

# Health care in America: A right or a privilege?

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## Introduction

by *Richard L. Byyny, MD*

Every gun that is made, every warship launched, every rocket fired, signifies in the final sense a theft from those who hunger and are not fed, those who are cold and are not clothed.

—President Dwight D. Eisenhower

Those who are sick and cannot get care could be added to the above statement by Pres. Eisenhower. Thirty-two of the 33 developed countries in the world have universal health care. These countries have concluded that health care for all is a moral right. The one developed country in the world that has not resolved that health care is a fundamental human right is the United States of America.

The evolution of the U.S. health care system emphasizes individual responsibility, free choice, and pluralism. This results in a system where health care is a privilege paid for by the individual through employer health insurance; by government socialized insurance (Medicare and Medicaid); by the military; through Congressional insurance (for members of Congress only); through the Veterans Administration; or by Indian Health Service.

In the U. S. health care system—a capitalist system—health care is considered an economic good where patients are analogous to commodities, and services are provided based primarily on an individual's purchasing power. In many instances, health care services are rationed based on ability to pay and individual responsibility. However, illness and injury are not subject to market decision-making as are other commodities.

In the late 19th century and early 20th century medical care in the U.S. was primitive. Public health needed to be improved through provision of services, immunization, clean water, and awareness. Preventive medicine—home

remedies—was more about public health than individual patients, and was considered more effective than care by the doctor. While doctors could diagnose some illnesses, there were primarily mystical treatments with potions that did nothing, or could cause further harm.

Health care was inexpensive, with the average American spending about \$5 per year on health care. Physician payment was often a bartering system of reciprocal exchange of goods or services, or direct financial payment. Hospitals were largely places to die, or be isolated from others, with some surgeries performed using rudimentary anesthesia. Most medical care, births, and surgeries were performed in the home.

Health insurance evolved during the industrial development, that followed the Civil War. Most industrial jobs were dangerous and associated with job-related injuries that often resulted in life-long disabilities. In some industries, more than 10 percent of workers were injured, or killed, on the job. Many companies employed doctors and nurses, and provided on-site clinics and infirmaries with care provided, and paid for, by the company. Businesses had a stake in the health and well-being of their employees. Unions gradually became influential, resulting in factory workers and others being provided industrial sickness funds for accidents and illness.

In 1910, Montgomery Ward developed the first multi-employee health insurance policy to cover work related disability. There was a movement toward compulsory sickness coverage, but businesses thought it was too expensive and viewed it as the equivalent of a pay raise for employees. Doctors were concerned that health insurers would control payment and practice.

During the depressions of 1914 and 1929, people who were out of work didn't have access to health care (no job, no company care), and because they were out of work they couldn't afford to pay the local doctor through bartering or with cash. Hospitals were being built, but had few patients as they could not pay for care. To help their local hospital survive, a group of teachers in Dallas developed a plan to prepay premiums to Baylor Hospital in exchange for hospital care when sick or injured—thus, the origin of Blue Cross.

This new payment system evolved for employees at myriad companies to be covered at multiple hospitals, and in 1939, prepayment plans were created for physicians, which evolved into Blue Shield. Later, Kaiser Construction



Bob Mankoff/The New Yorker Collection/The Cartoon Bank

*"Uh-oh, your coverage doesn't seem to include illness."*

Co. was one of the first to deduct voluntary premiums from employee paychecks to pay for insurance for care by a Kaiser company doctor for illness and work related injuries.

Then came World War II, and in 1942, Congress passed the Stabilization Act to limit wage increases during the war, limit inflation that could adversely affect the military, and increase development of the domestic infrastructure. Employers responded by offering health insurance rather than raises in salary to help recruit workers. They organized health insurance coverage thereby creating third-party payors.

Employer-based health insurance became pervasive. After WWII, since it was beneficial for workers and their families, and covered medical and surgical care, pharmaceuticals, medical devices, and other services through insurance plans, the national fee-for-service health care system was established. At the same time, most of the countries involved in WWII were developing nationalized health care as the standard of care for their people.

