

How to Enact Bipartisan Fixes to the Affordable Care Act



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Takeaways

Repeal has failed. Replace has failed. Let's try fix instead. This paper provides ideas in two key areas that Congress could adopt to make the Affordable Care Act (ACA) work better for people. After all, the ACA is—to quote Speaker Paul Ryan—the law of the land. With repeal efforts nearly dead, it's time for both parties to work together to fix it.

1. Make coverage more stable and affordable.
Ideas that Democrats broadly support include: funding federal payments for cost-sharing subsidies for moderate to low-income families; a stability fund to expand health plan choices for consumers; and marketing around open enrollment to encourage younger, healthier Americans to sign up for coverage.

2. Reduce federal tax and regulatory burdens.

Ideas in this area that could attract GOP support include: state flexibility in meeting certain federal standards; fewer regulatory requirements for employers; and tax relief from poorly targeted taxes like the medical device tax.

This report is not a wish list of reforms, but a practical set of fixes ripe for charting an initial bipartisan course toward revitalizing America's health care system.

The chances of enacting bipartisan fixes to the ACA may still seem remote despite recent talk about reaching across the aisle. After all, Republicans have fought the law from its inception, and their own unpopular proposals would have made health care less secure, less stable, and less affordable for tens of millions of Americans. But after multiple failure efforts to repeal and replace, many Republicans are acknowledging they remain politically accountable for fixing health care.

Democrats have every right to be proud of the progress in American health care coverage under the ACA. Nine out of ten working adults have health insurance.¹ Nineteen out of 20 children have health insurance.² No Americans are denied coverage due to pre-existing conditions such as pregnancy or cancer.³ And no American is dying or going bankrupt because they exhausted their health care coverage.⁴ While the ACA's successes have kept Democrats unified around protecting it, however, the ACA also has some issues that do need to be fixed.

Fortunately, there are solutions that can draw bipartisan support. Senate Democratic leaders and the House New Democrat Coalition, as well as the bipartisan Problem Solvers Caucus, have recommended specific improvements.⁵ A bipartisan group of governors, the Bipartisan Policy Center,

and the Health Reform Roundtable have come up with their own proposals.⁶ Within these ideas and others, both parties should be able to agree on a package of fixes. We recommend drawing from two buckets of proposals: protecting coverage and reducing governmental burdens. Below, we describe three ideas in each of these two areas and discuss ways to pay for the changes. This list is not exhaustive—it's just the beginning steps that could form a bipartisan package.

Protect Coverage

Here are three ways to protect coverage by lowering premiums and expanding choice in the Affordable Care Act's health insurance exchanges:

1. ***Fund Cost-Sharing Reduction Subsidies.*** The single action with the greatest potential impact for protecting coverage is to provide ongoing funding for the subsidies that cover health plans' expenses for the out-of-pocket costs of exchange participants with incomes between 100% and 250% of the federal poverty rate. This support makes health care accessible for people who cannot afford to pay an upfront deductible before their care is covered by their insurance policy. Health plans are legally required to pay those out-of-pocket costs for low-to-moderate income individuals and families. Without stable federal funding, health plans will have to raise premiums for everyone by an estimated 19% on average.⁷ A large and diverse group of health care stakeholders have urged the President and Congress to provide these critical subsidies.⁸

2. **Create a Stability Fund.** A sustained federal funding mechanism to support the cost of caring for those with serious health conditions is essential to make premiums more affordable. One of the key reasons why the exchanges were more expensive and had fewer health plan choices in 2017 compared to 2016 is that several provisions aimed at stabilizing the insurance markets expired. For example, a program called *reinsurance*, which covers a portion of a health plan's costs for patients who receive high-cost care, ended. The support provided by reinsurance helps prevent health plans from having to charge higher premiums to everyone due to those high-cost patients. That support lowered premiums by 4-7% in 2016, according to the American Academy of Actuaries.⁹ The Republican American Health Care Act (AHCA) has a provision called the Patient and State Stability Fund, which would support the use of reinsurance or other kinds of state-sponsored programs to offset the costs of high-risk individuals. Such a fund could also support the original reinsurance program under the ACA to help in states that do not set up their own reinsurance program. If sufficiently funded, these efforts will help attract more health plans back to the exchanges.

3. *Increase resources for marketing around open enrollment periods.* This measure would reverse the recently announced Trump Administration's 90% cut in funding for public education and expand it so people know when and how to get coverage through the exchanges. It is critical for getting younger and healthier Americans to enroll, which in turn helps lower premiums for everyone. Such outreach has proven effective in the past. When the Trump Administration abruptly ended marketing in January near the end of the open enrollment period, enrollment rates declined. Instead of de-stabilizing cuts to the marketing program as the Trump Administration is currently pursuing,¹⁰ Congress should expand funding and set clear expectations for the role of enrollment marketing across the diverse groups who need coverage.

