

*"They write politics, we write government"*

# HEALTH INSURANCE, PART V

## American Health Care Act: A Requiem Mass

*"Sometimes you're playing Fantasy Football and sometimes you're in the real game...This time, if we got it to the President's desk, it would be signed." – Joe Barton, R-TX*

*"Nobody knew health care could be so complicated." – Donald Trump*

Presidents, especially those who control both Houses of Congress, usually get what they want.

We are in uncharted waters here. Twice, a President's bill was brought confidently to the House of Representatives floor, only to be pulled just before a vote could be taken. For a President to not even get a vote on the first item on his legislative agenda is astounding. For a Party to spend seven years railing for a specific policy result, only to find themselves with no plan to achieve it begs understanding.

I'm not the first, and I won't be the last to look back and try to make sense of this historic week in Congress. What does it mean going forward? We can break our study down into three parts: the policy, the process, and the future.

- What was in the American Health Care Act? How would it have affected the system?
- Why did it fail to pass the House?
- What will happen to Obamacare now? What about the rest of the Administration's agenda?

### What was in the American Health Care Act? How would it have affected the system?

The AHCA had three significant legislative versions. The Original bill was presented by Speaker Ryan, and passed three House Committees between March 9 and March 16. The Amended version, which came out on March 20, made small but significant tweaks once it became clear that the most conservative Republicans were unwilling to accept it. The Final version included more amendments added hastily on March 23, after a meeting where the Republican conference where

they received an ultimatum. We can consider each of the versions in detail, because the legislative history is important to understanding the bill's failure. Please note these are short summaries; I apologize if I skip your favorite AHCA provision.

#### *AHCA, Original Version:*

By the time the first version of the AHCA was released, it was already contentious. Draft versions were allegedly kept under lock and key, available only to Republican Members of the relevant Committees and their staffs.<sup>1</sup> Legislation sausage-

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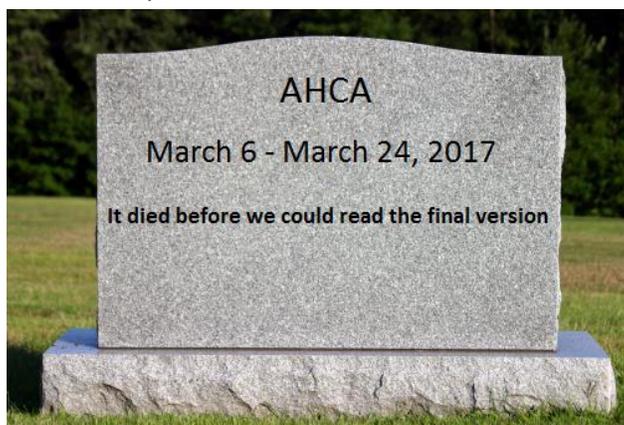
<sup>1</sup> Senator Rand Paul (R-KY) turned the unveiling into a farce when he created a [twitter account for his copier](#) while trying to find the bill. He was not successful.

making is not pretty, but how good could legislation be if it was literally surrounded by security guards so that the public couldn't see it.

When the bill was released, many analysts had the same reaction: "This is it?"<sup>2</sup> After seven years of daily reminders of the Obamacare<sup>3</sup> disaster, the AHCA did little to change its general structure. In a famous anecdote, nearly 10% of the bill's length is taken up by creating a procedure to kick lottery winners off of Medicaid. Did the GOP believe that lottery winners on Medicaid were causing 10% of the problems in the US health insurance system?<sup>4</sup>

The more meaningful provisions of the Original Version were:

- Replacing Obamacare's individual and employer mandates with a continuous coverage provision.<sup>5</sup> In order to encourage healthy people to stay in the insured pool, anyone leaving would be subject to a 30% penalty when they came back.
- Allowed premium differences based on age of 5:1 (Obamacare allows 3:1). This meant more expensive insurance for older people, less expensive for younger.
- Obamacare's expansion of Medicaid was wound down over the next decade.



