

Affordable Care Act Repeal and Replace 2017 Frequently Asked Questions

As of December 20, 2016

1. Can the Affordable Care Act be repealed in its entirety?

It is extremely unlikely that the entire Affordable Care Act (ACA) will be completely repealed in 2017. Given the balance of power in the Senate (52 Republicans and 48 Democrats), Democratic votes would be required to support a wholesale repeal since it takes 60 Senators to vote to overcome a filibuster. This means that many parts of the ACA are likely to remain.

2. I've heard that the repeal of the ACA may happen via budget reconciliation. What does that mean?

Budget reconciliation is part of a two-step process whose primary purpose is to change existing law so that revenues (e.g. taxes) and spending are brought into line with budget resolution priorities.

Under the first step, instructions are included in the annual budget resolution that Congress adopts to direct one or more Congressional committees to draft a bill that changes spending and/or revenues by a specified amount. Those Committees then have a deadline to pass legislation to achieve that. The legislation is then submitted to the House or Senate Budget Committees, which incorporate all submissions, without any substantive revision, into a single, omnibus budget reconciliation bill.

Under the second step of this process, the budget reconciliation bill is considered in the House and Senate under expedited procedures and sent to the president for signature, or veto. As with any legislation, differences between House- and Senate-passed reconciliation bills are settled by a conference committee, after which both bodies vote on final passage of the compromise version.

The main benefit from this process is that in the Senate, reconciliation bills can be passed with only 51 votes rather than the 60 usually required to prevent a filibuster. .

3. How does the use of budget reconciliation affect what can be repealed?

The contents of a reconciliation bill are tightly controlled and the bill can only be used to alter provisions in law that would officially have a federal budget consequence—changes in spending, revenue and the federal debt limit. Of particular note, the Senate has strict rules governing what can be included in reconciliation bills. The so-called "Byrd Rule" allows just one senator to block any provision deemed extraneous to reconciliation's basic purpose of changing the level of federal spending or revenues.

This means that it is likely that the reconciliation bill will include changes to taxes imposed on various parts of the health care system as well as tax credits for low-income individuals. However, regulatory changes imposed on the private sector insurance market—such as the pre-existing conditions exclusion and the requirement to cover young adults under age 26 on their parents' plans—could not be included in a reconciliation bill.

4. Does that mean that the patient protections will stand?

The reconciliation bill will not repeal the private insurance market reforms, such as the elimination of lifetime and annual caps, the elimination of pre-existing conditions exclusions, guaranteed issue (which requires plans to sell insurance to anyone regardless of health status) and guaranteed renewal (which requires plans to renew a person's coverage as long as he or she continues to pay premiums).

However, since the ACA repeal package is likely to include repeal of the individual and employer mandates – the so-called “sticks” to ensure that insurance pools are broad enough to allow for the patient protections to be enacted – the insurance industry is likely to press for HHS and Congress to relax these requirements. If insurance mandates are repealed, insurers will oppose keeping private insurance market reforms (patient protections).

In addition, while Republican replacement plans discuss keeping various patient protections, the details suggest that there will be reforms to these policies. For example, while the replacement plans would maintain the elimination of pre-existing conditions exclusions, this may only be for individuals that maintain continuous, creditable health care coverage. This is similar to the status of pre-existing conditions exclusions prior to the enactment of the ACA.

5. Congress has already voted many times to repeal the ACA. What do those efforts tell us about what might be included in the reconciliation bill?

Yes, Congress has voted many times to repeal, defund or delay the ACA in recent years, all of which have been vetoed by President Obama. The version that passed Congress in December 2015, HR 3762, the Restoring Americans' Healthcare Freedom Reconciliation Act, is important to review for a few reasons: 1. It was drafted by Rep. Tom Price (R-GA), President-Elect Trump's nominee for Secretary of HHS; and 2. It was drafted and passed using the budget reconciliation process, which means that the Senate Parliamentarian has approved that all of its provisions meet the rules of reconciliation. While Congress may not consider the exact same text, it will be used as a base for the legislation that may be considered in 2017.

Here's what the bill would do:

- Repeal the premium tax credits and cost-sharing reductions for low-income people
- Repeal the Marketplaces
- Repeal the individual and employer mandates
- Repeal the Medicaid expansion and repeal other ACA-enacted Medicaid reforms
- Repeal a number of taxes, including the taxes on prescription drugs, medical devices, health insurers, indoor tanning facilities, and the investment income of high-income individuals
- Repeal the surtax on higher-income Medicare beneficiaries

As written in HR 3762, the Restoring Americans' Healthcare Freedom Reconciliation Act, the implementation dates of these changes vary, but most would occur in 2017.

