replacing vacant seats: Becerra’s seat in CA; Price’s seat in GA; and Pompeo’s seat in Kansas. If there are any surprise results, then anything can happen in the 2018 election
State of Play: The Players

✓ Secretary Price and other Administration officials are expected to focus on reducing regulatory burdens on providers, eliminate mandates in favor of market forces, and initially, heavy focus on turning back HHS regulatory guidance where possible.

✓ He is expected to be especially sensitive to physician concerns, and ways to empower patients to make better decisions
Key White House Health Staff

**Andrew Bremerberg**: Director, Domestic Policy Council (DPC)
- Former policy advisor and counsel to Sen. McConnell
- 2016 GOP Party Platform policy advisor
- Senior Advisor at HHS in Bush II Administration

**Katy Talento**: Healthcare Policy Lead, DPC
- Infectious disease epidemiologist by training
- Former staffer to 5 Senators and 2 Senate committees

**Alexandra Campau**: Medicare Policy Lead, DPC
- Former staff to House Budget Committee under then-Rep. Price
- Former staff to Republican Policy Committee under Senator Barrasso
HHS Confirmed Leadership

**Secretary Tom Price, MD**
- Chair of House Budget Committee
- GOP Representative from GA since 2005
- Orthopedic surgeon
- Author of a previous GOP replacement plan
- A full repeal of Medicaid expansion

**CMS Administrator Seema Verma (Pending confirmation)**
- Owner and CEO of SVC Inc. – health policy consulting firm
- Vice-president of planning for the Health & Hospital Corporation of Marion County
- Director with the Association of State and Territorial Health Officials
- Helped to design Medicaid expansion waivers in: Indiana, Iowa, Ohio, Kentucky

**NIH Director Francis Collins, MD**
- Appointed NIH Director in 2009 by President Obama
- President Trump asked Dr. Collins to stay on as NIH director, at least for now
Overview of health committee leaders in the Senate

**Finance**
- Chairman: Orrin Hatch (R-UT)
- Ranking Member: Ron Wyden (D-OR)

**Health, Education, Labor & Pensions**
- Chairman: Lamar Alexander (R-TN)
- Ranking Member: Patty Murray (D-WA)

**Appropriations**
- Chairman: Thad Cochran (R-MS)
- Ranking Member: Patrick Leahy (D-VT)

**Health Subcommittee**
- Chairman: Pat Toomey (R-PA)
- Ranking Member: Debbie Stabenow (D-MI)

**Special Committee on Aging**
- Chairman: Susan Collins (R-ME)
- Ranking Member: Robert Casey (D-PA)

**Chairman Ranking Member**
- Roy Blunt (R-OK 4)
- Patty Murray (D-WA)
Overview of health committee leaders in the House

Ways & Means
Chairman Ranking Member
Kevin Brady (R-TX 8)
Richard Neal (D-MA 1)

Energy & Commerce
Chairman Ranking Member
Greg Walden (R-OR 2)
Frank Pallone (D-NJ 6)

Appropriations
Chairman Ranking Member
Rodney Frelinghuysen (R-NJ 11)
Nita Lowey (D-NY 17)

Health Subcommittee
Chairman Ranking Member
Pat Tiberi (R-OH 12)
Sandy Levin (D-MI 9)

Health Subcommittee
Chairman Ranking Member
Michael Burgess (R-TX 26)
Gene Green (D-TX 29)

Labor, HHS, Education and Related Agency Subcommittee
Chairman Ranking Member
Tom Cole (R-OK 4)
Rosa DeLauro (D-CT 3)
In any year, repeal and replace of the ACA would be a complex, time consuming priority, but add to the mix:

- The learning curve of a new, under staffed, Administration
- A narrow GOP vote margin of 3 in the Senate
- Growing anger during public Congressional events about the possible impact of ACA repeal
- And the numerous other “must do” priorities:
  - Congress – Supreme Court Nomination, remaining agency nominations, tax reform, Debt Ceiling, CHIP, etc
  - Executive Branch – Staffing up, international issues, immigration, climate change/energy policy, economic/jobs policy, veterans healthcare reform, etc
# 2017 Legislative/Regulatory Anticipated Timeline

