Comparison of Key Repeal and Replace Proposals
December 15, 2016

As the incoming Congress and administration develop plans to "repeal and replace" the Affordable Care Act (ACA), analysis of five earlier repeal and replace proposals provides insights into the key features likely to appear in any forthcoming repeal and replace legislation. Manatt analyzed Speaker Paul Ryan and the House Republican Caucus's 2016 proposal, legislation sponsored by House Budget Committee Chairman Tom Price, President-elect Trump's nominee to lead Health and Human Services, a proposal co-sponsored by Senators Orrin Hatch and Richard Burr and Representative Fred Upton, as well as a proposal from the Heritage Foundation. We also analyzed the reconciliation bill (H.R. 3762) passed and vetoed earlier this year, noting the areas that were and those that were not addressed in that reconciliation bill. (Many of the excluded provisions are assumed to be outside of the scope of reconciliation.) The proposals range from a 242-page draft of legislation sponsored by Representative Price to an 8-page concept paper published by Senators Hatch and Burr and Representative Upton. Across these different formats there was significant variation in the level of detail, with some proposals providing answers to key policy questions and others merely outlining an approach.

Despite the differences in the breadth and depth of the proposals, they shared several common features—and had some key differences—on how to modify the ACA's commercial market reforms. The proposals generally modify or eliminate federal reforms. All proposals revise and reduce the tax credits and federal funding for healthcare coverage, which might limit state choices even in the states that would want to retain some ACA consumer protections.

- *Tax Credits.* Notably, all proposals analyzed replace the current advanced-payment premium tax credit with a new tax credit, though the proposals diverge on the size of the tax credit and whether to scale by income or other factors.
- *Mandates.* Each proposal repeals the individual and employer mandates.
- *Benefit and Cost-Sharing Requirements.* Several proposals would eliminate the federal essential health benefit and actuarial value requirements, returning questions about benefit mandates to the states and, depending on the state response, giving insurers more flexibility in designing products but making comparison shopping more challenging for consumers.
- *Rating Rules and Consumer Protections.* Across the board, the proposals would largely return authority to the states to oversee their individual insurance markets. All proposals retain ACA-like consumer protections around preexisting conditions and medical underwriting only for those individuals who maintain continuous coverage—but otherwise differ in their approaches to protecting consumers.

While these proposals have many common features on how they approach reforms to the commercial market, they disagree sharply on how to restructure Medicaid. Some would roll back expansion, while others grandfather existing but freeze any new expansions. With respect to Medicaid financing, many proposals favor per capita caps on federal dollars, but they differ considerably on how to structure those caps.

The bottom line: Prior repeal and replace proposals have similar features, but the final approach and myriad details will be determined through the legislative process and through regulations and other executive guidance. Further, how these proposals would interact with existing state laws remains to be seen.

	Empowering Patients First Act (Tom Price)	A Better Way (Paul Ryan)	Patient CARE Act (Burr, Upton, Hatch)	Heritage Foundation[1]	H.R. 3762
Overall Approach	Comprehensive 242-page bill with major reforms across commercial market, Medicaid and Medicare	37-page conceptual blueprint that addresses three public programs adopting a broadly similar approach to the Price bill	8-page conceptual proposal that addresses a more limited set of reforms and does not address Medicare	Two short summaries of Heritage proposals that address key issues across public programs	Targeted bill limited to issues that are in scope for reconciliation process
Tax Credits & HSAs	• Provides tax credits adjusted for age • Deposits unused credit in HSA and enhances value of HSAs	• Provides tax credits adjusted for age • Deposits unused credit in HSA and enhances value of HSAs	• Provides tax credits adjusted for age and income up to 300% FPL • State option to auto-assign individuals to plans with opt-out rights • Enhances value of HSAs	• Provides tax credits adjusted by age • Enhances value of HSAs	• Repeals tax credits with two-year delay • Enhances value of HSAs
Marketplaces	Tax credits available through private portals; no enrollment through public portals	Tax credits available through private portals	Does not directly address	Does not directly address	Not addressed
Individual & Employer Mandate	Repeals individual and employer mandates	Repeals individual and employer mandates	Repeals individual and employer mandates	Repeals individual and employer mandates	Repeals individual and employer mandates
Guaranteed Issue & Preexisting Conditions	• Guaranteed issue at standard rates only for individuals who maintain continuous coverage • Individuals with coverage gaps may be subject to medical underwriting and assigned to high-risk pool	• Guaranteed issue at standard rates only for individuals who maintain continuous coverage • Individuals with coverage gaps may be subject to medical underwriting and assigned to high-risk pool	• Guaranteed issue at standard rates only for individuals who maintain continuous coverage • Individuals with coverage gaps may be subject to medical underwriting and assigned to high-risk pool	• Guaranteed issue at standard rates only for individuals who maintain continuous coverage • Individuals with coverage gaps may be subject to medical underwriting and assigned to high-risk pool	Not addressed
High-Risk	Federal funding for state-	Federal funding for state-	Targeted federal funding	Does not address	Not addressed

