

## POLICY NOTE

### Key Findings

- 1) The November election indicated that voters want a new direction for the country, including a new direction for our health care system.
- 2) The Affordable Care Act has helped some people, but it has not come close to reaching the two goals supporters of “Health Care for All” promised: coverage for everyone and decreasing health care costs.
- 3) Congressional Republicans have published a paper that outlines six health care reform principles with the goal of more patient-control and less government intervention. The proposed reform principles are:
  - Repeal Obamacare
  - Provide all Americans with more choices, lower costs, and greater flexibility
  - Protect and strengthen coverage options for all Americans
  - Enact Medicaid entitlement reform
  - Spur innovation in health care
  - Protect and preserve Medicare
- 4) Policymakers must find a way to not only repeal and replace the Affordable Care Act, but to protect those people who have benefited from the law.
- 5) Repeal and replace should occur simultaneously so patients, providers, and insurance companies can plan for the future without uncertainty.
- 6) After the November election, policymakers should understand the mood of Americans and should work together to achieve meaningful reform that puts patients, rather than the government, in charge of their health care.

# Health Care Reform After the Election

## *What Congress should do to replace Obamacare*

By Roger Stark, MD, FACS

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### Introduction

Republicans won nationally in the recent November election. From a policy standpoint, American voters want a new direction for the country, including a new direction for our health care system.

The Affordable Care Act (ACA), passed in 2010, was enacted as a highly partisan, complex, 2,700 page federal law. Government officials then felt obligated to add over 20,000 pages of new regulations in an effort to make the legislation workable. The Obama Administration, Congress, and the U.S. Supreme Court have made over 70 major changes in the ACA law in an effort to make it more acceptable. Yet a majority of Americans has opposed the entire law or significant parts of it since it passed.<sup>1</sup>

Unquestionably, the ACA has helped some people, but it has not come close to reaching the two goals supporters of “Health Care for All” promised: coverage for everyone and decreasing health care costs. The law is too complex, too political, and too expensive. It clearly imposes too large a regulatory burden on Americans to be effective.

### Better health care reform

Given the hard lessons of the last six years, Americans deserve better health care reform. They deserve patient-centered solutions that would allow them to make their own health care decisions and spend their own health care dollars. Patient-centered reform would re-establish the relationship between patients and doctors. The ACA opts for more government central-planning.

This past year, Congressional Republicans published a series of white papers called “A Better Way” which outline reform changes in our economy, taxes, social issues, and health care. These papers are starting-points for discussion and debate on possible reforms.<sup>2</sup>

The white paper dealing with health care outlines six reform principles with the goal of more patient-control and less government intervention. These reform principles are:

- Repeal the Affordable Care Act, also called Obamacare
- Provide all Americans with more choices, lower costs and greater flexibility
- Protect and strengthen coverage options for all Americans
- Enact Medicaid entitlement reform
- Spur innovation in health care
- Protect and preserve Medicare

1 “Constant Changes Highlight Flaws in Affordable Care Act,” by Roger Stark, MD, Policy Note, Washington Policy Center, May 17, 2016 at <http://www.washingtonpolicy.org/publications/detail/constant-changes-highlight-flaws-in-affordable-care-act>

2 “A Better Way; Our Vision for a Confident America,” June 22, 2016 at [http://abetterway.speaker.gov/\\_assets/pdf/ABetterWay-HealthCare-PolicyPaper.pdf](http://abetterway.speaker.gov/_assets/pdf/ABetterWay-HealthCare-PolicyPaper.pdf).

## Transition to a patient-centered system

The problem that Republicans now face is making a seamless and painless transition from Obamacare to a patient-oriented system. Although the ACA is a failed law, 20 million Americans now have health insurance either with taxpayer subsidies on the exchanges or through the expanded Medicaid entitlement program.

In Washington state, 170,000 people receive their health insurance through the state Obamacare exchange.<sup>3</sup> Another 600,000 Washington residents were placed in the expanded Medicaid entitlement, bringing the total number of people in Medicaid to 1.8 million in Washington state.<sup>4</sup>

Policymakers must find a way to not only repeal and replace the Affordable Care Act, but also to protect those people who have benefited from the law, so they can continue to have health coverage.

Republicans did not win a 60-vote majority in the United States Senate. Consequently, repeal of Obamacare will require either the support of Democratic lawmakers to reach a filibuster-proof 60 votes, or a series of votes on specific parts of the law requiring only a simple majority.

Through a process known as reconciliation, a simple majority in the Senate can amend the parts of the law that specifically deal with the budget and financing.<sup>5</sup> The reconciliation process could defund the Medicaid expansion and could stop the subsidies in the Obamacare exchanges. Because the U.S. Supreme Court ruled that the penalty for not having health insurance is a tax, theoretically the reconciliation process could repeal the individual and employer mandates. The process could not be used, however, to repeal the insurance mandates in Obamacare. This non-budget policy change would require 60 votes in the Senate to pass.

