

# ACA AFTER THE ELECTION: WHAT NOW?





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# INTRODUCTION

The election of Donald Trump has generated a great deal of uncertainty in the already complex world of the Affordable Care Act. This white paper shares observations about the road ahead based on the new political landscape and the concepts most likely driving the new vision of health reform.

Although President-elect Donald Trump and Vice President-elect Mike Pence have not yet released a detailed proposal, each has spoken numerous times about health reform during the campaign. Those speeches and the recent appointment of Tom Price as the Secretary of Health & Human Services gives us a window into the policy views that President-elect Trump is likely to support.

This white paper outlines the possible future of the ACA as discussed in a recent webinar with Netchex's partner HUB International.



# **What is Necessary to Repeal and Replace the ACA**

# WHAT IS NECESSARY TO REPEAL AND REPLACE THE ACA

One of President-elect Trump's top promises has been "on day one of the Trump Administration, we will ask Congress to immediately deliver a full repeal of Obamacare.<sup>1</sup>" He insisted that his administration would work to simultaneously repeal and replace the ACA to avoid lapses in protection. However, despite the House and Senate majority, experts warn the President may not see the complete ACA repeal he has promised.

## THE CIVICS ISSUE

To understand why the Republicans could face an uphill battle despite having a majority in the House and Senate and a Republican President, let's take a look at the basic civics of the issue at hand.

*In general, a super-majority of 60 votes is likely needed to repeal the ACA and overcome a filibuster, and the Republicans don't have that many seats.*



### House of Representatives

194 Democrats (3 non-voting)  
241 Republicans (2 non-voting)

### Senate

46 Democrats  
2 Independents  
52 Republicans

"Without a filibuster-proof Republican majority in the Senate, Democrats are sure to make every effort to block any proposal to fully repeal the ACA," said Chatrane Birbal, senior advisor, government relations at the Society for Human Resource Management.

<sup>1</sup> Healthcare Reform. (n.d.). Retrieved December 23, 2016, from <https://www.donaldjtrump.com/positions/healthcare-reform>

# WHAT IS NECESSARY TO REPEAL AND REPLACE THE ACA

## EXCEPTIONS TO THE RULE

Although Congress and the Trump administration may not have a legal avenue to repeal ACA, they have the following options to alter the statute:

- **Reconciliation** - “Reconciliation” allows for a simple majority vote to eliminate taxes and spending. This includes new taxes created to fund the ACA, such as those on medical devices, subsidies to buy health insurance, penalties for not having insurance, and Medicaid expansion. Impacting the financial underpinnings of the ACA through reconciliation could cause serious distortions in the insurance markets and the exchanges, which are already in a state of disarray.
- **Executive Order** - Once he becomes President, Trump could use his executive order to amend the ACA. Since his hard-lined repeal comments, he has changed his position slightly, saying in a November 2016 interview with *60 Minutes* that he would take a more modest approach to overhauling the ACA. He also expressed that he would consider keeping the provisions that allow for pre-existing conditions and children living at home to remain on their parents’ insurance.
- **DOJ Actions** - The Trump administration could also order the Department of Justice not to enforce, fund, or vigorously defend the ongoing lawsuits against the ACA.



Chairman of the Health, Education, Labor and Pensions Committee, Senator Lamar Alexander has said the health-care law should be replaced in a “step-by-step” process to give states more control, which won’t be done quickly – it could even take several years to complete the transition.

**Senator Lamar Alexander (R-TN)**



# The Cabinet to Reform ACA

# THE CABINET TO REFORM ACA

Since his election, Donald Trump has appointed key cabinet officials with a history of developing and manging healthcare reform and plans to change the path of the ACA.

## Health and Human Services Department Key Appointments



**Tom Price (R-GA)**

### Nominee for Health Secretary

In 2014, Tom Price introduced a comprehensive alternative to the ACA, later called the Empowering Patients First Act. It was originally introduced as the Obamacare alternative from the conservative Republican Study Committee (RSC), which Price chaired at the time. The bill aims to provide affordable coverage for all through a series of tax credits and deductions designed to entice individuals into the

insurance market with positive incentives, as opposed to the ACA's solution of fining those who refuse to purchase health insurance. The law would allow individuals to opt out of Medicare, Medicaid, and other federal health-care-benefit programs in favor of receiving a tax credit; an individual's health coverage would be "portable" — no longer tied to an employer — so losing a job would no longer mean losing insurance; individuals and small businesses would be able to access insurance pools that reduce risk for those with pre-existing conditions, and they could purchase plans across state lines. The plan is based on six principles:

1. Relinquish federal control and give states control
2. No individual mandate
3. Tax credits for enrolling
4. Eliminate Medicaid expansion and provide block grants to states to allocate to needy citizens.
5. States positioned better to negotiate with local providers and carriers to help control costs within the system.
6. No pre-existing condition protection as today under the ACA; instead, stay insured and your coverage will continue to be priced based on age, and you won't be surcharged for a pre-existing condition. States create high-risk pools for those with pre-existing conditions.

# THE CABINET TO REFORM ACA

## Health and Human Services Department Key Appointments



**Seema Verma**

### **Administrator of the Centers for Medicare and Medicaid Services (CMS)**

CMS is the agency that administers the ACA. Verma is a former health policy consultant who is most noted as the architect of the Healthy Indiana Plan (HIP) 2.0. HIP requires users, including low-income recipients, to make monthly payments for their health insurance services with restrictions that could result in a six-month lockout from coverage if even a single payment was missed. She

has also developed Medicaid reform programs in Iowa, Ohio, Kentucky, and Tennessee. Ms. Verma and her company, SVC, have also supported Iowa's Medicaid transition to manage care.

She served as the lead of Indiana's healthcare reform after the passage of the ACA. Ms. Verma's reforms are highly favored by conservatives interested in a gradual phase out of government healthcare programs including Medicare, Medicaid, and the ACA.

In a recent NPR interview, David Machledt, policy analyst for the National Health Law Program, expressed that the provisions Verma curated for the HIP blocked people from getting health coverage. "Early evaluations show that a lot of people don't understand this plan and don't understand the incentives in it," he said, adding that proposals like Verma's Indiana coverage program could result in harsher provisions throughout the country.

Price and Verma have been referred to as Trump's "dream team" to repeal and replace the ACA and to institute overall reform of health policies.<sup>2</sup>

<sup>2</sup> UPDATE 7-Trump set to roll out his 'dream team' for health care reforms. (2016). Retrieved December 23, 2016, from <http://www.reuters.com/article/usa-trump-idUSL1N1DU01D>



# The Path Forward



## THE PATH FORWARD

### REGISTERING AND REPORTING

Although the 2017 open enrollment period began November 1, the election has left some people confused. Many voters are under the impression that the ACA repeal automatically happened with the President-elect's appointment.

Healthcare.gov has launched a television and radio public relations effort to inform affected individuals that the marketplace is indeed still open and that the deadline to register for 2017 coverage has been extended until January 31, 2017.

In addition, employers must still submit 2016 ACA reporting information. The IRS has extended the deadlines for submitting the 6055 and delivering form 1095-C to employees to March 2, 2017.

### THE FIGHT BEGINS ON DAY ONE

Some lawmakers want a repeal bill ready for Trump's signature in January, along with companion legislation to replace the ACA. It is likely that a concept for replacement will be unveiled at the same time as a repeal package. Experts expect the repeal package to include a transition period to allow time for the passage of the proposed replacement.

Replacing the ACA will be a difficult and lengthy process that won't happen in the first days of President-elect Trump's administration. As we discussed earlier in the document, the 2017 Congressional budget is expected to include components of the reconciliation process to defund key parts of the ACA which will begin the dismantling of the provision.

## **360 DEGREE COMPLIANCE**

No matter what changes happen to the ACA, our team is here to bring you the best in employer services and total government compliance. We continually monitor the ongoing changes to regulations such as the ACA, EEOC, and more to ensure our clients stay compliant at every turn. The Netchex difference means one complete system of record to manage your employee base from recruitment to retirement.

## **ABOUT NETCHEX**

Netchex is a trusted provider of payroll, human resources, time management, and benefits outsourcing services.

Netchex was founded in 2003 by two executives working in the payroll industry at a publicly traded firm who were convinced that there was an easier and better way to manage payroll. Embracing three tenets - web integration for technology, accountability for service, and value for price delivery, Netchex has quickly grown into an industry leader in web-based payroll, human resource and benefits management services.

Netchex has a presence in all 50 states and more than 3,000 businesses that trust us with their payroll needs. Netchex has been listed on the Inc. 5000 list of fastest-growing, privately owned businesses in the country for the past six years.

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