# What Does a Trump Administration Mean for Healthcare?

**Manatt Health**
**January 12, 2017**

manatt

# Agenda



- Context: Politics, Policy and Procedure
- Trump Administration and Healthcare Policy
- Individual Market & Medicaid:  Repeal and Replace
- Medicare & Employer-Sponsored Coverage: Incremental Changes
- Conclusion

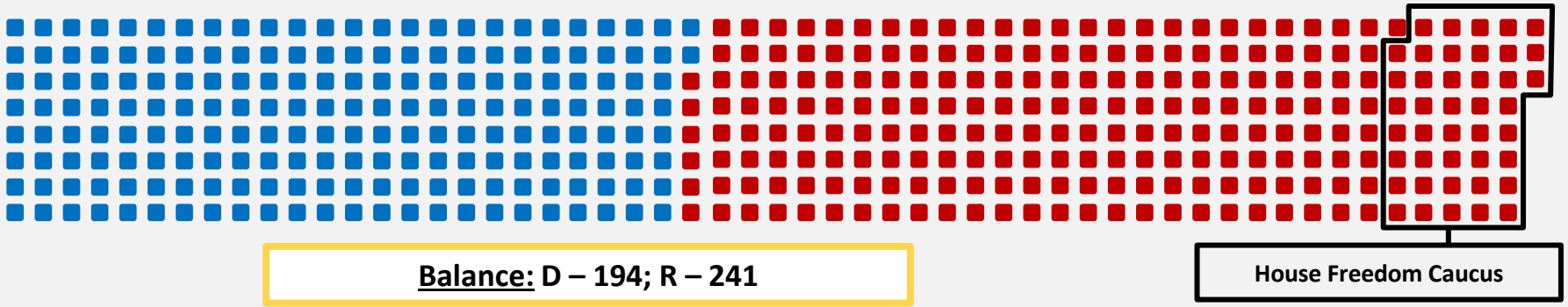
# *Context: Politics, Policy and Procedure*

# House Ready to Lead on Repeal



- House has voted to repeal the ACA over 60 times – however all of those efforts were passed knowing they would be vetoed
- Speaker Ryan prepared to lead repeal effort and has blueprint for replace ("A Better Way")
- House Republicans may have increased leverage on replacement if Congress passes repeal-only legislation
- Freedom Caucus may resist long delays and incremental approach to replacing current ACA provisions

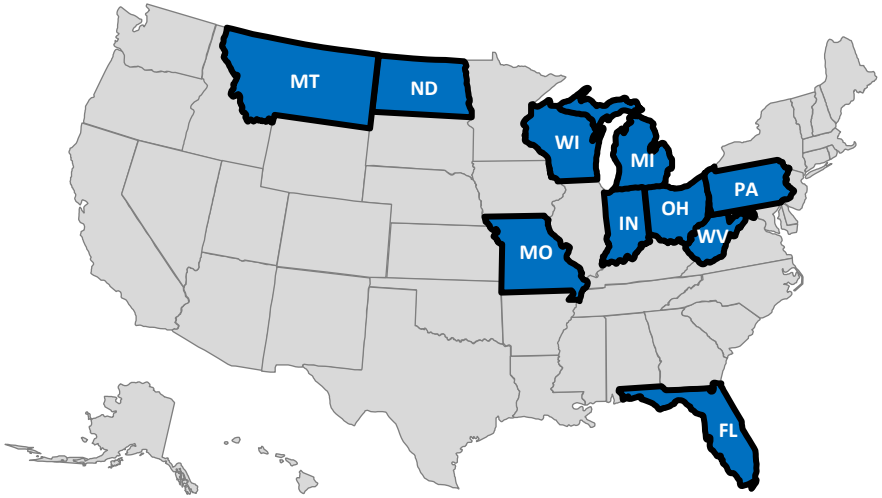
## House of Representatives – Balance of Power



# Senate May Resist Quick Repeal



- Senate leadership is pursuing repeal without replace through budget reconciliation as first order of business
- Growing support for defining replacement before repeal from key Senators as conservative thought leaders and influential stakeholders advocate for this approach
- Coupling repeal and replace would enhance Senate role and could open door to bipartisanship




**Ten of 25 Democratic Senators up for re-election in 2018 are from states carried by Trump.**

**FL – Bill Nelson**
**IN – Joe Donnelly**
**MI – Debbie Stabenow**
**MO – Claire McCaskill**
**MT – Jon Tester**
**ND – Heidi Heitkamp**
**OH – Sherrod Brown**
**PA – Bob Casey**
**WI – Tammy Baldwin**
**WV – Joe Manchin**

**"…we pour our legislation into the senatorial saucer to cool it."**
**– George Washington**

# Trump in Transition: More Mixed Signals Than Usual



## Many signals pointing to decisive action on repeal and replace

- Repeal was lead issue in late stages of campaign
- Nominated staunch advocate of repeal to lead HHS

## …but also mixed signals during and after campaign

- Has emphasized “smooth transition” and “no gaps in coverage” (but without specifics) since election

**“One thing we have to do: repeal and replace the disaster known as Obamacare. It's destroying our country. It's destroying our businesses.”**

**“It will be repeal and replace. It will be various segments, you understand, but will most likely be on the same day or the same week, but probably the same day. Could be the same hour.”**

