



THE FUTURE OF HEALTH CARE REFORM

What changes will November's election bring?

Next month, Americans will be casting their votes for a new president and many members of Congress, which will likely result in new health care policies for the country. President Barack Obama's signature health care legislation, the Affordable Care Act (ACA—also known as Obamacare), has been in place since 2010 and has largely been implemented over the past six years. The law has resulted in widespread changes to health care in America, resulting in nearly 13 million fewer adults (age 18–64) without health insurance since 2013, widespread innovation and experimentation in the delivery of health care, and upheaval and uncertainty in the regulation of health insurance and the insurance markets.

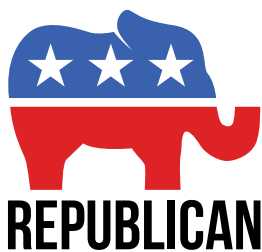
Since its enactment, some Republican members of Congress have attempted to repeal the law more than 50 times, and the law has been subject to multiple legal

challenges, some going all the way to the U.S. Supreme Court. With a new leader in the White House and the potential for a change in control of one or both chambers of Congress, what will be the future of health care in America?

Three Health Reform Proposals

Democratic presidential candidate Hillary Clinton has pledged to defend and expand on the ACA, while Republican candidate Donald Trump has stated his intent to repeal the ACA if he becomes the next president. Within the past few months, both of the candidates and House Republicans have released plans laying out their priorities for health care reform for 2017 and beyond. A review of these plans makes it clear that regardless of who is in control of the White House and Congress beginning in 2017, health care and policy in the United States will continue to evolve. The future is anything but certain.





Donald Trump

In March 2016, while running for the Republican nomination, Trump released a brief, seven-point health care reform plan to:

- Repeal Obamacare and eliminate the individual mandate;
- Allow insurance companies to sell health insurance across state lines;
- Allow individuals to fully deduct their health insurance premium payments from their taxes;
- Encourage and support the use of health savings accounts by individuals to cover some health care costs;
- Require price transparency from all health care providers, including doctors and hospitals;
- Make block grants to states for their Medicaid programs; and
- Remove barriers to entry into the U.S. drug market for overseas companies.

Republican Members of the U.S. House of Representatives

A few months later, on June 22, 2016, Speaker of the House Paul Ryan announced the release of the proposed replacement plan for the ACA developed by House Republicans (the “GOP Plan”). The 37-page report, entitled *A Better Way, Our Vision For A Confident America, Health Care*, is built on five key principles:

- Repealing Obamacare;
- Providing all Americans with more choices, lower costs, and greater flexibility through greater competition among health insurance companies;
- Protecting the nation’s most vulnerable citizens, including individuals with pre-existing health conditions and low-income families;
- Spurring innovation in health care by building on the 21st Century Cures Act passed by the House in 2015, which supports advancements in medical cures and treatments; and
- Protecting and preserving Medicare by financially strengthening the program and slowly phasing in improvements for future generations.



Hillary Clinton

Clinton has stated she intends to “strengthen, improve and build on” the ACA but has also released her own nine-point health care plan, entitled

Universal, Quality, Affordable Health Care for Everyone. In her plan, she proposes to:

- Defend and expand the ACA;
- Bring down out-of-pocket costs, such as copays and deductibles for consumers;
- Reduce the cost of prescription drugs;
- Protect consumers from unjustified prescription drug price increases;
- Incentivize states to expand Medicaid;
- Expand access to affordable health care to families, regardless of immigration status;
- Expand access to rural Americans by exploring ways to make more health care providers eligible for telehealth reimbursement under Medicare and other programs;
- Ensure that all women have access to reproductive health care; and
- Double funding for community health centers and expand the health care workforce.

The Affordable Care Act

As noted above, both Trump and House Republicans have stated that repealing the ACA is their first priority. Trump has specifically emphasized elimination of the individual mandate, a key part of the ACA and the subject of one of the legal challenges that was addressed by the U.S. Supreme Court in 2012.

