

CLIENT BULLETIN

Four GOP Legislative Alternatives to the ACA

With the election of a Republican President and Republican controlled Senate and House, the stage is set for the GOP to act on its “*repeal and replace*” the *Affordable Care Act (ACA)* battle-cry, except they are finding it’s not quite as easy as it sounds. Even President Donald Trump has scaled back the timeline for repealing and replacing the *ACA* suggesting in an [interview](#) that passing legislation may take until the end of this year or even into 2018.

While the “repeal” part will be accomplished, the “replace” part has several possible legislative contenders. At the moment, four different proposals seem to be receiving the most attention. The Bill sponsor(s) and Bill names are listed below:

- (1) Cassidy-Collins - *Patient Freedom Act of 2017 (S.191)*,
- (2) Paul Ryan’s - *A Better Way*,
- (3) Tom Price’s - *Empowering Patients First Act of 2015 (HR 2300)*, and
- (4) Rand Paul’s - *Obamacare Replacement Act (S.222)*

The Cassidy-Collins Bill seems like it has the best chance of garnering bipartisan support as it allows states the option of keeping the *ACA* if they wish. We will take a look at each of the four proposals and provide links to more detailed analyses, as well as to the Bill text where applicable.

Cassidy-Collins Bill, Patient Freedom Act of 2017

The Cassidy-Collins Bill, *Patient Freedom Act of 2017 (S.191)* (73 pages), repeals Title I of *ACA*, which includes, among other things, the individual and employer mandates, the group health plan reforms, essential health benefits and the rules for grandfathered and non-grandfathered plans. The Bill is named for the Senate Republican co-sponsors, Senators Bill Cassidy (LA) and Susan Collins (ME).

However, the Bill maintains certain consumer protections from the *ACA* such as:

- Protecting individuals with preexisting conditions,
- Prohibiting annual or lifetime maximums,
- Maintaining guaranteed issue and guaranteed renewability,
- Preventing discrimination,
- Maintaining coverage for mental health and substance abuse disorders, and
- Allowing adult children to remain on their parent’s health insurance plan to age 26.

A one-page summary of the Bill is available "[here.](#)" A section-by-section summary is available "[here.](#)" We will take a broad overview of certain aspects of the Bill, leaving the interested reader to peruse the summaries or Bill text.

Alternatives for State Health Plans Under the Cassidy-Collins Bill

A State could reinstate Obamacare or choose from two other health care systems.

The Bill offers States three options:

- A state can choose to reinstate Title I of the ACA to recreate Obamacare for that state.
- A state can choose to adopt a market-based health insurance system using federally funded Roth Health Savings Accounts.
- A state can choose to design its own health insurance system without federal funding.

States which do not chose an option within one year of enactment are assumed to have elected Option 2. States may change their election at any time.

The State Alternative Under Choice 2

This option allows states to adopt a market-based health insurance system under which Roth HSAs will be created for residents enrolled in qualified health plans.

The Roth HSAs will be funded through advanceable, refundable federal tax credits. Enrollees may receive federal funding for new Roth HSAs if they are not eligible for coverage under Medicare, and are not enrolled in Medicaid, CHIP, TRICARE, FEHB or programs providing veterans' health benefits. States may allow the federal government to administer this system or administer it themselves. States that administer it themselves will receive 2% of amounts deposited annually for enrollees in Roth HSAs for population health initiatives.

States may include Medicaid expansion population in this market-based alternative. States electing Option 2 must adopt rules protecting consumers from excessive out-of-network charges for emergency services.

Other Matters In The Cassidy-Collins Bill

In addition, the Cassidy-Collins Bill addresses the following subjects which are discussed in more detail in the [section-by-section summary](#):

- Individual Tax Credit for Health Insurance
- Improving Access to Health Insurance Coverage
- Returning regulation of health insurance markets to the states
- Protecting Patients
- Roth HSA assets and Medicaid eligibility
- Ensuring access to emergency services without excessive charges for out of network services
- Creation of Roth Health Savings Accounts

- Roth HSA funds can be used, tax free, to pay for medical care not otherwise paid by insurance,
- Limited Application of ACA Health Premium Credit to qualified residents in States that continue the ACA.
- Creation of a New Roth HSA Credit

House Speaker Paul Ryan's "A Better Way"

House Speaker Paul Ryan has a health reform section in his vision for America called [A Better Way](#). More detail is found in a 38 page [booklet](#) of Ryan's called "*A BETTER WAY TO FIX HEALTH CARE*" and is a list of 47 items for health care reform. The health care reform section begins at page 18. Many of the 47 items are so vague as to be mere platitudes. There is not yet a proposed Bill.

However, it is clear that repealing Obamacare tops the "to do" list. The Ryan Plan would have protections for people with pre-existing conditions, allow children to stay on their parents plan until age 26 and make other reforms. A few items of interest include:

- Allow purchasing coverage across state lines
- Expand opportunities for pooling
- Protect employers flexibility for self-insurance
- Make coverage portable
- Preserve employer sponsored health insurance
- Pre-existing condition protections
- Medicare reforms

Further details are offered in a [policy paper](#) from Speaker Ryan.