# States Will be Key Barometer

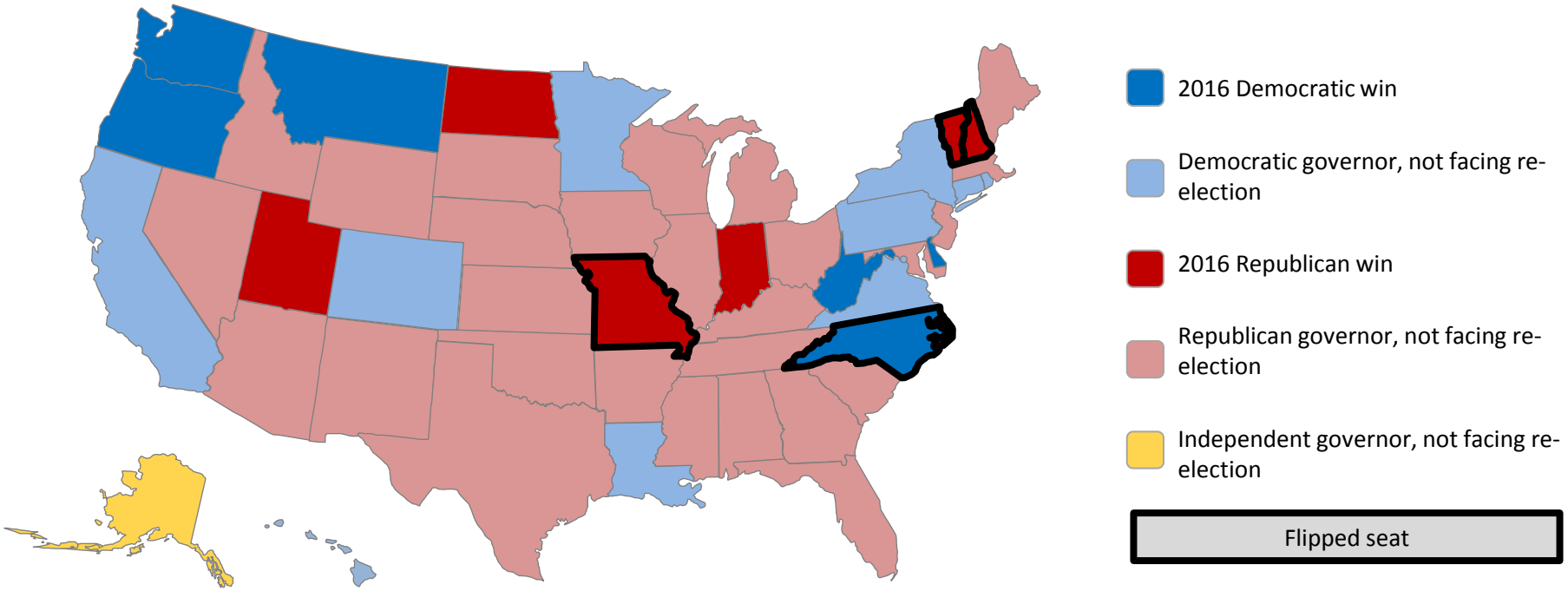


**Republican Governors in 33 states with practical concerns about coverage disruptions**

- 16 in Medicaid expansion states and 17 in non-expansion states

**Republican agenda likely to give states bigger role with both Marketplaces/individual market and Medicaid, perhaps in exchange for more financial risk**

- States will vary dramatically in viewpoint but all will care about losses in federal funding



# Many of the ACA's Major Provisions Will Remain in Force



| | |
|---|---|
| 1 Marketplace | 8 Taxes Related to Individuals |
| 2 Individual and Small Group Market | 9 Taxes on Health Providers, Insurers, and Employers |
| 3 Insurance Market | 10 Public Health/Primary & Preventive Care |
| 4 Medicaid/CHIP | 11 Workforce Provisions |
| 5 Medicare/ Medicaid | 12 Quality Provisions |
| 6 Medicare | 13 Other Provisions |
| 7 Employers/ESI | 14 Temporary Provisions |

15 Never Implemented (Repealed/Pending Implementation or Regulation)

# Risk of Coverage Disruption Varies by Type of Coverage



## Non-group Market

- Total non-group enrollment (2015): 21.8M
- Total Marketplace enrollment (March 2016): 11.1M
- Repeal of mandate/tax credits could require corrective action to avoid market collapse during delayed implementation

## Medicaid

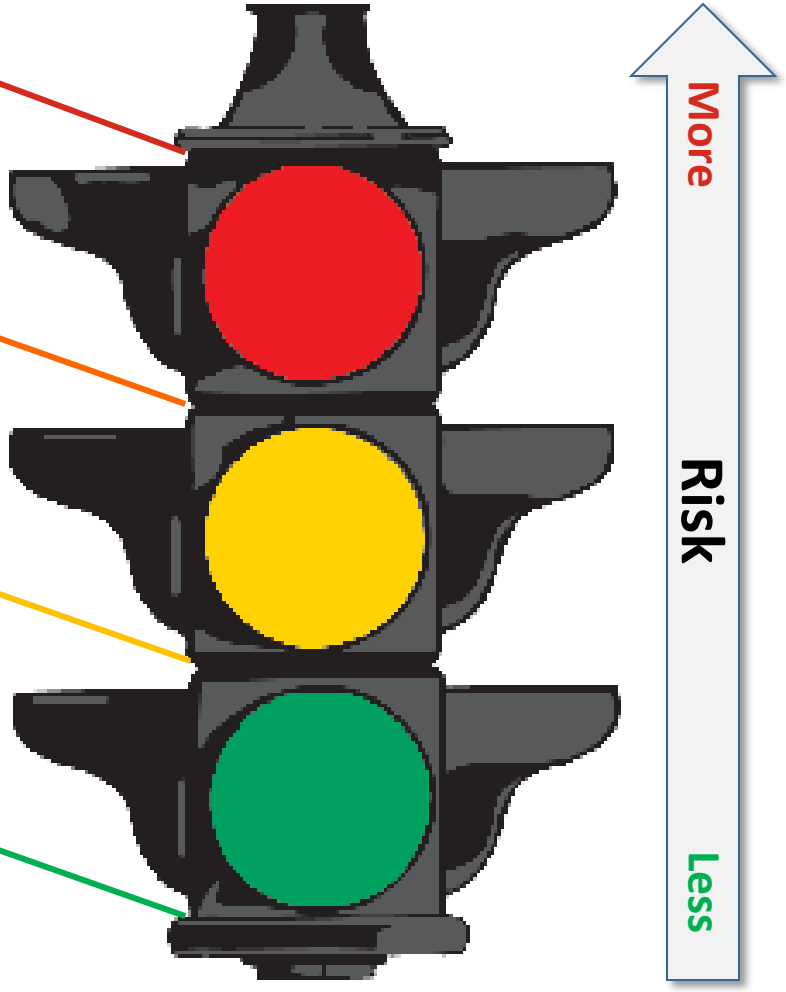
- Total enrollment (March 2016): 74.1M
  - Expansion population: 14.6M
- Medicaid expansion population most at-risk; funding cuts could jeopardize program as a whole

