



**RECOMMENDATIONS RESPECTFULLY SUBMITTED TO
THE TRUMP ADMINISTRATION REGARDING
THE PATIENT PROTECTION AND AFFORDABLE CARE ACT**

This report is respectfully submitted by the Health Law Committee of the New York City Bar Association (“City Bar”). The City Bar is an organization of over 24,000 lawyers and judges dedicated to improving the administration of justice. The members of the City Bar’s Health Law Committee address legal issues relating to the rights and welfare of patients and the betterment of our healthcare system.

The Health Law Committee is aware of interest on the part of the Administration and members of Congress in repealing key provisions of the Patient Protection and Affordable Care Act (the “ACA”). As healthcare lawyers, members of the Health Law Committee represent a wide range of healthcare stakeholders, each of whom may wish to see different aspects of the ACA changed or remain intact. Well-considered, incremental change that decreases regulatory burdens on all stakeholders would also be welcome by many in the healthcare industry. However, we are not writing to take a position on whether or which aspects of the ACA should be changed.

Instead, consistent with the City Bar’s commitment to the fair administration of laws, the Health Law Committee urges the Administration and Congress not to repeal the ACA, in whole or in part, without a clear and viable replacement for the repealed provisions. The U.S. and New York healthcare systems, like all industries, cannot thrive in an unstable regulatory environment. Before any action is taken to repeal the ACA, the Administration and Congress should first develop, and simultaneously adopt, a comprehensive replacement plan.

Repealing the ACA without a viable replacement will have serious consequences for insurance markets, healthcare providers and consumers. For your consideration, we have set forth below some of the consequences of repealing without a replacement plan.

I. CREATING A REGULATORY VOID AND LEGAL UNCERTAINTY

Clear and enforceable laws are essential to the success of a free market economy in the United States. The stability of statutes and regulations governing the conduct of business and the provision of government services fosters business investment, free trade and commerce, and supports a reliable, skilled and mobile labor force.

Repealing the ACA without a replacement will likely delay or frustrate entire corporate transactions and create ambiguity with respect to the enforcement of existing contracts as well as sow doubt about the formation of new agreements. Furthermore, healthcare providers, payors and investors alike will be reluctant to undertake development and investment in the healthcare industry if there is uncertainty about coverage rules, benefit requirements, reimbursement methodologies, and care delivery models.

II. THREATENING THE STABILITY OF THE HEALTH INSURANCE MARKETS

Without knowing either (a) the extent to which subsidies or alternative financing mechanisms will be available to consumers or (b) the requirements imposed on health insurance issuers with respect to, for instance, guaranteed availability, and benefit and premium rating rules, issuers may be unable to make reliable actuarial projections or to price, design or market health plans. Such uncertainty may lead some insurers to exit the individual market and as a consequence may exacerbate instability in the health insurance markets. This outcome could also have a detrimental impact on healthcare systems, healthcare providers, and state and federal public health programs, as the rolls of the uninsured increase. Such dramatic disruption could fuel litigation and disrupt ordinary business transactions in the healthcare sector.

III. JEOPARDIZING THE HEALTH AND SAFETY OF MILLIONS OF INDIVIDUALS

Repealing the ACA without a replacement plan threatens the coverage of millions of Americans. An estimated twenty-two million people gained coverage under the ACA through the marketplace – 80 percent with federal subsidies – and through the Medicaid expansion. Absent a viable replacement plan, they will have no alternative access to affordable coverage. Millions more who bought coverage without subsidies will face skyrocketing premiums and many will be unable to continue to afford coverage. Uncompensated care at hospitals will likely rise. All of these consequences could have a repercussive effect through the economy, including for instance in the residential housing market, potentially putting more individuals at risk of foreclosure due to medical debt. (Medical debt is the single greatest cause of personal bankruptcy.)

In addition, without clear and enforceable laws in place, health systems and providers will likely delay or defer investment in creating more efficient and effective care delivery models. Delaying health system development and innovation will in turn prevent health systems and providers from improving efficiency and producing better patient outcomes -- a goal shared among all interested parties, across the political spectrum.

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A stable healthcare system is essential for an effective, functioning economy and society. As discussed above, repealing provisions of the ACA without a viable and concrete replacement plan in place would cause major health system instability and, in turn, have detrimental consequences for the economy and society. We respectfully urge you to ensure that a viable replacement plan is developed and put in place prior to repealing provisions of the ACA.

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