

# Navigating the First 100 Days

## What to Expect from the Outset of the Trump Administration

**Highlights**

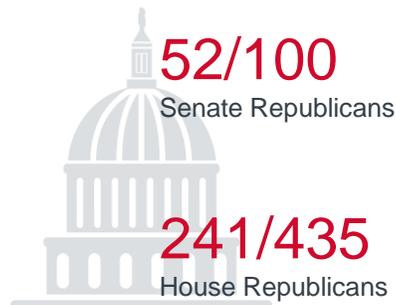
- **Congress has initiated the process of repealing the Affordable Care Act (ACA) through budget reconciliation.** Pursuing repeal through reconciliation will allow Republicans to eliminate components of the law with a simple majority in the Senate, although they can only target tax- and budget-related measures under the rules of this process.
- **No formal legislation has been released, but Republicans are likely to adhere closely to past repeal proposals.** These proposals have targeted subsidies available for purchasing insurance on the public exchanges, elimination of penalties associated with the individual and employer mandates, and elimination of new taxes, including the Cadillac Tax. The future of Medicaid expansion and payment reform remain harder to predict.
- **Republicans hope to finalize repeal by late February, but the timing and content of a replacement plan remains the subject of considerable debate.** Congress continues to debate how quickly it could craft replacement legislation, with proposals ranging from concurrent replacement to a several-year delay.

### Introduction

On November 8, 2016, Donald Trump defeated Hillary Clinton in an unexpected upset to become the 45th president of the United States. While the presidential election dominated headlines, the Congressional elections were also noteworthy: the GOP retained control of both the House and Senate. Although the GOP lacks the 60 Senate votes required to overcome a filibuster, their sweep of the White House and Congress has opened some unexpected doors for the party.



Image: © 2016, Chip Somodevilla/Getty Images



In the months immediately following the election, health care reform has quickly risen to the top of the GOP's policy agenda. Many Republicans—including President Trump—campaigning on a promise to repeal and replace the ACA. And in the early days of 2017, the newly elected Congress has already taken initial steps to launch repeal efforts. As a result, health care executives now find themselves grappling with a newfound, and largely unexpected, sense of uncertainty. While much uncertainty will remain across the next few months and potentially even years, the first 100 days of the Trump administration will provide significant insight into the direction of reform efforts. Here are five key issues to watch:

### Five Things to Watch in the First 100 Days

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|--|--|---|---|--|
| <p><u>1</u></p> <p><b>What process</b> will enable reform?</p> | <p><u>2</u></p> <p><b>Who are the key players?</b></p> | <p><u>3</u></p> <p><b>Which principles</b> will drive reform?</p> | <p><u>4</u></p> <p><b>What are the likely targets</b> for reform?</p> | <p><u>5</u></p> <p><b>What is the timeline</b> for reform?</p> |
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# 1. What process will enable reform?

## Two Repeal Options on the Table

Although President Trump, like many other Republicans, campaigned on a simple promise to repeal the Affordable Care Act, the GOP has two options for dismantling the ACA, neither of which is easy.

### Wholesale Immediate Repeal

A full repeal of the ACA through a standard congressional vote in both the House and the Senate



### Piecemeal Change

Changes to specific components of the ACA; most likely through budget reconciliation, which only requires a majority vote in the Senate

The first approach—wholesale repeal—would introduce new legislation to eliminate the ACA in its entirety, granting the GOP a blank slate from which to begin replacement efforts. However, such an approach would likely face significant pushback from industry members and the general public, as it would eliminate popular provisions of the ACA and roll back insurance coverage for up to several million individuals. Full repeal could also face resistance from governors of the states that expanded Medicaid, including 16 Republicans. Furthermore, Senate Democrats would almost certainly attempt to filibuster any new legislation designed to repeal the ACA. With only 52 seats in the Senate, the GOP lacks the 60-vote supermajority required to overcome filibuster.

For these practical reasons, Congress has already moved in the early days of January to begin the process of repealing select components of the ACA by starting an alternative legislative process known as **budget reconciliation**. The reconciliation process will allow Republicans to repeal provisions of the ACA related to taxes and the federal budget, such as the subsidies available for individuals shopping on the public exchanges, the funding granted to states for expanding Medicaid, and the penalties associated with the individual and employer mandates. While this approach does not allow for sweeping repeal of the ACA in its entirety, legislative changes through budget reconciliation can pass Congress with a simple Senate majority, allowing the GOP to dismantle components of the law without securing votes from Senate Democrats.



