

## Making Health Care Great Again: The Republicans' Playbook to Health Care Reform

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Republican representatives and senators recently retreated to Philadelphia to be brought up to speed on health care reform. When leaked audio from that meeting became available<sup>1</sup>, it revealed the Republican playbook on what reform will look like and how they intend to push it through Congress.

The Trump administration is leading a three-pronged approach to health

care reform: (1) repeal unpopular penalties and taxes, (2) provide states greater control and flexibility over the Medicaid program, and (3) encourage consumer-centric reforms based on free market principles. Their message is that the existing system is not affordable, competitive, nor effective.

### Repealing Penalties and Taxes

Below is a list of key taxes and penalties that Republicans would like to see on the chopping block:

- When the Affordable Care Act (“ACA”) was passed in 2010, it used tax increases to fund government programs intended to expand coverage to millions of Americans. Currently, married taxpayers with \$250,000 of income and single taxpayers with \$200,000 of income<sup>2</sup> pay a 3.8 percent tax on certain investment income<sup>3</sup> as well as a 0.9 percent additional payroll tax on their employment income to fund these programs<sup>4</sup>. Republicans have been proposing a repeal of

this provision since they took control of Congress after the 2010 elections, while Democrats see it as an important way to fund health programs.

- The medical device industry paid a 2.3 percent excise tax on the sale of certain devices starting in 2013<sup>5</sup>, but the tax was temporarily suspended from 2016 through the end of 2017<sup>6</sup>. The medical device tax has been seen as controversial by both political parties due to concern that some businesses would reduce their domestic manufacturing workforces to offset the tax<sup>7</sup>.
- The ACA imposed a 40 percent excise tax<sup>8</sup> (often referred to as the “Cadillac tax”) on annual employer-paid premiums over \$10,200 for individuals and \$27,500 for families (presently delayed until 2020)<sup>9</sup>. The tax is deeply unpopular with both parties, and repealing the tax was even included in the Democratic party platform for the 2016 election<sup>10</sup>.
- Individuals who do not have health insurance for all 12

months of the year are subject to a penalty of \$695 per adult (half that rate for children under 18) or 2.5 percent of their household income, whichever is higher<sup>11</sup>. While there are some limitations on the maximum penalty and several exceptions exist, this penalty has been the subject of multiple lawsuits, Supreme Court rulings, and is viewed favorably by only 35 percent of the country<sup>12</sup>.

- The employer mandate requires employers with 50 or more full-time-equivalent employees to offer affordable coverage to their employees or else face penalties from the IRS<sup>13</sup>. To ensure enforcement, large employers are required to report to the IRS whether they offered affordable coverage to each of their full-time employees<sup>14</sup>. Republican leaders see these rules as leading by punitive measures, and would prefer positive incentives to encourage individuals to obtain health insurance coverage.

### **Providing States Greater Control**

Republican congressional leaders emphasized the need to push down greater flexibility and control to the states when administering the Medicaid program. They believe there will be significant cost savings to the overall system by allowing the states to innovate and develop programs tailored for their populations without interference from federal bureaucracies.

Currently, federal funds are sent to state governments to support health care programs for the poor through a complicated matching program in which the US government pays for

the majority of costs (the average is 57 percent and varies by state<sup>15</sup>) and states pick up the remaining amounts. Many conservatives believe the program is full of inefficiency and fraud.

Republicans are considering changing the federal payments to a fixed amount per enrollee, or a block grant that provides the state a fixed amount of funds regardless of the total cost to the state. These approaches give states greater certainty as to how much they will receive each year, while incentivizing greater efficiency in how the funds are spent. Unless the payments are increased each year at or near the rate of health care inflation, the risk that the cost of delivering care to Medicaid recipients will increase faster than the funding increases will shift from the US government to the states, thus applying pressure for greater cost efficiency at the state level.

### **Free Market Solutions**

Conservative proposals emphasize driving down health care costs by creating greater competition, flexibility, and price transparency. Health insurance exchanges have been plagued by dwindling insurance options, resulting at times in only a single insurer option, especially in rural communities<sup>16</sup>. Look for proposals that will eliminate federal subsidies to the current health insurance exchanges.

In addition, Republicans would like to allow insurance companies to offer coverage across state lines. Currently, insurance is regulated by the state an individual lives in, creating cost differences from one state to the next. By allowing

interstate insurance, Republicans believe that individuals could take advantage of similar policies offered in other states, creating greater competition to drive down costs. State regulators argue the change will incentivize insurance companies to choose to operate from states with the fewest regulations, thereby reducing consumer protections<sup>17</sup>.

Since the 1940s, health insurance purchased through an employer has been treated as a non-taxable benefit, creating a significant tax break if you're covered through work. Republicans are discussing refundable tax credits for individuals who aren't covered through their employer and placing a limit on the tax benefit for employer-sponsored insurance. Look for proposals that give individuals the opportunity to carry the same insurance policy from one job to the next as well as into retirement. Some legislators have referred to this concept as having a health care "backpack" where individual consumers have greater flexibility and portability over their coverage. Any reform coverage would continue the existing policies forbidding denial of coverage due to pre-existing conditions, as well as allowing young adults to be covered under their parents' policies until they turn 26.

