

Health Care in Motion

Timely, Substantive Updates on Policy Shifts · Actionable Advocacy to Protect Health Care

March 07, 2017 3:00PM EST

House Republicans Unveil Health Care Proposal

Draft legislation limits financial supports for purchasing individual insurance, narrows consumer protections, and undermines federal financial support for Medicaid

On March 6, 2017, Republican House leadership unveiled their proposal, the *American Health Care Act* (the Proposed Legislation),¹ to replace the Affordable Care Act (ACA) and modify Medicaid's funding structure. The Proposed Legislation would modify the subsidies for purchasing private coverage implemented by the ACA by pegging these subsidies to age instead of income, and by reducing the size of the subsidies. The Proposed Legislation also targets consumer protections first implemented by the ACA, including protections designed to facilitate access to private health care coverage for people living with pre-existing conditions. It would also dramatically modify Medicaid by removing its entitlement funding status and shifting the majority of the financial burden of this program to states by implementing per capita spending caps. If implemented, the Proposed Legislation would likely make it difficult for people living with chronic illnesses and disabilities to access meaningful coverage from private insurers while shrinking the scope of eligibility and benefits for Medicaid.

The process outlined by House leadership for moving this draft bill forward is highly unusual for a major legislative proposal. House leadership is promoting an accelerated timeline for the Proposed Legislation that would likely provide little to no opportunity for public comment, thoughtful debates, or other deliberation. This accelerated timeline, with limited opportunities for stakeholders to weigh in, raises significant transparency concerns.

Because of the accelerated timeline and potential major impact the Proposed Legislation could have on the American health care system, advocates should move quickly to analyze and respond.

To ensure that their voices are heard in this discussion, advocates should:

- 1. Understand the potential impact the Proposed Legislation would have on the private insurance markets, including narrowing consumer protections and limiting subsidies received by lower income individuals.**
- 2. Understand the potential impact the Proposed Legislation would have on curbing Medicaid expansion and limiting the federal government's financial support of Medicaid. Advocates should also understand what impact these financial changes would have on eligibility and benefits for their state's Medicaid program.**
- 3. Monitor the accelerated timeline for the Proposed Legislation and move quickly to educate their Congressional delegations, particularly their [Senators](#), on the impact that the Proposed Legislation would have on access to care for vulnerable individuals.**

¹ The [American Health Care Act](#) currently consists of two proposals, one in front of the House [Ways and Means Committee](#) and the other in front of the House [Energy and Commerce Committee](#). Once both Committees have finalized the proposals, they will be combined into one bill for the House and Senate to consider. For section by section summaries of these two bills please see [here](#) and [here](#).

Health Care in Motion

House Proposal Likely to Result in Vulnerable Individuals Facing Challenges in Accessing Care on the Private Market

The Proposed Legislation modifies changes first implemented by the ACA to curtail some key consumer protections as well as limit the financial support offered to lower income individuals seeking to purchase health care through the Marketplaces. Although the Proposed Legislation does offer some additional support to vulnerable individuals through high risk pools, it is unlikely that these programs will be sufficient to offset the other changes made to the private insurance system.

Age based tax credits in lieu of income-based subsidies for purchasing health insurance

Under both the ACA and the Proposed Legislation, at least some Americans would receive tax credits to help pay monthly premiums for health insurance. However, while the ACA scaled these tax credits based on income, to provide the greatest relief for lower income individuals, the Proposed Legislation would scale these tax credits based on age. This would create a system in which a lower income individual who could not afford to contribute additional out-of-pocket funds to his or her premium payments would receive the same subsidies as a higher income individual who could supplement the tax credit with additional funds. The tax credits in the Proposed Legislation would also be capped to avoid providing support to the very richest Americans.

Further exacerbating the negative impact on low income populations, the subsidies available under the Proposed Legislation do not vary to account for geographic differences in the costs of insurance and they are much less robust than the subsidies provided under the ACA. Under the Proposed Legislation, the tax credits are capped at \$2,000 for an individual under 30 and \$4,000 for an individual over 60. In contrast, under the ACA, the [average subsidy](#) for 2014 was \$2,890 per person, with average subsidies in each state ranging from \$1,780 in Utah to \$4,980 in Massachusetts to reflect the variations in health care costs across the country. Further, an individual closer to 100% of the Federal Poverty Level (FPL) could expect to receive a higher than average subsidy amount under the ACA. The tax credits that would be available under the Proposed Legislation are simply not robust enough to enable individuals to purchase meaningful, quality insurance without significant personal financial contributions by the individual, which is not feasible for many lower income Americans.

