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Summary of Presentation on the ACA and Congress in 2015
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I. The Political Landscape

- The political landscape in the 114th Congress is not at all favorable for health reform and the Affordable Care Act (ACA) in particular. Republicans in Congress have committed themselves to repeal the ACA; there have been over 50 votes to repeal the ACA or substantially cut it down in the U.S. House of Representatives. Following the 2014 elections, Republicans are now have majorities in control in both houses of Congress:
 - U.S. House of Representatives: The Republican-Democratic breakdown is 246-188. (There is one vacancy as of January 5, 2015, due to the resignation of Michael Grimm in NYS; there will be a special election to fill his seat.)
 - U.S. Senate: The Republican-Democratic breakdown is 54-46 (the 46 number includes two independents who caucus with the Democrats: Bernie Sanders of Vermont and Angus King of Maine.)
- Despite the strong majorities the Republicans possess in both houses of Congress, there are at least 3 counterweights to Republicans achieving their goals of repealing or eviscerating the ACA:
 - First, you need 60 votes to get things done in the Senate for most purposes. As the Republicans have only 54 votes, they need Democratic help to get to 60, which they are extremely unlikely to get on most ACA issues.
 - Second, Obama has threatened to veto several specific proposed changes to the ACA and is expected to aggressively fight any moves to substantially change it -- his "signature" domestic legislative achievement. The Senate Republicans do not of course have the necessary two-thirds votes to overturn his vetoes.
 - Third, there are substantive and strategic divisions among Republicans on how to proceed, which will make a unified Republican legislative strategy hard to implement.
- Plus, there are the *political constraints*:
 - The ACA is now in place: As a result:
 - There is potentially greater support for health reform from the grassroots. Now that the ACA has now been implemented (exchanges have been set up in the states and a federal exchange is in place; millions have enrolled and are receiving health

coverage and other benefits of the law), the question of ACA repeal is not abstract. Congressmembers that are proposing to repeal the ACA or core provisions of the ACA are *proposing to take away people's existing benefits or deny them benefits that residents of other states have* – a much more difficult political fight to undertake.

- Politically powerful constituencies will now defend the ACA. Now that the ACA is in place, strong interest groups other than consumers and who are not necessarily “progressives” are strongly invested in protecting the ACA, in part because they rely on ACA funding (example: hospitals who benefit from the Medicaid expansion).
 - Some Republican officeholders have already backed down now that the ACA is in place. For example, very conservative Republican Governors like Kasich of Ohio have given into political reality and are proposing to expand or expanding Medicaid in their states.
 - Polling: The polling on the ACA is mixed (depends on how you ask the question). Increasingly greater percentages of those polled are against repealing the ACA outright.
 - Elections in 2016: Republicans and other ACA opponents may be nervous to run on a platform that they will take existing benefits of their constituents away.
- Role of New York State House members: The New York State House delegation is now 18-8 Democratic. (Again, there is one vacancy, Michael Grimm's seat due to his resignation.) There is a possibility of health advocates influencing New York Republican House members to stop bad legislation and in limited cases to promote good legislation (example of latter: reauthorizing Children's Health Insurance Program; see below for details).

II. 11 Things Republicans in Congress Might Propose

Introduction: I have developed a list of 11 items on the “wish list” of Republicans in Congress and other ACA opponents. (All of the items below involve primarily federal work, except for the 10th item, which might entail state-level work.) I offer a qualification: ACA opponents have produced no formal written agenda that I know of that that ACA supporters have access to. I compiled these 11 points from media coverage, blogs and talking to pro-ACA advocates who focus on the federal level. And, I've made some educated guesses based on proposals previously made in Congress or by conservative commentators.

And, we don't know the timing of any proposals they'll make at this point and what legislative vehicle they'll use (e.g. “stand-alone” bills, putting their proposals in the budget, etc.)

The bottom line is that ACA supporters must be vigilant: we must follow developments in Congress closely and be prepared to engage in rapid response. (See Section II on our rapid respond efforts so far.)

1) Repeal of the ACA and/or repeal the ACA individual mandate (symbolic steps only).

- These proposals won't pass: they are just “red meat” for the Republican base. Neither ACA repeal nor repeal of the individual mandate will pass the U.S. Senate and Obama will veto even if did. Nevertheless repeals or the equivalent have passed the House over 50 times and there's every reason to assume votes will be staged again and again for show.
- Commentators (e.g. Yahoo finance; former National Campaign Manager of Health Care for America Now Richard Kirsch): Obama will veto anything like repeal of individual mandate that gets at the core provisions of ACA.

2) Change the definition of a full time worker for purposes of the employer mandate to one who works 30 hours a week to one who works 40 hours a week.

