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Jessica L. Bailey-Wheaton, Esq., Editor
Todd A. Zigrang MBA, MHA, ASA, FACHE, Publisher

The 2016 Election and the ACA: The Future of Healthcare Reform (Part Two of a Two-Part Series)

During his campaign for the Office of the President of the United States, Donald Trump repeatedly attacked the *Patient Protection and Affordable Care Act* (ACA), a/k/a "*Obamacare*," as a flawed healthcare reform effort, and vowed that "*on day one*" of his administration, he would request that Congress "*immediately deliver a full repeal of Obamacare*."[1] However, since his victory over Democratic Party nominee Hillary Clinton on November 8, 2016, President-elect Trump has created uncertainty regarding the fate of the law, noting that he would seek to retain certain provisions of the law, including the ban on discrimination based on pre-existing health conditions and coverage extensions for children on their parents' plan until age 26.[2] Although legislative strategies to repeal the ACA have started to materialize, the fate of the law, as well as the longevity of the numerous benefits spurred by it, remain in the balance. This second installment of the two-part *Health Capital Topics* series on the 2016 election and the ACA will discuss the potential changes to the law that may be enacted during the Trump administration, as well as how those changes might occur.

Currently, much uncertainty surrounds the position held by President-elect Trump on healthcare reform. During his campaign, the policy platform by which the President-elect pursued the office included a call for Congress to "*completely repeal Obamacare*,"[3] a position he often repeated on the campaign trail and in debates with Hillary Clinton.[4] In particular, Trump offered that his administration would seek to eliminate the *individual mandate* provisions of the ACA, as well as convert Medicaid to a block grant program, i.e., provide states with a lump sum of federal dollars to provide healthcare for low-income beneficiaries.[5] However, since his victory on November 8, 2016, President-elect Trump has issued mixed messages regarding his opinion of the ACA. During a 60 Minutes interview, Trump stated that the ban on insurer discrimination against potential beneficiaries with pre-existing health conditions, along with coverage extensions for children to remain on their parents' health insurance plans until the age of 26, should be included within legislation that both simultaneously repeals the ACA and replaces it with new provisions.[6] Despite this statement, Trump's nomination of Tom Price, MD (R-GA), a six-term Republican congressman who has introduced bills to repeal the ACA on numerous occasions since the law was passed in 2010, as Secretary of the *U.S. Department of Health and Human Services* (HHS), may signal an intent to uphold his promise to repeal the law.[7] Trump and Rep. Price favor the provision of federal block grants to the states as the primary financing mechanism for Medicaid, which would likely create significant problems for the ACA's tactic of expanding the program to low-income adults.[8] As to Medicare, Rep. Price and House Republicans support offering a fixed amount of money for coverage of each beneficiary that could be used to buy private insurance or to pay for traditional Medicare. Critics of this approach argue that it leaves older Americans to fend for themselves if they need care that costs more than the federal contribution.[9]

The uncertain political environment, caused by the election of Donald Trump as President of the U.S. and Republican majorities in both the U.S. House of Representatives and the U.S. Senate, has led many commentators to examine if, and how, the President-elect will satisfy his campaign promise of repealing the ACA. In particular, a 2015 bill passed by both houses of Congress, but vetoed by President Obama, provides a window into how potential legislation that mandates changes to the ACA may be constructed and passed.[10] Among other provisions, the 2015 bill sought to repeal the following components of the ACA:

1. The individual and employer mandates;
2. Federal funding for Medicaid expansion;
3. The tax credit for small businesses providing health insurance coverage to their employees;
4. The tax on high-cost employer health benefit packages (i.e., the "*Cadillac Tax*");
5. The medical device excise tax;
6. The limit on annual contributions to flexible spending accounts; and,
7. Premium tax credits for qualifying purchasers of health insurance on the federally operated health insurance exchanges.[11]

The 2015 bill implements these provisions on a varied schedule, with certain provisions (e.g., the individual and employer mandates) set to expire upon passage,[12] while others (e.g., federal funding for Medicaid expansion, the small business tax credit) are mandated to expire two years after passage.[13] Legislation introduced under the

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Trump administration may retain these effective dates, although such legislation, without any replacement offered, may destabilize insurance markets and state Medicaid programs which rely on funds designated by the ACA to operate.[14]

