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New Congress Begins; Immediately Attacks the Affordable Care Act and Threatens Domestic Programs Critical to Vulnerable Populations

The 115th Congress began on January 3, 2017. Republican leadership wasted no time in articulating their legislative priorities, particularly with respect to the Affordable Care Act (ACA) and other domestic programs. Notably, Republicans are attempting to initiate a budget reconciliation process to repeal key ACA programs without a replacement proposal in sight. Republicans are also using the House rules process to increase oversight of unauthorized programs and agencies, which could force reauthorization battles over programs like Ryan White with little warning to advocates.

Next Steps for Advocates:

1. **Advocates should be vocal with Republican Senators about the importance of only moving forward with a repeal of the ACA once a fully fleshed out replacement plan has been proposed, to minimize disruption of the health care system and protect our access to care. As such, advocates should ask these Senators to oppose beginning the budget reconciliation process prematurely.**

2. **Advocates should prepare for reauthorization battles within the next two years, even if they were hoping to postpone the process until after mid-term elections.**

The ACA Repeal Process Begins, With No Replacement in Sight

Undoing the ACA has been the legislative priority of the majority of Congressional Republicans for the last several years. The new budget resolution, introduced by Senator Budget Committee Chair Michael Enzi (R-WY) on January 3rd, is Congressional Republicans' opening shot in their latest assault on the ACA. If this budget resolution passes, Congressional Republicans will be able to repeal many key ACA programs without having to propose any replacement. According to the Congressional Budget Office, this could leave as many as 22 million people without health insurance.

It is important to note that the budget resolution is not a bill to directly repeal the ACA. Rather it is a set of instructions to four Congressional Committees, the Ways and Means and the Energy and Commerce Committees in the House and the Finance and the Health, Education, Labor and Pensions Committees in the Senate, to begin the budget reconciliation process. The four authorizing Committees deal with health care legislation, making it clear that this is intended as an attack on the ACA. The budget resolution must be voted upon after fifty hours of debate, which begins on January 4, 2017 and could end as early as **January 11, 2017**.

If the budget resolution passes, the four authorizing Committees must then recommend legislation changing existing laws and programs in order to achieve at least $1 billion each in deficit reductions over fiscal years 2017 through 2026. Republican leaders have indicated that the proposed changes would likely look similar to 2015's H.R. 3762. While ultimately vetoed by President Obama, that bill would have repealed the ACA's insurance subsidies, Medicaid expansion, certain tax increases, and the individual mandate. The budget resolution does allow these Committees to reserve some funds to accommodate future legislation to replace ACA programs, but does not require the Committees to propose such legislation any time soon. Under the terms of this budget resolution, the authorizing Committees would be required to submit their proposed changes to the Senate and the House by January 27, 2017. Debates in the Senate on these changes would be

filibuster proof and require only a simple majority to pass, meaning that Congressional Democrats would not be able to prevent these repeal efforts from going through. For a more detailed explanation of the reconciliation process, please see the Center for Health Law and Policy Innovation's summary of the reconciliation process available here.

The reconciliation process potentially initiated by this budget resolution poses a significant threat to access to care. Congressional Republicans are yet to develop a "replacement" plan for the ACA, so any legislation that comes out of this rapid turn around reconciliation would repeal key ACA programs without any sort of replacement in sight. This would subject millions of Americans, including those living with chronic illnesses and disabilities, to uncertainty and potential disruptions in their health care and treatment and could destabilize our health care system. Further, Congressional Republicans could use a looming health care "cliff" to force Congressional Democrats to accept Republican proposals, regardless of their impact on underserved and vulnerable communities. By contrast, a repeal done with a simultaneous replace strategy allows Congressional Democrats to push for modifications to any health policy proposals, to protect vulnerable populations, while preserving the status quo of the ACA until a replacement plan is debated and improved.

