

KEEPING UP WITH HEALTHCARE REFORM



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Politics v. Law

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- I generally start these presentations off by stating that were gonna stick to the law and stay out of politics, and I'll do my best, but the current state of things might make that a difficult feat.
- I'd like to start off with a few statistics about how Americans feel about healthcare currently:
 - According to a June Kaiser poll, 50% of the public has a favorable view of the ACA and 30% have a favorable view of the plans to repeal and replace
 - A Thompson/Rueter poll found that 49% of American adults said the Republican healthcare reform measure is not an improvement over the ACA
 - A 2017 Gallup poll found that 26% of Americans would keep the ACA as is, 40% would revise it, 30% would repeal, and 4% had no opinion
 - It also found that 57% of Americans worry "a great deal" about the availability and affordability of healthcare



The Affordable Care Act

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- Enacted March 23, 2010
- Goal of increasing the quality and affordability of health insurance
- 3 major components
 - Individual Mandate: requires most Americans to maintain qualifying health insurance coverage or pay a penalty.
 - ✦ 2017 Penalty: Higher of 2.5% of household income or \$695 per adult plus \$347 per child (capped at annual premium for Bronze plan on the exchange)
 - Employer Mandate: requires large employers to offer 95% of full-time employees and dependents affordable health insurance that provides minimum value or pay a penalty. **As a reminder large employers are those with 50+ full-time employees. Affordable=single coverage costs no more than 9.69% of household income; Minimum Value = covers 60% of healthcare costs.**
 - ✦ 2017 Penalty: **Assessed only if one full-time employee obtains coverage through the Exchange and receives a premium credit = (1) number of full-time employees minus 30 times \$2,260 (if no coverage is offered); or (2) number of full-time employees who actually received a premium credit times \$ 3,390 (offered non-compliant coverage).**
 - Health Care Reform: requires health plans to provide certain mandated benefits, employee communication/reporting, and expands coverage available for most Americans.

ACA's Health Care Reform

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- **Mandated Benefits:** All plans must cover “Essential Health Benefits”
 - Ambulatory patient services (outpatient care); emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care
- **Preventative Care:** Plans may not impose cost-sharing requirements (such as deductibles or co-pays) on certain preventive care services. **There are different lists of services covered for all adults, women, and children –generally covers things like screenings, immunizations, contraception, certain counseling, etc. Full list on healthcare.gov if anyone is interested.**
- **Employee Communication/Reporting:** Plans must provide a summary of benefits and coverage (SBC) and employers must report cost of medical coverage on Form W-2 **(currently only applies to employers with 250+ employees)**
- **Expansion of Coverage:** Children covered up to age 26; no preexisting condition exclusions, ban on lifetime benefit limits, emergency care available outside network at no additional charge
- **Medicaid Expansion:** States permitted to voluntarily expand eligibility to all non-elderly adults with incomes up to 138% of FPL. Expanding states eligible to receive 100% federal funding for 2014-2016, 95% in 2017, 94% in 2018, 93% in 2019, and 90% for 2020 and subsequent years.

The House Plan: The American Health Care Act

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- Before I go into the details of the competing repeal and replace bills, I want to clarify that there are a lot of changes being proposed in each bill. I won't discuss them all here, but plan on hitting the highlights. One topic that I won't go into much detail on but that is causing a lot of flurry are the changes being proposed to Medicaid. We'll have to save some fun for another day.
- Plan announced March 6, 2016
- Brought to House floor March 24, 2016 – pulled before vote
- Vote on May 6, 2017 after a series of amendments; passed 217 to 213
- Budget reconciliation legislation
 - Only requires 51-vote simple majority to pass (or 50 votes plus Vice President Pence's tiebreaker)
 - Byrd rule: less stringent standard restricted to provisions that affect revenue or expenditures of the federal government and do not do so simply incidental to some other purpose – **In other words, the Senate cannot repeal or modify any non-budgetary provisions of the ACA. So, if you're thinking to yourself, hey, why didn't they touch that?! This is the reason.**
 - ✦ If a provision is challenged under the Byrd rule and the Senate Parliamentary rules that the challenged provision is "extraneous," it will take a 3/5 vote of the Senate for that provision to move forward (60 vs. 51 votes)

