

Is this email not displaying correctly? Try the web version.

GIBBONS | NEUMAN

ATTORNEYS AT LAW

ISSUE

04

The ElderCounselor

"Providing Solutions to Seniors and People with Disabilities"

July 2017



Elizabeth P. Allen, JD, LLM
Gibbons | Neuman
3321 Henderson Boulevard
Tampa, FL 33609
Tel: 813 877-9222
Fax: 813 877-9290
www.gibblaw.com



The Senate Releases its Health Care Bill...Now What?

We are certainly watching a Civics class in action as the Republicans in the House and Senate work toward a repeal and replacement of the *Affordable Care Act* (ObamaCare). The House passed its bill, the *American Health Care Act* (AHCA) in May. The Senate is taking the next step with its *Better Care Reconciliation Act*, which was introduced on June 22. Senate Majority Leader Mitch McConnell had hoped for a vote before the July 4 recess but postponed it because several Senate Republicans publicly stated they would not vote for it in its present form.

In this issue of *The ElderCounselor*, we will look at what is in the current Senate bill, how it differs from the House bill, why some are opposed to it, and what the future might hold. But first, let's revisit why Republicans are trying so hard to repeal and replace ObamaCare and how they are going about it.

Why Repeal and Replace ObamaCare?

ObamaCare, you may remember, was passed by the Democrats in 2010 with no Republican support. Ever since, Republicans have campaigned on repealing and replacing the program, which was unpopular with many Americans. "Repeal and Replace" was their rallying cry to voters to help them win back control of the House in 2012, then the Senate in 2014, and finally the Presidency in 2016. If the Republicans are not able to fulfill this major promise, some may be in danger of losing their seats in the next election, as they would likely be blamed for the problems with ObamaCare if they don't fix them. These are the political reasons.

The practical reason is that, according to its opponents, ObamaCare is self-destructing. Those opposed to Obamacare state that premiums continue to rise, deductibles and copays are so high that many cannot afford to use their plans, and insurers, who

underestimated costs, are leaving markets. They assert that in 2018, many counties across the country will have no plans in the individual marketplace. Democrats admit that ObamaCare has problems and needs a major fix to survive. But they are not on board with repeal and replace of such a signature piece of legislation, and are happy to stay on the sidelines while Republicans try to find a way to pass new legislation on their own.

The Legislative Process

The normal legislative process is that a bill begins in the House, where it is written, discussed and approved by a committee before the House votes on it. If it passes the House, it is then sent to the Senate. The Senate can vote on the same bill, make amendments to the House bill, or create its own bill. Eventually, both the House and Senate must vote on the same bill, so if there are differences, members of both the House and Senate meet in committee to resolve them. Once a bill passes both the House and Senate, it is then sent to the President who can sign it into law or veto it.

As we are witnessing, this can be a messy process. Right now, there is a House bill on health care that has passed the House, and a Senate bill that has not passed the Senate. Discussions and amendments are still occurring with the Senate bill in hopes it will pass soon. The public posture is that this messy legislative process is making the bill better.

Further complicating this process is that while the Republicans have a majority in both the House and the Senate, they only have 52 Republican Senators. 60 votes are required to pass new legislation, so they are attempting to pass health care legislation through the Budget Reconciliation process. It only requires 51 votes, but it limits the legislation to budget-related items only. They would not be able to include provisions some Republicans want in a full repeal and replace bill—for example, letting insurance companies sell across state lines to increase competition, lower prices and create better plans; and allowing the government to negotiate lower drug prices. Issues like these would have to be voted on later.

For the Senate bill to pass in Reconciliation, 50 Republicans must vote for the bill, since no Democrat or Independent is expected to vote for the bill. Vice-President Pence would break the tie if needed.

How Do the Current Senate Bill and the House Bill Compare?

There are broad similarities in both bills, including the repeal of some major parts of ObamaCare, but neither is a full repeal and replace. Senate Majority Leader McConnell calls the Senate bill a “discussion draft,” as they work to get the needed Senators on board. Let’s look at how the House bill and the current Senate bill compare.