## Medicare

- Total enrollment (September 2016): 57.1M
  - Medicare Advantage: 18.9M
- Changes likely to be targeted (IPAB, CMMI) though some discussion of premium support

## Employer-Sponsored Insurance/Coverage

- Total enrollment (2015): 156.0M
- Likely to remain stable though Republicans propose to cap employee tax exclusion




Sources: http://kff.org/other/state-indicator/total-population/?dataView=1&currentTimeframe=0
https://www.medicaid.gov/medicaid/program-information/downloads/cms-64-enrollment-report-jan-mar-2016.pdf
https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2016-Fact-sheets-items/2016-06-30.html
https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Dashboard/Medicare-Enrollment/Enrollment%20Dashboard.html

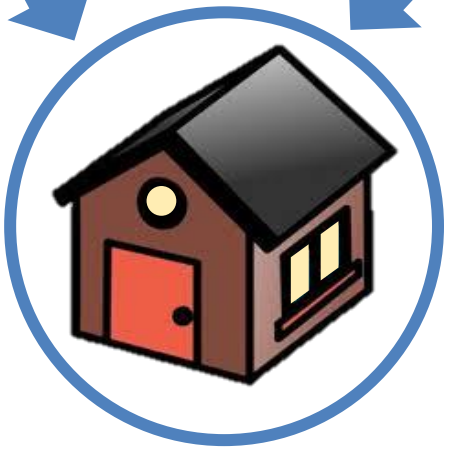
# Vehicles for Changing the ACA



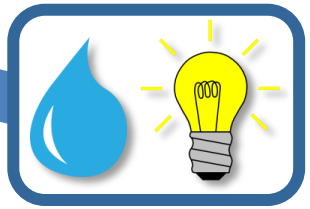
Legislation

Executive Action

Trump Administration will use executive orders and other administrative authority to reshape the ACA while Congress is debating repeal and replace legislation and many key changes will be embedded in funding decisions



Budget



# Legislative & Administrative Key Dates Timeline



## *Administrative Actions*

## *Legislative Actions*

**2017**

**Jan.**

President-elect Trump sworn in

Possible repeal using FY17 budget process

New Congress sworn in

**Feb.**

Cabinet confirmation hearings

FY 2018 Budget Committee allocations (and reconciliation instructions, if any)

**Mar.**

**Apr.**

**May**

2017 Medicare Trustees Report; IPAB likely triggered

Regulatory Process:

Waivers
Regulations
Other Guidance

**Jun.**

**Jul.**

**Aug.**

**Sept.**

FY 2018 Reconciliation Bill possible after Budget is agreed to

User Fee Acts likely a must-pass

CHIP/ Appropriations expires on 9/30

**Oct.**

**Nov.**

**Dec.**

*Dates Unclear: Decision on Mergers (January likely); Appellate Court decision on cost-sharing reductions (if not settled)*

# Budget Reconciliation Process

*Two* Reconciliation Bills possible in 2017 using FY17 and FY18 Budget Process



**Timeline for Reconciliation**

The President submits a budget request to Congress

The House and Senate pass concurrent budget resolutions. These can include **reconciliation instructions**

Budget Resolutions usually are passed first by Budget Committees in each Chamber

**The instructions specify which committees they apply to, the minimum deficit reduction that must be achieved, and usually provide a deadline by which the legislation is to be reported or submitted**

House and Senate committees mark up and report out reconciliation bills aligned with the reconciliation instructions

Congress passes a **consolidated budget reconciliation bill**. Final bill goes to the President to sign or veto