Republicans must offer reasonable alternatives to people who might lose their health insurance if Obamacare is repealed. This will be difficult to accomplish unless the costly mandates imposed by the law are repealed. For example, simply allowing purchase of health insurance across state lines would not increase competition if all plans must include the 10 federal benefit mandates now required by Obamacare. Eliminating the individual mandate would not be successful unless insurance companies can offer mandate-free or mandate-light plans at low cost, and offer consumers health savings accounts and high-deductible plans at low prices.

## Repeal or reduce state-imposed mandates

Through the years, Washington state elected officials have bent to special interest groups in Olympia and added 58 benefit and provider mandates to every individual and small group health insurance plan sold in the state. Many of these state-imposed mandates overlap with Obamacare federal mandates. Just like the federal mandates, these 58 state-imposed mandates must be eliminated or reduced to make regulatory reform of the insurance

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3 “Washington health insurance marketplace,” by Louis Norris, [healthinsurance.org](http://healthinsurance.org), August 25, 2016 at [www.healthinsurance.org/washington-state-health-insurance-exchange/](http://www.healthinsurance.org/washington-state-health-insurance-exchange/)

4 “A 50-state look at Medicaid expansion,” FamiliesUSA, February, 2016 at [www.familiesusa.org/product/50-state-look-medicaid-expansion](http://www.familiesusa.org/product/50-state-look-medicaid-expansion)

5 “What is reconciliation ?,” by David Kraljic, VoteTocracy, February 26, 2011 at [www.votetocracy.com/blog/what-is-reconciliation](http://www.votetocracy.com/blog/what-is-reconciliation)

industry meaningful. For example, why should a 28 year old unmarried man pay for obstetrical coverage in his health insurance plan, as our state now requires?

## **Similarities between the Republican plan and the ACA**

The Republican “A Better Way” plan also retains several of the most popular policies in Obamacare, including pre-existing condition protection and allowing children to remain on their parents’ health insurance until age 26. These items are supported by President-elect Trump, as well. If these policies are retained, meaningful regulatory reform of the health insurance industry must occur to allow realistic underwriting for insurance plans.

## **Association health plans**

Association health plans (AHPs) offer a real solution for small business owners who want to provide employee health benefits without the massive regulatory burden associated with Obamacare. AHPs are based on voluntary associations, and they have a track record of offering quality health insurance at a reasonable price.

If structured properly, the AHP market can be competitive and can allow small employers to access the same health insurance price and benefit advantages that large employers enjoy. The key is the voluntary choices made by small employers and their employees in seeking affordable health coverage, rather than attempting to navigate a narrow and complex government-run system. Any reform legislation should preserve and strengthen AHPs.

## **High risk pools for people with high medical needs**

The Republican plan recommends high risk pools for patients that have high medical needs and high costs. There are various potential funding mechanisms, but the critical issue is to provide a support system for people with extensive health care needs.

## **Impact on Washington state taxpayers**

Lawmakers in Washington state aggressively established a state exchange and expanded Medicaid under the provisions of Obamacare. If these programs are defunded by the federal government, our state elected officials will need to decide if Washington taxpayers should continue to pay for them or if the programs should be meaningfully reformed.<sup>6</sup> Retaining them could burden state taxpayers with millions of dollars in new taxes.

## **Addressing the third-party payer problem**

Since 1943, employers have been able to deduct the cost of employee health insurance from their company income tax. “A Better Way” proposes a similar tax credit for individuals so they can purchase health insurance tax free. The tax credit would be age adjusted, but there is no mention of income stratification. The criteria of age rather than income simplifies the bureaucratic process and would potentially lead to less fraud and abuse in applying for credits. Using the tax credit also assumes the insurance industry would be deregulated and could offer mandate-free or mandate-light plans at lower, pre-Obamacare prices.

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<sup>6</sup> “A review of the Medicaid program,” by Roger Stark, MD, Policy Brief, Washington Policy Center, May 2009 at [http://www.washingtonpolicy.org/library/docLib/May\\_2009\\_MedicaidPB.pdf](http://www.washingtonpolicy.org/library/docLib/May_2009_MedicaidPB.pdf)

“A Better Way” preserves the employer-paid model for insurance coverage. This is a legacy program from World War II and has resulted in a third party, employers, paying for the health insurance of half the American population. Whether it is employers or the government paying for insurance, the third-party model creates a dis-connect between health care costs and utilization. Patients, and often doctors, have no idea how much medical services cost because, in their minds, someone else is paying the bill. The third-party payer concept is the largest driver of ever-increasing health care costs in the U.S. and any meaningful reform plan should address this problem.