<table>
<thead>
<tr>
<th>Event</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>First 100 Days of New Administration:</td>
<td>Exec. Orders, Supreme Court nomination, Joint Session 2/28</td>
</tr>
<tr>
<td>Cabinet Nomination Senate Hearings</td>
<td></td>
</tr>
<tr>
<td>Trump Administration FY 2018 Budget Outline (March?)</td>
<td></td>
</tr>
<tr>
<td>CHIP Reauthorization (Expires Oct. 1, but state budgets begin 7/1/17)*</td>
<td>Shorter extension could be included in reconciliation</td>
</tr>
<tr>
<td>CR FY 2017 Government Funding (April 28)*</td>
<td></td>
</tr>
<tr>
<td>PDUFA (and other UFA) Reauthorizations (Expire Oct. 1)*</td>
<td></td>
</tr>
<tr>
<td>Medicare Extenders (Expire Oct. 1/Jan. 1)*</td>
<td></td>
</tr>
<tr>
<td>Annual CMS Rulemakings (e.g., QPP, IPPS, PFS, OPPS, PFS) (April - September)</td>
<td></td>
</tr>
<tr>
<td>Debt Ceiling (late summer/early fall)*</td>
<td></td>
</tr>
<tr>
<td>ACA Repeal and Repair (Reconciliation) – Two Reconciliation bills:</td>
<td>First, FY 2017 Reconciliation; then FY 2018 Reconciliation</td>
</tr>
<tr>
<td>Tax reform</td>
<td></td>
</tr>
<tr>
<td>Trump FY2018 Budget: 3/14</td>
<td></td>
</tr>
<tr>
<td>2017 FY 2018 Budget</td>
<td></td>
</tr>
<tr>
<td>Medicare Extenders (Expire Oct. 1/Jan. 1)*</td>
<td></td>
</tr>
<tr>
<td>PDUFA (and other UFA) Reauthorizations (Expire Oct. 1)*</td>
<td></td>
</tr>
<tr>
<td>CR FY 2017 Government Funding (April 28)*</td>
<td></td>
</tr>
<tr>
<td>CHIP Reauthorization (Expires Oct. 1, but state budgets begin 7/1/17)*</td>
<td>Shorter extension could be included in reconciliation</td>
</tr>
<tr>
<td>Trump Administration FY 2018 Budget Outline (March?)</td>
<td></td>
</tr>
<tr>
<td>cabinet Nomination Senate Hearings</td>
<td></td>
</tr>
<tr>
<td>First 100 Days of New Administration:</td>
<td>Exec. Orders, Supreme Court nomination, Joint Session 2/28</td>
</tr>
<tr>
<td>Cabinet Nomination Senate Hearings</td>
<td></td>
</tr>
<tr>
<td>2017 FY 2018 Budget</td>
<td></td>
</tr>
</tbody>
</table>
Executive Orders - President Trump has already released directives to federal agencies to:

- Freeze, rescind, or revise federal ACA regulations which create a burden on individuals or industry.
- Establish regulatory reform officers/task forces within each federal agency to review of current federal regulatory policies to be eliminated or revised if they eliminate jobs, inhibit job creation, costs exceed their benefits, are outdated, unnecessary, or ineffective. They must report in 90 days.

Agency unilateral regulatory action or non-enforcement:

- The IRS has indicated it will not be checking taxpayer acknowledgement of insurance coverage on tax forms.
- HHS has proposed a rule that more broadly seeks to stabilize the insurance marketplace by bolstering the financial incentives for insurers by loosening insurance policy restrictions and tightening consumer enrollment requirements.
- Other actions which may be considered in the short term could include narrowing essential health benefits, limit or eliminate recent HRSA women’s preventive services, extension of “grandmother” or “transition” plan guidance possible, and expand hobby lobby exemption regarding contraceptive mandate religious accommodation.