## What is Budget Reconciliation?

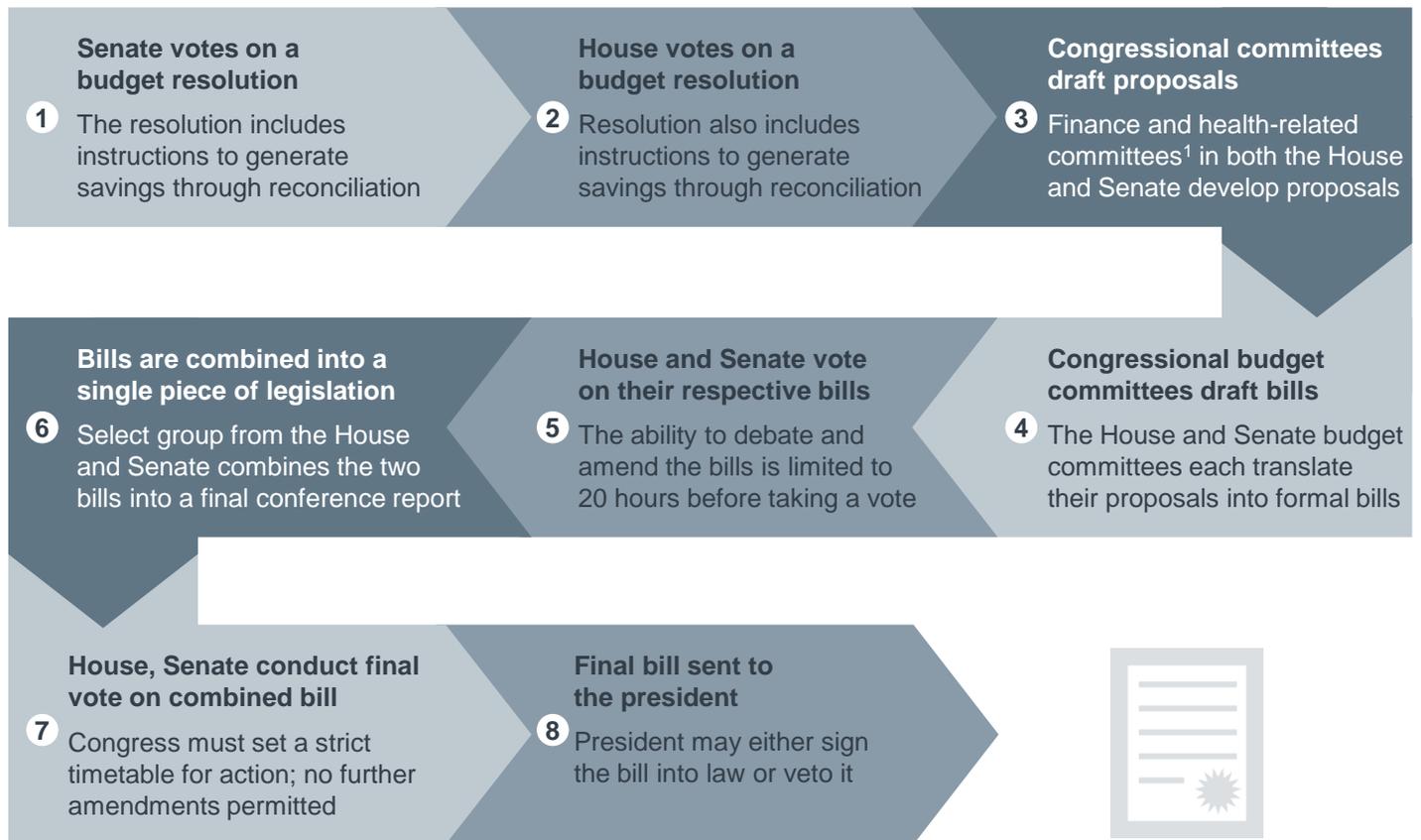
The legislative process of reconciliation was created as part of the Congressional Budget Act of 1974, which determined the role of Congress in formulating the U.S. federal budget. The act established reconciliation as a procedure for quickly reducing the federal deficit by making changes to government spending and revenues in an expedited manner. To enable such changes to occur quickly, the process of reconciliation is subject to a unique set of rules which distinguish it from other legislative procedures in Congress:

- Reconciliation may only be used for legislation that impacts spending, revenues, or the federal debt limit
- No presidential signature is required to begin the reconciliation process
- Senate debate is limited to 20 hours
- Because of the limits set on debate time, no Senate filibuster is permitted
- Bills may pass in the Senate with a simple majority of 51 votes

Budget reconciliation was first used in 1980, and has since been used to pass at least 20 bills; during the Obama administration, Democrats used reconciliation to pass parts of the Affordable Care Act.

## How Budget Reconciliation Works

The process of reconciliation involves the full Senate, the full House, and various congressional committees. Here is an overview of how reconciliation is likely to proceed given the current focus on health care spending. As of January 20th, both the House and Senate had already voted on a budget resolution:



1) House Ways and Means Committee, House Energy and Commerce Committee, Senate Health Committee, Senate Finance Committee.

## Congressional Replacement Process Less Clear

While the process by which Republicans intend to repeal the ACA has come into focus, the process for replacement remains unclear. Although President Trump campaigned on a promise to repeal and replace the ACA simultaneously, many Republicans have advocated for a “repeal-and-delay” strategy, under which repeal legislation would include a set period of time to phase out provisions of the ACA and craft additional legislation to guide replacement efforts.

This strategy could help ensure that individuals who gained coverage through the ACA do not lose coverage abruptly, and also allow time for Congress and the Trump administration to craft a more thoughtful and detailed replacement bill. But many Democrats, along with a small but growing minority of Republicans, have argued that repeal without an immediate replacement would be irresponsible. Even among those who agree in the concept of repeal-and-delay, there is significant debate about the appropriate length of the delay period, with proposals ranging from six months to four years.

Despite the ongoing debate, Republicans will likely pass repeal without a complete replacement plan given the complexity associated with crafting such a plan. As such, any future legislation surrounding replacement could require a 60-vote Senate majority to pass Congress.

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“We’re acting quickly because Obamacare is collapsing under its own weight, and things will continue to get worse otherwise. That doesn’t mean the law will end overnight. There will be a stable transition period, and once repeal is passed we will turn to replacement policies that cost less and work better than what we have now.”

*Mitch McConnell  
Majority Leader  
US Senate*

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Source: Fox News, “ObamaCare Failed Americans. Now It’s Time for Relief,” January 9, 2017.

## President Can Also Impact Reform Through Executive Action

Although Congress will lead legislative efforts to repeal and replace the ACA, the president can also impact reform efforts by issuing direct orders to undermine or scale back elements of the ACA. And in fact, President Trump signed an **executive order** targeting the ACA on January 20<sup>th</sup>, his first day in office:

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“To the maximum extent permitted by law, the Secretary of Health and Human Services (Secretary) and the heads of all other executive departments and agencies (agencies) with authorities and responsibilities under the Act shall exercise all authority and discretion available to them to **waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act** that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.”

*Executive Order  
January 20, 2017*

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Source: Office of the Press Secretary, available at [whitehouse.gov](http://whitehouse.gov), accessed January 23, 2017.

### What is an executive order?

Although not explicitly permitted through a specific statute or provision of the Constitution, presidents have historically assumed the authority to issue orders directed at government agencies to help manage and guide the operations of the federal government. Executive orders are considered to be legally binding so long as they are supported by congressional statute or the Constitution. Executive orders are subject to judicial review, may not be used to repeal or amend a statute, and cannot direct the government to act in contradiction to the law. Executive orders are typically used to determine how legislation is executed and to what extent legislation is enforced.

Pursuing change through executive action assists Congressional reform efforts in a few key ways. First, it could help Republicans begin to unwind elements of the ACA more quickly than they would be able to through legislative change. Second, because Congress is bound by the limitations of the budget reconciliation process, the president could seek to change some non-budgetary provisions of the ACA through executive action. And finally, the order allows the president to express his support and commitment to assisting the legislative branch in its efforts to repeal and replace the ACA.