A third important difference between the ACA and the Proposed Legislation's tax credits is that the ACA's tax credits are pegged to the cost of the second lowest silver qualified health plan available on a state's Marketplace while the Proposed Legislation's tax credits will increase based on the [Consumer Price Index](#) plus one (CPI+1). This means that the tax credits contemplated by the Proposed Legislation would not reflect jumps in health care spending and cost of insurance, which would quickly further reduce the buying power of these credits. These new tax credits could be used to purchase catastrophic care plans, which will encourage healthier individuals to leave more robust but expensive plans, thus skewing the more robust plans' risk pools sicker and increasing premiums for those plans. Also of note, the new tax credits cannot be used for any plans that offer elective abortion coverage.

Use of health savings accounts

In an effort to offset the decreased financial supports for many Americans and control health care spending costs, the Proposed Legislation emphasizes expanded [health savings accounts](#) (HSAs) coupled with high deductible health plans. HSAs are special savings accounts in which any contributions are tax deductible and any interest or earnings on the account are tax free. This tax benefit is intended to help ease the burden of paying for health care. The purpose of HSAs is to help individuals finance a [higher deductible](#) in their health plan. The Proposed Legislation would allow individuals to contribute up to the current out of pocket maximum limits to their HSAs (\$6,550 for individuals and \$13,100 for families).

HSAs can be beneficial for middle and higher income individuals who have the funds to contribute to their accounts and a high enough tax bill to take advantage of the deductions. Unfortunately, HSAs are not useful for lower income Americans

Health Care in Motion

who would struggle to fund these accounts and would not realize a tax benefit. Expanded HSAs would likely be an inadequate substitute for the 10.5 million lower income Americans who currently rely on the ACA's tax credits to afford their health care coverage.

High risk pools

To specifically support individuals with high health costs, the Proposed Legislation provides states with funds through a Patient and State Stability Fund to create highrisk pools for some people with pre-existing conditions, among other Marketplace stabilization efforts. The fund will provide \$15 billion for state use in 2018 and 2019, and then \$10 billion per year onwards. This sum is inadequate to fund robust enough high risk pools to compensate for changes to the Marketplace and, in any case, [past experience](#) with high risk pools has shown that [they do not work](#). They are prohibitively expensive to administer, the coverage is too costly for consumers, and the benefits they offer are poor compared to other plans. The high risk pools in this proposal are not an adequate tradeoff for eliminating many of the ACA's important consumer protections that allow individuals living with chronic illnesses and disabilities to participate in the broader Marketplaces.

Consumer protections, continuous coverage, and actuarial value

Most notably for individuals living with chronic illnesses and disabilities, the Proposed Legislation maintains guaranteed issue as well as the prohibition on health status underwriting. The Proposed Legislation also maintains essential health benefit requirements for private insurance (although not for Medicaid) and the prohibition on annual and lifetime coverage caps. These are all important consumer protections for people living with chronic illnesses and disabilities.

However, the Proposed Legislation also weakens other important consumer protections. For example, it imposes a new continuous coverage requirement with heavy penalties. This provision requires individuals to maintain coverage without lapses over 63 days to avoid insurers charging higher premiums. The Proposed Legislation requires insurers to charge 30% more for an individual who experienced a lapse in coverage of greater than 63 days, regardless of health status. The continuous coverage penalty is designed to encourage people to purchase health care as the Proposed Legislation eliminates the ACA's individual mandate. This provision is problematic for vulnerable populations, because if an individual's coverage lapses for whatever reason, such as loss of employment, he or she may face prohibitively high premiums when they reenter the insurance market.

The Proposed Legislation also eliminates the actuarial value (AV) requirements for qualified health plans. AV is the percentage of annual health care costs covered by the insurer rather than covered out of pocket. Higher AV values help protect individuals living with chronic illnesses and disabilities with predictably high health care costs by limiting the percentage of their care they would be required to pay out of pocket. Eliminating the AV requirements will allow insurers to push much of the annual cost of care back onto enrollees and individuals living with expensive conditions will feel this change most acutely.

Key takeaways for advocates: private insurance

This is a critical moment for advocates to weigh in to support vulnerable populations' access to care. With so many issues still in-flux, advocates should educate their Congressional delegations about the importance of providing subsidies robust enough to allow Americans, especially lower income individuals, the ability to purchase quality coverage. Because the Proposed Legislation allows tax credits to be used to purchase catastrophic care plans, advocates should make sure to distinguish quality coverage, similar to the qualified health plans currently offered on the Marketplaces, from catastrophic care plans, which do not adequately address the needs of individuals living with chronic illnesses and disabilities. Advocates should also highlight the importance of strong consumer protections for individuals living with chronic illnesses and disabilities, such as the AV requirement, as well as the inadequacy of high risk pools to address these individuals' health care needs.

