Navigating the ACA in the Trump Era

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How We Got Here

- Before November 8, 2016, many predicted that Hillary Clinton had a 92% chance of winning the White House.
- The likelihood of a Trump victory was compared to the chances of a kicker missing a 20 yard field goal.
- Well he missed…
What does this mean for the Affordable Care Act?

- Since the law was enacted in March 2010, 20 million uninsured people have gained coverage.
- We now have 6 years of implementation – the ACA is now the “norm”.
- Republicans now control the White House and both houses of Congress.
- With a Republican President, at best, the future of the Affordable Care Act is uncertain.
Recap: ACA in a nutshell

- Premium tax credits and other cost-sharing subsidies
- Individual mandate
- Employer mandate
- Prohibitions on pre-existing condition exclusions
- Dependent coverage (coverage for children up to age 26)
- Small business tax credit
- Chronic care, net investment and tanning taxes
- Medicare tax increases as applied to individuals with income surpassing certain thresholds
- Limitations on contributions to Flexible Savings Accounts (FSAs)
Recap: ACA in a nutshell

- Medical device excise tax
- The annual tax imposed on health insurers
- Prohibitions on using FSAs or HSAs for non-prescription healthcare expenses
- 20% tax penalty on non-qualified purchases from FSAs
- The prescription drug tax imposed on manufacturers and importers of prescription drugs
- Disproportionate Share Hospital (DSH) allotment reductions
- "Cadillac Tax" on high-cost employer-sponsored health insurance premiums and health plan benefits
- Medicaid expansion – (31 states + DC have expanded; 19 have not)
- Prevention and Public Health Fund
- Coverage of preventive services
- Wellness programs
Trump on the ACA

Trump position from campaign website:

“On day one of the Trump Administration, we will ask Congress to immediately deliver a full repeal of Obamacare”.
Trump’s 7 Point Healthcare Plan from Campaign

- Complete repeal of ACA
- Allow insurance companies to offer plans in any state, as long as the plan is in compliance with state requirements
- Allow individuals to deduct insurance premium payments from taxes; review of Medicaid options to ensure it is affordable
- Establish tax-free Health Savings Accounts, which could become part of an individual’s estate and passed on to heirs without an estate penalty.
Trump’s 7 Point Healthcare Plan from Campaign

- Price transparency from providers and hospital organizations
- Medicaid handled on state level, including incentives
- Break down barriers that prevent drug providers of less expensive, safe products from entering the free market.
Trump since the Election

✧ Since winning the presidency, Trump has seemed to soften his rhetoric:

“Either Obamacare will be amended, or repealed and replaced.” (first official post-election interview; with Wall Street Journal on Nov. 11, 2016)
Trump Administration Transition Plan

- Replace ACA with a solution that includes Health Savings Accounts and State regulation of health insurance
- Re-establish high-risk pools
- Purchase of insurance across state lines
- “Modernization” of Medicare
- Flexibility for States to administer Medicaid
- Patient-centered healthcare system that promotes choice, quality and affordability
Repeal Process

- Full repeal of the ACA would require a 60-vote supermajority in the Senate to overcome Democrat filibuster.
- Senate breakdown after 2016 Election:
  - Democratic Party: 46
  - Republican Party: 52
  - Independent: 2
Budget Reconciliation

- Created by the Congressional Budget Act of 1974
- Allows for expedited consideration (debate less than 20 hours) of certain tax, spending, and debt limit legislation.
- Reconciliation bills are not subject to filibuster
- Bill can pass with simple 51 vote majority
- Allows for partial repeal of ACA
Restoring Americans' Healthcare Freedom Reconciliation Act of 2015

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Other Tools

- Executive Orders (and the undoing of the previous administration’s Executive Orders)
- Section 1332 of the ACA: allows the federal government to grant:
  - Innovation waivers to states to take a different approach to care
  - Section 1115 waivers, which allow for experimental, pilot, or demonstration projects that promote the objectives of Medicaid with expanded coverage, new benefits, or improved efficiency
Paul Ryan’s “A Better Way”

- Eliminate individual and employer mandates
- Support for employer-based insurance
- Universal, refundable tax credits to help buy insurance on the individual market given at the beginning of each month, adjusted for age/grows over time
- Allow sales across state lines
- Promotion of wellness plans
Paul Ryan’s “A Better Way”

- Substantial reform to Medicaid through per capita allotment financing and block grants
- Creation of a "Medicare Exchange" – private plans compete with traditional fee-for-service Medicare
- Medicare "premium support" payments that would be paid by Medicare directly to the private plan or the fee-for-service program to subsidize its cost
Rep. Tom Price 2015 proposal

- 2015 proposal: repeal ACA in its entirety, privatization of Medicare, sharp cuts in Medicaid funding, and defunding of Planned Parenthood
- Price is now the incoming Trump Administration appointee to head Department of Health and Human Services
World's Greatest Healthcare Plan Act

- Legislation introduced by House Rules Chairman Pete Sessions (R-TX) and by Senator Bill Cassidy (R-LA) in 2016
- No individual mandate and no employer mandate
- Based on freedom of choice and competition
  - Refundable, universal health insurance tax credit available to everyone to help buy the private health insurance in a competitive marketplace
  - The credit varies by age and geography, but not income
  - Credit averages $2,500 per adult and $1,500 per child
Other Recent Developments: 21st Century Cures Act

- Passed by House and Senate with strong bipartisan approval
- Signed into law by President Obama on Dec. 13, 2016
- $6.3 billion law that provides funding for cancer cure research, efforts to fight opioid addiction, treatment of mental illness, and Alzheimer’s research
- Amends the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 to allow small employers that do not offer group health insurance coverage to establish a new qualified small employer health reimbursement arrangement and reimburse employees for medical care expenses.
Common Themes

- More Choice
- Affordability
- Open Markets
- Transparency
- Shifts away from Federal Government and Towards State Government and Private Enterprise