President Trump's initial executive order issued on January 20<sup>th</sup> is best read as a largely symbolic move. The order does not immediately unwind any components of the ACA, and it does not grant agencies any new authorities. The order does, however, strongly signal that the Trump administration intends to keep its campaign promise to repeal the ACA and will actively work to ensure that changes to the ACA occur. The order also suggests that the administration is willing to wield executive power to drive change in addition to relying on legislative efforts in Congress. Elements of the ACA that may be affected by executive action include:



#### Insurance Mandates

Broadening exemptions to and/or reducing enforcement of the individual and employer mandates



#### Health Benefits Requirements

Reducing the number of essential health benefits for which the ACA requires coverages



#### Insurance Market Regulation

Granting states greater flexibility in administering Medicaid and/or regulating commercial insurance markets

President Trump's executive order confirms that his administration intends to use standard regulatory processes to pursue any such administrative changes. For major changes, the process often includes issuing a proposed rule and providing a comment period before issuing a final rule, which can take months to complete. But there are also minor changes that can be made more quickly through "sub-regulatory" guidance.

## 2. Who are the key players?

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While President Trump can alter implementation and enforcement of the ACA through executive action, the process of designing and passing repeal-and-replace legislation will fall on the shoulders of members of Congress, working in conjunction with health policy leaders in the new administration. The following policymakers are expected to play particularly instrumental roles in shaping reform efforts:



Image: © 2017, District Office of Tom Price

### Representative Tom Price

As President Trump's nominee to serve as the Secretary of Health and Human Services (HHS), Representative Tom Price would hold the top health care advisory role within the new administration. This appointment requires Senate confirmation; if confirmed, Price will oversee a broad range of health care agencies, including the Centers for Medicare and Medicaid Services (CMS), the Center for Disease Control and Prevention (CDC), and the Food and Drug Administration (FDA). As HHS Secretary, he would determine the extent to which the agency would continue to enforce the ACA and would play a key role in regulating and overseeing execution of any new reforms. A retired orthopedic surgeon and a Representative for the state of Georgia, Price has been a vocal critic of the ACA. In 2015, he introduced an ACA replacement bill called the Empowering Patients First Act.



Image: © 2016, Drew Angerer/Getty Images

### Seema Verma

President Trump has nominated Seema Verma to serve as Administrator for CMS. If confirmed by the Senate, Verma would play an instrumental role in carrying out any repeal efforts related to Medicare, Medicaid, and the public health insurance exchanges. She would also oversee implementation of future reforms to Medicare or Medicaid. Verma is president, CEO, and founder of SVC, a health policy consulting firm based in Indiana. She worked closely with Vice President Mike Pence to expand Medicaid in Indiana via federal waiver and also helped guide expansion efforts in Ohio, Iowa, Tennessee, Michigan, and Kentucky.

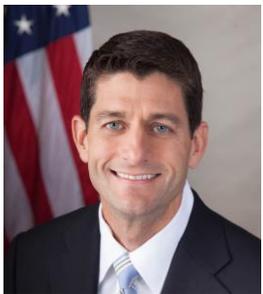


Image: © 2012, US Congress

### Speaker Paul Ryan

As Speaker of the House of Representatives, Paul Ryan holds a key role within the Republican-led Congress that will lead efforts to craft ACA repeal and replacement legislation. Ryan has been among the most vocal and influential critics of the ACA. In 2016, Ryan released "A Better Way"—a comprehensive plan covering six key policy areas, including an alternative plan for health care reform. "A Better Way" has been cited as one of the GOP proposals most likely to serve as the framework for an ACA repeal and replacement plan.



Image: © 2016, United States Senate

### Majority Leader Mitch McConnell

A senator from the Commonwealth of Kentucky, Mitch McConnell has been the Majority Leader of the Republican-led Senate since January 2015. The Senate is the legislative body responsible for confirming presidential nominations to key government positions and launching the budget reconciliation process, which gives it a crucial role in informing the pace and tone of any repeal-and-replace efforts. As the Senate's leader, McConnell has already emerged as a key spokesperson for ongoing repeal efforts.