The House Plan: The American Health Care Act

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- Provisions affecting Individuals:
 - Reduce individual mandate penalty to zero, effective for 2016
 - Repeal premium tax credits in 2020
 - ✦ Prior to full repeal premium credits will be increased for young adults and decreased for older adults, no tax credit to purchase a plan offering elective abortion coverage, and credit may be used to purchase catastrophic plans (must be under 30 or qualify for a financial hardship to qualify)
 - Effective 1/1/2020, provide advanceable, refundable tax credit for purchase of approved insurance adjusted by age as follows:
 - ✦ Under age 30: \$2,000
 - ✦ Between 30 and 39: \$2,500
 - ✦ Between 40 and 49: \$3,000
 - ✦ Between 50 and 59: \$ 3,500
 - ✦ Over age 60: \$4,000
 - ✦ Capped at \$14,000 for a family
 - Tax credit paid in full to those making \$75,000 per year (\$150,000 for joint filers) and phases out by \$100 for every additional \$1,000 in income
 - No factor for geographic location in this “simpler” scheme so a 27 year old earning \$30k would pay 50% less than she pays currently if she lives in Lansing Michigan but would pay 40% more if she lives in Lehigh Pennsylvania.
 - Repeal additional Medicare tax on “high-income” individuals, effective for 2017 (generally 0.9% on those making \$200,000 or more per year)
 - Impose 30% premium penalty for people who don’t stay continuously covered (without coverage for 63 days). Also applies to those who aged out of dependent coverage and didn’t enroll in other coverage during the next open enrollment period.

The House Plan: The American Health Care Act

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- Provisions affecting Employers: **some of these also affect individuals, I just couldn't decide where I liked them more.**
 - Reduce employer mandate penalty to zero, effective for 2016
 - Further delay Cadillac Tax to 2026 – **remember, Cadillac Tax is the much debated ACA provision imposing a 40% excise tax on the cost of applicable health insurance coverage exceeding \$10,200 for individuals and \$27,500 for families.**
 - Repeal limit on FSA contributions, effective 1/1/2017
 - ✦ 2017 limit: \$2,600
 - Increase maximum contribution to HSAs, effective 1/1/2018
 - ✦ From \$3,400 for individuals and \$6,750 for families to \$6,550 for individuals and \$13,100 for families –**tracks the out of pocket maximum for HSA qualified HDHP plans.**
 - **Would also permit both spouses to make catch-up contributions to the same HAS**
 - **There seems to be a real push toward HSAs and FSAs alike in both proposals.**
 - Reduce tax on non-qualified distributions from HSAs, effective for 2017
 - ✦ From 20% to 10% **(10% is the pre-ACA penalty)**

The House Plan: The American Health Care Act

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- **Provisions affecting healthcare reform:**
 - States may request a waiver allowing insurers to set premiums based on how healthy a person is.
 - Cuts back Medicaid expansion, effective 12/31/2017 and caps State reimbursement for remaining enrollees, effective 1/1/2020
 - Converts Medicaid financing to a per capita structure (**aka per enrollee limits**), effective for 2020 – **also gives states the option of electing block grants for non-elderly, non-disabled, non-expansion adults and children. must elect for 10-year period.**
 - **Changes age rating rules, so that plans could charge an older individual up to 5x more than the plan would charge a 21-year old. This is an increase from the current 3:1 ratio.**
 - States may request a waiver for coverage of essential health benefits (e.g., hospital, maternity, mental health, etc.)
 - **\$15 billion** in additional funding for mental health, substance abuse, and maternity care

The House Plan: The American Health Care Act

- **“Safe” provisions**
 - The AHCA left 6 of the ACA’s 10 titles, and virtually all of its insurance reforms in place
 - AHCA did not repeal or amend:
 - ✦ Prohibition against preexisting condition exclusions;
 - ✦ Guaranteed issue and renewal requirements;
 - ✦ Requirement that health plans cover preventative services without cost sharing;
 - ✦ Requirement that health plans cover children up to age 26
 - ✦ Health insurance marketplaces (the Exchange)
 - ✦ Prohibition on annual and lifetime benefit limits
 - ✦ Employer reporting requirements*
 - ✦ Requirement that plans apply in-network cost for all emergency visits
 - Likely left many of these provisions alone because most involve issues that cannot be addressed by the Senate under budget reconciliation procedures
 - Although not specifically amended/repealed, waivers could affect these consumer protections

The House Plan: The American Health Care Act

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- **Congressional Budget Office findings:**
 - Would reduce the cumulative federal deficit over the 2017-2026 period by \$119 billion;
 - In 2018, 14 million more people would be uninsured under than under current law.
 - ✦ 19 million in 2020 and 23 million in 2026.
 - ✦ In 2026, an estimated 51 million people under age 65 would be uninsured, compared with 28 million who would lack insurance that year under current law.
 - Premiums would increase before 2020, relative to those under current law—by an average of about 20% in 2018 and 5% in 2019
 - ✦ Starting in 2020, however, average premiums would decline, on average.
 - ✦ **Starting in 2020 average premiums would depend in part on any waivers granted to states and on how those waivers were implemented and in part on what share of the funding available from the Patient and State Stability Fund was applied to premium reduction.**