In the U.S., there were still many people who were not covered by employer health insurance, including those working in low-paying jobs without benefits, part-time employees, the elderly/seniors, and the unemployed. After a long-debated political process, Medicare for the aged, and Medicaid for the poor, were established in 1965. Both programs are administered jointly by federal and state governments. Today, about one-third of the population is covered by Medicare and/or Medicaid—a number that has remained relatively consistent since the inception of the programs.

The concept of a Health Maintenance Organization was

promoted by the HMO Act of 1973 with federal loans to insurers and large employers to help control costs. HMOs managed health care costs by establishing physician gatekeepers, limiting doctor networks, and implementing review and prior approval requirements. HMOs were able to temporarily control costs, but patients and doctors were unhappy with the tight control of care and management decisions, including denial of care.

Over the last four decades, health care costs have continued their meteoric rise. Today, health care spending in the U.S. is 17.8 percent of the Gross Domestic Product, which is at least 50 percent more than 13 other developed countries. Annual cost per person at \$9,990 is considerably higher than in those 13 developed countries, and outcomes for the expenditure are not great. Life expectancy in the U.S. is 78.8 years compared to 81.2 years in the other developed countries, and infant mortality in the U.S. is 6.1 deaths per 1,000 live births, compared to 3.5 deaths per 1,000 live births. In the U.S., 68 percent of those age 65 years and older have two or more chronic conditions compared to less than 50 percent in the other developed countries.

Medical advances have developed exponentially over the last several decades with new diagnostics, procedures, pharmaceuticals, medical devices, and more intensive hospital care coming to market every day. With each new advancement so too has come the escalation of the cost of health care in America. As a result of the rising costs of care, coupled with recent recessions, employers have frequently limited, or eliminated, health insurance benefits.

The goal of providing health care for all will persist given that illness, disease, injuries, and social and public health

Country	Start Date of Universal Health Care
Australia	1975
Austria	1967
Bahrain	1957
Belgium	1945
Brunei	1958
Canada	1966
Cyprus	1980
Denmark	1973
Finland	1972
France	1974
Germany	1941
Greece	1983
Hong Kong	1993
Iceland	1990
Ireland	1977
Israel	1995
Italy	1978
Japan	1938
Kuwait	1950
Luxembourg	1973
Netherlands	1966
New Zealand	1938
Norway	1912
Portugal	1979
Singapore	1993
Slovenia	1972
South Korea	1988
Spain	1986
Sweden	1955
Switzerland	1994
United Arab Emirates	1971
United Kingdom	1948

issues continue to adversely impact the health and quality of life of so many people.

We cannot continue on our current path. We must determine whether in America health care is a right or a privilege. We can, and must, do better.

## The Affordable Care Act: Repeal and replace?

*by John Tooker, MD, MBA, MACP*

The ACA, also known as Obamacare, has been controversial since it was passed by the 111th Congress and subsequently signed into law by President Barack Obama March 23, 2010.

The Republican Congressional leadership vowed to “repeal and replace” the ACA, even before the bill was signed by the President.<sup>1</sup> Repeal and replace was the dominant Republican campaign theme through the 2010 and 2014 interim elections, and the 2012 and 2016 general elections. Fresh from their 2016 House, Senate, and White House victories, the Republican majority scheduled a vote March 24, to make good on their seven-year promise to repeal and replace the ACA. Falling short of the necessary 216 votes, the March vote was cancelled, and the legislation withdrawn.

### The origins of the ACA

The 2008 general election swept the Democrats into Congress, gaining control of the White House and the 111th Congress, which took office January 3, 2009. With majorities in the Senate (59/41), and House of Representatives (257/178), and a Democrat in the White House, the Democrats had political power and were prepared to exercise it.

Senate Democrats needed one more Democrat to have a 60-vote filibuster-proof majority. Their wish was realized when on April 28, 2009, Pennsylvania Senator Arlen Specter changed his party affiliation to Democrat. While bipartisan support was desirable for enduring political support of major legislation, it was not necessary to pass new laws.