Clinton has pledged to defend and expand the ACA, and is promoting the creation of a “public-option” insurance plan, a concept she has supported since 2008. A public-option plan would be a government-run insurance plan that would offer coverage through the ACA’s online marketplaces, in direct competition with private insurers.

Prescription Drug Costs

To address the rising cost of prescription drugs, both Clinton and Trump are proposing to allow consumers to import prescription drugs for their personal use from foreign nations that have safety and quality standards similar to the U.S.

Clinton is also proposing to allow Medicare to demand higher rebates and negotiate drug prices with drug companies, require pharmaceutical companies that benefit from federal support to invest a “sufficient amount of their revenue in research and development,” and clear out the Food and Drug Administration’s (FDA) backlog of generic drug approvals, reducing exclusivity periods for biologic drugs, and expediting review of applications for biosimilar drugs. She also proposes to create a federal oversight group that would be charged with reviewing proposed price increases for existing drugs and imposing penalties for unjustified price increases.

Coverage and Access for Vulnerable Populations

For individuals who are unable to afford insurance coverage, Trump is proposing that individuals be allowed to fully deduct the amount of their monthly health insurance premiums from their taxes. He has also stated that the country needs to look at Medicaid program options and work with states to ensure that individuals who want coverage can have it.

Clinton has stated she will work with governors to expand Medicaid in every state and also expand access to health care for families, regardless of their immigration status, by allowing them to purchase health insurance on the ACA marketplaces. She also proposes to launch a national campaign to enroll people in ACA coverage who are already eligible

but have not yet enrolled, and will work to make enrollment in both Medicaid and ACA coverage easier.

Clinton also wants to expand access for rural Americans by making more health care providers eligible for reimbursement for telehealth services under Medicare and other programs, including federally qualified health centers (FQHCs) and rural health clinics.

Medicare

House Republicans are proposing a number of changes to Medicare. Assuming a repeal of the ACA, certain changes in federal payments to Medicare Advantage (MA) plans (the private alternative to traditional Medicare) would be reversed to their pre-ACA status, both the Independent Payment Advisory Board and the Center for Medicare & Medicaid Innovation would be eliminated, and the ban on expansion of physician-owned hospitals would be lifted.

The GOP Plan also recommends giving MA insurers more flexibility to create value-based plans, reducing or phasing-out first dollar coverage in Medicare supplement (Medigap) policies beginning in 2020, and combining Medicare Parts A and B to create a unified, single deductible and 20 percent uniform cost-sharing requirement. It also includes repealing the fiscal year 2018 and 2019 disproportionate share hospital (DSH) cuts (also the 2018–2020 Medicaid DSH cuts); creating a new Medicare Compare website to post reports comparing MA and traditional fee-for-service (FFS) Medicare on a core set of quality measures, and gradually increasing the Medicare retirement age beginning in 2020 to correspond to the eligibility age for Social Security.

Both Hillary Clinton and Donald Trump propose allowing consumers to import prescription drugs from foreign countries that have similar quality and safety standards as the U.S.



Finally, beginning in 2024, House Republicans propose to convert the Medicare system to a competitive, market-based model, in which seniors would be given a choice of private plans on a Medicare Exchange to compete with the traditional FFS program, and would be provided with premium support payments to pay for or offset the premium of the plan chosen, depending on the plan's cost.

Clinton is opposed to the GOP Plan to privatize Medicare but is proposing to expand the Medicare program by allowing people age 55 and older to opt in, while protecting the traditional program.