Source: Jackson D. and Solis S., "Rep. Tom Price Is Trump's pick for Health and Human Services Dept.," *USA Today*, Nov. 29, 2016; "Trump Picks Seema Verma to Head Centers for Medicare and Medicaid Services," *Politico*, Nov. 29, 2016; Paul Ryan, [paulryan.house.gov](http://paulryan.house.gov); Mitch McConnell, [www.mcconnell.senate.gov/public/](http://www.mcconnell.senate.gov/public/).



Image © 2016, US Congress

## Senator Orrin Hatch

The senior senator for Utah, Orrin Hatch currently serves as president pro tempore of the Senate and Chair of the Senate Finance Committee. The Finance Committee plays an important role in all matters related to taxation and revenue by determining which bills warrant a full Senate vote. The committee also holds a vote on sending nominations for HHS Secretary to the full Senate for confirmation. Hatch has been a strong proponent of ACA repeal efforts; he collaborated with several other Republican senators to craft a replacement plan called the Patient CARE Act, proposed first in 2014 before being modified and proposed again in 2015.



Image © 2015, US Congress

## Representative Kevin Brady

A Republican representative from Texas, Kevin Brady currently serves as the Chair of the House's Committee on Ways and Means. The Ways and Means Committee has jurisdiction over matters related to tax and revenue, and includes number of subcommittees, including one on health care. Given the committee's jurisdiction over both tax-related issues and health care, Brady will also play an influential role in crafting repeal-related legislation to be presented to the House Budget Committee.



Image © 2015, US Congress

## Representative Greg Walden

A Republican Representative from Oregon, Greg Walden currently serves as the Chair of the National Republican Congressional Committee and the Chair of the House's Committee on Energy and Commerce. The Committee on Energy and Commerce's jurisdiction includes legislative oversight of matters related to public health. As a result, Walden stands to play a key role in the House's efforts to craft ACA repeal legislation that will be presented to the House Budget Committee.



## Other Groups to Watch

### *Republican Governors in Medicaid Expansion States*

- **Why:** With over a dozen expansion states led by Republican governors, the GOP will likely face intra-party opposition to any repeal efforts that include a rollback of Medicaid expansion; several governors have already expressed their concern
- **Who:** Jan Brewer, Asa Hutchinson, John Kasich, Brian Sandoval, Rick Snyder

### *Republican Senators Skeptical of "Repeal and Delay"*

- **Why:** A small but growing number of Republican senators have expressed concern at the potential for repeal without a simultaneous replacement plan; with only a slim Senate majority, Republicans will need to secure these votes to advance repeal
- **Who:** Lamar Alexander, Susan Collins, Bob Corker, Tom Cotton, Rand Paul

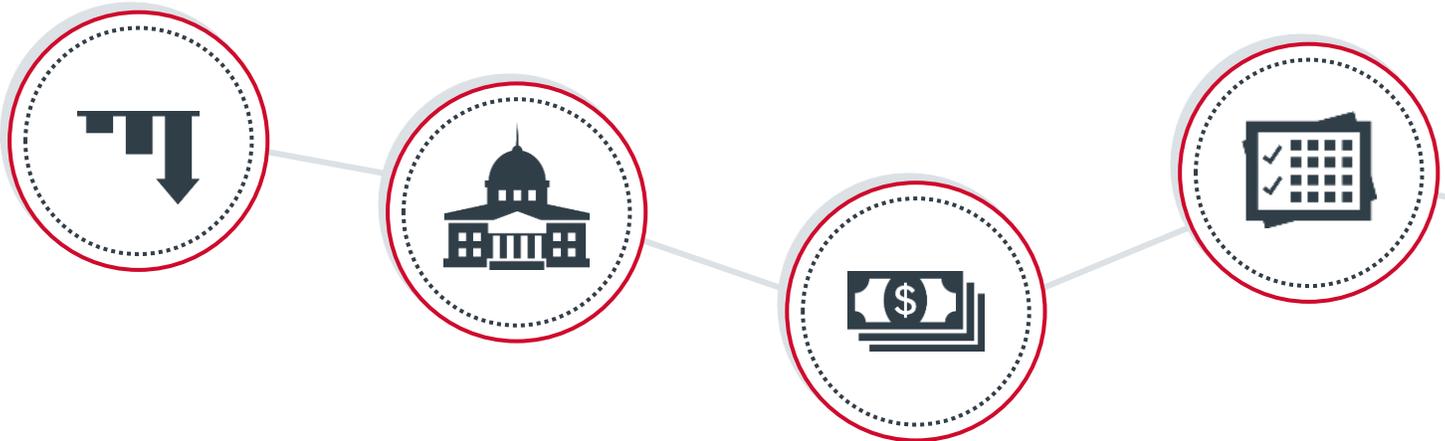
### *Senate Democrats Facing Reelection in Red States*

