

# Daily Journal

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PERSPECTIVE

## Affordable Care Act gets an uncertain prognosis

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The Patient Protection and Affordable Care Act (ACA) remains the law of the land for the time being and has survived the first serious legislative push to repeal its key provisions. With Republican lawmakers controlling the White House and both houses of Congress, party leadership was enthusiastic about reforming ACA in the campaign season leading up to and in the immediate aftermath of the November 2016 national election. Nevertheless, that optimism evaporated as the proposed replacement legislation championed by House Speaker Paul Ryan and the White House, called the American Health Care Act, faced sharp criticism from within the Republican Party.

After many weeks of lobbying both lawmakers and voters, Republican leaders in Washington struggled to obtain votes for the replacement plan, culminating in heated negotiations with hard line conservatives both on Capitol Hill and at the White House. Last Friday, House Speaker Paul Ryan pulled the replacement plan immediately prior to the scheduled vote, effectively leaving the ACA intact. National media outlets have had mixed reports as to whether Republican leadership will make further attempts at repealing ACA. However, there is little question the White House and Congress believe it's a national priority. It remains to be seen whether a replacement plan can theoretically or realistically satisfy both moderate and hard right factions in Congress.

With this context, it is an excellent time to give the ACA a checkup, review the challenges ACA presently faces, and offer some practical insights for its future.

### Taking the ACA's Temperature

The ACA's overarching goal was to expand access to health insurance by reducing barriers to coverage. Within two years after the coverage provisions took effect, a reported



New York Times

*Paul Ryan in Washington, March 15.*

20 million previously uninsured adults had obtained health insurance coverage. Moreover, the ACA aimed to lower overall costs of health care by providing free access to preventative care, which if utilized, decreases the net number of emergency room visits and hospitalization. In 2015, the second year of the ACA's effective implementation, the annual cost of health care services went up by only 0.5 percent, a measurable decrease from usual annual increases of 3 to 4 percent.

Further, employment rates have risen significantly due to the increasing demand for health care services. Health care created more jobs than any other sector in 2016, growing by an average of 35,000 jobs per month.

The ACA also instituted widely hailed health care reforms, including preventing insurance companies from denying coverage or raising premiums for those with preexisting conditions, providing tax credits on premiums for the middle class, and eliminating annual and lifetime coverage limits.

However, ACA has been beset by a number of problems. Early on, the wide availability of health insurance created a rapid influx of patients into a system with a shortage of both primary care physicians and specialists. Additionally, due to the ACA's employer mandate, requiring all businesses with 50 or more full-time equivalent employees to

provide health insurance to at least 95 percent of their full-time employees, relatively small businesses have been forced to offer coverage and pay associated premiums. This has been perceived as an obstacle to economic growth.

Likewise, the individual mandate has been said to place undue restrictions on individuals' freedom of choice. Although the Supreme Court upheld the individual mandate as a "tax" rather than a penalty, many have criticized it as an improper and unnecessary government restraint. Perhaps most significantly, there has also been a steady increase in the cost of premiums for the most popular health plans. These issues which have led many leaders in the Republican Party to demand a complete overhaul or repeal of the ACA.

### A Terminal Condition?

The view has been espoused that the ACA, as it presently exists, is unsustainable. In this divisive political moment, that may very well be the case. Major insurers such as Aetna and UnitedHealth have exited certain state health insurance markets due to unprofitability, premiums have consistently and sharply risen over four years, and enrollment numbers for the critical demographic of young and healthy Americans is not sufficient to offset government subsidies for low income enrollees and implementation costs.

While the latest report from the nonpartisan Congressional Budget Office suggests the health care marketplaces for most states are stable, increased premiums for 2018 enrollment are almost certain. It is entirely possible the state marketplaces are searching for equilibrium, but they are unlikely to find it amid the tumultuous debates about ACA's future. Meanwhile, the rises in insurance premiums will continue to drive distrust among voters, stifling potential for significant increases in enrollment.

Further, ACA can no longer depend upon the federal government to prop up ACA by

actively lobbying Americans to purchase health insurance. Given what we are observing now, the ACA's future is at best uncertain.

### A Curable Condition?

Notwithstanding the failure of the proposed American Health Care Act, the current prospects for rehabilitating the ACA are not good. Ultimately, the question of health care is too easily entwined with questions of political ideology. For example, the replacement legislation proposed dismantling the employer mandate and individual mandate. These are the taxes that are paid by large employers who elect not to offer insurance or individuals who choose not to purchase health insurance on the state exchanges. Although enrollment numbers have not been as robust as the architects of ACA imagined or projected, dismantling the "stick" that drives enrollment would be devastating to the delicate balancing of incentives underlying the ACA. Likewise, it

is also worth noting the recently withdrawn replacement legislation included a provision that would defund Planned Parenthood for one year, essentially eliminating any possibility of bipartisan support.

The ACA can be cured, but those changes or adjustments may realistically require at least a measure of bipartisan support. This can only rationally be done by focusing on the question of health care costs and insurance, and committing to reform that is sufficiently independent of ancillary debates concerning political ideology. This is undoubtedly difficult given the massive nature of ACA and how it is perceived so differently on each side of the aisle. That said, given the current trends and public demand for lawmakers to respond to these concerns, the political costs of allowing ACA to go untreated could be substantial and threaten the governing party's position. As such, there may be no rational political alternative but to pursue a bipartisan reform effort.

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