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The Future of the Affordable Care Act Post the 2016 Presidential Election

- ANALYSIS -

With the election now over, the future of the Affordable Care Act (“ACA”) is clearly in doubt as President-elect Donald Trump has made it clear big changes are on the horizon. What was President Obama’s signature domestic legislation now faces a near certain overhaul with Republicans also controlling both the House and Senate. President Obama took advantage of having had complete control of the executive and legislative branches to get the ACA passed. Now President-elect Trump will have similar control that he can likely use to maneuver through a series of changes that could measurably alter the law or gut its most significant provisions.

So is the ACA on borrowed time? Will the new President and Congress be able to find compromise on significant changes? Consuming nearly 17% of the GDP, how will the changes impact the economy and the future of the healthcare delivery system? Here’s our take on what benefit leaders and the C-suite should be focused on over the course of the next several weeks and during the new President’s first 100 days. And since Conner Strong & Buckelew represents group benefit plan sponsors, our commentary is focused primarily on the impact any post-ACA policies will have on the group market. However, it is clear that the aftermath of changes to the ACA will have broad sweeping implications to the overall healthcare landscape.

- **The ACA Is Not Dead Yet:** While more unpopular of late due to rising premiums across the nation, there are several popular provisions of the law that few politicians will look to eliminate; things like children staying on their parent’s plan to the age of 26, the elimination of pre-existing conditions and preventive care being covered at 100%. Any changes or replacement plan will likely maintain some or all of these popular provisions. Plus, some 8 million Americans now have subsidized health insurance under the ACA. An outright elimination of their coverage will not be politically practical so some sort of government financed successor plan (temporary or otherwise) will need to be developed in order to avoid a messy and politically untenable outcome. The bottom line is that repealing, fixing or replacing the ACA will be no easy task. It will take careful planning in order to avoid what could be a chaotic post-ACA environment.
- **The Individual and Employer Mandates:** It is highly likely that the individual and employer mandates will eventually be repealed. Absent the individual mandate, there will need to be changes to protect insurers against adverse selection in the individual markets that have already been weakened through the failures of the exchanges thus far. Meanwhile,

eliminating the employer mandate will lessen the cost and administrative burdens on employers.

- **Excise Tax on Employer Plans:** Both Presidential candidates and political parties strongly supported the elimination of the excise tax (also known as the “Cadillac Tax”) on employer sponsored health benefits that is now set to take effect in 2020. It is likely that this unpopular tax will be eliminated as a part of any post ACA plan.
- **Employer Plan Reporting and Other Administrative Requirements:** If the employer mandate is repealed, so too shall be the costly and onerous administrative and reporting obligations that have created a myriad of issues for most businesses. The elimination of these burdens will be a welcome respite from the business community that is still reeling from the near impossible reporting scheme now a part of the ACA.
- **State Health Insurance Exchanges:** If the state exchanges are eliminated, there will likely be a phase-out period of a few years and a likely transition to income based for tax credits for individual coverage at the state level. This will be one of the more complicated aspects of unwinding the ACA.
- **Consumer Directed Plans / Health Savings and Flexible Spending Accounts:** Over the past several years, consumer directed plans have faced an uncertain fate. However, all indications point to a resurgence of these plans and a lessening of regulatory changes that could have otherwise made these plans obsolete.
- **Payment and Delivery Reforms:** One of the successes of the ACA has been the accelerated migration of payment reform under Medicare from fee-for-service to more bundled and outcome based payment approaches. These approaches have also been adopted by commercial benefit plans as a way to help transform the cost of quality of healthcare. While it will take further time to impact the system, good progress has been made and it seems likely that these efforts will continue.
- **Tax Treatment of Health Coverage for Employers:** With so much to be tackled, it is unlikely that there will be a move to change employer’s tax advantaged status for employer-sponsored coverage anytime soon.
- **Medicaid Expansion:** Another essential aspect of the ACA was the expansion of Medicaid eligibility. Many states (red and blue) accepted expanded federal funding to increase Medicaid eligibility. However, the cost of Medicaid at the state levels continues to explode and may threaten the long term financial solvency of many state budgets. Any ACA replacement plan will need to deal with the expansion of Medicaid and how to pay for it. House Speaker Paul Ryan has previously championed converting Medicaid to a block grant program for the states to run on their own. It is expected this approach will gain serious consideration.

Even Elimination Will be Costly

As noted elsewhere, some 8 million Americans now receive government subsidies that help pay for their healthcare premiums. It is unlikely that President-elect Trump and the Republican led Congress will simply “end” coverage for these Americans. Plus, with the taxes and fees related to the mandate and other provisions of the law likely being discontinued, the government will need to develop alternate funding sources or solutions to pay for even a temporary period of subsidized healthcare for those now covered.

More Political Maneuvering on the Horizon

It is unlikely that congressional Democrats will sit back and allow the new President to pick apart the ACA without a fight. While Republicans control both the US House and Senate they lack a

filibuster-proof majority in the Senate (60 votes) and so Senate Democrats could block or slow down the new President's plans to change the ACA by imposing a "filibuster." It is expected that both sides will strategically maneuver to advance their position for sustaining or changing the ACA. One likely scenario is the Republican's use of the "budget reconciliation process" to deal with repealing or changing the ACA. The use of reconciliation allows legislation to be enacted with only a simple majority in each house of Congress thus avoiding filibusters.

Conclusion

President-elect Trump campaigned on a platform of repealing and replacing the ACA. It is expected that this will be an area that he'll focus on immediately; likely relying on executive orders where possible to move his plan. As it relates specifically to employer sponsored health benefits, it seems highly likely that the employer mandate and its costly and complex requirements will be eliminated. Yet eliminating the ACA will not be easy and replacing it with a financially viable system will be a complex task. Thus, even if the ACA is ultimately repealed in full or in part, it is unlikely to happen on day one of the new Trump Administration. Therefore, plan sponsors and employers should continue operating their health plans in compliance with the ACA.

The bigger issue is how a post-ACA model will deal with the rising cost of healthcare in the US. Now on an unsustainable trajectory for individuals and businesses, any successful plan must deal with the issues of cost and quality and truly impact the way healthcare is delivered and financed in this country. A major flaw with the ACA was that it only dealt with the issue of the uninsured without simultaneously addressing skyrocketing costs and major gaps in quality. If President-elect Trump's plan does not address the economic and structural issues with healthcare, his plan may ultimately face the same fate as the ACA. Employers and plan sponsors must continue to focus on aggressive and contemporary solutions to sustain affordable plans in regardless of what changes come out of Washington.

Conner Strong & Buckelew will be following these developments closely and shall continue to provide updates as the new President's plans become clearer. Please contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220 with any questions.



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