Expanding access to health savings accounts (HSAs) is intended to incentivize individuals to shop for the best pricing options when they seek care by transferring some financial risk onto the consumer. During the presidential race, Donald Trump proposed allowing greater tax incentives for HSA contributions, allowing accumulated funds to be exempted from the estate tax when

passed to heirs, and allowing the funds to be used by any member of a family without penalty<sup>18</sup>. HSAs rely on price transparency in the health care system, which has been a notoriously difficult problem to solve. Look for any health care reform to include greater price transparency requirements from doctors, clinics, and hospitals.

### Sticking Points

Health care is a difficult challenge to address, and attempts to reform the system will meet stiff political opposition. Details on reform proposals have been scarce, and Republicans will need nearly unanimous support from their 52 senators in order to make it a reality. Democrats have enough votes in the Senate to filibuster outright attempts to repeal the law, which they will likely use.

To get around a filibuster, Republicans will use the budget reconciliation provisions to pass key aspects of health care reform. Legislation done through reconciliation can only address taxes and spending, and the filibuster rules don't apply, meaning it can be passed with just 51 votes. (It takes 60 votes to overcome a filibuster.) While this process will work for areas such as repealing taxes, eliminating federal subsidies for exchange programs, and changing federal grants to the state Medicaid programs<sup>19</sup>, it won't allow President Trump to repeal the Affordable Care Act in its entirety. Look for several additional pieces of legislation to address health care reform issues on a piece-meal basis. If repealing key provisions of the ACA isn't possible, President Trump may encourage the Senate to change its rules to do away with the

filibuster altogether (the so-called nuclear option).

Another significant challenge will be whether the federal government continues to fund the Medicaid expansion program under the original ACA policy in the 31 states (plus the District of Columbia) which have adopted it<sup>20</sup>. Currently, the US government has committed to paying for 90 percent of the expansion costs for those states that expanded eligibility under their state Medicaid programs<sup>21</sup>. Republican legislators from states that opted out of Medicaid expansion would like to see it repealed as validation that the program was unsustainable and ineffective; however, 20 Republican senators and 16 Republican governors from states that chose Medicaid expansion may endure strong opposition at home if they vote against it. If federal funding is eliminated, many states will face difficult choices on whether they can afford to continue to provide access to health care for many individuals on this program.

Some legislators are concerned the health care reform proposals would make unsustainable promises by providing refundable tax credits for health insurance, eliminating existing tax rules, and continuing to fund Medicaid expansion programs without raising funds to pay for these programs. They would like to see reform that adequately addresses how Medicaid will be paid for in order to avoid further expansion of the federal deficit.

Even knowing the broad outline of how the Republicans are looking to reform the health care system, there are many twists and turns to come. Ultimately there are individuals

across our country, wealthy and poor, urban and rural, who will be walking into a new health care system in the years ahead wondering whether they will be taken care of and how they will pay for it.

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<sup>1</sup>Behind closed doors, Republican lawmakers fret about how to repeal Obamacare, Mike DeBonis, Washington Post, January 27, 2017

<sup>2</sup>Internal Revenue Code §1411(b)

<sup>3</sup>Internal Revenue Code §1411(a)

<sup>4</sup>Internal Revenue Code §1401(b)(2)

<sup>5</sup>Internal Revenue Code §4191(a)

<sup>6</sup>Internal Revenue Code §4191(c)

<sup>7</sup>Has the medical device tax eliminated 'thousands' of jobs?, Michelle Ye Hee Lee, Washington Post, January 7, 2015

<sup>8</sup>Internal Revenue Code §4980I

<sup>9</sup>Consolidated Appropriations Act of 2016, Division P, Title I, §101(a)

<sup>10</sup>See <https://www.democrats.org/party-platform#universal-health>

<sup>11</sup>Internal Revenue Code §5000A(c)

<sup>12</sup>Kaiser Health Tracking Poll: November 2016, The Henry J. Kaiser Family Foundation, [kff.org/health-costs/poll-finding/Kaiser-health-tracking-poll-november-2016/](http://kff.org/health-costs/poll-finding/Kaiser-health-tracking-poll-november-2016/)

<sup>13</sup>Internal Revenue Code §4980H

<sup>14</sup>Internal Revenue Code §6056(a)

<sup>15</sup>See <https://www.medicaid.gov/medicaid/financing-and-reimbursement/>

<sup>16</sup>Choices dwindling for Obamacare customers, Tami Luhby, CNN, August 24, 2016, <http://money.cnn.com/2016/08/23/news/economy/obamacare-insurers-choices/>

<sup>17</sup>See Interstate Health Insurance Sales: Myth vs. Reality, National Association of

Insurance Commissioners, [www.naic.org/documents/topics\\_interstate\\_sales\\_myths.pdf](http://www.naic.org/documents/topics_interstate_sales_myths.pdf)

<sup>18</sup>See <https://www.donaldjtrump.com/positions/healthcare-reform>

<sup>19</sup>How The Budget Reconciliation Process Works, Eric Pianin, NPR, January 21, 2010, <http://www.npr.org/templates/story/story.php?storyId=122816822>

<sup>20</sup>Status of State Action on the Medicaid Expansion Decision, as of January 1, 2017, The Henry J. Kaiser Family Foundation, <http://kff.org/health-reform/state-indicator/state-activity-around-expanding-medicare-under-the-affordable-care-act/?currentTimeframe=0>

<sup>21</sup>See Medicaid.gov discussion of Medicaid expansion financing, [https://](https://www.medicare.gov/affordable-care-act/financing/index.html)

[www.medicare.gov/affordable-care-act/financing/index.html](https://www.medicare.gov/affordable-care-act/financing/index.html)

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