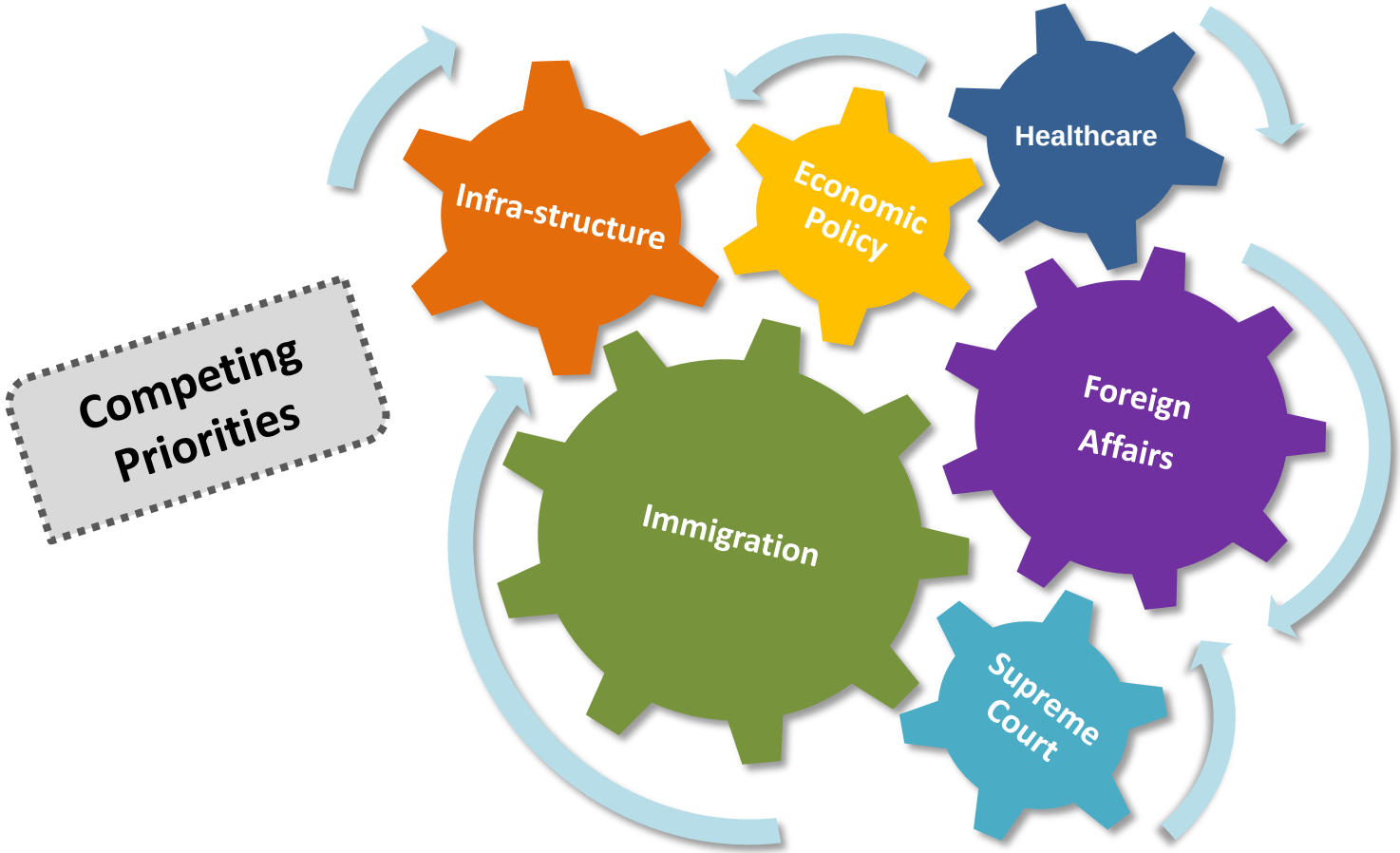
Repeal process has begun using FY2017 budget process, which could mean signed repeal legislation as early as January

# *Trump Administration and Healthcare Policy*

# President-elect Trump's Agenda



Trump has stated that **ACA repeal and replace is a top priority** but his agenda will be crowded with other priorities, including infrastructure and jobs, immigration, tax reform, foreign affairs and the Supreme Court



# Implications of Key Nominations



| | Name | Nominated/ Selected for | Background | Possible Implications |
|---|---|---|---|---|
|  | Rep. Tom Price | HHS Secretary | Staunch conservative in all areas since joining Congress in 2004; introduced an ACA replacement bill in every Congress since 2009 | The nomination of Rep. Tom Price as HHS Secretary and Seema Verma as CMS Administrator sends the signal that there will be major administrative actions |
|  | Seema Verma | CMS Administrator | Consultant who was key in designing Medicaid expansion and waivers in IN, IA, OH, and KY | |
|  | Rep. Mick Mulvaney | OMB Director | Served as Member of Congress since 2010 and a founding member of the House Freedom Caucus; known as a proponent of spending cuts and interested in reworking regulations | Will push for serious budget reforms and spending cuts; oversees all regulations and waivers; likely to impose budget discipline on waivers |
|  | Andrew Bremberg | Director of the White House Domestic Policy Council | Worked at HHS from 2001-2009, as a top aide to Senator Mitch McConnell, and on Gov. Walker's presidential campaign; served as head of Trump's HHS transition team | Has served on teams that proposed repealing the ACA and dividing Medicaid into smaller programs with separate funding |

- *Many of President-elect Trump's healthcare transition team members work for the Heritage Foundation or American Enterprise Institute (AEI), which advance conservative ideals at the local, state, and federal levels of government. The transition team will help shape the new administration's agenda and priorities.*

# Trump Administrative Actions Will Start in January



Trump's use of **administrative actions** (directives that guide executive action and set requirements for stakeholders but do not require congressional approval, such as regulations, waivers and enforcement policies) will be an early sign of his priorities.

