

ALSTON & BIRD



The Future of Healthcare: Policy Objectives in the United States

*2019 Transatlantic Conference
The Sagamore Resort, New York*

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June 20, 2019



Current US Health Coverage System

- Public
 - Medicare, over age 65 and persons with disabilities
 - Medicaid, low income
- Private
 - Employment based group health plans
 - Small group ≤ 50 ; large group, everything else
 - Self-funded
 - Fully insured
 - Wide range of plan designs, especially in large, self-funded plans
 - Defined benefit (traditional approach)
 - Defined contribution
 - Individual market
- There are always out of pocket costs
 - Premiums, deductibles, co-payments, co-insurance; not everything is covered
- Both federal (national) and state regulation may apply



"Nobody knew it could be so complicated."



Snap Shot of Health Coverage in the U.S. – Pre-ACA (2010)

Type of Coverage	Percent of Americans	Percent of non-elderly (under 65)
Employment-based coverage (includes large group, small group (≤ 50), fully-insured, self-funded)	49%	56%
Individual market coverage	5%	6%
Medicaid (federal/state program for low income individuals)	15%	16%
Medicare (federal single payer plan, mostly for age 65+ also covers individuals with certain disabilities)	11%	
Other public programs (e.g., military, Veterans, Indian Health Service)	2%	3%
Uninsured	16%	18%

Source: Kaiser Family Foundation (based on analysis of Census Bureau Data)



Affordable Care Act – “ObamaCare”

Provide Access to Affordable, High Quality Health Care

- Initial reforms focus on **Quality**
 - New coverage mandates
 - Generally starting in 2010
- Preventive care
 - Coverage of pre-existing conditions
 - No life-time dollar limits on benefits
 - Annual dollar limits must be phased out
 - Dependent coverage through age 26
 - New appeals processes for denied benefits...



Second Wave (generally, 2014)

- **Access**
 - Establishment of federal/state “Exchanges” for the purchase of insurance
 - Guaranteed access to individual coverage (insurers can’t turn individuals away)
 - Medicaid expansion available to the States
- **Affordability**
 - Premium subsidies available to lower income individuals for coverage purchased on an Exchange
 - Modified community rate in small group and individual markets (can’t charge people more based on their health status)
- **Quality**
 - New insurance mandates, depending on type of plan
 - Requirement to cover essential health benefits (EHBs), applies only to individual and small group fully insured plans
 - No annual dollar limits on EHBs
 - Overall limit on enrollee out-of-pocket costs for covered benefits



[Some] Other ACA Provisions

- Expanding the risk pool
 - Individual “mandate” to have coverage or pay a tax penalty
- Employer engagement
 - Employers with 50 or more employees that do not offer qualifying coverage have to pay a tax penalty
- Financing:
 - Tax on “high cost” employment based health plans, originally schedule to take effect in 2018, has been pushed back to 2022
 - Tax on insurers, temporarily suspended
 - Tax on medical devices, temporarily suspended
 - Other taxes, fees



ACA Immediately Challenged in Court



- First ACA case reached the Supreme Court in 2012
- The ACA was upheld
- Since then, litigation on many issues has continued
- Many Trump Administration actions also now being challenged in court



Health Care Coverage in the U.S. - Pre and Post-ACA

Type of Coverage	Percent of Americans Pre-ACA (2010)	Percent of Americans Post-ACA (2016)
Employment-based coverage (includes large group, small group (≤ 50), fully-insured, self-funded)	49% (56% of under age 65)	49% (57% of under age 65)
Individual market coverage	5%	7%
Medicaid (federal/state program for low income individuals)	15%	21%
Medicare (federal single payer plan, mostly for age 65+ also covers individuals with certain disabilities)	11%	13%
Other public programs (e.g., military, Veterans, Indian Health Service)	2%	2%
Uninsured	16%	9%

Source: Kaiser Family Foundation (based on analysis of Census Bureau Data)



Source: New York Times



115th Congress (2017)

- Repeal/Replace ACA in 2017 stopped with Sen. John McCain's historic vote





Democrats Regain the House in 2018 Midterms



Nancy Pelosi, Speaker of the House

“As Speaker, Pelosi is fighting For The People, **working to lower health care costs**, increase workers’ pay through strong economic growth and rebuilding America, and clean up corruption for make Washington work for all.”



2018 and forward on the ACA:



Republicans transition from wrecking ball...



... to incremental overhaul.