- Federal Medicaid expenditures were capped (rather than current sharing of actual cost).
- Insurance subsidies were no longer to be based on income or local premium cost. Instead they were to be based only on age.
- Obamacare's tax increases were cancelled, resulting in \$882 billion in lost revenue in the first ten years. These cuts were heavily slanted towards top earners, but included insurance companies, drug makes and medical device makers.

We have a good idea how this bill would have affected the system. The bombshell CBO scoring was released on March 13<sup>th</sup>.<sup>6</sup>

To summarize the CBO, under the AHCA, 14 million additional people would be uninsured in 2018, rising to 24 million in ten years. For the average individual,

health spending would be higher.<sup>7</sup> As an exclamation point for those opposed to the AHCA, the CBO predicted that Social Security spending would decrease by around \$3 billion annually after 10 years. This seems to be because the CBO predicted that more people would die sooner, so Social Security would not have to pay as many benefits.<sup>8</sup> The bill overall would improve budget deficits by around \$350 billion over the first ten years.

The CBO said that both the current, Obamacare-based, and new AHCA systems would have stable

<sup>2</sup> Some crazy [people live-tweeted themselves](#) reading the bill.

<sup>3</sup> I'm using "Obamacare" rather than "ACA" in this Volume to prevent confusion with the "AHCA."

<sup>4</sup> Bill length is an awful metric. I shouldn't use it in this fashion. But it is still really weird.

<sup>5</sup> We discussed continuous coverage in more detail in [Volume 8](#).

<sup>6</sup> I mean – not a bombshell for me. I [predicted 25mm](#) lost coverage in 10 years vs. CBO's 24mm. I was a bit high on premium increases (closer to [13% per Brookings](#)).

<sup>7</sup> See Brookings, above.

<sup>8</sup> See [here](#) and [here](#). The CBO doesn't say this explicitly; feel free to provide alternative explanations.

insurance markets. In other words: continuous coverage would prevent a death spiral. In my opinion, this should not be taken as a given. Continuous coverage has never really been tried, it might not work. So, I think that the CBO coverage numbers may be a best-case scenario.<sup>9</sup>

#### *AHCA, Amended Version:*

The first set of amendments was fairly limited. It ended Obamacare's taxes one year earlier. It also allowed states to add a work requirement as a condition to receive Medicaid. The CBO released revised scoring on the amendment. It would lessen the budgetary improvement by \$150 billion due to the taxes ending sooner. It did not have improve the coverage prediction (loss of 24 million) from the first CBO report.

#### *AHCA, Final Version:*

On Thursday, March 23<sup>rd</sup>, the AHCA was supposed to go to the House for final passage. But right-wing Republicans, under the banner of the House Freedom Caucus, controlled enough No votes to kill the bill. In a tense meeting between the President and the Republican House Conference, an ultimatum was made: the AHCA would be moved further to the right, and the vote would happen the next day. Anybody loyal to the President would be expected to vote Yes.

The major change in the Final bill was the elimination of the Essential Health Benefits (EHBs);

<sup>9</sup> I also don't see the massive age-based selection into the pool as consistent with a stable market. Maybe it's just me.

each state would be able to manage their own. Whatever you think about the previous versions of the bill, eliminating the EHBs without significant other changes made little sense. It would have caused a total collapse of the non-group market. Remember the three-legged stool includes Guaranteed Issue, Mandate and Subsidies.<sup>10</sup> If you make the assumption that Continuous Coverage is an effective mandate, why do we care about EHBs?

We can demonstrate y. Let's say that Maternity Care is no longer an EHB. Then, health insurance can be sold with or without Maternity Care. In Paul Ryan's world, those who wanted it would pay for it and those who didn't wouldn't. But there is a problem: a rational person would only buy Maternity Care if they planned to use it. Insurance companies are prohibited from screening patients,

because of Guaranteed Issue. So they would assume that everybody buying Maternity Care planned to use it and would raise the premium. At that point, it only makes sense for those with complicated pregnancies to buy it. The insurance companies respond by raising the prices to cost of

complicated pregnancies. We've created a death spiral in Maternity Care – it will soon be impossible for anybody to buy it.