- Administration can issue new regulations and executive orders and establish new policies within statutory guidelines at any time
  - Can suspend any rule that has not taken effect, 60 days for major rules
  - Can reshape many policies by waivers/demonstrations
  - Some state Medicaid programs are run completely under waiver authority
  - Could decide to keep CMS Innovation Center but use demonstrations in a much different way (e.g., replace mandatory payment reforms with market deference)
- Congress can overturn a rule within 60 legislative days under Congressional Review Act
- Some of the policies included in "replace" proposals could and are more likely to be achieved by administrative action (e.g., changes to essential health benefits)

# *Individual Market and Medicaid: Repeal and Replace*

# Comparison of Leading Repeal & Replace Proposals (1 of 2)



| | H.R. 3762 (FY16 Budget Reconciliation) | Empowering Patients First Act (Tom Price) | A Better Way (Paul Ryan) | Patient CARE Act (Burr, Upton, Hatch) | Heritage Foundation [1] |
|---|---|---|---|---|---|
| **Tax Credits & HSAs** | Repeals tax credits with two-year delay<br>Enhances value of HSAs | Provides tax credits adjusted for age<br>Deposits unused credit in HSA and enhances value of HSAs | Provides tax credits adjusted for age<br>Deposits unused credit in HSA and enhances value of HSAs | Provides tax credits adjusted for age and income up to 300% FPL<br>State option to auto-assign individuals to plans with opt-out rights<br>Enhances value of HSAs | Provides tax credits adjusted by age<br>Enhances value of HSAs |
| **Marketplaces** | Not addressed | Tax credits available through private portals; no enrollment through public portals | Tax credits available through private portals | Does not directly address | Does not directly address |
| **Individual & Employer Mandate** | Repeals individual and employer mandates | Repeals individual and employer mandates | Repeals individual and employer mandates | Repeals individual and employer mandates | Repeals individual and employer mandates |
| **Guaranteed Issue & Preexisting Conditions** | Not addressed | Guaranteed issue at standard rates only for individuals who maintain continuous coverage<br>Individuals with coverage gaps may be subject to medical underwriting and assigned to high-risk pool | Guaranteed issue at standard rates only for individuals who maintain continuous coverage<br>Individuals with coverage gaps may be subject to medical underwriting and assigned to high-risk pool | Guaranteed issue at standard rates only for individuals who maintain continuous coverage<br>Individuals with coverage gaps may be subject to medical underwriting and assigned to high-risk pool | Guaranteed issue at standard rates only for individuals who maintain continuous coverage<br>Individuals with coverage gaps may be subject to medical underwriting and assigned to high-risk pool |

1. Column reflects a combination of proposals by the Heritage Foundation.

# Comparison of Leading Repeal & Replace Proposals (2 of 2)



| | H.R. 3762 (FY16 Budget Reconciliation) | Empowering Patients First Act (Tom Price) | A Better Way (Paul Ryan) | Patient CARE Act (Burr, Upton, Hatch) | Heritage Foundation |
|---|---|---|---|---|---|
| **High-Risk Pools** | Not addressed | Federal funding for state-run high-risk pools ($3B over 3 years) | Federal funding for state-run high-risk pools ($25B over 10 years) | Targeted federal funding for state-run high-risk pools | Does not address |
| **Medicaid Expansion** | Eliminates Medicaid expansion and enhanced FMAP with a two-year delay | Eliminates Medicaid expansion and enhanced FMAP | Limits Medicaid expansion to current expansion states and phases down enhanced FMAP<br>Permits reduced eligibility thresholds and enrollment freezes for expansion adults | Eliminates Medicaid expansion and enhanced FMAP | Eliminates Medicaid expansion and enhanced FMAP |
| **Medicaid Financing** | No changes | No changes | Per capita cap across four categories: aged, blind and disabled, children, and adults<br>Permits states to opt out of per capita cap and receive a block grant<br>Eliminates 23 percentage point bump in CHIP funding | Per capita cap for pregnant women, children and families<br>Retains pre-ACA FMAP for acute care elderly and disabled<br>Provides “defined budget” for LTSS for elderly and disabled who do not access eligible tax credits | Per capita cap across three categories: able-bodied, disabled, and elderly |

# Individual Market: Mix of Repeal/Rollback Strategies



**If repeal and replace are decoupled, a key issue will be the extent to which the repeal effort alters the terms and dynamics of the replacement debate**

## On the Menu for Congressional Repeal

- **Tax credits:** repeal likely delayed to avoid gap
- **Individual mandate:** if not delayed, will require corrective action to avoid market collapse
- **Employer mandate**: has fiscal impact, but market impact would be minimal
- **All ACA taxes:** will require new funding source(s) if repealed before replace
- **Insurance reforms:** not in reconciliation bill but may be attempted again

## Potential Administrative Actions

- **Insurance reforms:** rollbacks possible in some areas
  - **Benefits:** could be rolled back, statute only lists 10 categories
  - **Rating:** admin flexibility is limited, 3:1 age band and other requirements in statute
  - **Preexisting conditions:** can only be changed by statute
- **Interstate sales of insurance:** could pressure states by regulation

## Other Administrative Actions

- **Market destabilization**
  - Shut off cost sharing reductions (CSRs)
  - Expand mandate exemptions
  - Reduce consumer assistance
- **Market stabilization during transition**
  - Pay insurers for risk corridors/reinsurance
  - Stricter enrollment rules

# Impact of Repeal without Replace on Individual Market



## 2017 coverage mostly in place and secure through insurer contracts

- Resolving CSR dispute could require corrective plan to avoid immediate disruption
- Changes to certain rules (mandate, SEPs) could impact 2017 insurer costs

## Early repeal could trigger market collapse for 2018

- Insurer participation declining even without repeal
- Insurers must plan for 2018 participation beginning in spring of 2017
- 2016 claims experience could have impact in either direction
- States with less insurer participation are most vulnerable

## Replacement plan will impact 2018 election unless delayed to 2020 or later

- Open enrollment for 2019 will start during 2018 election

## Delayed replacement could lead to other actions/reactions

- Grandfathering of current coverage
- Perennial delays through SGR-like process
- Expansion of 1332 waivers or other forms of state flexibility

