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## Potential Election Impacts on the Individual Market

During the Biden administration there has been a dramatic increase in enrollment in the individual market, specifically the Marketplace. Marketplace enrollment increased from 11.4 million in 2020 to nearly double that amount to 21.4 million in 2024.<sup>1</sup> This has happened as a result of numerous factors including legislation and operational changes since the Biden Administration took over. With the Trump Administration poised to retake control of Presidency, questions remain about how the change in Administration and Congress will affect the individual market. While there is considerable uncertainty as to what will occur over the next four years, below are key considerations and potential areas of change to keep in mind.

It's important to note that as a result of the election, Republicans not only control the White House but also both the House and Senate. At the time of writing this, the exact final counts are uncertain, but all signs point to Republicans having narrow majorities in both houses. This means that under current Senate rules, Republicans could pass legislative changes to budget issues without Democratic support but not non-budget items. For example, Republicans could make changes to premium tax credit subsidies but not to market reform rules like the prohibition on underwriting. Given this window of opportunity (i.e., Republicans could lose the trifecta after the Midterm elections in 2026), this could mean that Republicans will push for legislation quickly (i.e., the first 100 days).

### Key Sources of Uncertainty

**Agency Appointments** – With a new political party in position starting in 2025, all government agency appointments will expire. At the on-set of the term, the agency turnover will result in decreased activity as roughly 4,000 appointed positions are reviewed and filled. Some of the more significant positions that will shape the direction and outcomes of the Trump administration include the Secretary of Health and Human Services, the Administrator of the Centers for Medicare & Medicaid Services (CMS), and the head of the Center of Consumer Information and Insurance Oversight (CCIIO). Ultimately, political appointees have a great deal of influence over policy and until those appointments are known, policy preferences are uncertain

**Chevron Doctrine Overruled** - In June 2024, the Supreme Court overruled the Chevron doctrine which allowed government agencies the power to interpret ambiguous federal laws. Without the doctrine in place, the judicial system will no longer be given deference to agency interpretations of federal laws, resulting in regulation being challenged and overturned more frequently. This increases

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<sup>1</sup> <https://www.kff.org/affordable-care-act/state-indicator/marketplace-enrollment>

the uncertainty as to what regulations the new Trump Administration could adopt, and which changes may happen involuntarily due to judicial ruling.

**Prior Experience** – During the prior Trump administration, the attempt to repeal and replace the Affordable Care Act (ACA) resulted in a large negative public backlash. It is possible that the prior experience will deter the Trump Administration from attempting a large-scale change to the individual market.

## Likely Changes

### **Enhanced Subsidies Expiring at the end of 2025:**

As part of the American Rescue Plan and renewed as part of the Inflation Reduction Act, individuals in the Marketplaces have had the benefit of enhanced premium tax subsidies. These subsidies have resulted in dramatic increases in enrollment and proportion of members with free or affordable plans. For example, in 2024, almost 45% of individuals had monthly premiums under \$10 per month after the reduction of the enhanced subsidies. These enhanced subsidies are all but assured to expire at the end of 2025. CBO projects that enrollment will shrink by approximately 6.9 million enrollees as a result of the expiration of the enhanced subsidies.<sup>2</sup> These decreases are expected to be felt more by states that did not expand Medicaid.

### **Increased Verification Requirements for Enrollment and Reduced Outreach:**

A new Trump Administration is likely to push for stricter verification processes for individuals applying for health coverage through the ACA. This could include more rigorous checks on eligibility for subsidies, adding steps to confirm income levels, citizenship or immigration status, and other qualifying factors. Additionally, there is likely a reduction in outreach funding (such as decreased funding to navigators and reduced advertisement funding). Both changes would dampen enrollment. These changes could occur unilaterally and without new legislation.

### **Increased Accessibility to non-ACA Products (e.g., Short Term Limited Duration Insurance and Association Health Plans):**

During the previous Trump Administration, there were several regulatory changes enacted that increased the availability of plans that did not comply with the ACA. A primary change was the relaxation of restrictions on the sale of short-term limited duration plans and association health plans. Such an expansion of non-ACA coverage would lead to a shift in the ACA risk pool, leading to higher premiums for the remaining individuals.