- **Why:** Facing stiff odds for reelection, these Senators will likely be sought after as potential allies in a Republican-led replacement effort requiring votes from Senate Democrats
- **Who:** Tammy Baldwin, Sherrod Brown, Bob Casey, Joe Donnelly, Joe Manchin, Claire McCaskill, Jon Tester

### 3. Which principles will drive reform?

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As the GOP moves forward with the repeal-and-replace process, they will likely to look to a core set of conservative principles in crafting legislation. Based on Advisory Board analysis of past Republican health policy proposals, we expect four key principles to guide reform:



#### Reduce Federal Entitlement Spending

The existing focus on cost control and reducing federal health care spending is unlikely to diminish with the repeal of the ACA. While the GOP may share the Obama administration's desire to curb growth in spending, their intended goal likely departs dramatically from the aims of the ACA. Democrats hoped to use savings to fund near-universal coverage, while Republicans would likely use any savings to offset tax cuts and credits designed to spur faster economic growth.



#### Devolve Health Policy Control to States

Republicans have been vocal critics of the many provisions of the ACA that attempted to mandate and shape reform at the federal level. For example, while many Republican governors displayed a willingness to expand Medicaid, most of these expansions relied on federal waivers which enable states to customize their approach to expansion. Republicans are likely to expand and support such mechanisms, which enable more innovation at the state level.



#### Embrace Free Markets and Consumer Choice

Republicans have long been proponents of using private sector competition to spur innovation and control costs without direct government intervention. While the ACA sought to encourage some of these principles within the private insurance market, Republicans have voiced support for increasing these efforts—for example, by increasing use of HSAs—and extending these efforts into the public sector as well—eyeing Medicare and Medicaid as potential targets for additional reform.



#### Promote Transparency of Cost and Quality

Efforts to encourage competition and promote consumer choice will hinge on the GOP's ability to increase levels of transparency and information access across the health care industry. While the ACA established some mechanisms for driving transparency, Republicans are likely to double-down on transparency as a key element of their reform efforts.

## 4. What are the most likely targets for reform?

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While the new Congress has yet to unveil formal legislation to repeal or replace the ACA, Republicans—including several holding key leadership positions within Congress—have released numerous proposals intended to repeal and replace the ACA in the past. Many such proposals have even been subject to Congressional vote, with one proposal actually passing both House and Senate before being vetoed by President Obama. Still more Republicans have spoken extensively about their views on health care reform on the campaign trail. While these proposals provide some insight into what to expect from upcoming reform efforts, it is important to remember that previous proposals were crafted with the certain understanding that President Obama would ultimately veto any attempts to repeal or replace the ACA. As a result, it is possible that new legislation will take a more moderate approach, especially as Republicans look to attract a number of Senate Democrats to pass a replacement bill.

### Potential Targets for **Repeal**

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#### Individual Insurance Market Regulation

The individual insurance market has been the most frequent target of GOP repeal discussions. Initially, criticism focused heavily on the individual mandate as an example of an overreach in government power. Over time, Republicans have also assailed the costs of exchange plans as an indication that the ACA had failed to provide affordable coverage. Past proposals have sought to undermine the public exchanges by eliminating the exchange subsidies, the tax penalties associated with the individual mandate, and the funds intended to encourage payer participation in the exchanges.



#### Medicaid Expansion

Republicans have been less consistent in their views on the ACA's expansion of Medicaid. While the GOP objected to the ACA's initial intent to *mandate* Medicaid expansion at a national level, many Republican governors ultimately decided to expand the program when given the *choice*. While many past proposals have included a rollback of Medicaid expansion, this matter will be the subject of considerable debate. Several Republican governors have already urged Congress to maintain expansion in some form, as well as the funding associated with it.