# Replacement Proposals for Individual Market



**Key Issues**

**Alternative to mandate:** Proposals require enrollees to maintain continuous coverage to have all their health conditions covered at standard rates

- Individuals with coverage gaps may be subject to medical underwriting and assigned to high risk pools
- Creates a balanced risk pool by financing certain high risk individuals outside standard risk pool

**Tax credits:** Proposals vary as to size of tax credits and who is eligible

- Reps. Price and Ryan propose varying tax credits by age only and making them available through private websites
- Tax credits generally designed to purchase high deductible plan with help from enhanced value HSA

## Other Replacement Issues

| Insurance reforms: | Portability: | Benefit Caps: | Dependent coverage: | Federal preemption: |
|---|---|---|---|---|
| Proposals eliminate most federal benefit and rating rules and generally leave consumer protection issues to states | Proposals extend HIPAA-style portability to individual coverage, which may require minimum value standards or limits on buying up to better coverage | Proposals appear to allow annual limits and vary on lifetime limits | Proposals vary on whether to retain federal rules on dependent coverage to age 26 or leave this to states | Rep. Price proposes to preempt states for interstate sales (Ryan allows state choice) and both proposals preempt state insurance laws that restrict business and individual pooling |

# Challenges For Repeal and Delay in Individual Market



**Repeal w/out replace may be politically expedient but could lead to market collapse**

- Short term fix needed to promote insurer participation and/or stable pricing

**8-10 million subsidized enrollees in Marketplaces will be highly sensitive to coverage disruptions**

- Concentrated beneficiaries generally trump diffuse majority

**Republicans are deeply divided over amount of tax credits and who should be eligible for them**

- All solutions will offend key constituencies

**35 states ran high risk pools pre-ACA covering less than 1% of uninsured (226,000 total lives) and typically exceeding cost projections**

- States will be wary of high risk pools without adequate funding

**Repeal vote will require 49 of 52 Republican Senators if all Democrats oppose**

# Medicaid: Repeal and Replace Options



**Unclear how repeal and replace legislation will address Medicaid**

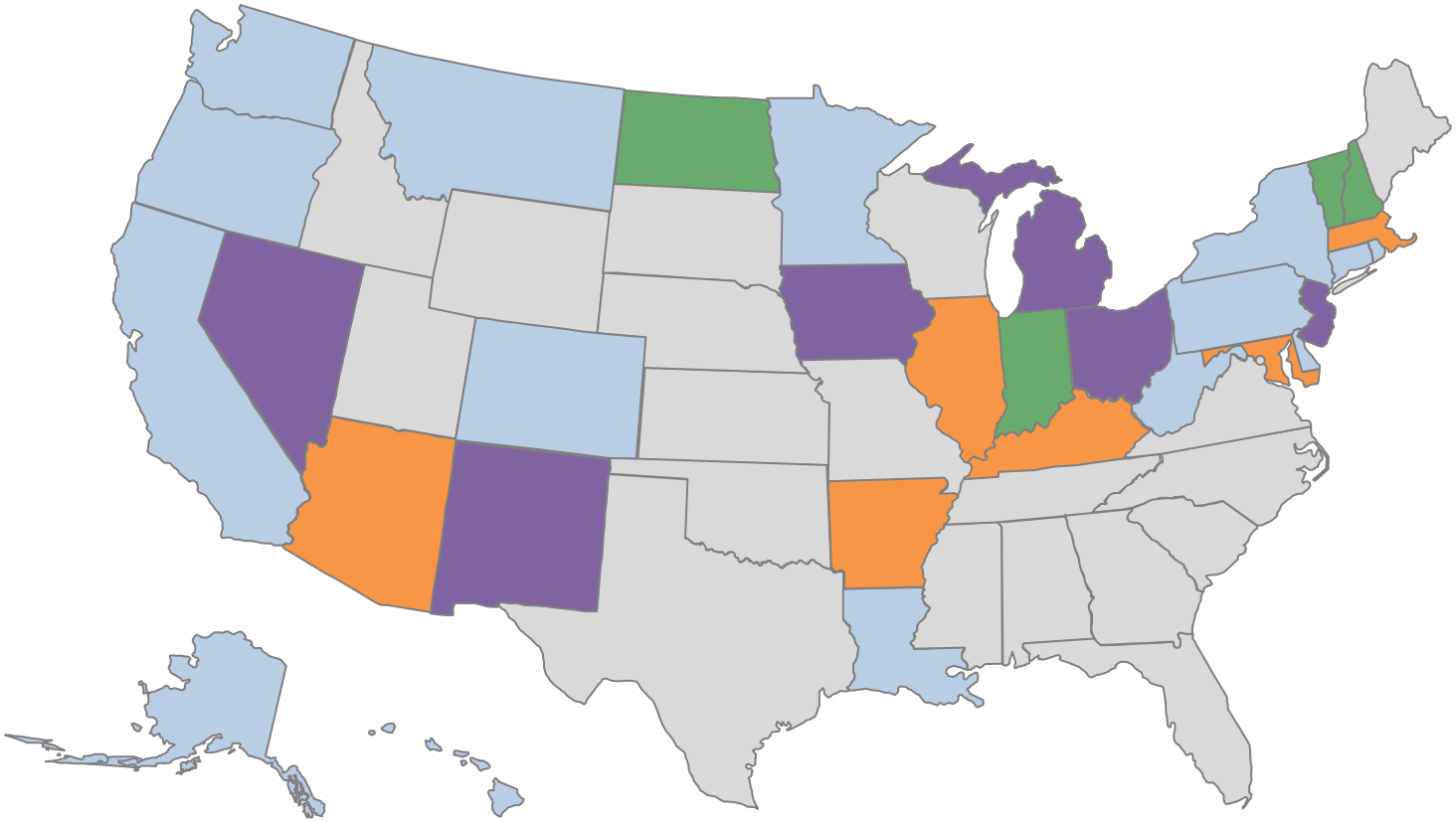
## Legislative Options

- **Medicaid not included in a repeal and replace legislation**
  - Possible that Congress chooses to focus on Marketplaces only and does not attempt to address Medicaid through reconciliation
- **Eliminate or modify Medicaid expansion**
  - Different variations possible; e.g., full elimination after a transition or grandfather states but no additional states permitted to expand with the enhanced match
- **Cap federal funding for Medicaid through block grant or per capita cap**
  - Included in the Ryan and Trump platforms, although challenging to implement under reconciliation given policy limitations