Medicaid

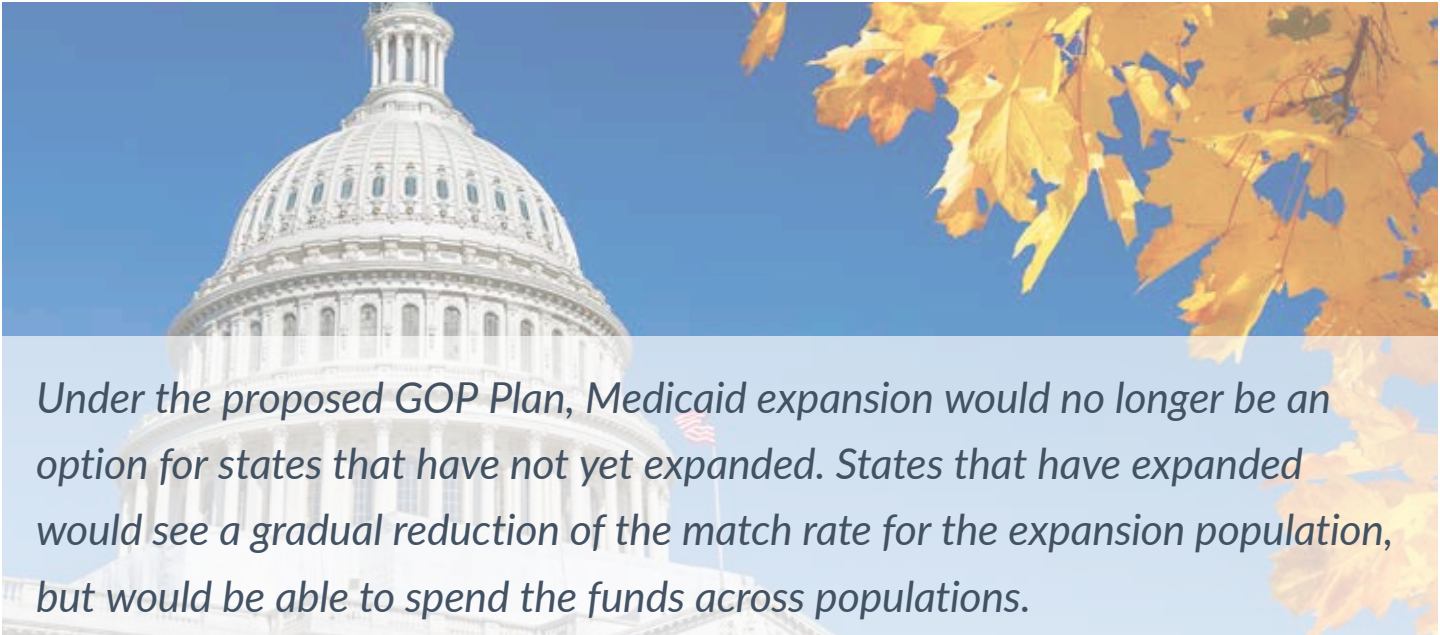
Trump has proposed that federal funding for Medicaid be provided in the form of block grants to states to operate their programs. Similarly, the House Republican plan includes a description of two options for funding Medicaid: a "per capita allotment" or a block grant.

Under the per capita allotment approach, beginning in 2019, a federal Medicaid allotment would be available for each state to draw down. The amount of a state's allotment would be calculated based on the state's per capita costs for the four major beneficiary categories—aged, blind, and disabled, children and adults—times the number of enrollees in each of those four categories. In the GOP Plan, Medicaid expansion would no longer be an option for states that have not yet expanded, and states that have already expanded would see a gradual reduction

in the enhanced match rate for the expansion population but would be able to spend the funds across populations. The Children's Health Insurance Program (CHIP) match rate would return to its pre-ACA levels.

This option would account for changes in a state's volume and mix of Medicaid beneficiaries, and is similar to one of the Medicaid reform approaches outlined by Governor Sam Brownback in 2011 in correspondence with then-Health and Human Services Secretary Kathleen Sebelius. It also shares similarities with an approach President Bill Clinton proposed in the mid-1990s as an alternative to a block grant formula then favored by the Republican Congress.