Post Repeal/Replace Incremental Legislative Changes

- **Republican Tax Cuts and Jobs Act**
- Enacted Dec. 2017
- Reduced the individual penalty for failure to have health coverage to zero starting in 2019



- **New round of litigation**
- The change makes the entire ACA unconstitutional
- A lower federal court has agreed
- Trump Administration originally argued parts of the ACA were still valid (e.g., protections for pre-existing conditions)
- Now argues the entire ACA must fall



Post Repeal/Replace Executive Branch Initiatives

Exchange focused:

- Cut enrollment publicity and outreach
- Reduce premium subsidies (by changing the method of determining premium growth)
- Reduce open enrollment periods
- Discontinue funding for cost sharing subsidies

Opening up non-exchange alternatives (Choice and Flexibility):

- Association Health Plans expanded -- allows groups to avoid certain ACA requirements
- Short Term Limited Duration plans expanded
- Health Reimbursement Arrangement expansion: allow employers to help pay for individual coverage
- Provide greater flexibility for States to get waivers from ACA requirements



Creating Winners and Losers in Risk Segmentation



- More risk pools create lower premiums for healthy risks and spiraling premiums for older, sicker classes
- Reducing cross-subsidization of risk creates more volatility in the marketplace



Next Up For the Democrats: Medicare for All?

- Some Democrats reach for Single-Payer
- House leadership focused on shoring up the ACA
- 2020 Presidential campaign issue





Next Up for Republicans – New Trump Proposal?

- **Reduce federal oversight**

- Politically, some protections will need to be kept

- **Focus on Health Savings Accounts**

- High deductible health plan
- Tax-favored savings vehicle to pay for out-of-pocket expenses
- Employers and individuals can contribute

Capitol Hill Reaction --

- Senate leadership taking “wait and see” approach
- Still weary from failed ACA repeal/replace
- Could put Republicans on the defensive on health care in 2020 elections



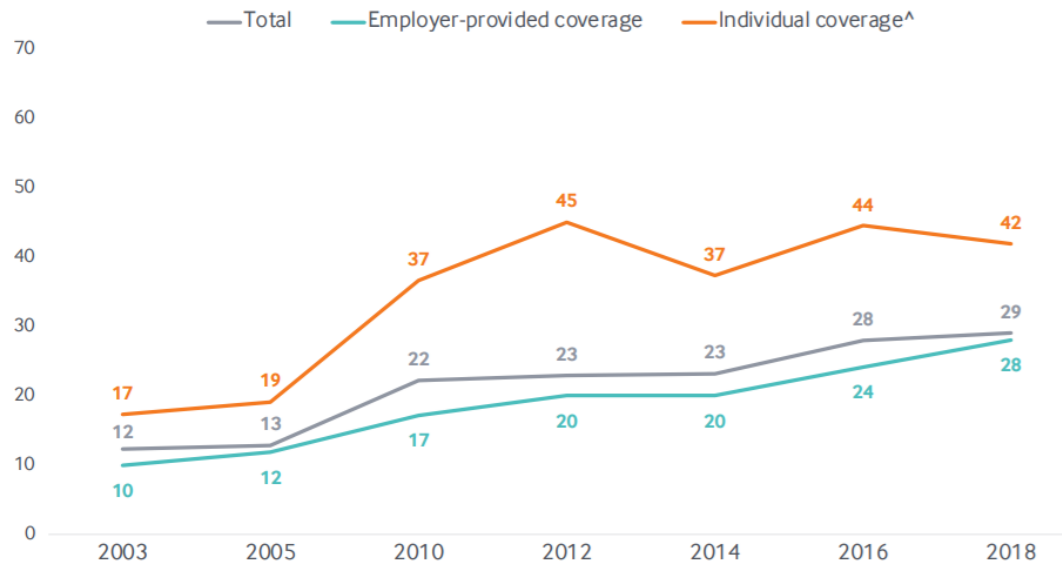
Driving the Debate: Higher Health Care Costs

- More adults are underinsured, with the greatest growth occurring among those with employer coverage

February 7, 2019



Percent of adults ages 19–64 insured all year who were underinsured





Many Households Have Difficulty with Even Modest Unexpected Expenses

- If faced with an unexpected expense of \$400
 - Almost 40 percent of adults would have difficulty paying
 - 27% would borrow or sell something to pay for the expense, and
 - 12% would not be able to cover the expense at all
- One-fifth of adults had major, unexpected medical bills to pay in the prior year
- One-fourth of adults skipped necessary medical care in 2018 because they were unable to afford the cost

Source: Federal Reserve



Room for Bi-partisanship?

- Prescription Drug Costs
 - Democrats favor larger government role including price negotiations for Medicare and Medicaid
 - Republicans focus on market-based strategies focused on price transparency
- “Surprise” Medical Bills
 - Unexpected out-of-network charges, such as for emergency care or for out-of-network providers at in-network facilities
 - Goal is to protect the patient, but who ends up paying and how much?
- Opioid Abuse



Questions?