# 31 States and DC Have Expanded Medicaid



**Republican governors were elected in four states that have expanded Medicaid**
**16 Medicaid expansion states will now have a Republican governor**



New Republican governor; expansion state

Sitting Republican governor; elected post-Medicaid expansion

Sitting Republican governor; presided over Medicaid expansion

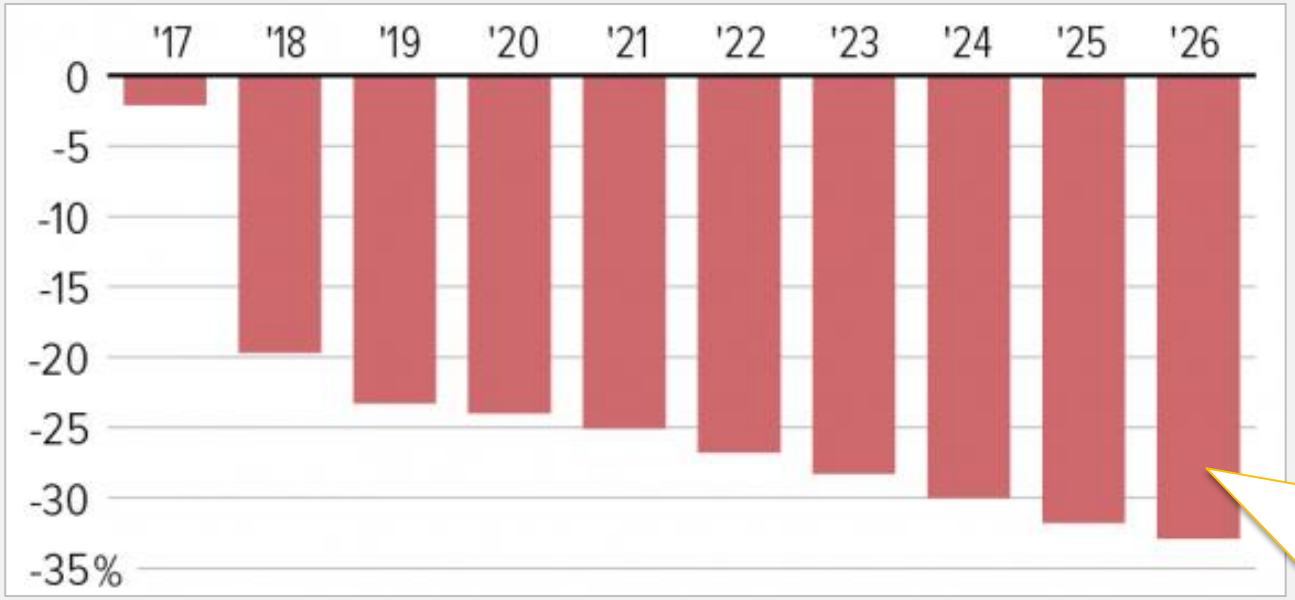
Democratic governor

# Beyond Expansion: Alternative Medicaid Financing Proposals



**All recent proposals to cap federal Medicaid funding would sharply reduce federal payments**

## Percent Cut in Federal Medicaid and CHIP Funds (House FY 2017 Plan Relative to Current Law)




Proposal would cut federal Medicaid funds by $1 trillion (or 25%) over ten years, resulting in a combined 33% reduction in federal funds for Medicaid and CHIP

**Sources:** National and State-by-State Impact of the 2012 House Republican Budget Plan for Medicaid John Holahan, Matthew Buettgens, Caitlin Carroll and Vicki Chen, The Urban Institute, October 2012. Available at: https://kaiserfamilyfoundation.files.wordpress.com/2013/01/8185-02.pdf; "Medicaid Block Grant Would Add Millions to Uninsured and Underinsured," Center on Budget and Policy Priorities, March 2016. Available at: http://www.cbpp.org/research/health/medicaid-block-grant-would-slash-federal-funding-shift-costs-to-states-and-leave#_ftnref5

# Block Grants



## States receive no more than a set amount of federal funds annually

- Amounts typically allocated among states by reference to spending in a base year
- Caps could be frozen (no year-to-year increase), but Medicaid block grant proposals typically allow capped payments to grow based on a national trend rate (e.g., CPI or GDP)
- Provides funding certainty to federal government; shifts risk for enrollment and health care costs to states
- States may or may not have a state spending requirement
- Eligibility and benefit rules set by block grant legislation, generally giving states more flexibility to set eligibility, benefits and other program features; may also impose new obligations on states

**Source:** MACPAC, "MACstats: Medicaid Spending by State, Category, and Source of Funds, FY 2015 (millions)" Available at: https://www.macpac.gov/wp-content/uploads/2015/01/EXHIBIT-16.-Medicaid-Spending-by-State-Category-and-Source-of-Funds-FY-2015-millions.pdf.

