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the ACA—and other healthcare issues confronting a new Congress

To no one's surprise, most attention in the healthcare world has focused on the fate of the Affordable Care Act (ACA). Republicans in Congress seem intent on moving quickly to repeal the ACA—at least to the extent possible using the budget reconciliation process, which requires only a simple majority for passage in the Senate. A "repeal and delay" bill seems most likely, with funding removed for all or some of the ACA, and a delay in implementation for two (or more) years. This was the model used for passing HR 3762 in late 2015, predictably vetoed by President Obama in early 2016.

Although a "repeal and delay" approach seems the most likely to be introduced, it's not certain that it will pass. Some have suggested a delay would be useful, but the Republicans' Freedom Caucus wing in the House already is pushing back against any delay that might last as long as three years, and Sen. Susan Collins (R. Maine) has indicated she will not support a repeal with a delay that doesn't contain a replacement bill.

Neither position necessarily derails a "repeal and delay" process, unless others join the critics. I believe the most desirable approach would be to develop a replacement strategy before introducing a repeal bill, because then it would be more likley that some Democrats might support the bill in the Senate. The presence of Democratic support would make it possible to address non-funding issues such as insurance regulation.

Nonetheless, there remains strong support among Republicans in Congress for immediate action to repeal the law as soon as Congress convenes in January.

Interim ACA Considerations

The Trump administration also will have some important flexibility for determining how the ACA functions in the interim. For example, new guidance could be written for the "1332 waivers" allowing states to apply for state innovation waivers, which would permit savings created in Medicaid and the exchanges to be pooled together, and which would allow the process for assessing budget neutrality to extend over several years rather than requiring it to occur annually.[a] The Centers for Medicare & Medicaid Services (CMS) also could focus on providing greater flexibility and a quicker response for waiver requests. Both of these steps would require collaboration with the new appointees at the Office of Management and Budget to proceed expeditiously.

Beyond the ACA

Clearly, the fate of the ACA and the type of replacement bill that will follow it are at the forefront of healthcare considerations for the incoming Republican-led Congress—given that there are Republicans in both the House and Senate who have indicated they would rather not run in 2018 with 20 million more uninsured on the rolls. Yet the next Congress also will be faced with other healthcare-related issues.

Children's Health Insurance Program (CHIP).

Congress will need to address early the issue of whether to extend the funding for CHIP, which expires in September, and for community health centers and some of the Medicare provisions benefiting rural and low-volume Medicare

a. See cms.gov, "Section 1332: State Innovation Waivers," The Center for Consumer Information & Insurance Oversight.

providers. There was extensive discussion when CHIP was last reauthorized about whether the ACA made the program superfluous, and I assume there will be further discussion about whether it is needed. A two-year extension may be possible, particularly if combined with other legislation, given the uncertainty of a post-ACA world.

Veterans Choice Program. Another issue that is certain to get attention will be the reauthorization of the U.S. Department of Veterans Affairs (VA) Choice program, which also expires in September. Providing more choice to veterans and improving services delivered to veterans at the VA are issues President-elect Trump raised during the campaign that his administration also will need to address early. Whether the Trump administration will want to reauthorize existing legislation or craft its own version of a VA Choice bill is unclear. But continuing reports from the Government Accountability Office (GAO) about the difficulties newly enrolled veterans have faced in accessing primary care and various ongoing IT challenges at the VA make it clear that the VA continues to struggle with some of the problems that became so public in 2014.[b]

Prescription drug pricing. The most recent round of prescription drug pricing controversies—beginning with the spike in prescription drug spending in 2014 (attributed then primarily to Sovaldi and other high-priced specialty drugs) and continuing with periodic instances of extraordinary price increases for older drugs and devices (think Daraprim and EpiPens)—is likely to continue under a Trump administration. Democrats have called for Medicare to have the type of administered pricing authority it has for other types of services, and Trump briefly advocated enabling the government to "negotiate" drug prices, but he has not repeated this call since early last spring. A Republican Congress is not likely to invest CMS with direct drug reimbursement authority.

However, the 21st Century Cures Act, which finally passed in December after three years of debates and hearings, contains legislation that is designed to produce a faster approval for prescription drugs and devices, which may alleviate some of the pricing pressure. The experience of AbbVie following approval of its Hepatitis C drug showed that pharmacy benefit managers (PMBs) can effectively exert pressure on manufacturers to accept substantially lower prices by making favorable pricing a condition for inclusion as a preferred drug on the formulary when competitors become available. Accelerating the approval process for competitive specialty drugs may prove an effective strategy for combating high prices.

A Change in Healthcare Spending Trends

Healthcare spending seems to be increasing more rapidly after several years of historically low increases. CMS recently reported that healthcare spending in 2016 increased by 5.8 percent —0.5 percent faster than in 2015. The growth was mostly attributed to coverage expansions from the ACA and increased specialty drug spending, although some of it may also reflect the continued economic recovery. CMS has projected healthcare spending to increase at about this rate for the next decade—about 1.3 percent faster than the expected growth in the economy and a slower rate of increase than the nation has seen historically.

Medicare spending also is expected to grow more quickly than in recent years. With the continued aging and retirement of baby boomers, this rising growth rate will increase pressure on both the Part A trust fund and general revenue, which finances portions of Part B and D. At some point, changes will need to be made to Medicare to make it financially viable—but probably not in the next Congress—despite the clear interest of House Speaker Paul Ryan. ■

b. GAO, "VA Health Care: Actions Needed to Improve Newly Enrolled Veterans' Access to Primary Care," April 18, 2016; Veterans Affairs: Sustained Management Attention Needed to Address Numerous IT Challenges," June 22, 2016; and Veterans Affairs Contracting: "Improvements in Policies and Processes Could Yield Cost Savings and Efficiency," Sept. 20, 2016.

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