#### Payment Reform

While the concept of payment reform has garnered bipartisan support, Republicans have expressed concern at the aggressive pace of change to date and the increasing propensity to mandate payment reforms. As a result, past proposals have included plans to defund and even eliminate the Center for Medicare and Medicaid Innovation (CMMI), which runs many of the government's current alternative payment programs and which has the power to mandate and expand its reforms without congressional approval under certain conditions.

### Potential Targets for **Replacement**

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#### Commercial Insurance Reform

By and large, Republican plans for the commercial insurance market follow similar principles as those deployed by the ACA, though with fewer qualifying benefit mandates. For example, replacement proposals have included tax credits for individual market purchasers and plans to limit tax exclusions for employer-sponsored insurance. Replacement plans have departed from the ACA in two main ways: Republicans would like to expand use of health savings accounts and make it easier for health plans to sell products across state lines.



#### Medicaid Reform

Medicaid has emerged as a prime target for further reform, with many Republicans suggesting that federal spending on Medicaid should be both more limited and more predictable than it is today. Per capita allotment—under which the federal government would provide a set monetary contribution for each Medicaid enrollee—and block grants—under which the government would provide a single, lump sum payment to each state—have emerged as two potential alternatives to the current federal matching structure.



#### Medicare Reform

Although Trump opposed significant reforms to Medicare during his campaign, others have suggested increasing the Medicare eligibility age to 67 as a means for immediately cutting costs. For longer term savings, some Republicans have even proposed moving Medicare to a premium support model in which beneficiaries receive vouchers to buy insurance and modifying benefit design to increase consumer engagement as means of curtailing costs. To date, the GOP has not reached consensus on Medicare reform.

The table below summarizes the provisions that have been included in recent Republican health policy proposals. While past proposals have demonstrated relative consistency around the future of the public exchanges and the commercial insurance market, Republican leaders have yet to coalesce around the repeal of Medicaid expansion and some of the potential reforms related to the financing and design of the Medicare and Medicaid programs.

