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"Repeal and Replace": What's Next

David Gruber and Peter Urbanowicz

Editor's note: Changes (some predict repeal) in the Affordable Care Act is an immanent prospect that will affect all stakeholders in healthcare, including patients, providers, and innovators in telemedicine. In this article and three others included in this issue of Telehealth and Medicine Today, *David Gruber and Peter Urbanowicz inform our readers and, hopefully, help prepare them for changes that may be every bit as impactful in 2017 as were the initiating events that occurred seven years ago on March 23rd, 2010.*

Unlike other recent presidential candidates who issued lengthy policy prescriptions, and even published books, as part of their campaigns (e.g., 1992 Bill Clinton *"Putting People First,"* 2000 George W. Bush *"A Fresh Start for America,"* 2008 Barack Obama *"The Audacity of Hope,"* 2016 Hillary Clinton *"Stronger Together"*), President-elect Trump's campaign provided limited insight into its healthcare policy view, other than sustained promises that Obamacare would be repealed, that any new system for the uninsured would have more flexibility, and that the Trump administration would stand by the federal government's historical commitment to Medicare.

Since the election, the Trump transition team has outlined on a single webpage the tenets that will guide its healthcare policy, which in most respects mirror what the candidate said on the campaign trail (Tables 1 and 2). The challenge is always to distinguish between campaign trail rhetoric and actual policy position.

Table 1. The vision for healthcare in the Trump administration

TRUMP TRANSITION TEAM WEBSITE: HEALTHCARE POLICY TENETS

Vision for healthcare in Trump Administration laid out in one web page

It is clear to any objective observer that the Affordable Care Act (ACA), which has resulted in rapidly rising premiums and deductibles, narrow networks, and health insurance, has not been a success.

A Trump Administration will work with Congress to repeal the ACA and replace it with a solution that includes Health Savings Accounts (HSAs), and returns the historic role in regulating health insurance to the States.

The Administration's goal will be to create a patient-centered healthcare system that promotes choice, quality and affordability with health insurance and healthcare, and take any needed action to alleviate the burdens imposed on American families and businesses by the law.

To maximize choice and create a dynamic market for health insurance, the Administration will work with Congress to enable people to purchase insurance across state lines.

The Administration also will work with both Congress and the States to re-establish high-risk pools – a proven approach to ensuring access to health insurance coverage for individuals who have significant medical expenses and who have not maintained continuous coverage.

Source: https://www.greatagain.gov/policy/healthcare.html

Table 2. Healthcare challenges beyond ACA, recognized by the Trump administration

The Administration recognizes that the problems with the U.S. health care system did not begin with – and will not end with the repeal of – the ACA. With the assistance of Congress and working with the States, as appropriate, the Administration will act to:

- *Protect individual conscience in healthcare*
- *Protect innocent human life from conception to natural death, including the most defenseless and those Americans with disabilities*
- *Advance research and development in healthcare*
- *Reform the Food and Drug Administration, to put greater focus on the need of patients for new and innovative medical products*
- *Modernize Medicare, so that it will be ready for the challenges with the coming retirement of the Baby Boom generation – and beyond*
- *Maximize flexibility for States in administering Medicaid, to enable States to experiment with innovative methods to deliver healthcare to our low-income citizens*

Source: https://www.greatagain.gov/policy/healthcare.html

One position that has been a constant since the inception of the Trump campaign—indeed with the inception of the campaigns of all the Republican

candidates—has been an absolute commitment to “repeal and replace” Obamacare. From that perspective, a legislative bill, any bill, must be put forth by the Republican Congress and the Trump administration that is styled as a repeal bill. But on a total repeal of all provisions of Obamacare, already here the president-elect has hedged a bit and has offered that some of the most popular provisions of the Patient Protection and Affordable Care Act (PPACA)—pre-existing condition bans and adult children coverage on a parent’s healthcare policy—will be maintained; all other provisions (e.g., subsidies, healthcare exchanges, uniform mandated benefits, Medicare “surtax”) are subject to being jettisoned.[1] Trump administration authorized “replacement bills” might include:

- An increased reliance on Health Savings Accounts (HSAs)
- The elimination of uniform, “minimum” and/or “essential” health insurance benefit provisions required by the federal government, i.e., allowing state insurance commissioners to determine the specific benefits to be included in an individual (not employer sponsored) healthcare plan
- Changes to federal law permitting individual health insurance policies to be sold across state lines
- Expansion (or establishment) of high-risk pool patients, possibly state-based, to assist individuals with high-cost chronic conditions who otherwise cannot access insurance on an individual market
- Elimination of any mandated benefits (e.g., birth control) that might conflict with beliefs of religious organizations or employers

The Trump transition healthcare position has also called for:

- Additional funding for healthcare research
- Food and Drug Administration (FDA) reforms to speed approval of innovative drugs and medical products

Presumably, a “repeal and replace” bill will eliminate or significantly alter the Medicaid expansion provided under the PPACA. The Trump administration is committed to devolving authority from the federal government to states and

allowing individual states to design and administer their own Medicaid programs. Most pronounced is the administration's desire to seek more Medicaid waiver programs and, possibly, to exchange Medicaid expansion for block grants. Given Vice President-elect Mike Pence's position on Medicaid, it is highly likely that any Trump administration "replace" plan will include some kind of Medicaid block granting provision.