The Senate Plan: The Better Care Reconciliation Act

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- Same bill number but entirely strikes the House bill and adopts a new one.
- Intent to vote prior to July 4th recess – delayed
- Provisions affecting Individuals:
 - Reduce individual mandate penalty to zero, effective 1/1/2016
 - Eligibility for premium tax credits modified to include all households with income under 350%, effective 1/1/2020 **current eligibility=between 100% and 400% of FPL leaving an unintended coverage gap for those earning less than 100% (this gap was meant to be filled by mandatory Medicaid expansion, but that didn't work out)**
 - Keeps the outline of the ACA's premium credit scheme but revises to include age as an additional factor, making credits larger for younger individuals
 - Repeal additional Medicare tax on "high-income" individuals, effective for 2023 **(same as AHCA but 6 year later effective date)**
 - Requires an individual who is uninsured for more than 63 days to wait 6 months to gain new health coverage.
 - **As an extra tidbit: both the AHCA and BRCA intend to repeal the tanning bed tax, taxes on health insurers, taxes on pharmaceutical manufacturers, excise tax on sale of medical devices, the net investment tax (additional 3.8% on net investment income), etc.**

The Senate Plan: The Better Care Reconciliation Act

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- **Provisions affecting employers:**
 - Reduce employer mandate penalty to zero, effective for 2016
 - Further delay Cadillac Tax to 2026
 - Repeal limit on FSA contributions, effective 1/1/2018
 - ✦ 2017 limit: \$2,600
 - Increase maximum contribution to HSAs, effective 1/1/2018
 - ✦ From \$3,400 for individuals and \$6,750 for families to \$6,550 for individuals and \$13,100 for families
 - Reduce tax on non-qualified distributions from HSAs, effective 1/1/2017
 - ✦ From 20% to 10%

The Senate Plan: The Better Care Reconciliation Act

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- **Provisions affecting Healthcare Reform:**
 - Cuts back Medicaid expansion, effective in 2019 and reduces enhanced match for Medicaid expansion states
 - Convert Medicaid financing to a per capita structure, effective for 2020 – like the AHCA, there is also a block grant funding option but it would not apply to any children and states must elect for a 5-year rather than a 10-year period.
 - Allows older individuals to be charged up to 5x more than younger individuals
 - States may request a waiver for coverage of essential health benefits (e.g., hospital, maternity, mental health, etc.) if a state can describe how it would provide for alternative means of, and requirements for, increasing access to comprehensive coverage, reducing average premiums, and increasing enrollment.
 - Provides opioid funding - \$2 billion in 2018 for HHS to distribute grants to states to support substance abuse treatment and recovery services . This is important for us Tennesseans since we rank 2nd in the nation, only behind Alabama, in prescriptions of opioids – 1.18 prescriptions for every man, woman, and child. There have been talks in the recent weeks of increasing funding to \$45 billion.
 - I failed to mention this earlier, but both plans prohibit Medicaid funding for Planned Parenthood clinics for one year.
 - In the last week or so, Ted Cruze has been floating a “choice” amendment to the bill which would allow any insurer to offer "non-Obamacare compliant" plans in a state if it was already offering at least one plan that does comply with the 2010 health care law in that state

The Senate Plan: The Better Care Reconciliation Act

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- **“Safe” provisions:**
 - BCRA did not repeal or amend:
 - ✦ Prohibition against preexisting condition exclusions;
 - ✦ Guaranteed issue and renewal requirements;
 - ✦ Requirement that health plans cover preventative services without cost sharing;
 - ✦ Requirement that health plans cover children up to age 26
 - ✦ Health insurance marketplaces (the exchange)
 - ✦ Employer reporting requirements*
 - ✦ Prohibition on annual and lifetime benefit limits
 - ✦ Requirement that plans apply in-network cost for all emergency visits
 - ✦ Optional Medicaid expansion
 - Although not specifically amended/repealed, waivers could affect these consumer protections

The Senate Plan: The Better Care Reconciliation Act

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- **Congressional Budget Office Findings*:**
 - Would reduce the cumulative federal deficit over the 2017-2026 period by \$321 billion **(a significant increase over the \$119 of the AHCA)**
 - In 2018, 15 million more people would be uninsured than under current law **(about the same stats as the AHCA).**
 - ✦ 19 million in 2020 and 22 million in 2026.
 - ✦ In 2026, an estimated 49 million people under age 65 would be uninsured, compared with 28 million who would lack insurance that year under current law.
 - Premiums would increase before 2020, relative to those under current law—by an average of about 20% in 2018 and 10% in 2019
 - ✦ Starting in 2020, however, average premiums would decline, on average.
 - ✦ Pretty close to the AHCA, a minor increase in premiums for 2019
 - **Senate is asking CBO for another review, including certain proposed amendments to the bill.**