# Per Capita Caps



**States receive fixed amount of federal funds per Medicaid enrollee**

- Per capita amount set based on state's per enrollee spending in base year; amounts typically grow consistent with a national trend rate
- Caps would vary by eligibility category (e.g., disabled, children)
- Shifts risk of higher health care costs, but not enrollment, to states
  - ***However***, may be subject to national cap, limiting ability for federal funds to grow with enrollment; in which case, both enrollment and cost risk shifted to state
- State match typically required; federal funds provided to states based on actual expenditures up to the cap

**Sources:** "Alternative Approaches to Federal Medicaid Matching," MACPAC, June 2016. Available at: https://www.macpac.gov/wp-content/uploads/2016/06/Alternative-Approaches-to-Federal-Medicaid-Financing.pdf; "Block Grants and Per Capita Caps," Urban Institute, September 2016. Available at: http://www.urban.org/research/publication/block-grants-and-capita-caps

# New Waiver Requests Likely



## Premiums

- Premiums above 2% of income
- Loss of coverage for nonpayment of premiums for those ≤ 100% FPL
- Lockout for nonpayment of premiums (beyond Indiana approval)

## Restrictions on eligibility

- Work requirements
- Time limits
- Enrollment caps/enrollment periods

## Coverage rollbacks/ coverage expansions

- Enhanced match for expansions < 133% FPL

## Lockouts for failure to renew eligibility

## Other Changes

- “Block grant” type financing
- Federal funding for  Institutions for Mental Diseases (IMD)

# Challenges to Eliminating Medicaid Expansion or Changing Funding Structure



**Most individuals who have gained coverage through the ACA are enrolled in Medicaid; it is unlikely that a roll back in expansion funding could be accomplished in a way that preserves coverage**

- Currently, 16 of the 31 expansion states have R governors; eliminating the expansion dollars will have large and immediate budget implications on all expansion states

**Medicaid is a complex program and much larger than the marketplace (over $500 billion in spending, 70+ million enrollees); eliminating the expansion would have significant consequences for key stakeholders including beneficiaries, hospitals, pharma and managed care plans**

- ~60% of Medicaid spending is devoted to services for high cost and growing populations including the elderly and disabled; it will be difficult to reach consensus on whether and how to cap spending for these groups and yet a cap on only some of the program may lead to "leakage" and unintended costs

**"Formula fights" always arise when spending cap proposals are debated, and recent developments in Medicaid financing (expansion dollars, other ACA-triggered funding, growth in supplemental payments) will make interstate disputes over how to size and trend the capped funding even harder**

# Congressional Budget Office (CBO)



**Individual insurance under repeal proposals would likely not meet the CBO definition of healthcare coverage**

## 12/20 Blog Post

- Most repeal proposals include tax credits with little regulation of the non-group insurance market
- Many insurance products under these proposals would likely not meet the CBO/JCT definition of health insurance coverage

## Definition of Coverage

- Currently relies on ACA requirements in large group and small/non-group markets (EHBs, minimum actuarial value standards, etc.)
- If ACA is repealed, CBO will revert to broader definition of a comprehensive major medical policy (covers high cost medical events and various services)

Sources:
https://www.cbo.gov/publication/52351/
https://www.cbo.gov/publication/52352?utm_source=feedblitz&utm_medium=FeedBlitzEmail&utm_content=855024&utm_campaign=0

# *Medicare and Employer-sponsored Coverage: Incremental Changes*

# Medicare



**Many Republicans support fundamental changes to Medicare consistent with the private sector model of Part D; however, Medicare is a political "third rail"**

- Short-term Medicare changes in legislation are unlikely, but still possible
  - No discussion of repealing the ACA Part D benefit changes
  - ACA Payment cuts for providers already included in baseline
- Medicare changes through administrative actions are more likely
  - CMS Innovation Center is likely to continue, with possible restrictions
  - Independent Payment Advisory Board (IPAB) is likely to be triggered, highlighting Medicare spending and initiating restrictions to Medicare spending; IPAB could not be repealed through reconciliation according to the Senate Parliamentarian in 2010
- Speaker Ryan/Rep Price (HHS Secretary nominee) platforms call for premium support, although several Senate Republicans have suggested no interest in Medicare changes

# Employer-sponsored Coverage



**Employer market is most stable health care market and changes that are made will be carefully considered to minimize disruption**

- Employer mandate likely to be repealed along with individual mandate
  - Minimal impact on coverage, but loss of penalties has fiscal impact
- "Cadillac tax" likely to be repealed or altered
  - Unpopular with Republicans and Democrats but has significant fiscal impacts
- ACA reporting requirements likely to be streamlined but not eliminated
- Changes to some insurance reforms could affect employer coverage (e.g., preventive services, annual limits) but young adult coverage (>26 year old ACA provision) likely to remain
- Republicans favor longer term changes that will enhance value of individual coverage by diminishing advantages currently enjoyed by employer coverage
  - Replace "Cadillac tax" with cap on employee tax exclusion
  - Equalize tax treatment for individual and group insurance
  - Allow employees to choose individual or group tax breaks

# *Conclusion*

# Conclusion



**While important to look at past proposals to obtain an understanding of likely priorities, most of these proposals were put forth either pre-coverage gains or in light of a clear veto threat**

**Emerging proposals and final results may be very different based on:**

- Stakeholder positions
- Political dynamics
- Unforeseen events
- Facts on the ground

## Presentation developed by:


---

## Thank You!

Joel Ario| Managing Director
jario@manatt.com

Chiquita Brooks-LaSure| Managing Director
cbrooks-lasure@manatt.com