We don't have an estimate of what the Final version would have done to coverage; the bill was pulled before the CBO could score it.<sup>11</sup> But, in any state

#### *An Aside: The Fundamental Theorem of Health Insurance*

Many disciplines have a Fundamental Theorem; a basic principle that links to the broad discipline. Can we create one for health insurance markets? It must describe the trade-off between choice and pool selection.

***If it's not required for everybody, it will not be available for everybody. If everybody has the choice, then nobody will have a choice.***

I think this covers the three main paradoxes. Without a Mandate, death spiral results. If a benefit is optional, selection will make it prohibitively expensive. A system with no Guaranteed Issue and no Mandate is "stable" – but the rate of uninsured will be very high. People who have conditions will not be able to find coverage.

When you hear a proposal for changing health insurance regulations, apply the Theorem. If it fails, the system is flawed.

<sup>10</sup> Makes sense to [go back and look at Volume 4 for a minute](#) if you don't recall how this works.

<sup>11</sup> I would love to see the CBO – or any private analyst – to analyze the Final version.

that didn't create strong EHBs, the non-group (and probably small group) markets would have soon consisted only of health insurance that didn't cover health care.<sup>12</sup> Famously – aromatherapy but not chemotherapy. Recall that the GOP wanted to allow “buying insurance across state lines”. Let's say that your state created appropriate EHBs, theoretically protecting your market. But the GOP would have forced your state to allow in policies from other states. States with weak EHBs would “poison” those with strong. The Final version of the AHCA would have created the worst health insurance system I can seriously imagine.

### Why did it fail to pass the House?

I feel the need to say this again – what happened to the AHCA is unprecedented. The Majority Party has total control in the House of Representatives. They decide what bills go to committee, exit committee, what amendments are offered and passed, what comes to the floor, when and how. The GOP spent seven years yelling to repeal Obamacare and failed miserably – why?

In [Volume 6](#) we tested the claim that the GOP had no unifying principle on health care other than repealing Obamacare. We can now rate this statement as “VERY TRUE.” As somebody who read the entire AHCA (Original version), I was amazed how little was in the bill. No matter what you think the problem with health care is, the AHCA did nothing to fix it. Too many uninsured? AHCA created more. Plans have too high deductibles? AHCA would have increased them. Premiums too high? Nothing here would have lowered them; removing Guaranteed Issue was too controversial. Exchanges confusing? CBO specifically said this

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<sup>12</sup> I know that large groups are not subject to EHBs. But large employer sponsored insurance (ESI) is not a market. You get it if you work there, and you usually have very limited choice of providers and plans. But in a truly terrible regulatory environment, you can imagine ESI going into death spiral: if the only way for sick people to get insurance is to work at large companies, you create a strong adverse selection.

would get worse. Obamacare is a disaster (even if you can't say why)? **The AHCA did not repeal Obamacare.** It was built on Obamacare's structure, making no fundamental change. Removing people from Medicaid isn't a goal in itself – especially when you remember that Medicaid is 1) cheaper than private insurance, 2) has lower out of pocket costs than private insurance and 3) has better plan-holder favorability than private insurance!<sup>13</sup>

I learned something this month. President Obama has a legacy: belief in a fundamental right to health insurance. During the campaign and transition, Donald Trump said repeatedly that it was his goal to increase coverage – even create universal coverage! Secretary Price, Speaker Ryan and others who tried to sell the concept of “access” were taken rightly as charlatans. The fact that the working poor have access to buy penthouses at Trump Tower doesn't mean home affordability isn't a problem in New York City. Then the CBO score came out – the AHCA was directly opposed to Americans' newest fundamental right.

There is a lot of talk about the tactics used both by House Leadership and The White House. We can consider these tactics, but must remember the goal. Having no party-wide health policy goals, the GOP leadership seemed to not care what they passed. They just wanted to pass something to claim a victory on their core issue. The Final version clarified this: Trump and Ryan were fully behind a nonsense bill that would have destabilized the entire system without advancing any of their stated policy positions.