Comparison: Provisions Affecting Individuals

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	ACA	AHCA (House)	BCRA (Senate)
Tax Credit Calculation	Based on income and geographic location	Age based flat rate system	Based on income, geographic location, and age
Tax Credit Eligibility	100% to 400% of FPL	100% to 400% of FPL	Under 350% of FPL
Coverage Rules	Individual Mandate penalty	Individual Mandate penalty reduced to \$0. 30% premium penalty if w/o coverage for 63 days	Individual Mandate penalty reduced to \$0. 6 month waiting period if w/o coverage for 63 days
Medicare additional Tax	0.9% additional tax for those making over \$200,000	Repeal tax, effective 2017	Repeal tax, effective 2023

Comparison: Provisions Affecting Employers

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	ACA	AHCA (House)	BCRA (Senate)
Employer Mandate	Employer Mandate Penalty	Reduce penalty to \$0	Reduce penalty to \$0
Cadillac Tax	Delayed until 2020	Delayed until 2026	Delayed until 2026
FSA Annual Contribution Limit	2017: \$2,600	Repeal limit, effective 1/1/2017	Repeal limit, effective 1/1/2018
HSA Annual Contribution Limit	2017: \$3,400 individual; \$6,750 family	Increase to \$6,550 individual; \$13,100 family, effective 1/1/2016	Increase to \$6,550 individual; \$13,100 family, effective 1/1/2017

Comparison: Healthcare Reform Provisions

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	ACA	AHCA (House)	BCRA (Senate)
Preexisting Condition Exclusions	Not permitted	Not permitted, but would allow states to seek waivers from several consumer protections	Not permitted, but would allow states to seek waivers from several consumer protections
Age Rating Limits	Maximum 3:1	Maximum 5:1	Maximum 5:1
Medicaid Expansion	Optional for states	Freeze expansion after 3/1/2017	Optional for states but at a reduced matching rate if enrolled after 3/1/2017
Medicaid Payment Structure	Funding varies based on care states' Medicaid patients receive	Per capita model; block grant funding available for "other adults" effective 1/1/2020	Per capita model; block grant funding available for "other adults" effective 1/1/2020

What Now?

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- **Senate to vote**
 - With democrats united in their opposition, Republicans can only afford to lose 2 votes among their ranks
 - ✦ **Before the 4th of July recess, there were 9 confirmed “no” votes**
 - **GOP goal to vote before August recess**
 - ✦ **Because the calendar for the rest of the year is packed with other issues (e.g., tax reform)**
 - ✦ **Rumor that it may take place toward the end of July**
- **If it passes in the Senate, back to the House**
 - **Conference Committee vs. Amendments between the Houses**
 - ✦ **Going to conference means that each chamber appoints a handful of negotiators to hammer out the bill, which then is sent to both chambers for approval. If both chambers vote in favor, it goes to the president to be signed**
 - ✦ **Amendments between the houses: When one chamber accepts the other’s proposal and both chambers have approved it, it goes to the president to be signed**
 - ✦ **According to a source close to the Freedom Caucus: "The Freedom Caucus strongly supports going to conference with the Senate on healthcare legislation."**
 - **Quick passage unlikely**
 - ✦ **Rep. Mark Meadows, head of the Freedom Caucus told reporters the Senate bill "does not have enough conservative support" to get by the House without changes.**

A Little About Your Presenter

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ASHLEY N. TROTTO focuses her practice on Affordable Care Act (ACA) compliance, including employer reporting, employer mandate penalty assessment and calculation and applicability of the Cadillac Tax, and other employer health and welfare plan issues.

As part of the Firm's pension and employee benefits group, Ashley assists private, governmental, and nonprofit clients in the design, implementation, and maintenance of their employee benefit plans and also helps those clients navigate the complicated landscape of the FLSA, HIPAA, COBRA, FMLA, ADA, and other employment-related legislation.

In addition to her work with the pension and employee benefits practice group, Ashley is the energy behind "Christenberry Kids," the Firm's kindergarten book project.

Ashley graduated cum laude from the University of Tennessee College of Law in 2013. Prior to attending law school, Ashley earned a Bachelor of Science degree, summa cum laude, in 2009 from the University of Tennessee where she majored in psychology. Ashley serves on the Board of Directors for the Smoky Mountain Animal Care Foundation. She is also a member of the East Tennessee Benefits and Compensation Association, and serves on the Hunger and Poverty Relief Committee of the Knoxville Bar Association and the Health and Basic Needs Investment Committee for the United Way of Greater Knoxville.

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7/13/2017