WASHINGTON STRATEGIC CONSULTING

SPECIAL REPORT

Affordable Care Act: Background and Debate

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INTRODUCTION

This memorandum contains a summary of the major provisions of the Patient Protection and Affordable Care Act (ACA), a review of its impact, benefits and challenges, and a discussion of the current debate in Congress to repeal and replace the law. The memo is intended to provide factual, unbiased information to help the OI Foundation's Board of Directors evaluate the possible consequences that the outcome of this debate may have on the OI community.

BACKGROUND

The ACA contains a series of complex policies designed to extend health insurance coverage, that meet certain standards, to more than 20 million Americans, among other objectives. Under the law, beginning in 2014, most Americans are required to purchase a private or group health insurance plan that offers a minimum level of benefits and contains certain consumer protections. Low-income Americans are eligible for federal tax credits and cost-sharing subsidies while others may enroll in Medicaid, based on expanded eligibility rules. The ACA's annual cost to the federal government is financed through a combination of new taxes, penalties, fees, and Medicare payment reductions to health care providers.

The ACA was signed into law on March 23, 2010 following an intense two-year debate in Congress and among major stakeholders – including insurers, hospitals, physicians, patient advocacy groups, drug makers, labor, and others. Although most stakeholders endorsed the ACA, albeit reluctantly in some cases, the law was ultimately approved in the House and Senate by a Democratic majority without a single Republican vote.

In November 2010, a Gallup poll showed that only 37 percent of Americans viewed the ACA favorably.[i] In the midterm congressional elections held that month, Democrats suffered their greatest defeat since the Great Depression, losing their majority in the House and several seats in the Senate.

Republicans have made repealing and replacing the ACA the cornerstone of their legislative platform in every election since 2010. Over the past six years, the House voted 46 separate times on legislation to repeal, defund, delay, or otherwise amend the law, with each vote receiving at least 215 votes; however, the various bills could not be advanced under President Obama and a Democratic majority in the Senate (which Republicans were able to win back in 2014 and retain in 2016).

This year, with control of the White House and Congress, Republicans in both chambers are debating legislative options to repeal and replace the ACA that they hope will finally be signed into law.

MAJOR PROVISIONS OF THE ACA

Individual Mandate to Purchase Coverage

- Most legal U.S citizens are required to purchase qualifying health insurance or pay a penalty equal to $695 per year or 2.5 percent of household income, whichever is greater.
- Exemptions are granted for financial hardship, religious objections, federally recognized Tribal Members, those without coverage for less than three months, undocumented immigrants, incarcerated individuals, those for whom the lowest cost plan option exceeds 8 percent of the individual's income, and those with incomes below the tax filing threshold.

Employer Mandate to Offer Insurance

- Most employers with 50 or more full-time employees must offer insurance coverage or pay a penalty between $2,000-$3,000 per employee.

Health Insurance Exchanges

- Creates state-based virtual marketplaces for U.S. citizens and legal residents to purchase private health insurance plans that meet certain standards.

Tax Credits for the Purchase of Health Insurance

- Individuals with income between $16,000 and $48,000 per year are eligible to receive a tax credit toward the purchase of insurance offered on the Exchanges.

Subsidies to Reduce Insurance Out-of-Pocket Costs

- Individuals with income between $12,060 and $48,240 are eligible for subsidies to reduce the annual cost of insurance premiums offered on the Exchanges.

Expanded Medicaid Eligibility

- Traditional Medicaid provides coverage to low-income seniors, children, pregnant women, the disabled, seniors and parents of dependent children.
- The ACA provides each state with the option to expand Medicaid eligibility to all adults with annual household income up to $12,240 per year ($24,600 for families of four).