If that's the goal, the question is: was the AHCA the right bill to accomplish it? Would a different

<sup>13</sup> Cost of Medicaid we've covered many times before. Medicaid satisfaction comes through in [every survey I've seen](#). Out of pocket varies by state, but compare [these maximums](#) to your private plan. I know it has narrow networks – but I'm on an off-exchange non-group plan, I honestly think I'd move my family to Medicaid if I had the choice.

proposal have been more likely to pass the House?<sup>14</sup> This is a hypothetical so we can't know for sure. But for my money, at the start of the process I thought it looked likely to at least pass the House. It was always going to have opposition from both the Freedom Caucus and the Tuesday Group. But as they found during negotiations, moving the bill to gain one vote on the right lost two in the center, and vice versa. My view is that the AHCA was as likely as any bill to get 216 votes from the Republican caucus.

But why that proviso – why didn't they make any effort to win Democratic votes? There is a lot of talk about how Obamacare was pushed through in a partisan manner in the middle of the night. This is not true. The basic provisions of Obamacare were discussed for the better part of a year before the first votes on the floor; the AHCA for barely two weeks. Republicans were wooed for months to get on board – remember the swooning when Sen. Susan Collins (R-ME) supported a version in committee? Obamacare today includes many Republican amendments; so far as I know, Democrats were not given any real opportunity to be involved in the drafting or amending of the AHCA. In 2009-2010, if there had been any sign of any Republican showing interest, they would have had a lot of leverage in the bill's final shape. There was no such offer made to entice possible wavering Democrats.

Many Democrats are in swing districts. By running a fully closed process, there was no pressure for any Democrat to break ranks.

We learned two more things in the last week. First, both the House Freedom Caucus and the Tuesday Group held firm under what must have been unbearable pressure to support the bill. If they had

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<sup>14</sup> Let's leave aside the later steps to becoming a law for now.

<sup>15</sup> The AHCA could only afford 21 or 22 No's if it was to pass.

<sup>16</sup> "Representative Gomer McRyanFollower voted for an age tax that would force seniors to pay five times as much

folded, they would have proven themselves meaningless; instead they are forces to be reckoned with. Expect to hear more of Charlie Dent (R-PA, TG) and Mark Meadows (R-NC, HFC). Second, Trump's personal involvement was uniformly unhelpful. Every report of meetings between him and recalcitrant Republican Members was followed by reports of recalcitrant Members. In addition, his occasional uncertainty with the bill's provisions – even with the desirability of its passage – didn't help. Just because the White House wanted a "win" doesn't mean their constituents wouldn't blame them in November 2018.

Pulling the bill before the vote was undoubtedly the correct strategy for Ryan and Trump. Based on my whip count, there were at least 30 GOP votes against the bill.<sup>15</sup> During the vote, if it became clear it was going down, Members would have fled for the hills. There could have been 60 defections before it was over – or more. Let's say that by some miracle it did pass. A new CBO score would have come out on the Final version in a few days. Predicted coverage losses would have left Members dreaming of the good old days of 24 million. The midterm attack ads would have written themselves. They would have been as effective as similar ads in 2010 – and honest about the policy.<sup>16</sup>

### **What will happen to Obamacare now? What about the rest of the Administration's agenda?**

In the press conference after the bill failed, Paul Ryan said that Obamacare is the law of the land for the foreseeable future. It's not a disaster and it's not in a death spiral. But its markets are fragile. We are about to enter the Critical Phase of the year. Insurers are deciding right now whether to

for their health insurance. He also tried to strip Doctors' Visits and Hospital Stays from your insurance. I'm sorry Gomer, if I get sick, I'll need those things." I could have a second career here.

participate on the exchanges – or in the individual markets at all.

Whether our non-group and small-group insurance systems thrive or fail is in the hands of two men: Health and Human Services Secretary Tom Price, and Donald J. Trump. They have a choice: make Obamacare work as well as possible or knowingly harm the system. Trump has said that he wants to see the system fail and blame Democrats. I don't think this is likely to succeed – how do you blame a party that controls precisely zero branches of the government?

