



## The future of the Affordable Care Act: Possible Directions Emerge

A month after the election, possible directions of change for the Affordable Care Act have emerged.

Despite discussion of a “repeal-and-replace” approach, such sweeping change is unlikely given that Republicans lack the 60 Senate votes needed to break a filibuster. More likely, changes will come piecemeal, through a combination of executive and regulatory actions and legislation. States may also take executive, regulatory or legislative action that could affect the shape of things.

There are still more questions than answers as to how ACA and federal health care law will look in the future. Here are some updated answers to common questions based on what we know now.

### Who will be in charge of the Department of Health and Human Services (HHS) in the Trump administration?

President-elect Donald Trump has selected Georgia Rep. Tom Price, chair of the House Budget Committee and an orthopedic surgeon, as the secretary of HHS. Price is seen as an advocate for physicians and private-sector solutions to health care issues, and as a proponent of state regulation of health insurance. He has been an opponent of ACA, and in 2015 proposed [an alternative to the law](#).

Trump has selected as CMS director Seema Verma, a health policy consultant who helped craft major reforms to Indiana’s Medicaid program under Vice-President-elect Mike Pence. Indiana’s plan expanded eligibility for Medicaid under ACA, but implemented it through a waiver program negotiated with HHS that allowed [several Indiana-specific policy ideas](#), such as requiring small premium contributions from some beneficiaries.

Trump recently appointed Nina Owcharenko of the Heritage Foundation to his HHS “landing team.” The landing team is responsible for working with current HHS officials to help transition to the new administration. Owcharenko currently leads the Heritage Foundation’s research and policy work for federal and state health care issues. She is steeped in health policy and recently wrote a [paper](#) providing a framework for repealing and replacing the ACA and supporting a smooth transition to a new marketplace.

### What will happen to ACA?

Parts of the ACA, like the individual mandate, premium subsidies and the ban on denial of coverage due to pre-existing conditions (known as guaranteed issue) were designed to work in concert. Experts have warned that the individual insurance market would be destabilized under one possible scenario – if the individual mandate and/or premium subsidies were eliminated while guaranteed issue is retained.

In the event the individual mandate or premium subsidies were eliminated, one idea is to create incentives that encourage consumers to purchase coverage when they are not immediately in need of health care. This is aimed at populating insurance risk pools with relatively healthy people and stabilizing the market. Republican proposals, including a previous bill called the [Empowering Patients Act](#) introduced in 2015 by HHS nominee Price, ban the use of pre-existing conditions in coverage and premium determinations for consumers who have maintained continuous health coverage.



## How might the Trump administration approach changing ACA?

There are several ways an administration can change policy or alter existing regulations under ACA. For example, federal agencies may take a “non-enforcement” policy on penalties for violations of the law, such as the tax penalty for individuals who do not maintain insurance coverage. The administration could simply revise, replace or withdraw current guidance or rewrite existing regulations by providing notice of changes and allowing for public comments.

Republicans will hold majorities in the House and Senate. But because their Senate majority will not be filibuster-proof, they might take a more collaborative approach with Senate Democrats on issues including health care reform. Alternatively, there is increasing interest among Republicans in using a budget reconciliation process to make certain ACA changes, thereby requiring only a simple majority for passage in the Senate. But rules that govern a budget reconciliation bill significantly restrict what changes can be put in the bill and therefore the modifications to ACA that can be made through this process. Republicans have suggested immediately moving a budget resolution to allow for a reconciliation bill in Congress as soon as the 115th Congress is sworn-in on Jan. 3. A budget resolution is the first step in the budget process. It too only requires a simple majority for passage and is not signed into law by the President. Timing of a reconciliation bill with possible changes to ACA is still uncertain, but it could move through Congress within the first two months of the new Congress.

## If there are changes to ACA, when will the changes happen?

Republicans seem to want to ease potential disruptions. They’ve said repeal plans will likely include a transition period and/or sunsets for changes that would take effect years in the future. In a prior unsuccessful reconciliation effort in 2015, Republicans set the repeal of the Medicaid expansion and premium subsidies at two years after the passage of the bill.

The new administration and Republican Congress may have limited time during the first session of the new Congress to enact major policy agendas because the entire House and about one-third of the Senate face re-election in 2018. Practically speaking, campaigning for midterm elections typically starts a year before Election Day and election politics historically slows the ability to reach bipartisan consensus.

## What policy proposals have Trump’s transition team and Congress introduced, and how do they align with the positions of the insurance industry?

The Trump campaign released a high-level proposal on reforming the health care industry. According to the plan and media reports, the president-elect favors returning the role of insurance regulation to the states, an idea that the insurance industry has long championed. And while Trump has advocated repeal of ACA, he has supported retaining the prohibition on pre-existing condition limitations and allowing children to remain on their parent’s policy up to age 26. The industry also supports the age-26 rule and, given the likely retention of guarantee issue by health plans without any requirement on individuals to maintain coverage, the industry is providing technical and operational knowledge to policymakers to ensure that the elimination of mandates is partnered with reforms that will provide a stable and competitive private insurance marketplace.

In addition to HHS nominee Price’s previous proposals, House Speaker Paul Ryan has introduced [A Better Way](#), a policy framework for the next Congress. For health care it includes policy changes such as repealing and replacing ACA, giving states more control over insurance regulation as well over the design and implementation of Medicaid programs through block grants. It also outlines structural reforms for Medicare to extend the program’s sustainability and to encourage greater private sector competition. The insurance industry supports proposals that build on the private insurance marketplace and ensure choice and foster innovation.



## What are we doing to help members during this transition?

We recognize our customers may have questions about how the change in administration could affect their health care benefits. For now, nothing changes with their health coverage. We continue to serve our members as best we can by answering their questions and providing updates as they become available. For more than 75 years, our company has been committed to providing access to quality, cost-effective coverage to as many people as possible through employer group plans, government programs and individual policies. We have a longstanding history in the health insurance business and we are well-equipped to adapt to the evolving health care landscape – just as we did when the ACA was passed in 2010. Moving forward, we're going to continue to focus on what's best for our customers, and that includes establishing a stable market for the long term.