Both Bills Repeal Mandates and Most ObamaCare Taxes

Both bills call for the elimination of 1) the individual mandate that required every person to have health insurance or pay a fine and 2) the employer mandate that forces employers with at least 50 employees to provide healthcare coverage. Most of the tax increases that were imposed to pay for ObamaCare programs are also eliminated, including taxes on net investment income, insurers, drug makers and medical device manufacturers. The Senate bill keeps the “Cadillac tax” on expensive employer insurance plans, though it would be delayed until 2026.

Changes to Medicaid

Medicaid is an entitlement program that provides health care to low-income Americans, the disabled and impoverished children. ObamaCare allowed states to expand Medicaid to some low-income Americans above the poverty level, which greatly increased the number of people on Medicaid. In addition, funding for the Medicaid program is currently “open-ended,” meaning funding increases as need increases.

The problem is that these make Medicaid unsustainable. The goal for Medicaid reform in both the House and Senate bills is to rein in the Medicaid program, preserve it for those who really need it, put it on a fiscally sustainable path and reduce its future spending so that it grows more slowly. Reports of Medicaid funding cuts actually refer to reductions in future Medicaid spending. The House bill would slow the growth of Medicaid funding by \$834 billion over 10 years; the Senate bill has a similar growth reduction.

Both bills roll back Medicaid expansion, but the Senate bill would do that more slowly than the House bill. The House bill ended extra federal funds for Medicaid expansion in 2020. The Senate bill begins phasing out these enhanced funds starting in 2021 and restores it to pre-ObamaCare levels by 2024.

Both bills would end “open-ended benefits,” instead of providing the states a set amount of money for each person enrolled. This could be either a per capita cap (a certain number of dollars per person) or a block grant of funds (which each state can use however it wishes). While both bills tie the caps to a rate of inflation, the Senate bill uses a lower rate of inflation than the House bill.

In light of these funding changes, states would probably put some limitations on benefits. They would also be allowed to add a work requirement for able-bodied (non-elderly, non-disabled, non-pregnant) Medicaid recipients. Also, under the Senate bill, some of the currently mandated benefits under Medicaid would be made optional.

Premiums and Premium Assistance for Older/Younger Americans

Under ObamaCare, older Americans could only be charged three times more for their insurance premiums than younger people. While that was helpful for older Americans, younger people were subsidizing them by paying more than their actual costs. Because their insurance costs were high, many young people opted not to buy insurance —causing insurers to lose money and eventually pull out of markets.

Both the Senate and House bills would allow insurance companies to charge older people up to five times more than younger people, more accurately reflecting the actual costs of their health care coverage. The Senate bill offers more help to older people who can't afford insurance while making coverage cheaper for young healthy people, and it hopes to encourage people to voluntarily buy a policy by offering them tax credits to help pay premiums.

Currently, premium assistance (ObamaCare subsidies) is available to those with earnings up to 400% of the poverty level (\$48,240). The Senate bill would limit premium assistance to those earning up to 350% of the poverty level (\$42,210) through tax credits based on age, income, and geography. The House bill bases tax credits mostly on age.

Under both bills, young adults under age 26 can continue to get insurance through a parent's plan or they can buy it independently.

Abortion/Planned Parenthood

Both bills ban the use of any federal funds for any health care plan that covers abortion, except in the cases of rape, incest or where the pregnancy puts the mother's life in danger. They would also defund Planned Parenthood for one year.

Pre-Existing Conditions

Under ObamaCare, insurers were required to cover people with pre-existing conditions with no increase in cost. Under the House plan, states can receive a waiver that would let insurers charge more for some pre-existing conditions but federal money would be available to help those with expensive policies or conditions. Under the Senate plan, insurers are required to cover people with pre-existing conditions without charging them higher rates.