As a candidate, President-elect Trump frequently announced that the Medicare program was more or less a "sacred promise" to beneficiaries. Although the Trump transition website mentions a desire to "modernize Medicare," any movement from a defined benefit to defined contribution plan, as proposed by House Speaker Paul Ryan, is unlikely to occur, if it is to occur at all, in the early part of a Trump administration. The Trump administration will, however, likely promote the expansion of market-based solutions such as continuing growth in Medicare Advantage plan enrollment. The phrase "personnel is policy" was popularized during the Reagan administration.[2]

This maxim is clearly applicable to President-elect Trump, who remains sparing on details around replacement legislation for the PPACA and Medicaid/Medicare reform. Any policy predictions must include consideration of previously advocated healthcare policy positions by President-elect Trump's appointees and key Republican legislators.

Because President-elect Trump believes himself to be an astute evaluator of talent, history suggests that once he trusts and/or hires a person, that individual will have significant latitude in his or her position. In that respect, every Trump administration appointment appears to have his personal imprimatur. Four key healthcare-related personnel picks demonstrate the president-elect's intentions: Foremost is the selection of Mike Pence to be Vice President. As governor of Indiana, former congressman and leader of the Republican Policy Conference, Governor Pence may emerge as one of the most influential vice presidents in

history, even more influential than Vice President Dick Cheney. Pence's influence is particularly noted by his appointment as the chairman of President-elect Trump's transition team. This transition leadership position means that most, if not all, hires will have his stamp of approval. The first two key healthcare appointments demonstrate Pence's influence, as both appointees have historic relationships with him: Tom Price, MD, as Secretary of Health and Human Services and Seema Verma, a former healthcare policy consultant and author of the Indiana Medicaid waiver program, as the Administrator of CMS.

The selection of Dr. Price as Health and Human Services (HHS) secretary, a position often given to a governor with executive experience (e.g., Kathleen Sebelius, Michael Leavitt, Tommy Thompson), highlights President-elect Trump's desire for a secretary who literally knows how to write "repeal and replace" legislation for the PPACA and shepherd it through Congress. The president-elect also apparently believes that doctors, not bureaucrats, matter and being an orthopedic surgeon further qualifies Dr. Price as an administrator of healthcare policy (Table 3).

Table 3. Tom Price's view of healthcare reform.

ACA REPEAL AND REPLACE: TOM PRICE MODEL

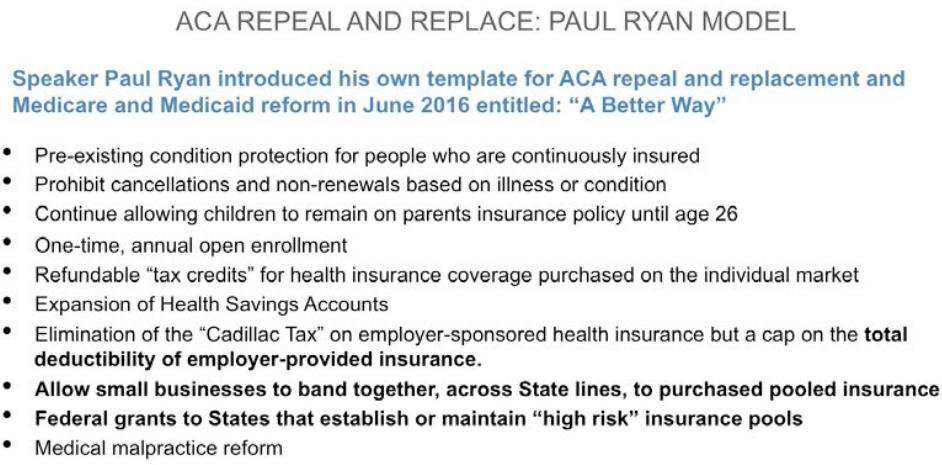
Congressman Tom Price introduced his own "repeal and replace" bill in May 2016 – HR 2300 Empowering Patients First Act -- which could be one model for overhauling the ACA

- Full repeal of the ACA and all healthcare related provisions
- Refundable, age-based "tax credits" for health insurance coverage purchased on the individual market
  - $1200 (18 to 35); $2,100 (35 to 50); $3000 (50 +); $900 for each child
  - No credits available for employer-based insurance or Medicaid / Medicare recipients
- Health Savings Accounts
  - One time $1,000 tax credit to everyone for an HAS
  - Increase HSA contribution rate; permit tax-free transfers from 401ks to HSAs
- Employer-based insurance "vouchers": employees permitted to take employer-paid insurer premiums and apply directly to an individually purchased health insurance policy
- **Federal grants to States that establish or maintain "high risk" insurance pools**
- Allow small businesses to band together, across State lines, to purchased pooled insurance
- **Interstate sales of health insurance permitted**
- Medical malpractice reform through establishment of defense "clinical guidelines"
- **New claims reporting requirements and penalties on group insurers**
- **Repealing several Medicare "comparative effectiveness" payment proposals**
- Allow Medicare beneficiaries to seek care from providers not enrolled in Medicare program.
- **New antitrust immunities for physicians contracting with health insurance companies**

The appointment of Ms. Verma as Administrator of CMS reflects Vice President-elect Pence's strong preference for the use of innovative Medicaid state waivers and a possible shift to a system of block grants for Medicaid, rather than the traditional federal/state pro rata cost sharing model.