New Insurance Coverage Reforms

- Prohibits denying coverage or charging more for people with pre-existing conditions.
- Dependent coverage must be offered to children up to age 26.
- Prohibits lifetime caps and annual limits on coverage.
- Requires insurers to offer minimum coverage, known as Essential Health Benefits, that includes at least the following 10 services: outpatient services, emergency care, hospitalization, maternity and newborn care, mental health, prescription drugs, rehabilitation, laboratory services, preventive care, and pediatric services.
- Limits the amount that insurers can increase rates for older beneficiaries.

Other Major Provisions

- Prohibits tax credits and subsidies for coverage that includes abortion services and permits states to prohibit plans participating in the Exchange from providing coverage for abortions.
- Funds "demonstration" programs designed to test new ways of delivering health care services, paying health care providers, or designing benefits.

- Provides funding for: chronic disease prevention and management, community health centers, recruitment and training of health care workers, primary care, initiatives to reduce fraud and abuse, and employer wellness programs.

PAYING FOR THE ACA

The ACA's numerous provisions cost the federal government more than $100 billion per year. Half of the cost is financed through a combination of new fees, taxes, and penalties; the other half comes from reductions in Medicare payments to health care providers.

ACA Taxes

- **Medical device manufacturers:** 2.3 percent of the sales price of certain devices.
- **High-cost employer-sponsored "Cadillac" health plans:** 40 percent tax (paid by employers) on the value of plans with premiums exceeding $10,200 for individuals and $27,500 for families. Effective 2018.
- **Medicare payroll tax:** Increased by 0.9 percent for individuals making more than $200,000 and couples earning more than $250,000.
- **Investment tax:** 3.8 percent tax on individuals making more than $200,000 and couples earning more than $250,000 per year (does not include distributions from qualified retirement plans).
- **Indoor tanning services:** 10 percent tax on the retail price of indoor tanning services.
- **Cafeteria plans:** Tax-free employee salary reductions deposited into cafeteria plans limited to $2,500 per year.
- **Itemized medical expenses deduction:** Increased to 10 percent of household income.

ACA Fees

- **Health insurance issuers:** Annual fee indexed for growth in premiums and insurer's market share.
- **Pharmaceutical manufacturers:** Based on brand-name drug sales.

ACA Penalties

- **Individual mandate:** Individuals who elect not to purchase coverage.
- **Employer mandate:** Large employers that do not provide insurance or contribute to the cost of uninsured employees' coverage.

ACA Medicare/Medicaid Payment Reductions to Health Care Providers

- Reductions to annual payment increase for inflation.
- Reductions to additional payments hospitals receive for treating low-income patients (Disproportionate Share Hospital Payments).
- Penalties for excessive hospital readmissions, patient infection rates, etc.
- Other payment reforms, including valued-based purchasing.

ACA PROGRESS REPORT

Enrollment

- Most of the ACA's provisions went into effect in 2014.
- The U.S. uninsured rate has declined from 18.2 percent in 2010 to 10.3 percent at the end of 2016.[ii]
- 25.8 million people have gained insurance through the ACA (13.8 million enrolled through the Exchanges; 12 million enrolled through Medicaid expansion).
- Enrollment in the Exchanges is 10 million *less* than initially predicted, and Medicaid Expansion enrollment is 2.4 million *more* than initially predicted.
- 6.5 million people paid an average penalty of $470 for failing to have coverage in 2015.
- The IRS has not yet created a system to identify or collect penalties from large-employers who fail to offer health insurance.[iii]
- Financial losses to hospitals for treating uninsured patients has decreased by roughly 41 percent since 2013.[iv]
- 19 states have expanded Medicaid and a handful of states are in the process of expanding.[v]
- In 2017, 68 insurance companies opted to no longer sell plans on the Exchange, leaving an average of 4.3 exchange insurers per state (ranging from 1 to 16 companies in a given state).[vi]

