**The Cake Is Not Yet Baked: Implications of a Full or Partial ACA Repeal**

The election of Donald Trump has injected a new uncertainty into an already turbulent period for the healthcare industry. While the implications of the election will play out over the next legislative session, it is worth contemplating how potential tectonic shifts in federal policy will impact healthcare providers. This white paper is the first in a series that will offer assessment of the implications of proposed healthcare reforms to providers. As you read this, please understand that the nature and scope of the impact of the campaign positions is conjectural based on what is known as of the publication of this white paper. There are many hurdles to clear before these reforms become law and the details of the legislation will be important to understanding the implications for providers. The cake is far from baked. We will be publishing additional white papers as the details of legislative action become clearer.

**Campaign Promises:**

President-elect Trump offered seven reforms to the ACA during the campaign, all touted to lower healthcare costs:

1. The complete repeal of the Affordable Care Act (Obamacare)
2. Modification of existing law that inhibits the sale of health insurance across state lines
3. Allowing individuals to fully deduct health insurance premium payments on their tax returns
4. Allowing individuals to use Health Savings Accounts (HSAs)
5. Requiring price transparency from all healthcare providers, especially doctors
6. Changing Medicaid into a block-grant program to the states
7. Removing barriers to entry into free markets for drug providers that offer safe, reliable and cheaper products

In this paper we address three of the above reforms.

1. **Repeal of Obamacare:** President-elect Trump's core campaign premise is that "Obamacare is a disaster," can't be fixed, and must be repealed and replaced. With that as the starting point, there has already been a shift in stance since the election moderating the absolutist tone of the campaign. As the policy proposals of the incoming administration have not yet been translated from the rhetoric of the campaign to specific legislative proposals, it is instructive to look at the elements of the Affordable Care Act that have been challenged by the Republican-led Congress to gain insight into the possible directions that "repeal and replace" could go.

   In January of this year, Congress passed a bill (HR 3762, Restoring Americans' Healthcare Freedom Reconciliation Act of 2015) partially repealing the ACA without a replacement. While the bill was vetoed by President Obama, it suggests the highest priorities that are likely to continue to shape Congressional action. Key features of HR 3762 included:

   - Restricting the federal government from operating health insurance exchanges
   - Phasing out funding for subsidies to help lower- and middle-income individuals and families afford insurance through the insurance exchanges

- Eliminating tax penalties for individuals who do not purchase health insurance and for employers with 50 or more employees who do not provide insurance plans
- Eliminating taxes on medical devices and the so-called "Cadillac tax" on the most expensive healthcare plans
- Phasing out the expansion of Medicaid over a two-year period

Given that President-elect Trump will begin his administration with majorities in both the House and Senate, his oft-stated commitment to this as a top priority in his administration's 100-day plan, and the negative sentiment of the electorate regarding Obamacare, it is reasonable to assume primacy of action with a reasonable probability of success in addressing this centerpiece agenda item. These priorities will be addressed through a combination of budget reconciliation on revenue and spending items requiring only a simple majority in the Senate and additional legislation subject to filibuster rules and a 60-vote majority.

- At this moment, it seems that repeal of certain popular ACA components, including prohibitions on coverage denials based upon pre-existing conditions, annual and lifetime caps on coverage, and keeping parental coverage of children through age 26, may not be pursued.

**The Impact of Repeal:** The impact of <u>full</u> repeal would result in an increased burden on patients and providers. A June 2016 study published by the Robert Wood Johnson Foundation on the impact of repeal[1] concluded that federal spending on the non-elderly would decline by $927B between 2017 and 2028. This reduction, however, comes at a cost in other areas:

- The number of uninsured people would rise by 24 million by 2021, an increase of 81 percent.
- Eighty-one percent of those losing coverage would be in working families, approximately 66% would have a high school education or less, 40% would be young adults, and about 50% would be non-Hispanic whites.
- There would be 14.5 million fewer people with Medicaid coverage in 2021.
- Approximately 9.4 million people who would have received tax credits for private health coverage would no longer receive assistance.
- State spending would increase by $68.5 billion between 2017 and 2026 as reductions in Medicaid spending would be more than offset by increases in uncompensated care.
- Many states have reported net budget savings as a result of expanding Medicaid and would experience budget shortfalls if the ACA were repealed.
- Significantly less healthcare would be provided to modest- and low- income families.

[1] Robert Wood Johnson Foundation, "The Cost of ACA Repeal", Matthew Buettgens, Linda J. Blumberg, John Holahan, and Siyabonga Ndwandwe. June 2016.