Under the block grant approach outlined in the GOP Plan, states that opt out of per capita allotment funding could automatically receive a block grant to fund their Medicaid program. The block grant approach would assume that states will transition individuals currently enrolled under the ACA expansion rules into other sources of coverage. By providing broad state authority in eligibility and benefits for non-disabled, non-elderly adults and children, the need for waivers would be eliminated and states could keep or modify existing waivers without further approval from HHS. States would have broad discretion to spend the funds, although they would have to provide required services to elderly and disabled individuals described as mandatory populations under current law.



Under the proposed GOP Plan, Medicaid expansion would no longer be an option for states that have not yet expanded. States that have expanded would see a gradual reduction of the match rate for the expansion population, but would be able to spend the funds across populations.

The GOP Plan also would allow states to adopt work or education and training requirements for non-disabled Medicaid enrollees and to use Medicaid dollars to provide defined-contribution benefits in the form of premium assistance or a limited benefit to enrollees who are working or preparing for work. States would be allowed to set “reasonable and enforceable” premiums for non-disabled adults and could require these individuals to use premium assistance without a requirement for wrap-around services. States could also use these dollars to help offset cost-sharing in an employer plan.

Clinton would maintain the existing federal funding structure for Medicaid, but has stated she will also offer incentives, such as allowing states to receive a 100 percent federal match for their expansion population for the first three years of expansion, regardless of when a state chooses to expand. The ACA only authorized the 100 percent match for calendar years 2014–2016. Clinton would also work with governors to expand Medicaid in every state, and invest \$500 million per year on a campaign to facilitate enrollment of eligible individuals into both Medicaid and marketplace coverage.

Health Insurance Market

Both political parties have proposed changes to the health insurance markets across the country to address the cost of health insurance and to increase competition.

A public option. In addition to maintaining the ACA, Clinton has proposed the creation of a “public-option” health plan that would compete with plans offered by private insurers on the ACA’s online insurance marketplaces.

Purchase of health insurance across state lines. Both Trump and House Republicans are proposing to modify existing laws that prohibit the sale of health insurance across state lines.

To date, five states have enacted legislation allowing insurers authorized in other states to issue policies in their states. Critics, including consumer advocates, argue that states effectively would lose their ability to regulate their own insurance markets and that consumers may not benefit from purchasing plans sold from out-of-state insurers who may have fewer local providers in their networks.

The GOP Plan also includes a number of other proposals related to health insurance, including:

Tax treatment for employer-sponsored insurance. There would be a cap on the dollar amount that individuals are allowed to exclude from their gross income for the value of their employer-sponsored insurance, rather than allowing the full value to be excluded as is currently permitted.

Expanded opportunities for risk pooling. Small businesses would be allowed to band together to offer plans, known as association health plans (AHPs), so small businesses could negotiate with health insurers for lower prices and health plans that do not contain the benefits required by their state’s laws. Individuals would be allowed to come together to purchase coverage through individual health pools (IHPs) that would operate similar to AHPs.

Many states have existing laws regarding the operation of AHPs in the state, which may be impacted by any federal AHP legislation. In Kansas, there are very few association health plans currently operating, and it is not clear what the impact would be on the state’s insurance market if large numbers of small businesses chose to offer AHPs and were permitted to offer products that do not comply with the mandated benefits required under state law.

Self-insurance by employers. This provision would maintain current federal law that allows employers to self-insure their employees, along with the use of stop-loss insurance, including ensuring that stop-loss insurance is not defined as “group health insurance,” which could make it subject to additional federal or state regulation. Self-insured plans are currently subject to federal regulation as Employee Retirement Income Security Act (ERISA) benefit plans but are not subject to state insurance regulation.

Expanding Coverage Options and Protecting Consumers

Trump, House Republicans and Clinton have all offered a number of proposals aimed at expanding health insurance coverage options for Americans and protecting individuals using health insurance to access care.

