

MEMORANDUM

To: Clients and Friends

From: Powers Legislative Practice Group

Date: November 9, 2016

Re: Health Care Implications of a Trump Presidency

Throughout the presidential campaign, candidate Donald J. Trump repeatedly stated that he will seek to dismantle the Affordable Care Act (ACA). Whether a Republican-led House and Senate will repeal the ACA, engage in negotiations for significant reform, or completely replace the ACA with their vision for health care reform remains in question. President-elect Trump's vision for action on the ACA borrows heavily from the Republican Party's Platform and House Speaker Ryan's healthcare blueprint published this past summer entitled, "[A Better Way](#)." This memorandum summarizes these proposals.

Last year, Republican leaders in Congress included a repeal of key aspects of the ACA in a reconciliation bill that was passed by both the House and Senate by a majority vote but vetoed by President Obama. The bill would have repealed the individual and employer mandates, the subsidies to help individuals purchase insurance, and the Medicaid expansion to cover those with lower-incomes. Passage of reconciliation bills only requires 51 votes to pass the Senate, not the usual 60 votes to bring a bill to a vote. With at least 51 Republican Senators set to take office in 2017, and a Republican President who has committed to signing such a bill, this becomes a distinct pathway to repealing the ACA. However, given that repeal and replace ideas were previously essentially political documents given the inevitability of a veto by President Obama, Republican health reform going forward will have to solve complex issues including whether and how to keep those insured by the Affordable Care Act continuously insured, and how to protect those with pre-existing conditions.

Who will lead the Department of Health and Human Services under the Trump Administration is another question on which speculation is already rampant. Who is chosen to lead HHS promises to more fully inform the direction a Trump Administration would take on health care issues. Candidates most often mentioned include Former House Speaker Newt Gingrich; former Republican Presidential candidate Ben Carson, a neurosurgeon; and Florida Governor, Rick Scott. But, there is also speculation that a health care business leader could also be a logical choice for Trump to make given his statements on running our country more like a business.

I. President-elect Trump's Health Care Platform

The following are highlights of the healthcare platforms of the President-elect, Donald Trump:

Medicaid

- Changing Medicaid into a state [block grant](#) program;

Affordable Care Act

- [Repealing](#) the ACA;
- [Repealing](#) the individual and employer mandates, the essential health benefits packages, CMS' Innovation Center, and the Medicare Independent Payment Advisory Board (IPAB);
- Reforming the [premium subsidies](#);

Health Insurance Reform

- Allowing the sale of health insurance [across state lines](#);
- Allowing individuals to take [tax deductions](#) for health care premium expenses;
- Working with states to create [high-risk pools](#) for those who have not maintained continuous coverage;
- Allowing individuals to use Health Savings Accounts (HSAs) and [share the funds](#) among their family;
- Making contributions to HSAs [tax-free and transferable](#) to heirs without financial penalty;

Healthcare Providers

- Requiring price transparency from healthcare providers for medical procedures;

Substance Abuse

- Increasing access to opioid treatment, including increasing access to Narcan (naloxone) for caregivers and first responders, and eliminating the cap on the number of patients to whom doctors can administer recovery medications;
- Ending Medicaid policies that prevent inpatient addiction treatment;
- Increasing incentives to states and local governments to increase the use of drug courts and mandated treatment;

Women's Health

- Opposing abortion in most instances, including opposing late term abortions and making the Hyde Amendment permanent law; and
- Defunding Planned Parenthood.

II. Healthcare Policies from Speaker Ryan’s Blueprint “A Better Way”

Speaker of the House Paul Ryan had released a blueprint for reform, “A Better Way,” which provides some specifics of his vision of healthcare reform. These ideas could also serve to influence the Trump Administration’s health care agenda. Additional policies in Speaker Ryan’s blueprint not expressed above include:

Insurance

- Capping the insurance tax break on employer-based premiums;
- Making health insurance portable, enabling a beneficiary to take her insurance plan from job to job, or to other vocational, educational, and retirement transitions;
- Allowing small businesses to band together to collectively offer health plans;
- Allowing employers to provide self-insurance and stop-loss protections;
- Allows employers to provide “wellness programs” to the extent that they are in compliance with the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA);

Medicare

- Combining Medicare Parts A and B;
- Strengthening Medicare Advantage by repealing the benchmark caps and limiting the administration’s ability to arbitrarily cut Medicare Advantage;
- Establishing a value-based insurance design (VBID) for Medicare Advantage;

Health Savings Account Reform

- Allowing spouses to make catchup contributions to the same HSA account;
- Allowing qualified medical expenses incurred before HSA-qualified coverage begins to be reimbursed from an HSA account as long as the account is established within 60 days;
- Setting the maximum contribution to an HSA at the maximum combined and allowed annual deductible and out-of-pocket expense limits;
- Expanding accessibility for HSAs to certain groups, such as beneficiaries of the Indian Health Service and TRICARE;

Other

- Enacting tort/medical liability reform, including caps on non-economic damage awards, and encouraging state law flexibility;
- Supporting medical innovation by building on the House’s 21st Century Cures Act; and
- Lifting the ban on physician-owned hospitals.