The bill avoided a potential Senate filibuster by qualifying as *budget reconciliation* legislation, which term denotes a specific type of congressional act stemming from an instruction contained in a budget resolution passed by Congress and voted into law.[15] Although such legislation only requires passage by a majority vote, *budget reconciliation* bills "*may only include provisions that affect the revenues or outlays of the federal government*."[16] Consequently, any measure seeking to repeal provisions of the ACA while also avoiding a potential filibuster in the Senate must qualify as a budget reconciliation bill; such qualification may limit the ability of congressional Republicans to completely repeal the landmark legislation, which contains numerous provisions not affecting revenues and outlays of the federal government, including mandatory coverage of certain preventive care services without patient cost-sharing and medical-loss ratio requirements.[17]

Alternatively, Republicans may utilize the framework of previous bills introduced by Rep. Price to repeal the ACA. Rep. Price's legislation, the *Empowering Patients First Act*, would repeal the ACA and instead offer age-adjusted tax credits for the purchase of individual and family health insurance policies. It would also allow insurers to sell to residents of other states, authorize business and professional groups to provide coverage to members through association health plans, create incentives for people to contribute to health savings accounts, and offer grants to states to subsidize insurance for high-risk populations.[18] However, people with high-cost employer-sponsored health coverage could face new taxes, and patients who believe they have been injured by negligent doctors may find it more difficult to recover damages.[19]

In spite of the campaign rhetoric from Trump involving a full "*repeal*" of the ACA, legal and political commentators have noted that such a drastic, sweeping action is unlikely. Of note, repeal would jeopardize many of the healthcare system benefits attributable to the law. First, a full repeal of the law would jeopardize coverage for over 20 million Americans who currently have coverage under the law, which has helped the uninsured rate fall to nine percent, the lowest level in the history of the U.S.[20] Such loss of coverage across a large portion of the U.S. population could result in political upheaval for the newly-elected President.[21] Second, the law has stimulated numerous economic benefits, including:

(1) A decrease in the rate of growth of healthcare costs;
(2) Reductions in uncompensated care costs (particularly in states expanding Medicaid); and,
(3) A decrease in the number of families reporting difficulty paying medical bills.[22]

Repeal may endanger the longevity of these economic benefits, as such action may increase the deficit by more than $300 billion relative to keeping the law intact.[23]

Further, the current political environment may prevent a full repeal of the law. Certain provisions within the ACA, such as the expansion of coverage for adults under the age of 26, remain popular with both Republicans and Democrats, and are not likely to be removed from any replacement legislation.[24] Additionally, due to the potential for a filibuster of any measure repealing the ACA by Senate Democrats, a full repeal would likely require 60 votes to pass the U.S. Senate, as the Democrats will hold enough seats in the chamber to prevent a party-line supermajority held by Senate Republicans.[25]

In the wake of this election, a multitude of unresolved issues remain related to the future existence and impact of the ACA. In order to survive these dynamic changes, as during all times of significant upheaval and adjustment, it may be prudent for healthcare providers (both small and large) to seek the guidance of their professional advisors and, as always, consultants will be well-served to stay knowledgeable of the changing aspects of the U.S. healthcare delivery system in an ongoing era of reform. To support this objective, *Health Capital Topics* will provide periodic updates to this series relating to changes in the ACA and other healthcare reform initiatives, such as the passage of legislation altering, repealing, or defunding ACA programs and provisions. These future updates will serve to support professionals within the healthcare industry in their efforts to stay abreast of these changes, which will help build and maintain a requisite command of the body of knowledge relating to the historical background and current trends in the U.S. healthcare industry through the conceptual framework of the *Four Pillars of the Healthcare Industry*, i.e., *reimbursement*, *regulatory*, *competition*, and *technology*.

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Robert James Cimasi, MHA, ASA, FRICS, MCBA, CVA, CM&AA, serves as Chief Executive Officer of HEALTH CAPITAL CONSULTANTS (HCC), a nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, MO, serving clients in 49 states since 1993. Mr. Cimasi has over thirty years of experience in serving clients, with a professional focus on the financial and economic aspects of healthcare service sector entities including: valuation consulting and capital formation services; healthcare industry transactions including joint ventures, mergers, acquisitions, and divestitures; litigation support & expert testimony; and, certificate-of-need and other regulatory and policy planning consulting.