Another significant personnel choice impacting healthcare is Reince Priebus as White House Chief of Staff. Although President-elect Trump campaigned as the consummate Washington "outsider," with Priebus as his Chief of Staff he has someone with significant Washington political experience. Mr. Priebus has a close, personal relationship with Speaker Paul Ryan (Table 4), suggesting that passing legislation is more important to Trump than stoking an internecine party war.

Table 4. Paul Ryan's view of healthcare reform



The Price, Ryan, and Priebus trio will likely be the primary designers and movers of "repeal and replace" legislation through Congress. Added to this team is Senator Mitch McConnell, Majority Leader of the Senate, considered an expert on the intricacies of Senate rules and procedures, based on more than 32 years of experience. This knowledge will be essential, especially if the Trump administration and the Republican Congressional leadership elect to proceed on "repeal and replace" through the budget reconciliation process, bypassing the Senate's 60-vote or "filibuster" rules.

Lastly, demonstrating that any internecine party wars are over and that "running the trains on time" takes priority, President-elect Trump has reached out to a number of HHS staffers from the George W. Bush administration—Andrew Bremberg, Paula Stannard, Eric Hargan, Scott Gottlieb, MD, and Nina Owcharenko—to ensure a smooth transition by deputizing former political insiders already familiar with the mechanics necessary to manage the sprawling HHS bureaucracy and its $1.1 trillion budget.

The First 60 Days to Six Months

How do the general themes outlined by the Trump transition team—most importantly, "repeal and replace" but also Health Savings Accounts, Medicaid block waivers, the sale of health insurance across state lines, and other items—

get translated into a robust policy statement and legislative package on a timely basis?

Both HHS Secretary-designate Dr. Price and Speaker Ryan have already generated alternative legislative approaches to "repeal and replace." Dr. Price first introduced HR 2300, also known as the "Empowering Patients First Act," in June 2013 and reintroduced the Act in May 2015 to "fully repeal Obamacare and start over with patient-centered solutions."[3, 4]

Speaker Ryan's plan for "repeal and replace" of the PPACA, although not committed to specific legislative language, contains similar provisions to Dr. Price's Empowering Patients First Act, including tax credits, use of HSAs and high-risk pools.

For Republican budget hawks such as Speaker Ryan, a key looming question will be: How much of the federal budget will be committed to subsidies to purchase health insurance, even if the subsidies come by way of a refundable tax credit or voucher from the federal government, rather than a check directly to an insurance company? Since a Republican "repeal and replace" bill may eliminate many of the funding mechanisms of the PPACA—Medicare surtax and the various taxes on employer-based plans—the cost of a repeal and replace with tax credits may add to the federal budget deficit.

Our Prediction

In some form or fashion, a bill will be enacted by Congress—and signed by President-elect Trump—in 2017 that "repeals" and "replaces" the Affordable Care Act.

- Popular ACA provisions—pre-existing condition limitations and children on parents' health plans through age 26—will likely be maintained
- Health exchange subsidies are likely to be eliminated and replaced by advance, "refundable" tax credits or voucher-like instruments

- Insurers will be allowed to create and sell all types of individual health insurance products, irrespective of a minimum, essential benefits package: high deductible, catastrophic to high-premium, full-coverage plans
- Insurers will be allowed to sell health insurance across state lines
- Use of Health Savings Accounts (HSAs) will be expanded
- High-risk pools will be created or expanded for individuals with high-cost conditions unable to find health insurance
- Medical malpractice reform will only happen if it can get past the 60-vote filibuster threshold in the Senate, a difficult task

“Repeal and replace” (or “repeal and delay”) will occur prior to any legislative changes to Medicare or Medicaid. However, the issue of Medicaid expansion (or block grants) could become part of the budget reconciliation process.

Even without legislative changes to Medicare and Medicaid, however, the Trump administration will have significant regulatory authority at HHS/CMS to:

- Change Medicare provider payments (hospitals, physician, skilled nursing facilities, home health, etc.)
- Eliminate or change CMS quality and payment reform initiatives such as value-based purchasing, hospital acquired condition, re-admission, episode payment model, Accountable Care Organizations (ACOs) and the Medicare Access and CHIP Reauthorization Act (MACRA) • Change Medicare Advantage payment rates, oversight, rules, etc.
- Approve new Medicare waiver projects
- Approve new Medicaid waiver projects giving more flexibility to the states

Bottom line: On January 10, President-elect Trump demanded immediate repeal of the Affordable Care Act, followed by rapid replacement; i.e., expedited passage of another health law. We continue to believe that replacement will

require at least a few months given local political consideration and administrative (regulatory) complexity.

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Articles in this series can be accessed here.
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