

## Health agenda shifts gears in Obamacare repeal's ashes



[Jonathan Gardner](#)

Defeat of legislation to repeal the US Affordable Care Act (ACA) has not left President Donald Trump's healthcare agenda completely in tatters, but it is a setback that will force him and his Republican congressional allies to limit their ambitions.

Narrow legislation to ease enforcement of penalties on non-enrolees or providing more flexibility in the Medicaid programme could still pass, but a grand promised repeal-and-replace plan that will satisfy the entire party is off the table. It also raises the possibility that President Trump will follow through on threats to act on drug pricing to compensate for the embarrassment of this major legislative defeat – on the other hand, a stated shift to tax reform has the potential to stimulate strategic biopharma manoeuvres.

In any case, investors saw a positive in the elimination of an immediate drug pricing threat ([Repatriation windfall could spur US M&A, November 15, 2016](#)). The S&P pharma and Nasdaq biotechnology indices outperformed broader markets, closing 3% and 1% higher, respectively.

### Law of the land, but ...

In acknowledging that there would be no vote on the American Health Care Act on Friday, House Speaker Paul Ryan said that Obamacare, as ACA is known informally, “is the law of the land”. This by no means precludes congressional and agency interventions that can affect the law's operations, particularly those that conservatives have criticised since its enactment in 2010.

A top priority might be reducing or doing away with the tax penalty paid by those who decline health insurance coverage, a provision that could fall within the scope of budget legislation or tax reform, or potentially could simply go unenforced by the tax-collecting Internal Revenue Service. The administration took steps in this last direction when it [eased reporting requirements](#).

The willingness of individuals to decline insurance coverage and pay the penalty was a point raised repeatedly by Republicans advocating ACA repeal. However, this will probably only lead to further shrinkage of the individual market, making premiums more expensive and often unaffordable for those who remain. This could be countered by tax credits to subsidise premiums.

Congress or the administration could probably also achieve some changes to the federal-state Medicaid programme for low-income and disabled people through budget legislation or regulatory shifts.

While they would probably not succeed in setting per-capita or state-specific spending limits – changes that would have cost 14 million people Medicaid coverage by 2026 under the ACA repeal bill – Congress or the Centers for Medicare and Medicaid Services could allow governors to have more authority over benefit designs or populations covered by the programme.

Expansions of Medicaid coverage have taken place in 32 states, and programme enrollment grew from 50 million to 69 million since the ACA was enacted in 2010. Medicaid prescription drug spending grew a corresponding amount, by 56% to \$32bn in 2015, double the 28% increase for prescription drug spending from all sources. Thus the biopharma world will want to watch changes to Medicaid coverage closely.

### Pricing and taxes

While the signature healthcare issue of the presidential campaign has reached stalemate, drug pricing still remains a concern of the White House, as demonstrated by President Trump's remarks last week that he intended to make a “competitive bidding” process part of the ACA replacement package. Bernstein analyst Ronny Gal wrote this morning that this statement suggested that a bill was close to completion.

It is still a mystery what the president means; Mr Gal wrote that some in the biopharma sector expected the drug pricing changes to focus on consumer out-of-pocket costs rather than the price charged by pharmaceutical manufacturers. If this is the case it would come as a relief to the sector, which has been operating in an atmosphere of distress since Mr Trump revived campaign pledges to act on pricing ([Fickle](#)

[Trump showers disappointment on biopharma's golden day, January 12, 2017](#)).

Also entering the frame is corporate tax reform, to which Mr Trump said he would turn following the collapse of the ACA repeal bill ([Medtech tax repeal misses again - but suspension still in place, March 27, 2017](#)).

With these pieces in place, one could see an attractive deal being offered to the biopharma sector: make some concessions on pricing in return for a cut in corporate tax rates and an opportunity for a low-cost repatriation of overseas cash. For biopharma investors the sting of pricing limits could be soothed by the hope that they would see some of that overseas cash flow to them in the form of special dividends or share buybacks.

That presumes, of course, that the White House has the discipline to execute such a grand bargain. For all of his purported skills as a deal-maker in the business world, Mr Trump has yet to translate these to the political sphere.

To contact the writer of this story email Jonathan Gardner in London at [jonathang-us@epvantage.com](mailto:jonathang-us@epvantage.com) or follow [@ByJonGardner](#) on Twitter

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