6. Will the ACA Marketplaces still exist in 2017 and 2018?

Congress is expected to phase in the repeal of the Marketplaces, so yes, it is anticipated that the Marketplaces will still exist in 2017 and 2018. Insurers have expressed the concern that uncertainty in future plan years might mean that they drop their plans in the Marketplaces, which means that there may be fewer plan options even if the Marketplaces continue.

7. Will the requirement that plans cover preventive services, such as screening mammography, without cost-sharing continue?

The repeal of this policy was not included in HR 3762, so it will likely stand in the meantime. Many Republican replacement plans would give plans more flexibility about what services to cover and how, so the policy may be modified in future years.

8. Will the Essential Health Benefits policies, that require private plans to cover 10 broad categories of services, remain?

The repeal of essential health benefits (EHB) requirements was not included in HR 3762, but reform of the EHB is included in some of the Republican ACA replacement plans. It is likely that these policies will be changed in future years.

9. What can President-Elect Trump do without Congress?

Some of the decisions concerning the implementation of the ACA are made through regulations, which means that President-Elect Trump and his administration can make changes without Congress acting. For example, they could lessen publicity efforts surrounding open enrollment for the Marketplaces or provide more exemptions from the individual and employer mandates. Other policies could be relaxed, as well. The Trump transition team has indicated that President-Elect Trump will sign a number of executive orders on his first day in office to change or repeal Obama policies and parts of the ACA may be included in that process.

10. Do Republicans agree on how to replace the ACA?

There are a number of replacement plans that have been proposed by Republican leaders, including Speaker Paul Ryan's "A Better Way" and two proposals made by Rep. Tom Price (H.R. 3762 and The Empowering Patients First Act). They don't agree on all of the details, but there are many commonalities.

For example, all proposals would give private insurance plans more flexibility about what to cover and all would seek to promote "consumer-directed" health plans, in which individuals would enroll in high-deductible health plans paired with health savings accounts to help them afford increased out-of-pocket costs. The idea is that by instituting more transparency (so individuals understand what their health care really costs) and by passing on more costs to consumers, people will make more appropriate health care choices. In addition, all plans would reinstitute high risk pools to provide insurance for individuals

with expensive health care needs. They also both include popular conservative ideas, such as allowing for individuals to purchase insurance across state lines and reforming the medical malpractice system.

It is difficult to compare the plans in detail because the proposals are white papers, and actual legislative text will include a deeper level of detail, which may prove meaningful. The precise legislative language is particularly important for these intricate health policy proposals.

11. What is a timeframe for what might happen in 2017?

Repealing the ACA is the top priority of the incoming Trump Administration and Republican leaders in Congress. As a result, Congress is expected to pass the first part of the budget reconciliation as early as mid-January. They are likely to use the same or similar language to HR 3762, the reconciliation bill that passed in 2015 to repeal the ACA (described in more detail above). Much of the ACA will be repealed – some parts immediately, and some parts will be phased out gradually to give Congress time to draft and enact a replacement plan and for HHS to implement it. Republicans anticipate that they may get Democratic support for their ACA replacement plans if there is a deadline looming. And, Republican leaders have said that they don't want the 20 million Americans currently insured by qualified health plans (QHPs) offered on the ACA Marketplaces to be uninsured, so if the Marketplaces are repealed, there will need to be a replacement mechanism for those people to buy insurance.

However, there are a growing number of legislators and health policy experts who caution that repealing any part of the ACA without a clear replacement plan could lead to chaos in the health insurance market. Repealing the ACA will be extremely complex and will affect millions of Americans and numerous aspects of the health care sector and federal and state government policies. It is possible, but somewhat unlikely, that these voices will influence Congress to delay its repeal plans.

12. What changes are anticipated for Medicaid?

Medicaid is now administered as a state/federal partnership, where states must have approval from the federal government regarding many aspects of their state's program. Republicans have proposed significant changes to Medicaid: states would receive either via a block grant (a set sum of money) or a per-capita formula (a set amount per person enrolled in Medicaid). States would also have much more flexibility to set the rules for their programs, including implementing work requirements, increasing cost-sharing, and modifying benefits.

States that expanded Medicaid eligibility as encouraged by the ACA bear minimal costs for those newly enrolled individuals (the federal government pays for more than 90% of the cost). While this "enhanced" payment is likely to be repealed, some states may find the increased flexibility afforded to them under the new system enticing. It is likely that more states will consider and implement policies where Medicaid dollars pay for or subsidize premiums for individuals to purchase private health insurance plans.