Congressional Review Act, which allows Congress, with a majority vote, to rescind regulations which were finalized within 60 legislative days:

- Numerous regulations have received a rescind vote during the past few weeks, but the only healthcare rule rescinded so far pertained to Title X family planning funding. However, more is expected.

Reconciliation legislation to repeal and replace the ACA: expect legislative action starting this week.
Repealing the ACA Using Reconciliation: Reconciliation 101

✓ Created in 1974, reconciliation is an imperfect budget mechanism being used to by Congress to repeal, defund or delay the ACA but it does have limitations

✓ Reconciliation uses expedited procedures: it allows bills in the Senate to be passed with only a simple majority (GOP holds 52-48 majority), not the 60 votes required to end a filibuster; debate is limited to 20 hours and amendments must be germane to the bill.

- Its limitations: Senators may block provisions that are determined to be “extraneous” to the bill’s basic purpose of implementing budget changes – the “Byrd Rule.” Meaning that all provisions must change federal spending, federal revenues, or the federal debt limit.

- Has potential to destabilize the mix of mandates and subsidies designed to achieve universal coverage, since many of the ACA private sector insurance requirements do not impact federal revenues, but the subsidies and penalties do. Eliminating the ACA taxes and Medicaid expansion would comply with Byrd Rule.

✓ Congress can only consider one reconciliation per fiscal year: the GOP leadership is considering a reconciliation bill for fiscal year 2017 for the initial ACA repeal and replace provisions, and plan to use a second bill this year for fiscal year 2018, for additional ACA actions and to proceed with tax reform.
The 4 Key Broad Elements of GOP ACA Reform

✓ Health Savings Accounts
  ▪ HSAs are paired with health insurance plans that have high deductions and low premiums
  ▪ GOP believe HSAs generally shift greater financial responsibility to the beneficiary
  ▪ Benefits are tax-free contributions (with limitations), and growth of savings and medical expense withdrawals

✓ High Risk Pools
  ▪ Remove individuals with pre-existing conditions from the general pool of health insurance, and provide state option, lowering the premiums for the young and healthy
  ▪ States have attempted to implement high-risk pools pre-ACA, with not much success, in some instances, they proved to be expensive

✓ Medicaid Block Grants/Per-Capita Caps
  ▪ GOP proposals include a per-capita grant or cap in place of the current Medicaid entitlement – the grant would allocate a set amount of money per enrollee in the states – expect a phase in to level playing field for expansion versus non-expansion states
  ▪ The goal is to reduce the federal share of dollars over time, and in return increase state flexibility in eligibility and coverage

✓ Tax credits for Health Insurance
  ▪ The GOP prefers to use tax credits to help people buy insurance rather than keep the ACA subsidies
  ▪ The tax credit details have not been finalized, but proposals are expected to include age-adjusted credits and credits based on number of family members
American Health Care Act, Part 1

✓ **Repeal of the ACA Taxes**
  - Repeals nearly all ACA taxes, including fees on insurers, prescription drugs, indoor tanning and medical device manufacturers, and the increase in the Medicare payroll tax for high earners, many not until 2018. “Cadillac Tax” delayed until 2025. Repeals the ACA Premium Tax Credit in 2020.

✓ **Mandates and Coverage Changes**
  - Reduces the individual and employer coverage mandate penalties to $0 beginning in 2016, to be replaced with (beginning in 2019) mandatory penalties for failure to maintain coverage as the incentive to enroll in coverage. Insurers would assess a penalty on any individual who experienced 63 or more continuous days without coverage during a 12-month look-back period, the “Continuous Health Insurance Coverage Initiative.”
    - Keeps under 26 and pre-existing condition prohibition in place

✓ **Repeals Cost-Sharing Subsidy** in 2020.

✓ **Reforms Medicaid Expansion.** Keeps enhanced federal match in effect until 2020. Ends presumptive eligibility, except for children, pregnant women and breast and cervical cancer patients. Cuts to DSH hospitals would not apply in non-expansion states; cuts in expansion states would be enforced as scheduled until 2020, when they would be repealed. Provides $10B to non-expansion states for safety net funding.