Reduce Tax & Regulatory Burdens

Here are three ways that Congress could reduce undue tax and regulatory burdens stemming from the ACA:

1. *Give states flexibility in meeting certain federal standards.*

The ACA includes provisions for flexibility in the ways states must meet federal requirements. Specifically, it allows states to apply for waivers from federal rules and programs *as long as a state maintains key federal protections*. For example, under a waiver for different ways to provide coverage, a state has to ensure that the coverage is just as complete as the federal standard for essential benefits. Eleven states have passed legislation to pursue waivers, which are now in various stages of the application and approval process. As the House Problem Solvers Caucus has proposed, more can be done to make it easier for states to use these waivers.¹¹ For example, Congress or the Administration could entice more states to apply for a waiver by creating more awareness and clarity around the process for reinsurance program waivers. Flexibility should also be allowed in terms of spending under ACA and Medicaid.¹² Specifically, states should be able to use savings in one program to offset costs in the other.

2. *Reduce the regulatory burden of the employer mandate.* The employer mandate, which applies to employers with more than 50 employees, requires coverage for employees working 30 hours or more each week. Federal regulations require employers to account for hours worked even when an employer does not track hours worked. For example, employers sometimes pay employees on a per diem basis instead of an hourly wage. A bill introduced by Sens. Mark Warner (D-VA) and Rob Portman (R-OH) would give employers more flexibility with how they account for time worked without sacrificing coverage for any employee.¹³

3. *Provide tax relief.* The ACA was completely self-funded and did not increase the deficit, but some of the taxes have proven problematic. The medical device tax adds a 2.3% sales tax on most medical devices, which was intended to recapture some of the medical device companies' windfall from having more insured Americans. But instead of a windfall, the device industry is seeing declines in investments and employment, with revenue growing only modestly.¹⁴ The medical device tax has already been delayed on a bipartisan basis, and full repeal is the next logical step. Similarly, the health insurance tax on health plans was supposed to recover additional revenue from health plans signing up new customers. Health plans have largely passed the tax on to consumers in the form of higher premiums, which are estimated to be 3% higher in 2018 as a result of the tax. This exacerbates the problem of rising premiums in the exchanges and raises health insurance premiums for tens of millions of others with coverage through a private health insurance plan.¹⁵ Like the device tax, the premium tax has also been suspended previously. This should continue at least until health plan premiums are more stable, if not indefinitely. Making bipartisan changes to a few tax provisions in the ACA would pave the way for reconsidering other controversial taxes like the "Cadillac plan" tax on expensive employment-based health plans or the tax on branded pharmaceutical products. It is essential that the ACA has stable financing for the millions of Americans who depend on it.

Paying for Fixes

While the costs of these provisions have yet to be determined, it is critical for ACA supporters to offer offsets to cover the costs for two reasons. First, doing so could reduce pressure to cut other progressive priorities such as Medicaid. Second, Congress can reduce costs while improving patient care for exchange-based coverage just as it is doing in Medicare. The bipartisan strategy to pay for value instead paying a fee-for-every-service in health care was formally

adopted in the Medicare Access and CHIP Reauthorization Act in 2015, which ended large, automatic tax cuts to physicians and other clinicians serving Medicare patients). This strategy should extend to all forms of coverage, not just Medicare.

Third Way has proposed over a dozen ideas for saving money by improving patient care.¹⁶ For example, Medicare has been moving steadily to scale up coordinated care through patient-centered medical homes—but it could be better targeted in Medicare and expanded more aggressively in private insurance markets.¹⁷ The idea is to give providers upfront funding to pay for services that today receive little reimbursement so they can do more to manage illnesses like chronic diseases. Such services can prevent the use of more expensive care before a patient’s medical problem gets worse. Similarly, integrating behavioral health care into routine primary care can reduce costs that occur from untreated mental illness and substance abuse. A portion of savings in the private sector would come back to the federal government in the form of reduced spending on ACA subsidies.

Conclusion

The chances for enacting bipartisan fixes are better now than perhaps at any other point since the ACA’s enactment, but success is not a given by any stretch. Democrats can increase those chances by working with congressional Republicans on solutions that both draw upon ideas from both parties and pay for the fixes. Doing so will make it harder for the more partisan Republicans to paint the ACA as unavoidably falling apart and therefore requiring repeal. It will also give Democrats a solid platform from which to contrast their constructive solutions with any further GOP efforts to sabotage the ACA, which are simply off track in the pursuit of health care coverage for everyone across the nation.

END NOTES

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- 12.** It is important to note that state flexibility has not, and should not, extend to the Employee Retirement Income Security Act, the federal law that provides the key legal framework for employers who provide health benefits, many of whom do so across state lines.

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