ACA “Repeal” Strategies

- Repeal and Delay

- Repeal and Replace

- 3 “Phases” of Repeal and Replace
  - Phase 1 - The “Reconciliation” Repeal-Replace Bill
  - Phase 2 - Administrative Actions Taken By HHS and the White House
  - Phase 3 - Passing “Replace” Plans Through the Normal Legislative Process

ACA Repeal-Replace Bill

- Entitlement reform (i.e., Medicaid reform)
- “Stabilizing” the individual health insurance markets
- Repealing all of the ACA’s taxes in advance of Tax Reform

Market “Stabilization”

- How do we “stabilize” the unbalanced individual market?
- Bi-partisan package?
  - Funding for the “cost-sharing” subsidies
  - Federal reinsurance dollars
  - Modifications to ACA Section 1332
  - Individuals of all ages purchasing an ACA-defined “catastrophic” plan
  - Changes to the “employer mandate”??
  - Replacement for the “individual mandate”??

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- Repeals the “individual mandate” penalty tax
- Repeals the “employer mandate” penalty tax
- Repeals the “spending” portions of the ACA
  - For example, the ACA’s Medicaid expansion, premium subsidies, and cost-sharing subsidies
- Re-allocates ALL of the spending portions of the ACA in the form of a block grant to the States
  - States could set up a single-payer system or they could offer a Medicaid-plan to every person without an employer plan (and regardless of income)
  - States could auto-enroll every person – regardless of income – in individual market plans with a tax credit and an HSA contribution
- Provides up to $25 billion in a Stability-like Fund for 2019 and 2020

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- To get the funds, the State must do at least 1 of the following things:
  - Set up a high-risk pool to help pay for high-utilizers in the individual market
  - Enter into a risk-sharing arrangements with carriers selling individual market plans
  - Provide direct payment to health care providers (e.g., hospitals) operating in the State
  - Provide some sort of mechanism to reduce out-of-pocket costs for individual market plans (e.g., cost-sharing subsidies)
  - Provide some sort of mechanism to help people purchase an individual market plan (e.g., premium subsidies)

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- States receiving funds – and also block grants starting in 2020 – can waive the following Federal requirements:
  - The “adjusted community” rating rules for individual and small group plans (but rates cannot be based on an individual’s sex, race, religious, creed, (protected under the Constitution).
  - The prohibition against developing premium rates for individual and small group plans based on a person’s (or their dependents) health status
  - The Federal “essential health benefits” standard (a State could instead establish its own benefits standards)
  - The Federal MLR rules

1332 Waivers

- You need to get younger/healthier people into the risk pool
  - You can do this through auto-enrollment
  - You could do this with a “carrot” (e.g., giving younger people a much higher premium subsidy than older people)
  - You could to this with a “stick” (e.g., create a State “penalty tax” or a “continuous coverage” rule)
- You need some sort of reinsurance program and/or high-risk pool
  - You can do this by building on your existing high-risk pool and establishing an additional reinsurance program, or you can set up an “invisible high-risk pool”
- You can set your own “essential health benefit” (EHB) standard that is “at least as comprehensive” as the Federal EHBs
  - You can prescribe more limited categories under each of the 10 Federal EHBs
  - You can develop an “actuarial equivalent” plan with benefits less than the Federal EHBs
- You need some form of premium and cost-sharing subsidies
  - You can look to a “defined contribution” model too

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Questions?

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