Mr. Cimasi holds a Master in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Institution of Chartered Surveyors (FRICS – Royal Institution of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Certified Valuation Analyst (CVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, and is the author of several books, the latest of which include: "*The Adviser's Guide to Healthcare – 2nd Edition*" [2015 – AICPA]; "*Healthcare Valuation: The Financial Appraisal of Enterprises, Assets, and Services*" [2014 – John Wiley & Sons]; "*Accountable Care Organizations: Value Metrics and Capital Formation*" [2013 - Taylor & Francis, a division of CRC Press]; and, "*The U.S. Healthcare Certificate of Need Sourcebook*" [2005 - Beard Books].

Mr. Cimasi is the author of numerous additional chapters in anthologies; books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious "*Shannon Pratt Award in Business Valuation*" conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows. In 2011, he was named a Fellow of the Royal Institution of Chartered Surveyors (RICS). In 2016, Mr. Cimasi was named a "*Pioneer of the Profession*" as part of the recognition of the *National Association of Certified Valuators and Analysts* (NACVA) "*Industry Titans*" awards, which distinguishes those whom have had the greatest impact on the valuation profession.

Todd A. Zigrang, MBA, MHA, ASA, FACHE, is the President of HEALTH CAPITAL CONSULTANTS (HCC), where he focuses on the areas of valuation and financial analysis for hospitals, physician practices, and other healthcare enterprises. Mr. Zigrang has over 20 years of experience providing valuation, financial, transaction and strategic advisory services nationwide in over 1,000 transactions and joint ventures. Mr. Zigrang is also considered an expert in the field of healthcare compensation for physicians, executives and other professionals.

Mr. Zigrang is the co-author of "*The Adviser's Guide to Healthcare – 2nd Edition*" [2015 – AICPA], numerous chapters in legal treatises and anthologies, and peer-reviewed and industry articles such as: *The Accountant's Business Manual* (AICPA); *Valuing Professional Practices and Licenses* (Aspen Publishers); *Valuation Strategies; Business Appraisal Practice*; and, *NACVA QuickRead*. In addition to his contributions as an author, Mr. Zigrang has served as faculty before professional and trade associations such as the American Society of Appraisers (ASA); the National Association of Certified Valuators and Analysts (NACVA); Physician Hospitals of America (PHA); the Institute of Business Appraisers (IBA); the Healthcare Financial Management Association (HFMA); and, the CPA Leadership Institute.

Mr. Zigrang holds a Master of Science in Health Administration (MHA) and a Master of Business Administration (MBA) from the University of Missouri at Columbia. He is a Fellow of the American College of Healthcare Executives (FACHE) and holds the Accredited Senior Appraiser (ASA) designation from the American Society of Appraisers, where he has served as President of the St. Louis Chapter, and is current Chair of the ASA Healthcare Special Interest Group (HSIG).

John R. Chwarzinski, MSF, MAE, is Senior Vice President of HEALTH CAPITAL CONSULTANTS (HCC). Mr. Chwarzinski's areas of expertise include advanced statistical analysis, econometric modeling, as well as, economic and financial analysis. Mr. Chwarzinski is the co-author of peer-reviewed and industry articles published in *Business Valuation Review* and *NACVA QuickRead*, and he has spoken before the Virginia Medical Group Management Association (VMGMA) and the Midwest Accountable Care Organization Expo.

Mr. Chwarzinski holds a Master's Degree in Economics from the University of Missouri – St. Louis, as well as, a Master's Degree in Finance from the John M. Olin School of Business at Washington University in St. Louis. He is a member of the St. Louis Chapter of the American Society of Appraisers, as well as a candidate for the Accredited Senior Appraiser designation from the American Society of Appraisers.

Jessica L. Bailey-Wheaton, Esq., is Vice President and General Counsel of HEALTH CAPITAL CONSULTANTS (HCC), where she conducts project management and consulting services related to the impact of both federal and state regulations on healthcare exempt organization transactions and provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services. Ms. Bailey is a member of the Missouri and Illinois Bars and holds a J.D., with a concentration in Health Law, from Saint Louis University School of Law, where she served as Fall Managing Editor for the *Journal of Health Law & Policy*.

Kenneth J. Farris, Esq., is an Associate at HEALTH CAPITAL CONSULTANTS (HCC), where he provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services, and tracks impact of federal and state regulations on healthcare exempt organization transactions. Mr. Farris is a member of the Missouri Bar and holds a J.D. from Saint Louis University School of Law, where he served as the 2014-2015 Footnotes Managing Editor for the *Journal of Health Law & Policy*.