- After a yearlong delay, the “employer mandate” is going into effect this year: this year, employers of a certain size (100) will have to offer a certain percentage of their employees (70%) health insurance or pay a penalty.
- The current ACA definition of full time workers for purposes of meeting the 100 threshold is 30 or more hours/week. H.R. 30, a Republican bill to raise it to 40, passed the House January 8, 2015 (with 12 Democrats in support). This proposal is now being considered by the U.S. Senate.
- The argument of bill supporters is that employers will cut the hours of millions of employees below 30 to avoid the employer mandate. They argue that this will adversely impact on workers in low-wage industries in particular, since employers in such industries are more sensitive to cost issues. (Note: these arguments and the underlying factual claims are very debatable and many ACA supporters strongly disagree with several of them.)
- There is a split in conservative ranks around this proposal. Some conservative commentators are arguing that raising the threshold to 40 hours will have even worse adverse consequences for job totals, as more workers presently work 40 hours a week or more than around 30 hours. This debate may affect whether the bill ultimately passes the Senate as is sent to the President.
 - Alternative proposal by conservatives: repeal the employer mandate entirely.
- Obama has previously threatened to veto this bill (even if it passes Senate).

3) Repeal of the medical device tax.

- The medical device tax, passed as part of the Affordable Care Act, is a 2.3% sales tax on medical devices. It applies to everything from surgical gloves to defibrillators, all manufactured by companies dotted across the country. There are an estimated 7,000 companies affected nationwide. Examples where there are large numbers of employees affected: California, Minnesota, Massachusetts and *New York*.
- The medical device tax doesn’t have that big an impact on the industry; the estimates are that repeal would only save the industry 29 billion dollars over 10 years.
- This proposal could conceivably be enacted. It has some support from Democrats and even progressives from states where there are substantial numbers of medical device manufactures (e.g. Sen. Elizabeth Warren of Massachusetts; Paul Tonko of New York).

4) Repeal of the Independent Payment Advisory Board provision of the ACA.

- The Independent Payment Advisory Board, or IPAB, is a fifteen-member United States Government agency created by the ACA. It has the explicit task of achieving specified savings in Medicare without affecting coverage or quality. It is the agency that led to the false claims by Sarah Palin and other conservatives that the ACA created “death panels.”

- The IPAB provision has always been controversial. In addition to the “death panels” rhetoric, it has received opposition from some physicians and hospitals. Even some Democratic lawmakers have raised concerns with it on the grounds that it impacts on Congressional authority. And it arguably is less necessary now that the rate of health care cost increases has abated somewhat.
- Despite the past controversies over this provision, it’s not clear at this point whether there will be a strong focus in Congress to repeal it.

5) Lower the subsidies for purchasing health insurance.

- The media has speculated that Republicans in Congress might try to lower the subsidies in the ACA to make health insurance more affordable (i.e. premium tax credits and cost sharing reductions).
- If this happened, this would be a major threat to the ACA. Any cuts to these subsidies would significantly impact on the ability of consumers to afford health coverage offered through exchanges.
- Although we have to assume that Obama and the Democratic leadership will strongly oppose, advocates have to closely watch this issue.

6) Add a copper plan to the ACA, which would have lower premiums than bronze plans but higher out of pocket costs.

- In the past, the lead trade group for health insurers (America’s Health Insurance Plans, or “AHIP”) and some U.S. senators (including former Democratic Senator Mark Begich of Alaska) have proposed offering cheaper, skimpier “copper” plans on the state and federal exchanges. A “copper” plan would have lower premiums, encouraging more of the uninsured to purchase health insurance. The problem with copper plans and similar proposals, of course that these plans would expose consumers to extremely high out-of-pocket costs if they got sick or injured. (Consumer advocates would generally oppose this proposal.)
- Coverage on the health insurance marketplaces now is divided into four “metal” plans that require different levels of cost-sharing by consumers: platinum plans (pay on average 90% of medical expenses), gold (80%), silver (70%) and bronze (60%). And a limited “catastrophic” plan is available to people younger than 30. The Begich proposal would have paid 50% of medical expenses on average.

7) Make various cuts to Medicare and Medicaid benefits.

- While describing all of the possible changes that have been proposed before and/or might be proposed this year is beyond the scope of this presentation:
 - Among the potential Medicare changes is changing it into a premium support program (previously proposed by former House Budget Committee chair Paul Ryan).
 - Among the potential Medicaid changes are block granting and “per capita” proposals. Per capita proposals would work like this: instead of paying a fixed percentage of each state’s Medicaid costs as in the present system (called “FMAP”), the federal government would offer a fixed dollar amount per beneficiary, eroding the benefits over time.

- We could and should work with constituencies other than traditional HCFANY partners (examples: senior groups, labor unions) to fight these proposals.

8) Withhold funding for certain discretionary ACA programs.