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<sup>2</sup> <https://www.cbo.gov/system/files/2024-06/60437-Arrington-Smith-Letter.pdf>

## Potential Regulatory/Administrative Changes

### **Silver-Loading:**

The Trump administration could also move to end the practice of silver loading, which could result in a decrease in marketplace participation. Silver loading emerged as a response to the elimination of cost-sharing reduction (CSR) payments to insurers under the previous Trump administration. To make up for the lost CSR funding, insurers began raising premiums on silver plans in what became known as silver loading. Rather than distributing the cost of CSRs across all metal tiers, insurers "loaded" the additional expense onto silver plans, where most subsidized enrollees eligible for the richer plan designs are concentrated. If silver loading is eliminated, insurers would need to spread the cost of CSRs across all metal tiers (bronze, silver, gold, and platinum), not just silver plans. While this would reduce premiums for silver plans, it would lead to a decrease in premium tax credits given the silver premiums are tied to the formula which determines the amount of premium subsidy available. It would also increase gross premiums for all other metal tiers, making coverage more expensive across the board. This shift would reduce enrollment.

### **Essential Health Benefits and Preventative Services:**

A Republican administration may move to reduce preventative service requirements. Currently, there is a case (*Braidwood v. HHS*) that could reduce or end preventative service requirements. The Trump Administration or a court ruling could overturn ACA preventative service requirements. Additionally, a new Trump Administration could enact legislations to reduce the scope of required covered benefits known as essential health benefits (EHBs). As seen in 2017, Republican parties have proposed several changes to the ACA that would allow states to reduce EHB coverages. Through regulation, the Republican administrations may pare down the definition of EHBs allowing insurers to provide less comprehensive benefit packages.

### **Individual Coverage Health Reimbursement Accounts (ICHRA):**

A shift toward Individual Coverage Health Reimbursement Accounts (ICHRA) could be encouraged. While these accounts offer flexibility by allowing employers to reimburse employees for purchasing health insurance on the individual market, they could also increase premiums in the individual market if there is selection among the people who shift from employer coverage to the individual market.

## Potential Legislative Changes

In addition to political procedures, substantial policy shifts are expected within both the regulatory and legislative frameworks of the ACA. These changes could have far-reaching implications for the marketplace impacting premiums, access to coverage, and overall market stability. Below is an overview of key healthcare issues likely to be addressed.

### **Subsidy Changes or Reductions:**

It is possible that as part of a Republican legislative effort, there could be large changes to premium tax credit subsidies beyond the expiration of enhanced subsidies. For example, during the 2017 repeal efforts, there were a number of different ideas for reducing or changing how premium tax credits work, from block granting them (i.e., changing premium tax credits to a block grant that would shift responsibility to the state in deciding how to allocate) to shifting premium tax credits to health saving accounts.

### **Medicaid Expansion Reduction:**

Several Republican affiliated groups have expressed interest in reducing spending on Medicaid, specifically reducing spending on Medicaid Expansion. For example, the Paragon Institute recommended phasing out enhanced federal matching on Medicaid Expansion.<sup>3</sup> If changes in federal legislation would encourage states to end their Medicaid Expansion programs, this would result in a dramatic change to the individual market via a large expansion in the pool of eligible individuals (individuals with Medicaid eligibility are not eligible for premium tax credits).

### **Employer Mandate and Tax Exclusions:**

While a low likelihood event, it is possible that new legislation would also aim to cap the employer tax exclusion. In the United States, employers have tax benefits for offering their employees insurance coverage. This results in a fairly sizeable cost to the federal government in forgone tax collections. In order to make permanent tax cuts, Republican led legislation would need to find offsetting tax revenue somewhere. This could come in the form of capping employer tax exclusions on insurance coverage. This could lead to fewer employers offering insurance and therefore an increase in the number of enrollees in the individual market.

There is considerable uncertainty as to what changes will happen in 2025 and beyond. While some outcomes, such as the expiration of the enhanced subsidies, are very likely, the unified control of government by the Republican party introduces the potential for very large changes to the individual market. These changes could be simple, such as an undoing of Biden era regulations, or significant in terms of restricting the Affordable Care Act. While four years may seem like a long stretch (and is), it is likely to become apparent in the first 100 days how large the changes may be.

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Please contact Michael Cohen at [michael.cohen@wakely.com](mailto:michael.cohen@wakely.com) with any questions or to follow up on any of the concepts presented here.

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<sup>3</sup> [https://paragoninstitute.org/wp-content/uploads/2024/05/14.2AW\\_ParagonEpic\\_pres\\_FOR\\_RELEASE.pdf](https://paragoninstitute.org/wp-content/uploads/2024/05/14.2AW_ParagonEpic_pres_FOR_RELEASE.pdf)

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