The 2016 Election:

What Could the Results Mean for Provider Organizations?

A White Paper

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Introduction

On November 8, 2016 Donald Trump was elected President of the United States, with the Republican Party retaining control of both the House and Senate. The result of the election – which shocked *both* political parties – has left healthcare organizations speculating on the potential fallout.

Right now there is a great deal of uncertainty, but most of the long-term implications for health delivery organizations will likely depend on how the new Congress and Administration go about their stated plan to "repeal and replace Obamacare," a law officially known as the Affordable Care Act (ACA).

Despite the uncertainty, it is important to note that the *overall* transition to value-based care is unlikely to slow down because of the election results. Even if there are ultimately significant changes made to Medicare that impact payment reform at the federal level, programs from *commercial payers* that increasingly hold providers accountable for quality and cost will likely continue to move forward.

What Do We Know?

We know that efforts to "repeal and replace" (or "amend") Obamacare will almost certainly be the initial – and primary – healthcare-related focus of the new Administration. However, it is important to clarify the difference between what the media (and many politicians) refer to as "Obamacare" and the actual Affordable Care Act.

The term "Obamacare" typically refers to the sections of the Affordable Care Act that relate to *health insurance coverage*, such as the individual mandate, the employer mandate, the minimum requirements for coverage, the expansion of Medicaid, and others. However, the Affordable Care Act itself is a complex law with many provisions that are not related to health insurance, such as a provision that established Medicare's voluntary ACO program, and a change that allowed the FDA to approve generic versions of biologic drugs. Not only are many of those provisions non-partisan, they are already well-established within the healthcare system. This complicates a potential "repeal."

It is also worth noting that the terms "repeal" and "amend" refer to multiple different mechanisms. Certain health insurance provisions of the ACA could be removed or changed through the budget reconciliation process, while others could essentially be removed by simply withholding funding or not taking action.

Significant changes though, such as comprehensive reforms to Medicare, or a full-fledged "repeal and replace" of the ACA, would require Congress to pass legislation that the President would need to then sign into law.

What Are the Potential Scenarios – and Which Are Most Likely?

There are essentially three potential scenarios:

1. *Repeal the ACA in full.*
2. *Pass a law that repeals and replaces the ACA in full.*
3. *Amend and / or repeal only portions of the ACA.*

While predictions in such situations are always difficult, **on the surface it would seem that a full repeal of the ACA is unlikely.** At the very least, **there would be very real hurdles to a full repeal**, such as a potential filibuster from Democrats and the fact that many provisions of the law (including many that aren't related to health insurance coverage) are already well-established and in place.

Similarly, a "repeal and replace" (say within 2 years) would also be a difficult road, with the largest challenge (aside from the hurdles mentioned earlier) being the definition of what a "replacement" law might look like. No matter what solutions are considered, they would almost certainly be the subject of much political discourse and debate. In other words, while this option might sound reasonable, **the implementation of a full "repeal and replace" might be politically impossible.**

Consequently, it seems more likely that **amending or repealing *portions* of the law would be a more politically feasible scenario.** This course of action could allow immediate changes to be enacted to the law, could minimize the impact to individuals currently insured by the ACA, and might be the most politically palatable scenario for both parties.

What Don't We Know?

In short: a lot. We don't yet know *definitively* which provisions of the ACA might be targeted. We don't know precisely *how* any planned efforts to amend or repeal the existing law would be implemented (although there has been speculation that the budget reconciliation process would be a possible candidate – at least initially). More importantly, we don't know *how successful* any efforts might be. We also don't yet know exactly what a "replacement" law would look like, although some have speculated that a starting point might be something along the lines of this recent white paper from Speaker Paul Ryan and House Republicans.

So, What Are the Biggest Potential Implications for *Provider Organizations* from the Election?

No matter what strategies might be implemented to amend (or potentially even "repeal") the ACA, the primary concern for providers would be changes or interruptions to patients' coverage. Given that an estimated 20 million U.S. residents currently receive some sort of health insurance coverage under the ACA, repealing or replacing provisions like the individual mandate or minimum coverage requirements potentially

could result in an increase in the number of uninsured (or underinsured) patients. However, without knowing which specific provisions of the ACA the new President and Congress will attempt – or *be able* – to amend or repeal, it is impossible to even speculate on the degree of potential change.

Regardless of what happens, it is important to note that any significant change (especially changes relating to health insurance coverage) will take time to *actually implement in practice*. For example, even if Congress were to vote to "repeal and replace" the entire ACA immediately, it would likely be *years* before those changes could take effect.