### Select Republican Health Care Reform Proposals

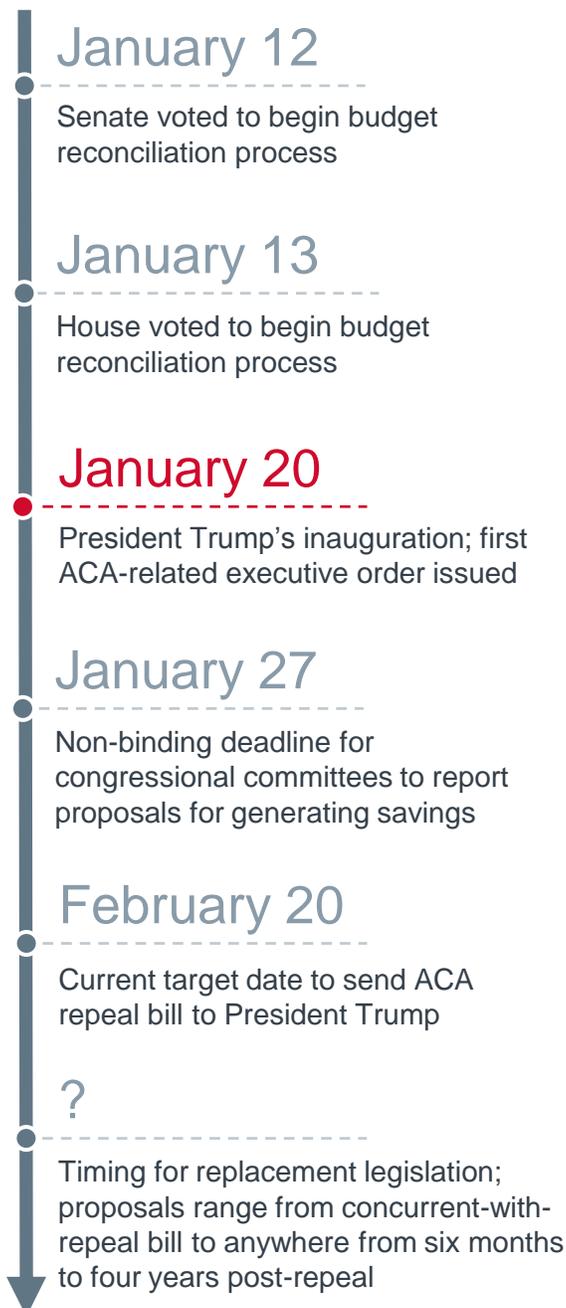
						
	<b>“American Health Care Reform Act of 2017”</b> (Rep. Phil Roe)	<b>“Empowering Patients First Act”</b> (Rep. Tom Price)	<b>“A Better Way”</b> (Rep. Paul Ryan)	<b>“Patient CARE Act”</b> (Sens. Orrin Hatch, Richard Burr, Fred Upton)		
Payment reform	Eliminates Centers for Medicare and Medicaid Innovation (CMMI)	✓	✓	✓	✓	
	Eliminates individual and employer insurance mandates	✓	✓	✓	✓	
	Preserves protection for preexisting conditions	✗	✓	✓	✓	
	Preserves dependent eligibility until age 26	✗	✓	✓	✓	
Insurance market regulation	Funds state-run high-risk pools	✓	✓	✓	✓	
	Allows sale of insurance across state lines	✓	✓	✓	✓	
	Creates small business association plans	✓	✓	✗	✗	
	Allows premium differential of 5x based on age	✗	✗	✓	✓	
	Removes “essential benefits” requirement	✓	✓	✓	✓	
	Expands availability and applicability of HSAs	✓	✓	✓	✓	
	Creates tax incentives for purchasing coverage	✓	✓	✓	✓	
	Caps tax exclusion for employer health benefits	✗	✓	✓	✓	
	Medicaid reform	Retains Medicaid eligibility expansion	✗	✗	✓	✗
		Converts Medicaid to block grants or per-capita allotment	✗	✗	✓	✓
Medicare reform	Increases Medicare eligibility age from 65 to 67	✗	✗	✓	✗	
	Converts Medicare to premium support model	✗	✗	✓	✗	

Source: American Health Care Reform Act of 2017, <https://walker.house.gov/sites/walker.house.gov/files/115AHCRA.pdf>; Empowering Patients First Act, <http://tomprice.house.gov/sites/tomprice.house.gov/files/HR%20202300%20Empowering%20Patients%20First%20Act%202015.pdf>; A Better Way, <http://abetterway.speaker.gov/>; Patient CARE Act, <http://www.finance.senate.gov/imo/media/doc/Patient%20CARE%20Act%20Two-Page%20Summary.pdf>.

## 5. What is the timeline for reform?

Although Congress has already taken the first steps toward ACA repeal, how quickly the legislative process will move from here remains a subject of speculation. As of mid-January, Congress intends to send a repeal bill to President Trump by the end of February. Some Republicans, however, have proposed a longer timeline, while others—including the president—have argued that such a bill be presented relatively quickly following the inauguration and confirmations of Seema Verma and Tom Price. Given the potential for a repeal-and-delay approach and the possibility of an extension for the repeal bill's development, it is also important to keep an eye on key deadlines for existing programs created by the ACA, as it is likely at least some of these activities will continue across the course of 2017 and beyond. Here is where reform stands as of January 20, 2017:

### Repeal-and-Replace Timeline



### Other Notable Dates

#### January 24

Final Senate confirmation hearing for Rep. Tom Price, nominee to lead HHS

#### April 8-July 15

Rate-filing deadlines for plans participating in state-run insurance exchanges in 2018

#### May

Deadline to submit Notice of Intent to Apply (NOIA) for the Medicare Shared Savings Program and Next Generation ACO Model

#### July 17

Federal rate-filing deadline for plans offering products on healthcare.gov in 2018

#### To Be Determined as of January 20:

Dates for confirmation hearings for Seema Verma, nominee for CMS Administrator

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### *Expert Insight*

#### **The 2016 Election: 12 Questions Every Executive Should Be Asking**

<https://www.advisory.com/research/health-care-advisory-board/expert-insights/2016/2016-election-12-questions-every-executive-should-be-asking>

### *Webinar*

#### **The Post-Election Outlook for Health Policy**

<https://www.advisory.com/research/health-care-advisory-board/events/webconferences/2016/the-post-election-outlook-for-health-policy/ondemand>



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