✓ **Per Capita Caps.** Restructures open-ended Medicaid financing into per-capita allotments in 2019, using 2016 as the base year indexed by medical CPI, exempting certain expenses like DSH payments, IHS and payments for breast and cervical cancer screening and treatment.
American Health Care Act, Part 2

✓ Insurance Reforms:

- **Marketplace Stabilization:** The proposal would take several steps to stabilize the Health Insurance Marketplaces for 2018, including increasing the permissible age-rating bands to 5-1 from 3-1 and giving states the authority to select the range for their state. Also, beginning in 2018, both the federal and state-based Marketplaces would be required to verify eligibility for special enrollment periods prior to enrollment.

- **Refundable Tax Credits for Health Insurance Coverage:** Beginning in 2020, the federal government would make available age-based, advanced, refundable tax credits to individuals without another source of coverage. The value of the tax credit would start at $2,000 annually for individuals under age 30 and increase with each decade of age to a maximum of $4,000 annually for individuals over age 60. Families claiming tax credits for multiple family members would be capped at a maximum tax credit of $14,000 annually. The amounts would be updated by CPI+1 annually. No abortion coverage.

- **Repeal of Essential Health Benefits:** Beginning in 2020, the federal essential health benefit requirements would be repealed for certain limited benefit plans and states would have authority to set any minimum benefit standards; the AV standards for metal level plans would be repealed allowing states to approve more flexible benefit designs.

- **Health Savings Accounts (HSAs) expansion:** The proposal would increase the maximum amount an individual could contribute to his or her HSA to align with limits on deductibles and co-pays.

- **“Patient and State Stability Fund”** $100 billion/10 could be used for various purposes, including creating high risk pools, helping people with OOP costs, promoting access to preventive services, establishing a reinsurance program. If a state chooses not to use the funding for their own program, the resources will be available to CMS to help stabilize premiums, contemplates state contribution amounts to federal funds.
American Health Care Act, Part 3

- “A starting point” – Secretary Tom Price, 3/7/17
  - Freedom caucus concerned about tax credits
  - Senate moderates concerned about Medicaid reforms

- Nothing on Medicare
- Nothing on drug price increases
- Nothing on tort reform
- Could be accomplished in other legislation, executive orders
- Some items (repeal of EHB, AV standards, rate ban changes) may be tossed out due to reconciliation rules, setting up a return of the bill to the House
- Some items may be tossed out for political reasons
- AHA, AMA, AHIP, AARP oppose
American Health Care Act Tweets of Note

- Our wonderful new Healthcare Bill is now out for review and negotiation. #ObamaCare is a complete and total disaster — is imploding fast!
- Don't worry, getting rid of state lines, which will promote competition, will be in phase 2 & 3 of healthcare rollout. @foxandfriends
- I am working on a new system where there will be competition in the Drug Industry. Pricing for the American people will come way down!
- Despite what you hear in the press, healthcare is coming along great, We are talking to many groups and it will end in a beautiful picture!
Tax reform

✓ Tax reform is a priority for the Republican majority, but will follow after initial ACA repeal/replace legislation - expect it to be handled in a FY 2018 reconciliation package.

✓ Objective: comprehensive tax reform, including international, corporate/business, individual, etc. Like ACA reform, tax reform means disruptions and will result in significant winners and losers.

✓ The Border Adjusted Tax (BAT) element of corporate tax reform as proposed by House GOP is currently receiving the most attention (conceptually a 20% tax on imports no tax on exports), but there are other issues.

✓ There has been bi-partisan, bi-cameral support for tax deductions for charitable contributions in the past, but changes to the standard deduction to erase the charitable contribution incentives could be considered as part of base broadening.

   ▪ House GOP “A Better Way” proposal states that the “best way to promote charitable giving…is to improve the overall health of the American economy”
   ▪ “Committee on Ways and Means will develop options” to improve the deduction

✓ Tax reform is currently a moving target as to what is in play, other ACA policies may be affected.
‘Trump Card?’

BY GARY VARVEL, THE INDIANAPOLIS STAR