If he wanted to try, there are many ways to make Obamacare fail.<sup>17</sup> The easiest and most disastrous way is to stop appeals in the ongoing court case *House v. Burwell*.<sup>18</sup> *House v. Burwell* is a super technical topic, but very briefly:

- The (GOP) House of Representatives sued the Obama Administration.
- There is currently a decision against the Obama Administration, but most people think the Administration will win the appeal.
- But the Administration is now the Trump Administration – they could make the simple decision just not to bother appealing, losing automatically.
- Again, I'm going to skip all the details, but losing the case will mean the Federal Government stops paying some of the Subsidies. Insurance companies can and will then cancel the relevant policies – possibly as many as six million.

But remember that we are at the Critical Phase of the year. If they aren't sure they will get paid, every insurer will leave the exchanges. They will probably

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<sup>17</sup> This is true about many areas other than health insurance.

<sup>18</sup> *House v. Burwell* is a big deal, I should gloss over it like I have. You can read about it [here](#) and [here](#).

<sup>19</sup> Fully explained [here](#).

exit the entire non-group market. Again, to get this to happen, all Trump and Price have to do is ... nothing.

Or, like other Presidents have basically always done with laws they didn't like, he can try to make it work. First, make it clear that he is going to enforce the Mandate. An early executive order opened the door to weakening it to its failure point; clarify that this wasn't intended. Then, fund the risk corridors.<sup>19</sup> The risk corridors are in Obamacare as a type of re-insurance for exchange participants; they were killed by the GOP Congress. You've heard that many health insurance co-ops failed? Most are because the government didn't pay them risk corridor money they were owed. Most importantly, just change the tone. I don't expect Trump to hire Andy Slavitt or Topher Spiro<sup>20</sup> tomorrow. But the President's words matter, and there is just no reason to keep repeating the lie that Obamacare is a disaster.

Because – unless I'm massively wrong – this Administration is done with legislative action on health care. Politicians don't do health care to win battles. It is the ultimate loser political issue. They do it because they really have a goal for the system. We now have proven that neither Trump nor the GOP generally have a real goal for health care. The bill they tried gutted Medicaid, cut taxes for the rich and tinkered around enough to claim to be an Obamacare repeal. Everybody involved in the AHCA came out looking awful – why would they go through this again?

But here's the problem: Trump's agenda doesn't get any easier. Corporate tax reform? When cut Person A's taxes, but still need to take in the same amount of money, Person B's taxes must go up.<sup>21</sup> I can't picture Trump telling a group of corporate

<sup>20</sup> Two key Obama Administration officials; these guys know more about health insurance markets than anybody around.

<sup>21</sup> Which is the stated goal of many of those involved in the design. See Gary Cohn [here](#); he is supposed to be in charge of this.

taxpayers that their taxes are actually higher in his plan. Personal taxes reform? The GOP might still pass a straight tax cut for the rich, but the public is unlikely to fall for this again.<sup>22</sup> A border wall? Democrats will shut down the government before paying for it; it's Mexico paying or nothing. Increasing military spending would also require Democratic support. Trump can unilaterally start trade wars or renegotiate NAFTA – or drop bombs where he wants I suppose.

But his job doesn't get easier after health care.

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I'm writing this 48 hours after the AHCA was pulled from the floor. I spent most of that time in a self-imposed ban from news and social media. I might already be behind, maybe there is an even more fantastic health care plan on its way to the Hill. But I doubt it.

This is a big loss for Trump; it probably ends Paul Ryan's dreams of national office. Trump's further agenda will be challenged from both sides of his own party. Democrats have shown they can oppose his plans when they need to.

Trump isn't finished – [he is still the President](#). But authoritarians can't afford a lot of losses. And...

The idea of Trump the dealmaker: shattered.

The idea of Trump the pragmatist: shattered.

From now on – the Republicans, not to mention the Democrats, know they can always call his bluff.

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<sup>22</sup> Again, the guy in charge has said [he's not doing this](#).