While savings could be achieved against the increase in state liabilities, those savings would come at the expense of coverage. The bottom line is that the uninsured population and provider bad debt would be expected to rise with the repeal of the ACA.

2. **Allow the Sale of Health Insurance Across State Lines:** This reform in the Trump Campaign platform is consistent with the House Republican Health Care Task Force[2] June 2016 plan to replace the ACA. This would enable consumers to purchase plans offered in states other than their own and would weaken state health insurance oversight on the assumption that this would promote competition among plans and lower premiums. The major feature of this initiative is to allow consumers to shop for lower mandated benefits that vary from state to state and to minimize their plan costs. If benefits are reduced, costs may go down for the consumer and insurance company in the short run, but the proposal corrodes efforts to build prevention services into plan designs that reduce costs over the longer run. Minimalist insurance plans may have the adverse effect of raising bad debt for providers.

3. **Changing Medicaid into a Block-Grant Program to the States:** This approach to funding Medicaid would give the states more flexibility for the management of eligibility and benefits. There is little to cut in Medicaid other than coverage, which might actually be viewed as a benefit vs. a bug in terms of block grants. Provider payments are already heavily discounted, and reductions in benefits will reduce funds available to providers for services, and likely increase bad debt from self-pay accounts as Medicaid recipients shoulder a greater percentage of costs. The Congressional Budget Office estimates that the elimination of the Medicaid expansion alone (i.e., before any reductions in block grant amounts) will reduce Medicaid enrollment by 14M, further contributing to growth of bad debt from self-/no-pay accounts.

   In addition, some of the innovative Section 1115 Medicaid Waiver initiatives in Oregon, Maryland, etc. and DSRIP initiatives in states like New York actually inject more resources into the system in order to create the infrastructure for future savings. The block grant concept could eliminate such initiatives.

   While this option results in predictable costs for the federal government, it is at the cost of difficult decisions by states related to lowering eligibility limits and addressing an increasing number of uninsured.

**Other Considerations:**

1. The Medicare Access and CHIP Reauthorization Act (MACRA) is likely to continue uninterrupted following the repeal of the ACA. MACRA was a replacement for the deeply flawed Sustainable Growth Rate (SGR) methodology and enjoyed broad bi-partisan support in Congress. While the ACA and MACRA are linked in many ways as they relate to value-based purchasing variables, MACRA is likely to remain. However, given the breadth of concern regarding MACRA within the medical community, there is some chance of a provider-invoked effort to repeal this as well.

[2] http://abetterway.speaker.gov/?page=health-care

This would require a "repeal and replace" strategy as well, and no replace option has been defined.

2. President-elect Trump has repeatedly expressed his support for retaining the Medicare program. He has not shown concern about trust fund insolvency, nor has he articulated the need for program reform. It should be noted that House Speaker Paul Ryan (R-Wis) has again raised the possibility of privatizing Medicare by moving it to a voucher system. In a post-election interview with Fox News's Bret Baier, Ryan said that Medicare privatization is high on the party's to-do list. Ryan told Baier, "Because of Obamacare, Medicare is going broke." *The budgetary reality, however, is that the Affordable Care Act improved Medicare's financial stability, extending the system's solvency by more than a decade.* While we don't believe this will gain traction with President-elect Trump, it will remain on our issues watch list.

   Medicare may prove to be a safe haven within the tempest of changes in Medicaid and private insurance markets. This seems likely to include Medicare Advantage plans as well as fee-for-service Medicare.

**A Preliminary "To Do" List:**

Good governance practices suggest that the majority of Board meeting time be focused on strategy. The next 12-24 months are predicted to be extremely dynamic, with potentially profound implications from a strategic-direction-setting standpoint. We are clearly moving toward a more consumer-centric and retail-driven market environment. A strategic understanding of the implications of this move will be of great benefit to healthcare provider and payer leaders.

In the meantime, while trying to determine what is a change in the weather and what is a change in the climate going forward, we must keep the following in mind:

- A focus on operational efficiency and quality improvement will yield dividends for both your organization and the patients/subscribers you serve.
- A consumer orientation to service, coupled with price transparency, will be a strategic differentiator. A review of potential Trump policies makes it clear that the new administration will be leaning in to a retail- and market-driven approach to the performance of the system.
- Building alignment between physicians, hospitals, and payers will yield performance synergies that will become even more valuable in a changing environment.
- Building systems of care that include distributed ambulatory services with high-efficiency acute-care diagnostic and treatment capabilities will represent a growing advantage.
- Maintaining focus on the community service mission of your organization and the foundational tenants of the Triple Aim will serve all of us well.

In summary, if you remain a bit confused after reviewing all of the above, you have a strong grasp of the situation.