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Pools	run high-risk pools ($3B over 3 years)	run high-risk pools ($25B over 10 years)	for state-run high-risk pools		
Benefits (EHB/AV)	Eliminates EHB and AV requirements	Implies elimination of EHB and AV requirements	Implies elimination of EHB and AV requirements	Eliminates EHB and AV requirements	Not addressed
Rating	• Eliminates age-rating restrictions • Leaves other rating issues to states except for protecting individuals maintaining continuous coverage	• 5:1 age band with state flexibility to modify • Leaves other rating issues to states except for protecting individuals maintaining continuous coverage	• 5:1 age band with state flexibility to modify • Leaves other rating issues to states except for protecting individuals maintaining continuous coverage	• Eliminates age-rating restrictions • Leaves other rating issues to states except for protecting individuals maintaining continuous coverage	Not addressed
Risk Pooling	Expands individual and group pooling options and preempts conflicting state laws	Expands individual and group pooling options and preempts conflicting state laws	Expands group pooling options, unclear about preemption	Does not address	Not addressed
Annual & Lifetime Limits	Does not address	Prohibits lifetime limits	Prohibits lifetime limits	Does not address	Not addressed
Dependent Coverage	Repeals dependent coverage up to age 26	Retains dependent coverage up to age 26	Retains dependent coverage up to age 26 with state opt-out	Does not address	Not addressed
Interstate Sales of Insurance	Permits insurers to sell across state lines, no opt-out rights for objecting states	Permits states to enter into interstate compacts to purchase coverage across state lines	Permits states to enter into interstate compacts to purchase coverage across state lines	Does not address	Not addressed
Employer-Sponsored Insurance	• Caps employee tax exclusion for high-cost ESI ($8K individual and $20K family) • Allows employees to	• Caps employee tax exclusion for high-cost ESI • Allows employers to contribute to individual coverage for employees	Caps employee tax exclusion for high-cost ESI	• Caps employee tax exclusion for high-cost ESI • Allows employees to choose between individual tax credit and	Repeals Cadillac tax

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	choose between individual tax credit and employer tax exclusion			employer tax exclusion	
Medicaid Expansion	Eliminates Medicaid expansion and enhanced FMAP	• Limits Medicaid expansion to current expansion states and phases down enhanced FMAP • Permits reduced eligibility thresholds and enrollment freezes for expansion adults	Eliminates Medicaid expansion and enhanced FMAP	Eliminates Medicaid expansion and enhanced FMAP	Eliminates Medicaid expansion and enhanced FMAP with a two-year delay
Medicaid Financing	No changes	• Per capita cap across four categories: aged, blind and disabled, children, and adults • Permits states to opt out of per capita cap and receive a block grant • Eliminates 23 percentage point bump in CHIP funding	• Per capita cap for pregnant women, children and families • Retains pre-ACA FMAP for acute care elderly and disabled • Provides "defined budget" for LTSS for elderly and disabled who do not access eligible tax credits	Per capita cap across three categories: able-bodied, disabled, and elderly	No changes
IPAB	Repeals IPAB	Repeals IPAB	Retains IPAB	Does not address	Not in scope according to Senate Parliamentarian in 2010
Innovation Center (CMMI)	Repeals CMMI	Repeals CMMI beginning January 1, 2020	Unclear whether CMMI would be considered a Medicare provision and be permitted	Repeals CMMI	Not addressed
Taxes	Repeals all taxes imposed in ACA	Repeals all taxes imposed in ACA	Repeals all taxes imposed in ACA *(assumes increase in Medicare tax is treated as a tax, rather than a Medicare provision)*	Repeals all taxes imposed in ACA	Repeals all taxes imposed in ACA

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