Health Savings Accounts (HSAs). Both Trump and House Republicans promote the use of HSAs to pay for certain medical expenses. Trump has proposed allowing HSAs to accumulate and become a part of an individual’s estate, which could be passed to heirs with no tax penalty, and used by any family member without penalty.

House Republicans are proposing to increase the maximum contribution to an HSA. The GOP Plan also supports expansion of the use of health reimbursement accounts (HRAs), funded by employers, which employees could use to purchase individual coverage.

A health care “backpack.” In addition to HSAs and HRAs, the GOP Plan proposes the creation of a health care “backpack” that would include a monthly universal, advanceable, refundable tax credit, adjusted for age, that could be used to help pay for a typical “pre-ACA health plan” or to pay for other health care expenses, such as over-the-counter medication or dental and vision care.



Provide for a one-time open enrollment period.

Unlike the current annual open enrollment period established by the ACA, the GOP Plan would give uninsured individuals one opportunity to enroll in health insurance, regardless of their health status. If they chose to enroll later, they would not receive the pre-existing conditions exclusion protection and could be subject to higher insurance costs.

Set the default age-rating ratio at five-to-one. This GOP Plan provision would allow insurance companies to set health insurance premiums at levels that would limit the cost of an older individual's premiums to no more than five times what a young person pays. States would have the ability to narrow or expand the ratio at their discretion.

Under the ACA, the age-rating ratio is currently set at three-to-one, which has resulted in higher premiums for young adults. Prior to passage of the ACA, former Kansas insurance commissioner

Sandy Praeger, speaking on behalf of the National Association of Insurance Commissioners, recommended that Congress adopt the five-to-one ratio to maintain reasonable premium costs for young adults.

State innovation grants and other funding. The GOP Plan would provide at least \$25 billion for grants to states that develop innovative health plans and an additional \$25 billion for states to operate high-risk pools.

Prior to the enactment of the ACA, most states, including Kansas, operated state high-risk pools for individuals who were unable to obtain coverage in the private insurance market due to health status or cost. Although the Kansas high-risk pool ceased operation in 2014, the legislation that established the Kansas high-risk pool, K.S.A. 40-2117, et seq., was not repealed and could be used to re-establish the state's high-risk pool.

Consumer protection. Clinton has also introduced proposals to expand coverage and address the cost of health care, including:

- A provision that would require health insurance companies to place a monthly limit of \$250 on covered out-of-pocket prescription drug costs for individuals. The cap would only apply to prescriptions covered by insurance that are specifically approved by the FDA for the treated condition; and
- Federal regulation of “unjustified” health insurance premium increases, including authorizing the Secretary of Health and Human Services to block or modify unreasonable health insurance premium rate increases in states that do not have such authority.

The GOP Plan also contains a number of recommendations specifically intended to protect consumers and ensure that they can obtain and maintain continuous coverage. A number of these recommendations are currently required under the ACA, including:

- Prohibiting insurance companies from using pre-existing condition exclusions as a basis for denying coverage to consumers based on health status;
- Allowing young adults up to age 26 to stay on their parents' health plans;

- Prohibiting insurers from putting lifetime limits on benefits in health plans provided to individuals; and
- Prohibiting insurers from unfairly rescinding (voiding or canceling) a consumer's health plan, especially in cases where the consumer becomes sick.

Family glitch. Clinton proposes to fix what is referred to as the “family glitch” in the ACA, where some low-to-moderate-income families are unable to receive financial assistance to purchase coverage through the marketplaces in cases where a family may have access to employer-sponsored insurance (ESI). Under the ACA, if the ESI coverage is “affordable,” based solely on the cost of covering the employee (and not the cost of covering the employee's spouse or dependents), then the remaining family members cannot qualify for tax credits to reduce the cost of coverage through the marketplace, even if the family cannot otherwise afford coverage. She also proposes to increase premium tax credits available through the marketplaces so that individuals and families pay no more than 8.5 percent of their household income on health insurance premiums.

