

ISSUE BRIEF

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Preparing a Smooth Transition for the Repeal of Obamacare

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It is vital that the new Administration, Congress, and state officials orchestrate a smooth and methodical transition for the repeal of Obamacare. For this smooth transition to take place, Congress should act immediately to initiate repeal and the Administration should take aggressive administrative actions to stabilize the private market for the upcoming 2018 plan cycle. The Administration, Congress, and the states should then coordinate efforts to begin the process to have a set of reforms in place for the 2019 plan cycle.

Setting a Strategic Timeline

The timing is crucial with respect to provisions affecting private insurance markets. For 2017, insurance plans are already set, and the 2017 annual enrollment period will still be underway as the new Congress and Administration take office. At the same time, insurers will be preparing their 2018 plan offerings, which they will need to finalize by May 2017.

With respect to the legislative timing, the *sequencing* is also crucial. Some budget experts have suggested that Congress could take a two-budgets/two-reconciliations approach to enacting repeal-and-replace legislation.¹

The first step would be for Congress to pass a budget for fiscal year (FY) 2017, followed by an FY 2017 reconciliation package that repeals the major budgetary components of Obamacare. The second step would be for Congress to pass a budget for FY 2018, again followed by an FY 2018 reconciliation package that enacts a set of replace components.

To ensure a smooth transition between repeal and replacement, Congress (as it did in a previous version of reconciliation) could set the effective dates of provisions so that key elements of current law (such as subsidies) do not expire before their replacement components are in place.

What Should Be Done

The following recommendations can help guide the new Administration, Congress, and state officials through this complex process to ensure a seamless and successful repeal of Obamacare:

- **Maximize the reconciliation process for repeal.** Last year, Congress passed (and President Obama vetoed) a reconciliation package that repealed the major budgetary provisions of Obamacare. Specifically, it repealed the various tax provisions, ended the individual and employer mandates, and sunset the subsidies for exchange and Medicaid coverage at the end of two years.² Although vetoed by President Obama, this effort provided a solid road map for a future repeal.

This time, Congress should go further and push to include the costly insurance mandates in the reconciliation package: specifically, the age rating, essential benefits, and actuarial value limitations.

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These specific regulations have driven up the cost of premiums by as much as 44 percent for young adults and 7 percent for pre-retirees.³ In addition, it is essential to establish—either through reconciliation or through other legislation—more sensible rules on preexisting condition exclusions in order to restrict the “gaming the system” behaviors that also have played a large role in driving up premiums under Obamacare.⁴

■ **Execute an aggressive regulatory rollback.**

While only Congress can make the necessary statutory changes, the new Administration can support and encourage those legislative efforts by aggressively rolling back many of the regulations implementing Obamacare.⁵ Rolling back and loosening the regulations would help to stabilize markets in 2017 and 2018 and offer consumers tangible evidence that relief is on the way.

Equally important, it would signal the new direction in health care reform to insurers, employers, and other stakeholders and give health plans clearer guidance in developing their offerings for the 2018 plan year. If Congress is able to move legislation repealing some or all of the costly insurance mandates and restore more stable market rules faster than regulatory rollback, so much the better.

■ **Accelerate state-level action to restore authority over health insurance markets.**

With the repeal of Obamacare imminent, states should act in their 2017 legislative sessions to have replacement market rules ready to take effect upon repeal. As they prepare to reclaim

authority over the regulation of their health insurance markets, rather than simply returning to the pre-Obamacare status quo, states should develop a package of alternative insurance reforms. Most urgently, they should review their benefit mandates, rating rules, and other regulatory barriers to ensure that these regulations do not raise the cost of coverage, do not limit choice, do not drive down competition, and do not hamper innovation.⁶

With regard to the Medicaid expansion, those states that expanded Medicaid will have to consider adjustments to accommodate elimination of the enhanced federal match rate. States could either continue the coverage for these able-bodied adults under the traditional match rate, with the possibility of receiving greater flexibility through the traditional waiver process, or consider a state-only alternative that would not be tethered to the statutory restrictions in the Medicaid program and would enable the states to define and design health care arrangements as they see fit.

- **Begin the process for replacement.** The new Administration and Congress will have to begin the legislative process for replacement in 2017. There are various legislative proposals that capture the essence of replacement, but they must now work their way through the legislative process for consideration. The goal should be to have the legislation completed by the end of 2017 so that the Administration can begin the regulation and implementation phase in 2018 for the 2019 plan year.

1. Paul Winfree and Brian Blase, “How to Repeal Obamacare: A Road Map for the GOP,” *Politico*, November 11, 2016, <http://www.politico.com/agenda/story/2016/11/repeal-obamacare-roadmap-republicans-000230> (accessed November 21, 2016).

2. For further details, see Annie L. Mach, “Provisions of the Senate Amendment to H.R. 3762,” Congressional Research Service *Report* No. R44300, February 1, 2016, <http://fas.org/sgp/crs/misc/R44300.pdf> (accessed November 21, 2016).

3. Edmund F. Haislmaier and Drew Gonshorowski, “Responding to *King v. Burwell*: Congress’s First Step Should Be to Remove Costly Mandates Driving Up Premiums,” Heritage Foundation *Issue Brief* No. 4400, May 4, 2015, <http://www.heritage.org/research/reports/2015/05/responding-to-king-v-burwell-congresss-first-step-should-be-to-remove-costly-mandates-driving-up-premiums>.

4. Edmund F. Haislmaier, “Saving the American Dream: The U.S. Needs Commonsense Health Insurance Reforms,” Heritage Foundation *Background* No. 2703, June 22, 2012, <http://www.heritage.org/research/reports/2012/06/saving-the-american-dream-the-us-needs-commonsense-health-insurance-reforms>.

5. The Heritage Foundation, *Blueprint for a New Administration: Priorities for the President*, 2016, pp. 19–22, <http://www.heritage.org/research/reports/2016/11/blueprint-for-a-new-administration>.

6. Edmund F. Haislmaier, and Nina Owcharenko, “States Should Start Planning Now for the Post-ACA World,” Heritage Foundation *Issue Brief* No. 4441, July 23, 2015, <http://www.heritage.org/research/reports/2015/07/states-should-start-planning-now-for-the-post-aca-world>.

Congress should tackle equalizing the tax treatment of health insurance for those who are with and without employer-based coverage, develop common insurance market reforms, and modernize both the Medicare and Medicaid programs to facilitate greater choice and competition.⁷ Such reforms need not be presented in one comprehensive legislative package (as Obamacare was) but could instead be a set of reforms to be advanced prudently through the legislative process.

Conclusion

Timing and sequencing of these efforts are complex, and proper execution is critical. Congress, the new Administration, and the states should work together both to ensure a smooth transition for the repeal of Obamacare and to create a path toward a more patient-centered, market-based approach to reforming the health care system.

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7. Edmund F. Haislmaier, Robert E. Moffit, Nina Owcharenko, and Alyene Senger, "A Fresh Start for Health Care Reform," Heritage Foundation Backgrounder No. 2970, October 30, 2014, <http://www.heritage.org/research/reports/2014/10/a-fresh-start-for-health-care-reform>.