Impact on Insurance Premiums

- Prior to the ACA, employer-based insurance premiums rose roughly 5 percent per year[vii] and individual plan premiums rose roughly 10 percent per year[viii] (individual plans account for only 15 percent of the insurance market).
- Since the ACA was implemented, employer-based insurance premiums have risen by 3.8 percent per year, a slower rate than before they ACA.[ix] Individual plan premiums (Exchange and non-Exchange plans) have risen 12 percent per year.[x]
  - Premiums for Exchange plans rose 22 percent in 2017[xi] with extraordinary variation among the states (for example, Rhode Island premiums were down 6.4 percent while Arizona premiums rose 125 percent[xii]).
- 78 percent of Exchange enrollees are eligible for premium subsidies and 66 percent are eligible for tax credits.[xiii]

PUBLIC OPINION

- The American public remains deeply divided on the ACA and legislative efforts to repeal and replace the law.
- The ACA's favorability among Americans has historically remained under 50 percent; however, new national polling shows the ACA's popularity at an all-time high rating of 51 percent.[xiv]
- Only 17 percent of Americans support the specific repeal and replace proposals currently being debated in Congress.[xv]
- More than 100 national organizations have formally expressed opposition to the current House and Senate proposals to repeal and replace the ACA. These stakeholders represent disease and patient advocacy organizations, consumer groups, hospitals, physicians and other clinicians, think tanks, medical researchers, religious institutions, and senior advocates.
- Organizations that have endorsed the specific House and Senate repeal and replace proposals include the U.S. Chamber of Commerce, National Right to Life Committee, National Taxpayers Union, Americans for Tax Reform, Council for Citizens Against Government Waste, National Federation of Independent Business, the National Association of Home Builders, National Retail Association, and the National Restaurant Association.
- America's Health Insurance Plans, the national trade organization of health insurers, has urged changes to the repeal and replace proposals rather than issuing a formal position on the legislation.

CURRENT EFFORTS TO REPEAL & REPLACE THE ACA

The 2016 election gave Republicans control of the White House and both chambers of Congress for the first time since the ACA became law. House and Senate leaders promised to send a bill repealing the ACA to President Trump within days of him taking the oath of office in January 2017. Their plan was to send the president legislation that would immediately become law, but delay repeal of the ACA to a future date, thereby fulfilling a campaign pledge and allowing time to develop additional legislation to replace the ACA.

That plan collapsed in early February when a group of Republican moderates demanded that the repeal legislation also include provisions to replace the ACA. This placed tremendous pressure on Republican leaders to develop detailed replacement legislation within a matter of days, despite having historically only agreed in principle to broad the policy concept of returning the insurance industry to a free market system with less government interference.

House Action

The House acted first by releasing the American Health Care Act (AHCA) on March 6, 2017. The details of the AHCA's repeal and replace plans drew opposition from Republican moderates, who argued that the legislation would leave too many Americans uninsured, and from Republican conservatives, who argued that the bill did not go far enough to lessen the government's role in regulating health care.

Following a month of intense negotiations, a revised version of the AHCA passed the House on May 4 by a two-vote margin without the support of most moderate Republicans and without any support from Democrats.

<u>Major Provisions of the AHCA:</u>

Repeals:

Individual and employer mandates, ACA taxes and fees, Exchanges, Medicaid expansion, premium and cost sharing subsidies.

Replacements:

- Restructures Medicaid from an open-ended entitlement to a capped, per - beneficiary payment system.

- Repeals mandatory Medicaid benefits and allows states to impose restrictions on Medicaid eligibility and increase cost sharing.
- Provides funding to states for high-cost and low-income individuals.
- Provides funding to insurers to "address coverage and access disruption."
- Replaces ACA income-based tax credits with flat tax credit adjusted for age (up to roughly $4,000 per year).
- Gives states the option to waive consumer protections, including Essential Health Benefits *and* the prohibition on discrimination based on pre-existing conditions.
- Increases allowable contribution to Health Savings Accounts.
- Bans Planned Parenthood from the Medicaid program for one year and prohibits federal funds from going to insurance plans that cover abortions.