Congressional Democrats, meanwhile, are launching a counterattack aimed at delaying the process and pinning Republicans with responsibility for all negative outcomes. Budget resolutions in the Senate can only be voted upon after all proposed amendments to the resolution have an up or down vote. As there is no limit to the number of amendments that can be proposed, what results is an extensive period of rapid fire voting known as "vote-a-rama." Senate Democrats are planning to use this tactic to delay voting on the budget resolution itself, and to force Republican Senators to take "on-the-record" positions on health care issues, such as the ban on preexisting condition exclusions.

Advocates now face a unique opportunity to insist that any effort to repeal the ACA must also include a specific replacement plan. The budget resolution requires a simple majority to pass in the Senate. **This means that if only three out of the 52 Republican Senators object to opening the door to repeal without replacement, the budget resolution will be stopped.** Several leading Republican Senators, including Lamar Alexander (TN), Bob Corker (TN), and Susan Collins (ME), have expressed concerns about repealing without simultaneously putting forward a replacement. Other potential "swing" Senators include Lisa Murkowski (AK), John McCain (AZ), Chuck Grassley (IA), Dean Heller (NV), Rob Portman (OH), and Shelley Moore Capito (WV). **If you live in a state with a Republican Senator, or know advocates in theses states, it is important to call their offices before January 11, 2017, to let them know that they should oppose any repeal of the ACA without an accompanying replacement plan.** Stable health care is too important to vulnerable patients to allow such uncertainty during the several years it might take to formulate a replacement plan.

House Rules Threaten Programs with Expired Authorizations

At the start of each Congress, the House adopts rules to guide its process. The rules for the 115th Congress are similar to those for the 114th Congress, with a few key exceptions. The House's attempt to undermine the independent Office of Congressional Ethics has received a significant amount of attention. Another rule change, however, should also spark alarm among health policy advocates. The new rules include a requirement that Congressional Committees increase oversight of unauthorized programs and agencies within their jurisdiction. This could draw attention to critical health and nutrition programs and lead to reauthorization battles that would play out in an extremely unfriendly political environment.

Federal programs and agencies are created through authorization legislation but they are funded through appropriation legislation. Generally, authorization legislation can establish, continue, or modify an agency, program, or activity for a fixed or indefinite period of time. Authorization legislation may set forth the duties and functions of an agency or program, its organizational structure, and even suggest funding levels. Programs do not receive funding, however, until an appropriations bill is separately passed allocating funding to the authorized program. While certain programs are authorized indefinitely, most have a specified time limit. Programs whose authorizations expire do not automatically end, rather there are appropriation restrictions that Congress must waive to provide funding to the now unauthorized program. Generally,

unauthorized programs can continue at previously authorized funding levels until reauthorization is passed.

The new rules, however, require that each Committee create a list of unauthorized programs and agencies within their jurisdiction that have received funding in the prior fiscal years as well as recommendations to consolidate or terminate any programs or agencies that are inconsistent with the "appropriate role of the Federal government." The new rules also require recommendations for moving programs or agencies up for reauthorization from mandatory to discretionary funding, which would make these programs more vulnerable to budget cuts.

Many programs that serve vulnerable populations fall into this category of unauthorized programs. For example, the Ryan White Program for people living with HIV and the Healthy and the Hunger-Free Kids Act of 2010, which provides nutritious school lunches for children, are both operating with expired authorization. In the case of some programs, advocates were hoping to postpone reauthorization until mid-term elections at the earliest, in hopes of waiting for a friendlier political environment. **The change in the House rules, however, indicates that advocates should not expect to fly under the radar for key unauthorized programs, and instead should be prepared to fight for these programs at some point during the 115th Congress.**

We recommend that advocates evaluate which key programs do not have active authorization. Each January, the Congressional Budget Office publishes a list of programs funded for the current fiscal year whose authorizations have either expired or are set to expire during that year. The 2017 report has not yet been released, but the 2016 report can be found here. **Advocates should begin to build the case for reauthorizations of these programs by encouraging community members to reach out to their Congressional delegations to discuss the importance of these programs.** They should also begin to work on their messaging around why these programs must be reauthorized and prepare for earlier reauthorization fights than they might otherwise expect.

For further questions or inquiries please contact your Health Care in Motion team:

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