

The AHA's Wish List to President-Elect Trump

As the country prepares for President-elect Donald Trump's swearing in on January 20, the future of the healthcare industry remains uncertain. Trump made many promises on the campaign trail, including an immediate repeal of the Affordable Care Act ("ACA") when he assumes the oval office. With a Republican majority in both houses of Congress, Trump will have an even greater ability to change how the industry is regulated via the Congressional Review Act. Although used only to overturn one final rule in the last 20 years, the Congressional Review Act could allow Trump to block rules enacted during the Obama Administration through much of this year.

In light of the foregoing, on November 30, 2016, The American Hospital Association ("AHA") President and CEO Rick Pollack wrote Trump a four-page letter congratulating Trump on his victory and outlining five areas that the new administration's public policy should address. The areas include: reduction of regulatory burden; enhancement of affordability and value; promotion of quality and patient safety; ensuring access to care and coverage; and continued advancement of health system transformation and innovation. Pollack included the following list of "duplicative, excessive, antiquated and contradictory" regulations to be reformed by the Trump Administration:

- cancel Meaningful Use Stage 3 so that hospitals will not be forced to spend large sums of money upgrading their electronic health records ("EHR") solely for the purpose of meeting regulatory requirements;
- revise the Recovery Auditor Contractor ("RAC") contracts to incorporate a financial penalty for high rates of incorrect denials that lead to unnecessary appeals, which is contributing to a multiyear backlog of claims awaiting adjudication;
- create exception safe harbors and waivers under the Anti-Kickback Statute to protect clinical integration arrangements and revise the Stark Law to protect arrangements that meet the Anti-Kickback Statute safe harbor so that physicians and hospitals can work together to improve care;
- standardize the federal merger review process between the Federal Trade Commission and the Department of Justice to better support hospital transformation; and

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- eliminate outdated regulations that threaten access to post-acute care, such as the long-term care hospital "25% Rule" and the onerous home health agency pre-claim review demonstration project.

Pollack's wish list may become a reality as Trump recently promised to eliminate two old regulations for every new one that is passed. The proposed reforms could save healthcare providers not only money but headaches. For instance, Meaningful Use Stage 3, which is set to become mandatory in 2018, would force providers to update EHR systems at an aggressive rate. In closing his letter, Pollack also asked that the Trump Administration and Congress not "make any abrupt changes" and "ensure that any repeal of portions of the ACA simultaneously include a replacement plan that continues to provide a mechanism for individuals to obtain affordable insurance coverage."

With the regulatory environment in greater flux than usual, it is important that healthcare providers and organizations remain as current as possible with the regulatory landscape. If you have questions regarding the impact these changes may have on your organization, please contact [Larri Broomfield](#) or any Reinhart Boerner Van Deuren attorney today.

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