Cost Transparency

Both Trump and Clinton propose requiring health care providers to provide more price transparency for consumers about the cost of medical procedures. In addition, Clinton would also require both

employers and insurers to provide more information to consumers about out-of-pocket costs, provider networks, drug costs and other elements of health insurance.

Other Health Reform Issues

Medical liability. The GOP Plan includes a proposal to enact medical liability reform by placing caps or limits on the amount of “non-economic damages,” such as pain and suffering, emotional distress, and loss of companionship, which can be awarded to plaintiffs in medical malpractice cases. States would also be encouraged to find ways to reduce frivolous lawsuits and the practice of defensive medicine by pursuing a variety of options, including:

- Using a collateral source rule to prohibit patients from suing for damages that were paid by a health insurer; and
- Authorizing health courts, where judges—not juries—hear testimony, determine liability and set the amount of damages to be awarded to the plaintiff.

Under Kansas law, awards for non-economic damages are capped at \$300,000, scaling up to \$350,000 by 2022. The collateral source rule in Kansas does not prohibit patients from suing for damages based on the medical bills actually charged by health care providers, but providers are permitted to present evidence to a jury that the charges



The GOP Plan would encourage states to find ways to reduce frivolous lawsuits and the practice of defensive medicine.

were reduced or adjusted based on contractual agreements with an insurance company, which a jury can consider when awarding damages.

Kansas law, K.S.A. 65-4901, also provides for the use of malpractice screening panels in medical malpractice cases, at the request of either party or by order of the court. The members of a screening panel are authorized to review the arguments of both parties and the claimant's medical records to determine whether the health care provider departed from the standard of practice and submit a written report that is admissible in any subsequent legal proceedings on the matter.

Wellness programs. House Republicans propose to ensure that employers are allowed to offer employee wellness programs tied to financial rewards or surcharges as long as the programs do not exceed the limits under current law, and clarify that offers of financial incentives for employees meeting certain health goals do not violate the Americans with Disabilities Act of 1990. Employee wellness programs would be permitted to gather "voluntarily collected" medical information from an employee's family members without violating the federal Genetic Information Nondiscrimination Act of 2008.

Workforce. Clinton is proposing to expand the health care workforce by doubling the funding for primary care services at community health centers over the next decade, which involves extending the current funding provided in the ACA and expanding it by \$40 billion over the next 10 years, and also tripling the size of the National Health Service Corps.

Mental health and substance abuse. Clinton has proposed to help school districts and communities implement age-specific drug abuse education, peer and mentorship programs and to increase funding for Substance Abuse Prevention and Treatment Block Grants by 15 percent to expand access to inpatient

and outpatient treatment. She also recommends a requirement for licensed prescribers to participate in training on controlled medications and to consult a prescription drug monitoring program before writing prescriptions for these medications. She plans to direct the U.S. Attorney General to issue guidance on prioritizing treatment over incarceration for nonviolent and low-level federal drug offenders.

Trump recently outlined related policy proposals, including expanding incentives for the use of drug courts and mandated treatment, ending Medicaid policies that obstruct substance abuse inpatient treatment, and increasing first responder and caregiver access to naloxone, a medication used to counter the effects of opioid overdose.

Autism. Clinton plans to conduct a nationwide early screening outreach campaign to ensure that all children can get screened for autism and will push states to require health insurance coverage for autism services in private health insurance.

Access to reproductive health care. Clinton has said she will work to ensure that all women have access to preventive care, affordable contraception, and safe and legal abortion.

Zika. Clinton plans to provide emergency funding for Zika and create a Public Health Rapid Response Fund to invest in public health preparedness and address emerging disease threats like Zika.

Conclusion

While the future of the ACA in its entirety is unclear, there may be some areas of agreement between Republicans and Democrats that could have bipartisan appeal and support. It is likely that health care policy in the U.S. will continue to evolve during the next four years and beyond, regardless of the outcome of the 2016 elections.

ABOUT THE ISSUE BRIEF

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