The American Recovery and Reinvestment Act of 2009 (H.R. 1 ARRA), a \$787 billion economic stimulus based on proposals of the newly-elected President, passed March 17, 2009. Not a single House Republican supported ARRA, foretelling there would be no bipartisan cooperation on future legislation. The Children’s Health Insurance Program Reauthorization Act of 2009 (H.R. 2 CHIPRA) was passed with limited bipartisan support on February 9, 2009.

With their first two policy priorities adopted, the Administration and Congress turned to health care reform, mindful of the unsuccessful health care reform attempts of the Clinton administration—and other presidents—and the need to move quickly. With the mid-term elections

only 18 months away, the President and Congress needed the support of the public, and the Democratic party, to pass major legislation. Pres. Obama laid out his health care vision in a June 2, 2009 letter to the chairs of the two health care Senate Committees—Senator Max Baucus (Finance, D-MT) and Senator Ted Kennedy (Health, Education, Labor and Pensions, D-MA). The letter voiced support for a new public health insurance plan to compete against private insurers, and included a call for a hardship waiver similar to the 2006 Massachusetts plan designed to provide health insurance for all Massachusetts residents who could not afford coverage. The letter noted the costs of increasing coverage to the uninsured—covering 50 million uninsured Americans could cost as much as \$1.5 trillion over a decade. Since the health care reform proposal was expected to be budget neutral over 10 years, Pres. Obama recommended reducing federal health care spending, and cutting Medicare and Medicaid costs through efficiencies over the 10-year period after enactment. To make cost increases more palatable to Republicans, Pres. Obama signaled that he could support limiting existing tax exclusions for employer-provided health benefits.<sup>2</sup>

On June 6, 2009, the President took his plan public in his weekly radio address, stating that reforming health care was a top policy priority of his administration, and that he would be asking Congress to develop new health care policy focusing on rising costs, the uninsured, and improving health care quality. And, he wanted the overhaul of the \$2.5 trillion U.S. health care system finished by October, a tight timetable for such a complex agenda.

With the June 2009 unemployment rate at 9.5 percent (more than twice the unemployment rate in 2007), and 16.2 percent of Americans without health insurance, health care spending was of paramount importance to the national economy.<sup>3</sup>

“Ultimately, as happened with the economic recovery act, health care reform will become President Obama’s plan,” Peter Orszag, head of the Office of Management and Budget and the administration’s lead spokesman on health care reform, told the *New York Times*.<sup>4</sup>

Early in the Senate Finance Committee policy discussions, Sen. Baucus, and the ranking Republican on the Senate Finance Committee Senator Chuck Grassley (R-IA), expressed optimism that they were close to a bipartisan deal. “I share the confidence that we’re going to get it done because the people of this country expect us to get it done,” Grassley said in a *New York Times*/CNBC interview.<sup>4</sup>

However, Senate Republicans complained about the cost and scope of the emerging proposal as the Finance

Committee legislation came into focus. Senate Democratic Majority Leader Harry Reid (D-NV) pushed to have a bill in time to meet the President’s October timeline. Among the major policy differences between Democrats and Republicans were the requirements that everyone carry health insurance (the individual mandate); employers contribute to the cost of their employees’ insurance (the employer mandate); government subsidies for those unable to afford coverage; a public plan to compete with private plans; and overall cost and scope. Sen. Grassley said, “Our caucus is very, very much against a public option. It’s kind of a litmus test.”<sup>5</sup>

Sen. Baucus and Sen. Grassley convened a working group, the “Gang of Six,” to discuss reform recommendations from both parties. These bipartisan group discussions lasted throughout the summer of 2009, but fell apart in September when Senate Republican Leader Mitch McConnell (R-KY) signaled that the Republicans would not participate in a health reform bill brought to the Senate floor. A similar decision was made by the House Republicans.

In July 2009, Speaker of the House Nancy Pelosi (D-CA) and a group of Democrats from three House committees released the House health care reform plan, H.R. 3962, the Affordable Care Act for America. The House passed H.R. 3962 November 9, 2009 by a vote of 220/215, a thin political majority vote. Only one Republican voted for the bill, and 39 Democrats voted against it.