HHS Secretary Tom Price's - Empowering Patients First Act of 2015

Just confirmed as Secretary of Health and Human Services (HHS), Congressman Tom Price has introduced legislation to repeal the ACA for the past several years in the form of [H.R. 2300](#) (242 page Bill) and as Secretary of HHS is now in a position to affect change.

The Price Bill provides for a full repeal of the ACA and all health care-related provisions included in the *Health Care and Education Reconciliation Act*. As an alternative, the Price Bill provides for refundable, age adjusted tax credits with amounts tied to average insurance on individual market adjusted for inflation.

- \$1,200 for those between 18 to 35 years of age
- \$2,100 for those between 35 and 50 years of age
- \$3,000 for those who are 50 years and older
- \$900 per child up to age 18

Tax credits would be available to those who purchase health insurance through the individual market. Upon purchase, individuals would have the option of receiving an advanceable, refundable credit. The credit is not available to those receiving federal or other benefits including: Medicare, Medicaid, SCHIP, TRICARE, VA benefits, FEHBP, or individuals in employer subsidized group plans.

In addition, the Price Bill allows individuals to opt out of Medicare, Medicaid, TRICARE, and VA benefits and receive tax credit to purchase personal health plan instead.

The Price Bill addresses a variety of other matters as listed below and explained in more detail in the explanatory handout available "[here](#)."

- Health Savings Accounts reforms
- Health Insurance Pooling Mechanisms for High-Risk Individuals
- Small Business Health Fairness Act
 - Association Health Plans (AHPs) allow small business owners to band together across state lines through their membership in a bona fide trade or professional association to purchase health coverage for their families and employees at a lower cost.
- Interstate Market for Health Insurance
- Lawsuit Abuse Reforms
- Wellness and Prevention
 - Amend HIPAA wellness regulations to increase permissible variation for programs of health promotion and disease prevention from 20% allowance to 50% of the cost of coverage
- Transparency and Insurance Reform Measures
- Quality
- State Transparency Plan Portal
- Patient Freedom of Choice
- Quality Health Care Coalition

Senator Rand Paul's Obamacare Replacement Act

The last ACA alternative we will review is from Kentucky Senator Rand Paul. The Bill repeals the ACA's individual and employer mandates, community rating restrictions, rate review, essential health benefits requirement, medical loss ratio, and other insurance mandates. The Senator's website touts that the [Obamacare Replacement Act \(S.222\)](#) (149 pages) empowers the American people to have more control of their healthcare in the areas highlighted below.

A section by section summary of the Bill is "[here](#)", and you can find summary information on [Paul's website](#). We will provide an overview of select portions of the Paul Bill below.

- **Legalize Inexpensive Insurance Plans**
Ensures that Americans can purchase the health insurance coverage that best fits their needs by eliminating the ACA's essential health benefits requirement, along with other restrictive coverage and plan requirements, to once again make low-cost insurance options available to American consumers.
- **Protect Individuals with Pre-Existing Conditions**
Provides a two-year open-enrollment period under which individuals with pre-existing conditions can obtain coverage and restores HIPAA pre-existing conditions protections.
- **Help People Save To Buy Health Insurance and Cover Medical Costs**
Eliminates the requirement that a participant in an HSA be enrolled in a high deductible health care plan in order to be eligible to establish and use an HSA. This would allow individuals with all types of insurance to establish and use an HSA.

The proposal also incentivizes savings by authorizing a tax credit (up to \$5,000 per taxpayer) for individuals and families that contribute to HSAs and removes the annual cap on HSAs so individuals can make unlimited contributions.

The proposal also allows HSA funds to be used to purchase insurance, cover premiums, and more easily afford a broader range of health-related expenses, including prescription and OTC drugs, dietary supplements, nutrition and physical exercise expenses, and direct primary care, among others.

- **Guarantee Fair Tax Treatment of Health Insurance To Individuals**
Allows individuals to deduct the cost of their health insurance from their income and payroll taxes by providing a universal deduction on both income and payroll taxes regardless of how an individual obtains their health insurance. Does not interfere with employer-provided coverage for Americans who prefer those plans.
- **Help Individuals Join Together to Purchase Insurance**
Expands Association Health Plans (AHPs) to allow small business owners and individuals to band together across state lines through their membership in a trade or professional association to purchase health coverage for their families and employees at a lower cost.
- **Self-Insurance Protections**
Amends the definition of "health insurance coverage" under the Public Health Service Act (PHSA), and parallel sections of ERISA and the Tax Code, to clarify that stop-loss insurance is not health insurance in order to prevent the federal government from using rule-making to restrict the availability of stop-loss insurance used by self-insured plans.

Other aspects of the proposal allows the purchase of insurance across state lines and increasing state Medicaid flexibility through Medicaid design waivers.

Conclusion

It seems that each proposal has some good points. Once the dust has settled and a clear frontrunner emerges, we will again report on the legislation.

* * *

LEGAL DISCLAIMER: Information contained in this publication is not legal advice, and should not be construed as legal advice. If you need legal advice upon which you can rely, you should seek a legal opinion from your attorney.