Health Care in Motion

House Proposal Would Curb Medicaid Expansion and Limit Federal Financial Support for Medicaid, Undermining Access to Care for Vulnerable Populations

The Proposed Legislation would also significantly change the Medicaid program, both by phasing out the Medicaid expansion that occurred under the ACA, and limiting federal financial support of the entire Medicaid program. In 2015, 97 million Americans relied on Medicaid, including at least [10 million individuals](#) living with chronic illnesses and disabilities. The Proposed Legislation's changes would result in many individuals losing access to Medicaid, while other Medicaid enrollees would likely experience greatly reduced benefits.

Elimination of Medicaid expansion

The Proposed Legislation would eliminate the special financial support for Medicaid expansion by 2020. Under the ACA, the federal government covers 90% of the cost to state governments of the Medicaid expansion population. An estimated [11 million Americans](#) receive health care access through Medicaid expansion. Under the Proposed Legislation, for any individuals enrolled after December 31, 2019 (or for an individual enrolled prior to December 31, 2019 who has experienced over a month break in coverage) this percentage would be reduced to match the amount of support the federal government provides for the rest of Medicaid. The result is a phase out of the enhanced federal financial support for Medicaid expansion.

While states could opt to continue to provide Medicaid to the expanded eligibility groups after the phase out, they would bear much more of the financial burden of this expansion, as they would no longer receive enhanced federal reimbursement for this population. States would likely have to pay a combined [\\$32 billion](#) in additional funds to continue Medicaid expansion.

This will force states to make difficult financial decisions about whether they can afford to continue covering the expansion population. Seven states, Arkansas, Illinois, Indiana, Michigan, New Hampshire, New Mexico, and Washington, have laws that would automatically end their expansion as a result of reduced federal funding. These laws would result in 2.6 million Americans in these seven states alone losing their current health care coverage. The Proposed Legislation also seeks to reward non-expansion states by providing them with \$10 billion over five years in safety net funding.

Elimination of Medicaid entitlement in favor of per capita caps

The Proposed Legislation also significantly curtails all federal Medicaid spending by doing away with the entitlement structure and replacing it with per capita caps beginning in FY2020. The Proposed Legislation would shift Medicaid from an open ended federal entitlement program, in which the federal government must match state spending, to a program designed by each state within a pre-set financial limit, here a per capita cap. The Proposed Legislation uses each state's spending in FY2016 to set targeted spending, which would permanently enshrine the disparities in Medicaid spending across states. The Proposed Legislation ties the annual increase in the per capita rates to the medical care component of CPI. While this index tracks medical spending, it will not immediately account for sudden jumps in expenditure such as the advent of a new blockbuster drug, such as the introduction of Hepatitis C medications several years ago.

A change to per capita caps is [alarming for proponents of access to care](#). Per capita caps can be especially problematic for higher cost individuals, such as those living with chronic illnesses and disabilities, because it puts a ceiling on the federal contribution towards each individual's health care costs. This means that states would be responsible for all costs above the per-beneficiary cap, which may be challenging in states with tight budgets. Under the Proposed Legislation, states would be given the authority to control their Medicaid enrollment and eligibility in order to address costs, and would no longer be required to provide essential health benefits to the expansion populations. This will likely result in heavy pressure on the states to cut benefits and eligibility in their programs. This is especially concerning for individuals living with chronic illnesses and disabilities, who account for about [half of Medicaid spending](#). Ultimately, the greater flexibility the Proposed Legislation

Health Care in Motion

purports to give the states is useless without financial support to pursue innovation. Without the funding, greater flexibility will only translate into the flexibility to cut services and eligibility.

Key Takeaways for Advocates: Medicaid

Advocates should also make their position on Medicaid known to their Congressional delegations. In particular, advocates should highlight the success of Medicaid expansion in reducing the number of uninsured individuals and improving health in states that have expanded Medicaid. Advocates should also highlight the importance of maintaining strong federal funding for Medicaid and the impact that per capita spending caps could have on coverage and benefits for Medicaid enrollees. Advocates could highlight the importance of Medicaid in financing services, such as long term support services, for individuals living with chronic illnesses and disabilities.

House Proposal is on an Alarming Accelerated Timeline, Raising Transparency Concerns

The process for generating the Proposed Legislation has been [remarkably non-transparent](#), and signs indicate that the process for moving the Proposed Legislation forward will continue to be equally unorthodox. Based on the ambitious timeline envisioned by House leadership, there will be limited to no opportunity for public comment or thoughtful discussion of this legislation.