Senate Action

Shortly following House passage of the AHCA, Senate leaders announced that they would develop their own legislation rather than vote on the House bill.

On June 22, they released the Better Care Reconciliation Act (BCRA). The Senate bill is similar to the House bill, but with a few notable differences. For example, the Senate bill phases out Medicaid expansion at a later date, but contains steeper funding cuts to traditional Medicaid in later years than those contained in the House bill.

For many of the same reasons that House leaders found it difficult to achieve the necessary votes for approval, the Senate repeal and replace legislation has faced objections from both Republican moderates and conservatives.
There are currently 52 Republicans in the Senate. All 48 Democrats are expected to vote against the repeal and replace bill. Therefore, the legislation requires the support of 50 Republican Senators (VP Pence would cast the 51st vote required for passage). As of July 12, 10 Republican Senators have publically expressed their opposition to the BCRA while a handful of others have not stated a position.

The BCRA has undergone several revisions in an effort to win the needed support for passage. Another revision is expected to be released shortly.

Major Provisions of the BCRA as of July 13, 2017:

Repeals:

- Individual and employer mandates, ACA taxes (maintains the Medicare payroll, investment tax and Cadillac tax) and fees, Medicaid expansion, premium subsidies.

Replacements:

- Provides $182 billion for states to assist high-cost and low-income individuals.
- Provides $50 billion for insurers to "address coverage and access disruption."
- Creates tax credits, indexed for age and income for individuals with annual income up to 350% FPL.
- Allow insurers to sell plans that do not meet ACA consumer protection standards if they also sell a plan that does meet those rules (aka Cruz amendment).
- Bans Planned Parenthood from the Medicaid program for one year and prohibits federal funds from going to insurance plans that cover abortions.
- Adds $45 billion for states to address the opioid crisis.
- Allows insurers to charge older beneficiaries higher premiums.
  Allows Health Savings Accounts to pay for premiums and increases contribution limits.

Medicaid provisions:

- Restructures Medicaid from an open-ended entitlement to a capped, per-beneficiary payment system.
- Annual growth in caps would be initially tied to medical inflation (CPI-M) and then switched to general inflation (CPI-U) starting in 2025.
- Allows states to impose restrictions on Medicaid eligibility and increase cost sharing.
- Medicaid Expansion phased out starting in 2021 and eliminated in 2024. (enhanced match would be 90% in 2021 and phased down to 75% in 2023).

Expansion states would continue to receive an enhanced match for already enrolled expansion recipients that continue to meet eligibility requirements

- Medicaid DSH reductions eliminated effective 2020 for expansion states; non-expansion states receive an increase based on level of uninsured.

AHCA & BCRA: Predicted Impact

The Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) have issued official estimates of the expected effects that the AHCA and BCRA would have on federal spending, the number of uninsured, premiums, etc. The official estimate of the revisions to the BCRA announced on July 13 is not yet available.

Measure*	House AHCA[xvi]	Senate BCRA[xvii]
Increase in number of uninsured	23 million	22 million
Reduction in Medicaid enrollment	17 percent	16 percent
Reduced Medicaid spending	$834 billion	$772 billion
Federal deficit reduction	$119 billion	$321 billion
Effect on premiums	Increase 20 percent (2018); Reduced 20 percent (2026)	Increase 20 percent (2018); Reduced 20 percent (by 2026)

**Figures are based on based on 10-year projections (through 2026).*
**Senate BCRA figures based on version released on June 26.*

OUTLOOK

Senate leaders recently announced that the August recess period would be delayed in order to allow additional time for negotiation.

If the Senate approves a bill, the process would follow one of two possible paths. One path would be for the House to vote on the Senate bill without modification. If approved by the House, the legislation would be sent to the president.

If the House opts not to vote on the Senate bill, then each chamber would appoint members to serve on a conference committee to develop a compromise bill. The final bill would then need to be approved by the full House and Senate before being sent to the president to be signed into law.

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