

Change on the Horizon? New White House Spells Shift in Health Care Policy

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On the morning after Election Day, many in our country were surprised to learn that not only did the Republican nominee win the White House, but also that the House of Representatives and the Senate remain under GOP control.

As many are aware, one of the main issues that has rallied Republicans, including the president-elect, was the repeal of the 2010 Affordable Care Act, more widely known as "Obamacare."

House Republicans have voted to repeal all or parts of the Affordable Care Act more than 50 times in the past several years. However, past House efforts have often died in the Senate, given that chamber's unique rule of needing 60 votes to pass substantive measures and avoid a filibuster. Needless to say, the election of Donald Trump changes the landscape and the dynamic considerably.

The first 100 days of any new president's tenure has always been a bellwether for keeping campaign promises. The newly elected chief executive generally has a "honeymoon period" in which those on the other side of the political aisle look to find compromise with many of his intended policies. However, given the arduous nature of the 2016 campaign, specifically surrounding the Affordable Care Act, President Trump may find little solace among the loyal opposition.

The Affordable Care Act: Repeal and Replace or Repeal and Delay?

As this article went to press, the winds swirling around repeal of the Affordable Care Act centered on two possible paths:

1. *Strike down large parts of law through budget reconciliation:* Republicans would likely pass the repeal – perhaps in early January, so Trump could have it on his desk within minutes of swearing the oath of office – but delay the effective date until a replacement is devised, which could shield the GOP from an immediate backlash that could result from taking insurance away from millions of Americans. Budget reconciliation allows the Senate to get around the need for a 60-vote majority in that chamber. As a result, it only takes a simple majority, typically 51 votes, in the Senate to adopt a budget resolution that could gut Obamacare.
2. *Enact smaller, piecemeal repeals or issue executive orders.* For instance, GOP lawmakers could strike down deeply unpopular parts of the law, such as the individual mandate – the requirement for employers to offer coverage to workers or face penalties; or the taxes on medical devices and high-cost "[Cadillac](#)" employer-sponsored plans.

Additionally, an important consideration for the chiropractic profession is support for the elimination of the laws fund for prevention and public health activities. The new president, also through executive order, can remove an appeal in the courts begun by the Obama administration that is looking at the funding mechanism of the Affordable Care Act. He also can choose to stop enforcing certain sections

of the law that would cause the cost to the insurance companies to skyrocket, potentially forcing them to "voluntarily" drop out of the program.

The Future of Sec. 2706

A "win" for the chiropractic profession contained in the Affordable Care Act was Section 2706 of the law, the provider nondiscrimination provision, which bars health care plans from prohibiting patient access to a whole class of providers - for example, doctors of chiropractic.

The "coverage" aspect in the provision also applies to reimbursement, whereas a doctor of chiropractic must be paid on par with a medical doctor if providing the same service. Going into effect in 2014, [the 2706 provision](#) is still in its infancy, but the American Chiropractic Association and many individual states continue to work to ensure the language is properly implemented across private group and individual plans, as well as ERISA-regulated plans.

With much talk centered on repealing and replacing the Affordable Care Act, the profession must remain vigilant in making sure Section 2706 survives and thrives. In earlier reconciliation repeal efforts, Section 2706 was *not* part of the package because it does not have a federal budgetary impact. The ACA is working to ensure that is again the case going forward.

An initiative that could gain support in 2017 is the not-so-new idea of patients being able to buy health insurance across state lines. Current law prohibits consumers from buying a plan that is not regulated in the state in which they reside. Republicans argue, however, that a patient in Texas, for example, should be able to buy a plan offered in Florida, primarily because of cost.

However, we believe this may lead to a "race to the bottom," whereby many consumers will simply pick the cheapest option, regardless of what benefits (including chiropractic) are offered in the plan. The last time this issue came up in Congress, 10 years ago, the ACA fought this proposal and it ultimately died in the Senate on a procedural vote.

Medicare and Medicaid

Running on a dual track with Obamacare repeal efforts in 2017 could be an overhaul of the Medicare and Medicaid programs. While there are limited details on what a package could look like, indications on Capitol Hill point to deliberations on how to improve these massive federal entitlements.

Privatization and Medicaid block grants are just two items that House Republicans are looking at. Medicaid block grants create a pool of money sent by the federal government to the states. While some feel this may limit care for the poor, it may present an opportunity for expanding chiropractic access on the state level.

In Medicare, the ACA has been working with members of Congress to fix a decades-long dilemma for chiropractic patients. Briefly, chiropractic Medicare patients are covered for a single service, primarily the adjustment. However, there are other services a DC can provide under their state scope which are currently covered Medicare services, such as examinations, X-rays, and other treatments including rehabilitation, lifestyle modification, and ancillary-therapeutic services.

If Medicare continues as is or goes down the path of privatization through commercial insurers, as suggested by the GOP plan, there will need to be very aggressive grassroots advocacy in Washington,

D.C., and at home by the profession to make certain patients will continue to have unfettered access to their doctor of chiropractic as a primary-contact, physician-level provider as defined by state laws.

The ACA government relations team believes that come Jan. 20, changes to the health care system proposed by the president-elect and the GOP majority will move forward very quickly. Even though we are currently ramping up our efforts, our reaction to any new legislative initiative will need to be quick and effective.

It will require all members of the profession to be "at the ready" to reach out to your members of Congress to ensure patients who are covered under Obamacare, Medicare, Medicaid and commercial plans sold throughout the country have full and unimpeded access to the essential services provided by doctors of chiropractic.

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