Customarily, major legislation is considered through some deliberation among Congresspeople followed by a hearing process, in which witnesses may give testimony as to the potential effects of a bill. These [hearings](#), which can be held by committees or the entire House or Senate, allow for information gathering and act as a forum for the public to provide input on proposals. While House Republicans have likely been working on some version of the Proposed Legislation since President Trump's election, their process has not been transparent. A draft of the Proposed Legislation was made available to House Republicans last Thursday, March 2, but House Democrats were prevented from reviewing the bill until this Monday, March 6. Both House Committees responsible for reviewing the bill, the [Energy and Commerce Committee](#) and the [Ways and Means Committee](#) have not announced any hearings on the Proposed Legislation. They are expected to vote on the Proposed Legislation on March 8, leaving little time for thoughtful review.²

Further, legislation intended to impact the federal budget, such as this proposal, is also evaluated by the [Congressional Budget Office](#) (CBO) to provide estimates of the budgetary impact of any changes. This allows Congresspeople to understand the financial impacts of the legislation they vote for. However, both Committees will have to vote on the proposal before the CBO will be able to release estimates of its impact on the federal budget and on insurance coverage. As of March 7, 2017, the CBO has not provided a timeline for when it will be able to release its analysis of the Proposed Legislation. Previous versions of the Proposed Legislation [received](#) unfavorable coverage numbers from the CBO. House Leadership has promised that the CBO final estimates will be available by the time the Proposed Legislation reaches the House floor. Because of the accelerated timeline, it is possible that the Senate will be forced to review the Proposed Legislation before the House has finalized it.

Key Takeaways for Advocates: Process

This accelerated schedule is alarming because it requires lawmakers to vote on a major bill without having the time to fully understand its potential impacts on our health care system. Congresspeople should have the opportunity to consider public input on the Proposed Legislation and understand its impact on the budget and insurance coverage through its CBO evaluation. Advocates should let their Congressional representation know that haste is not a virtue in considering legislation that could affect millions of Americans. Advocates should reach out to their [Representatives](#) to ask them to hold hearings on the Proposed Legislation to allow for public comment and more thoughtful deliberation as well as to slow down the process

² Prior to voting on the Proposed Legislation, both House Committees may amend or modify the Proposed Legislation. This Health Care in Motion is based on the draft of the Proposed Legislation released late on March 6, 2017. It may not reflect any subsequent changes made by either Committee to the Proposed Legislation.

Health Care in Motion

to allow the CBO to properly evaluate the draft before the House Committees vote on the proposal.

House Proposal has Already Garnered Criticism from both House Conservatives and Key Moderates in the Senate

In selling the Proposed Legislation to both houses of Congress, House Leadership faces the difficult challenge of threading the needle between the more conservative elements of the House and the more moderate Republican elements of the Senate. Leaders of the House Freedom Caucus and the Republican Study Committee, two of the most conservative groups of Congresspeople, have [made it clear](#) that they oppose the Proposed Legislation on the grounds that it does not go far enough in dismantling the ACA. Specific points of contention include the maintenance of tax credits, which these Congresspeople view as an entitlement held over from the ACA, as well as the continued existence of Medicaid expansion, albeit in a limited form.

In addition to this criticism in the House, certain conservative Senators, such as [Rand Paul](#) (R-KY) and [Ted Cruz](#) (R-TX), have also voiced their opposition to any proposal that does not completely repeal the ACA, including its tax credits and Medicaid expansion. Several influential conservative advocacy groups, including the Club for Growth and the Heritage Foundation, have also denounced the House proposal. The Trump Administration, meanwhile declined to fully endorse the proposal, with Health and Human Services (HHS) Secretary Tom Price calling it “a work in progress.”

Meanwhile, moderate Republican Senators, such as [Rob Portman](#) (R-OH), [Shelley Moore Capito](#) (R-WV), [Cory Gardner](#) (R-CO), and [Lisa Murkowski](#) (R-AK) have [expressed concern](#) about the potential impact that the Proposed Legislation could have on their states, especially with respect to Medicaid expansion. As a result, it is far from certain that the House’s Proposed Legislation could pass in the Senate.

Key Takeaway for Advocates: Maximizing Impact

Congressional leadership will need at least fifty of the fifty two Republican Senators to vote in favor of the Proposed Legislation, meaning that they will have to somehow appease virtually all of the Senators in their party. Because of the importance of each Senator’s vote, advocates should focus on educating their Senators on the importance of strong consumer protections, subsidies scaled to income, and robust federal financial support for Medicaid on access to care for people living with chronic illnesses and disabilities.

Health Care in Motion is written by:

*Caitlin McCormick-Brault, Associate Director at the Center for Health Law and Policy Innovation;
Carmel Shachar, Clinical Instructor at the Center for Health Law and Policy Innovation; and
Phil Waters, Clinical Fellow at the Center for Health Law and Policy Innovation.*

For further questions or inquiries please contact Carmel Shachar, cshachar@law.harvard.edu.

Subscribe to all Health Care in Motion Updates