- One possibility is that Republicans will go after the funding of “discretionary” programs in the ACA as a means to hamper the effectiveness of the program or state implementation of it. Such proposals probably won’t get at the heart of the ACA, much of which consists of “mandatory” programs.
- While we don’t know at this point which programs they might target, one possibility is the ACA Prevention and Public Health Fund, which invests in programs like community and clinical prevention, research, public health infrastructure, immunizations and screenings, tobacco prevention and public health workforce and training. Reasons I think it may be targeted:
 - Members have gone after it before.
 - It funds a lot of different initiatives arguably not central to the ACA, allowing it to be characterized by Republicans in the past as a “slush fund” for HHS.

9) Propose Republican “alternatives” to the ACA.

- Since the passage of the ACA, a number of proposals that allegedly provide alternative methods of addressing the problems that led to the passage of the ACA (i.e. lack of consumer access to affordable coverage) have been floated in the Congress. It is possible that Congress will consider legislation to repeal all or portions of the ACA, accompanied by one or more of these proposals. (Common Republican talking point: “repeal and replace” the ACA.)
- Examples of such proposals are: 1) allowing people to purchase insurance across state lines, 2) offering health savings accounts, and 3) limiting medical malpractice awards. None of these three proposals even remotely addresses the concerns that led to passage of the ACA.
- It is unclear whether any of these proposals will be seriously considered, or are instead “talking points” aimed at the media and the Republican base.

10) Restrict immigrant access to health care.

- Attempts may be made in the Congress to overturn or impede Obama’s November 2014 initiatives allowing certain categories of undocumented immigrants to stay in the United States without fear of deportation. (Update: On January 16th, after this presentation, the U.S. House of Representatives voted to halt the Deferred Action for Children’s Arrivals program, or “DACA” and to defund Obama’s executive action; the Senate is unlikely to pass the bill.)
- Due to a New York Court of Appeals decision, immigrants that are legal residents are entitled to Medicaid under the U.S. and N.Y. constitutions; the effect of the Obama initiative is to make thousands of additional New Yorkers legal residents and therefore entitled to Medicaid. This is of course a positive development, but advocates should be aware that the resulting increased Medicaid costs to the state may potentially give State Senate Republicans an excuse to go after Medicaid or other important programs and to politicize health care implementation generally. State Senate Majority leader Dean Skelos has already raised concerns about the potential increase

in Medicaid costs. He has (ironically, given his lack of support for education equity) tried to pit schools funding against Medicaid funding, stating that the increased Medicaid funding burden resulting from Obama's order might hurt the state's ability to educate its children.

- We need to watch this issue during this year's state budget fight this year and work to ensure that immigrant and education advocates are not pitted against each other.

11) CHIP funding will expire if not extended in 2015.

- It is extremely necessary that Congress continue to fund the Children's Health Insurance Program (CHIP) beyond September 30, 2015, the date the funding runs out. We prefer 4 years of funding, until 2019. (The program is called "Child Health Plus" in NYS.) Without CHIP, significantly over 500,000 New York children under the age of 19 would lose access to quality, affordable health care coverage that is structured to meet their needs.
- CHIP has bipartisan support: it was created in 1997, with support from then President Clinton and then Speaker Newt Gingrich. Our initial strategy is therefore to emphasize the bipartisan support for CHIP based on the advice of our national partners. In a 2012 poll, 83% of voters as a whole and 75% of Republicans supported extending CHIP.
- Child Health Plus ("CHP" or "CHPlus") provides much more comprehensive coverage than parents can get in the private market, including through NY State of Health (NYSOH), New York's health care marketplace. CHP provides the type of coverage that children need, including speech, occupational therapy, and dental and vision care -- broader coverage than parents could get through NYSOH, at a much lower price. CHP coverage is also cheaper for parents than through NY State of Health.
- Congress needs to act as soon as possible: it would be extremely dangerous to wait to the last minute (September 2015)! State health officials have said that unless several months' lead time is provided, the state will have enormous difficulty in planning: the state would need to notify parents and plan to transition children to other programs on the assumption the program won't be renewed. This will cause significant confusion and many children will lose coverage.

III. Actions HCFANY Will Undertake to Defend the ACA in 2015

- Rapid Response Campaign: PPEF/Citizen Action is leading HCFANY's "rapid response" campaign to defend the ACA. We regularly screen newspapers and the web for attacks on the ACA and misinformation on the ACA by New York elected officials and commentators. When we find such a reference, we alert HCFANY partners around the state, and work with you to develop appropriate responses, such as letters to the editor, social media work, and speaking at town hall meetings and attending public events. Please contact me if you or your organization is interested in participating.
 - HCFANY could work with other partners on rapid response and ACA in general, such as the "Restore the American Promise (RAP)" network.
- CHIP Renewal: Through its Children, Youth & Families Task Force, HCFANY is taking a number of steps to advocate for an extension of CHIP funding for 4 years. Contact Andrew Leonard of Children's Defense Fund – NY at aleonard@childrensdefense.org if you are interested in getting involved with this work.