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# The Future of the Affordable Care Act in a Trump Administration

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We now know the outcome of the 2016 election. On Jan. 20, 2017, Donald Trump will take office and a Republican majority will remain in both houses of Congress. What will this mean for the future of the Affordable Care Act?



At the end of October, then candidate Trump released “Donald Trump’s Contract with the American Voter” outlining a plan for his first 100 days in office. Prominently listed among his objectives is to “Repeal and Replace Obamacare Act.”

Along the campaign trail Trump stressed his intent to work with Congress to repeal Obamacare and to enact regulatory reform. Both health care and regulatory reform have prominent positions on Trump’s transition website [Greatagain.gov](http://Greatagain.gov), with regulatory reform called a “cornerstone of the Trump Administration.”

The Patient Protection and Affordable Care Act, 42 U.S.C. §18001 et seq. (2010), (a/k/a The Affordable Care Act and Obamacare) was signed into law by President Obama on March 23, 2010. The statute itself is 900+ pages, with the pages of regulation implementing the Affordable Care Act numbering in the thousands, so what would a “repeal” of Obamacare look like?

When many think of Obamacare, largely two parts of the Affordable Care Act come to mind: 1) the individual mandate requiring individuals to have qualifying health insurance (or face a penalty); and 2) the employer mandate requiring many employers to offer affordable, qualifying health insurance coverage to their full-time employees (and their dependents) or face a penalty.

The Affordable Care Act goes beyond the individual and employer mandate, and includes many provisions that would be difficult to roll back completely. For example, the Affordable Care Act prohibits insurance companies from denying coverage for pre-existing conditions, permits dependents to remain on a parent’s insurance until their 26<sup>th</sup> birthday, and requires employers provide nursing mothers reasonable breaks and a location other than a bathroom to express milk during a child’s first year of life. These provisions of the Affordable Care Act were not the focus of Trump during the campaign and it may be his intent that they be left in place or replaced in substance if the portions of the Affordable Care Act conferring the protections are repealed.

It would be difficult if not impossible to repeal the entirety of The Affordable Care Act, even with a Republican majority in both houses of Congress, for a variety of procedural and political reasons. However, what is likely is that Trump, along with a Republican led Congress, will take action on key elements of Obamacare, including the individual and employer penalties, during Trump’s first days in office.

On Jan. 8, 2016, President Obama vetoed legislation that would have eliminated the individual and employer penalties under the Affordable Care Act. In response to President Obama’s veto, House Speaker Paul Ryan said in a statement:

"The idea that Obamacare is the law of the land for good is a myth. This law will collapse under its own weight, or it will be repealed...We have now shown that there is a clear path to repealing Obamacare without 60 votes in the Senate. So, next year, if we're sending this bill to a Republican president, it will get signed into law."

On Nov. 9, Senate Majority Leader Mitch McConnell said repealing Obamacare is a "pretty high item on our agenda."

To add another layer of complexity, open enrollment for 2017 Marketplace health insurance began on November 1, 2016 and the deadline to enroll or change a 2017 health plan is January 31, 2017. January 31, 2017 is also the deadline for employers to furnish ACA required information to employees, leaving six business days between inauguration and these upcoming deadlines. It remains to be seen if any repeal would impact 2017 or would be set to take effect in 2018.

Trump may begin releasing additional details on the timing and implementation of the objectives outlined in his 100-day action plan in the coming months leading up to his inauguration. One thing that is certain, individuals and employers will want to stay tuned and we will continue to provide updates as we learn more.

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