Continuous Coverage

The original Senate bill had dropped the ObamaCare penalty on those who do not have insurance. Experts had warned that canceling the fine would lead to a sicker pool of people with insurance because young and healthy people would not face consequences for failing to purchase insurance. The Senate bill now imposes a six-month waiting period for anyone who lets their health insurance lapse for over 63 days and then wants to re-enroll in a plan in the individual market. The House bill includes a provision also aimed at those who let their insurance lapse for more than 63 days, allowing insurers to charge a 30% penalty over their premium for one year.

Opioid Addiction

\$2 billion has been allocated for fighting opioid addiction and helping states with treatment and response. About 30% of all opioid treatment goes through the Medicaid program, and moderates were worried that people would not be able to get treatment for their substance abuse problems. As part of the negotiations, Senator McConnell added an immediate benefit for opioid addiction.

Congressional Budget Office (CBO) Scoring

The CBO report found that, under the Senate bill, 22 million more people would be uninsured by 2026, compared to 23 million more under the House bill. Next year, 15 million more people would be uninsured under the Senate's measure because Obamacare's individual mandate that forces a penalty on the uninsured would be eliminated—allowing people who do not want to buy insurance to be able to drop out of

the market with no penalty. By 2026, the CBO projects there would be 15 million fewer Medicaid enrollees.

In addition, average premiums for single individuals would rise by 20% in 2018 and 10% in 2019. In 2020, average premiums for single people would be about 30 percent lower than under current law. By 2026, the analysis projects such premiums will be 20 percent lower than under Obamacare.

The Senate bill would also reduce the federal deficit over the next 10 years by \$321 billion. The largest savings would stem from cuts in Medicaid spending.

It should be noted that CBO predictions are just that: predictions. They can, and have been, wrong in the past and should not be relied upon as a factual basis.

What's Next?

As many as ten Senators have said they cannot vote for the current bill. A new Senate bill is expected in the next few days and a vote could come as early as mid-July.

Senate Majority Leader McConnell and his staff are trying to find a balance between conservative Republicans, who want a full repeal of ObamaCare and a replacement that has lower health care costs, and more moderate Republicans who want to preserve its more popular benefits. The Congressional Budget Office is reviewing legislative language, the Senate parliamentarian is reviewing processes, and Republican Senators are still submitting and discussing options that could get them to the 50 votes they need.

The deal-making process is in full swing, with the additions of opioid funding and allowing health savings accounts to be used to pay for insurance premiums. Some Senators are for potentially leaving in some taxes to pay for more generous benefits, after weeks of being criticized by Democrats for offering “tax cuts for the rich and Medicaid cuts for the poor.” Conservatives want to cut more from the regulations and many from Medicaid expansion states are uneasy about future cuts to Medicaid.

Senator Ted Cruz of Texas has offered an amendment called the “Consumer Freedom Option” that would allow insurance companies to sell any health coverage plan they wish as long as they provide one plan that satisfies the “essential benefits” mandates of

Obamacare. While the Cruz amendment appeals to conservatives who want to provide consumers with lower cost options, moderates are concerned it could negatively impact those with pre-existing conditions. Supporters have suggested that federal subsidies could help ensure that premiums don't increase for those who are seriously ill. The CBO is currently scoring this amendment.

President Trump, along with Senator Rand Paul of Kentucky and Senator Ben Sasse of Nebraska, has even offered to repeal ObamaCare now and replacing it later.

Of course, no one is going to get everything they want so there must be compromises. Majority Leader McConnell has said that if the Senate is not able to pass a bill soon, Congress will have to pass a bipartisan measure to shore up the imploding health insurance markets.

And so, the Civics lesson continues. The process is at work. And we at ElderCounsel will be watching every minute so we can keep you informed.

Stay tuned.



To comply with the U.S. Treasury regulations, we must inform you that (i) any U.S. federal tax advice contained in this newsletter was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person and (ii) each taxpayer should seek advice from their tax advisor based on the taxpayer's particular circumstances.

You are receiving this newsletter because you are subscribed to our email list.
Not interested anymore? [Unsubscribe.](#)

Gibbons | Neuman
3321 Henderson Boulevard
Tampa, FL 33609
Tel: 813 877-9222
Fax: 813 877-9290
www.gibblaw.com

