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Labor and Employment Alert: What Does the 2016 Election Mean for the Affordable Care Act?

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For now, stay the course and stay tuned...

There are a lot of moving parts and different proposals out there. It is impossible to predict exactly what form the 'repeal and replace' process will take. The Republicans do not have a filibuster proof majority. While it is possible to repeal revenue related provisions with a simple majority using the budget reconciliation process, any repeal of the non-revenue provisions can be struck from a budget reconciliation bill.

For example, in legislation that was vetoed by President Obama in 2015, Congress repealed the various employer and employee mandate excise taxes, the availability of the premium and cost sharing subsidies of policies sold in the Obamacare exchanges, and various other taxes, but kept all of the ACA market reforms.

While legislative action is in process (or if it can't get through), the president could issue a directive to the relevant agencies to cease enforcement activities and to revise the sub-regulatory guidance.

Some additional reform proposals under consideration are allowing people to buy insurance across state lines, allowing people to access imported prescription drugs, and replacing the current tax treatment of medical insurance premiums with a capped deduction (employer) or above-the-line tax credit (individual nonemployer coverage).

We will continue to monitor developments and issue client alerts when we have something more than speculation.