What Does the Election Mean for Existing Federal Payment Reform Initiatives and HIT Regulations?

Most current federal payment reform initiatives and HIT regulations are unlikely to be impacted as a result of the election. The programs most at risk are those established by the ACA – but overall, few are at *significant* risk.

Here is a rundown of some well-known federal payment reform models and HIT regulations, with the potential impact the election could have on each.

- **Pilots and models established by the Center for Medicare & Medicaid Innovation (CMMI)**

  The CMMI (or "Innovation Center") might not be a household name, but most providers are likely familiar with some of the models and programs that the Innovation Center has created (see text box). The Innovation Center was established by the ACA, so there is a risk that it could be targeted for reform. Adding to the uncertainty is that some have called for the Innovation Center to be eliminated. However, even under the plan from Speaker Paul Ryan and House Republicans, that would not happen until 2020. **Likelihood of being impacted by the election: *Moderate, but changes likely wouldn't take effect immediately.***

  Examples of CMMI models:
  - Comprehensive Care for Joint Replacement Model
  - Pioneer ACO Model
  - Next Generation ACO Model
  - Oncology Care Model
  - Comprehensive Primary Care Plus (CPC+)

  Note: full list available here.

- **The Medicare Shared Savings Program (MSSP)**

  This is Medicare's ACO initiative, which was created by the ACA. Unlike the Innovation Center, the Shared Savings Program is not a particularly divisive issue, so the risk would seem lower. Additionally, the voluntary program is well-established, with 433 participating ACOs as of April 2016. **Likelihood of being impacted by the election: *Low, but technically possible if the entire ACA is repealed or replaced.***

- **The Merit-Based Incentive Payment System (MIPS)**

  MIPS was established by the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA), *not* the ACA. MIPS replaces existing federal incentive initiatives for ambulatory providers – specifically meaningful use, PQRS, and the Physician Value-Based Modifier – with a system that ties a portion of Medicare Part B reimbursement to a clinician's performance across four distinct categories. Given that MACRA was passed by Congress on a bipartisan basis (and that the program must be budget neutral by law), it seems *highly* unlikely that this legislation will be targeted for reform. **Likelihood of being impacted by the election: *Extremely low.***

  For more on **MACRA** and the two major provisions the law established **(MIPS and incentives for participation in Advanced APMs)**, download the **Impact Advisors summary and analysis of the recent Final Rule.**

- **Incentives for participation in Advanced Alternative Payment Models (APMs)**

  This was the second major provision established by MACRA. Clinicians with "qualifying" participation in "Advanced APMs" will be exempt from MIPS and will receive an additional 5% Medicare bonus for the corresponding payment year. The potential risk from the election stems from the fact that some of the models that will meet the definition of an "Advanced APM" in 2017 and 2018 were established by the CMS Innovation Center (like the Next Generation ACO Model, CPC+, and Oncology Care Model). However, given that the Innovation Center is unlikely to be eliminated immediately, and that certain models from *commercial payers* will also qualify as "Advanced APMs" starting in 2019, any potential disruption is likely to be limited. **Likelihood of being impacted by the election: *Low, and the impact would only be minimal.***

- **Meaningful Use (MU)**

  The EHR Incentive Program was established by the American Recovery and Reinvestment Act of 2009 (also known as "the stimulus"). Although politically contentious at the time, the incentives have virtually all been paid out, and ambulatory clinicians are transitioning to MIPS in 2017. Hospitals should fully expect MU to continue to evolve, but that would have happened regardless of the election outcome. **Likelihood of being impacted by the election: *Extremely low.***

- **HIPAA**

  HIPAA is short for the "Health Insurance Portability and Accountability Act of 1996." Congress has updated HIPAA requirements over time to reflect changes in the market, and it is fair to expect Congress will continue to do so to ensure HIPAA stays current. Given that the provisions established by HIPAA are *extremely* important to patients, it is hard to imagine any fundamental or sweeping changes as a result of the election. **Likelihood of being impacted by the election: *Extremely low.***

The Bottom Line

While it is certainly possible there will be potentially significant implications for providers as a result of this election, until bills are drafted, passed by Congress, and signed into law, it will be impossible to predict the degree – and impact – of those changes. It is still early, yet there are some important takeaways to keep in mind. **The initial focus will likely target the ACA and particularly provisions related to healthcare coverage.** Regardless of what happens, **it will take time to *actually implement* any significant changes**. Lastly, with programs from commercial payers continuing to evolve, **the overall transition to value-based care is unlikely to be significantly impacted**. The names and details of payment reform programs might change over time, but the *underlying concepts* will continue to move forward.

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