## **Strengthening Medicare and Medicaid**

Comprehensive health care reform must also include changes to Medicare and Medicaid to guarantee their sustainability. This will require bipartisan support to make effective changes and will require educating the American public to understand the future financial costs of these enormous entitlement programs.

Meaningful reforms to Medicare would include raising the age of eligibility, allowing seniors to opt out of the program without losing their Social Security benefits and means testing based on income. Reforms to the traditional Medicaid program could include adding a co-pay, establishing a work requirement, providing block grants from the federal government to states, using vouchers so enrollees could access health care in the private market, and returning the program to being a temporary, time-limited entitlement. Some of these Medicare and Medicaid reforms have already experienced bi-partisan support.

## **Comparing “A Better Way” with Secretary-elect Price’s reform plan**

Rep. Tom Price, MD (R-GA) has been named as the new secretary of the Department of Health and Human Services. He is a retired orthopedic surgeon and has been a member of Congress since 2005.

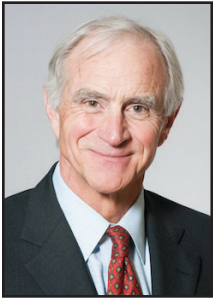
Health care reform has been a priority of Dr. Price’s since he arrived in Washington, D.C. He introduced a comprehensive bill in the 111th Congress (2009-2011) called “Empowering Patients First Act” and subsequently re-introduced it in the 112th and 113th Congresses.<sup>7</sup> How does Rep. Price’s plan for reform compare to the Congressional Republican plan?

They are very similar on fundamentals:

- Repeal Obamacare.
- Continue the employer-paid health insurance model.
- Use an age-based refundable tax credit for individuals to purchase health insurance.
- Maintain the pre-existing condition insurance mandate.
- Allow purchase of health insurance across state lines to increase patient choices.
- Increase the use of high risk pools, funded by federal grants and controlled at the state level.
- Establish medical malpractice reform.
- Allow seniors to opt out of Medicare without losing their Social Security benefits.  
Allow seniors to use health savings accounts and receive the refundable tax credits to purchase insurance in the private market.

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<sup>7</sup> “Empowering patients first act,” by Congressman Tom Price, MD, H.R. 2300 at <http://tomprice.house.gov/sites/tomprice.house.gov/files/Section%20by%20Section%20of%20HR%202300%20Empowering%20Patients%20First%20Act%202015.pdf>



**Dr. Roger Stark** is the health care policy analyst at Washington Policy Center and a retired physician. He is the author of two books including *The Patient-Centered Solution: Our Health Care Crisis, How It Happened, and How We Can Fix It*. He has also authored numerous in-depth studies on health care policy for WPC, including *The Impact of the Affordable Care Act in Washington State, A Review of the Medicaid Program: Its Impact in Washington State and Efforts at Reform in Other States, What Works and What Doesn't: A Review of Health Care Reform in the States, and Health Care Reform that Works: An Update on Health Savings Accounts*. Over a 12-month period in 2013 and 2014, Dr. Stark testified before three different Congressional committees in Washington DC regarding the Affordable Care Act. Dr. Stark graduated from the University of Nebraska's College of Medicine and he completed his general surgery residency in Seattle and his cardiothoracic residency at the University of Utah. After practicing in Tacoma he moved to Bellevue and was one of the co-founders of the open heart surgery program at Overlake Hospital. He has served on the hospital's governing board. He retired from private practice in 2001 and became actively involved in the hospital's Foundation, serving as Board Chair and Executive Director. He currently serves on the Board of the Washington Liability Reform Coalition and is an active member of the Woodinville Rotary. He and his wife live on the Eastside and have children and grandchildren in the area.

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- Allow Medicaid recipients to opt out and use the refundable tax credits to purchase insurance in the private market.
- Increase the use of association health plans, especially for small businesses.
- Increase utilization of wellness and prevention programs.

The differences between the two plans are mostly in details, although Rep. Price's bill addresses the economic distortion caused by employers paying for employee health insurance. Dr. Price would limit the employer contribution to \$20,000 for a family and \$8,000 for an individual. He would also allow employers to make pre-tax defined contributions to employees' accounts.

The "A Better Way" proposal provides more detail on Medicaid reform. It suggests the following: federal block grants to states with individual allotments, a work requirement, allow states to adjust the eligibility threshold, charge enrollees a small premium, and use a transition mechanism to employer-paid insurance or to the individual market with refundable tax credits.

## **Conclusion**

Health care reform and changes to Obamacare are critically important and are a priority of the president-elect and Congress. For six years officials of the federal government and of Washington state have pursued an aggressive policy of centralized control over people's health care, with the result that Obamacare remains unworkable and unpopular. After the November election, however, policymakers should understand the mood of Americans and should work together to achieve meaningful reform that puts patients, rather than the government, in charge of their health care. To eliminate uncertainty, policymakers should pass a replacement plan simultaneously with a repeal of Obamacare.