On the Senate side, Sen. Kennedy, the “Lion of the Senate,” and a leading supporter of health care reform, died in August from a brain tumor, putting the Senate Democrats’ 60-seat majority at risk. Paul Kirk was appointed interim senator from Massachusetts, providing the 60th vote to maintain the Democrats’ filibuster-proof majority. That vote would be needed December 24, 2009, when all 60 Democrats voted to end a Republican filibuster and pass the Senate’s version of the health care reform bill, America’s Healthy Future Act.

On March 21, 2010, the Senate version of the health care plan was passed by the House in a 219-212 vote—all Republicans and 34 Democrats voted against the plan.

When signed into law by the President on March 23, 2010, the bill had become the Patient Protection and Affordable Care Act (PPACA), later shortened to ACA.

The importance of the ACA was evidenced by the intense lobbying of many special interest groups for, and against, the legislation; 5,300 lobbyists were hired by 1,750 interested parties who spent more than \$1.1 billion lobbying the bill.<sup>6</sup>

### ACA policy and regulation

A comprehensive bill, the PPACA is about 900 pages long, contains 10 sections (Titles) detailing expanding access to health care (insurance reform) for all Americans; improving the quality of health and health care; expanding the role of public programs (particularly Medicaid); expanded resources for chronic disease and public health; increasing and improving the health care work force; and outcomes research for diagnosis, treatment, and care delivery. In addition, it contained critical policy initiatives such as guaranteed insurance issue regardless of preexisting conditions; parents' ability to keep children on their health insurance until age 26; and a robust minimum benefits package, including mental health and maternity care, that insurers are required to offer in their plans. The ACA provides a variety of mechanisms to expand insurance coverage, including Medicaid expansion—finding and enrolling people eligible for Medicaid—and tax credits for those who are working but need premium support to purchase insurance.<sup>7</sup>

Under the federal rule-making process, the ACA legislation was translated into more than 20,000 pages of regulations.<sup>8</sup>

More than 30 million Americans now have health insurance, or better insurance, under the provisions of the ACA.

### The individual mandate

One of the most contentious policies of the ACA is the individual mandate, which deserves special mention. The individual mandate is a requirement that most Americans obtain and maintain health insurance or pay a tax penalty. The intent of the mandate is to reduce the costs of uncompensated care and adverse selection, meaning patients in poor health paying much higher, and often unaffordable, insurance premiums and out-of-pocket costs.

Originally a policy idea attributed to the Heritage Foundation (1989), the individual mandate was a key component of the 2006 Massachusetts legislation, An Act Providing Access to Affordable, Quality, Accountable Health Care, aka Romneycare.

Pres. Obama and the 111th Congress borrowed heavily from the policy initiatives of the Massachusetts health care reform bill in constructing the ACA. They were advised by Jonathan Gruber, a Massachusetts Institute of Technology economist, who was instrumental in the design of the Massachusetts Commonwealth reform bill.<sup>9</sup>

Repeal and/or replace?

The ACA was under assault even before it became law in 2010. On the day before Pres. Obama was to sign

the bill into law, Sen. McConnell convened a group of senior Republicans to develop a marketing slogan to oppose it. The slogan, suggested by Josh Holmes, a communications director for Sen. McConnell, was “Repeal and Replace.”<sup>1</sup>

Not cooperating with the Democrats during the ACA legislative process, the political strategy developed by Sen. McConnell, turned out to be a sound, though somewhat cynical, political strategy.<sup>10</sup> In the 2010 mid-term elections, the House Republicans gained 63 seats giving them control of the House, and six Senate seats, leaving the Democrats with a thin Senate majority and removing their filibuster-proof majority. In 2012, Pres. Obama's second term saw the Senate change hands as the Republicans gained nine seats in the 2014 mid-term election. The House remained in Republican control from 2012 through the 2016 general election.

In the last two years of Pres. Obama's second term, only his veto—which he exercised multiple times—prevented the opposition from repealing parts of the ACA.

### A new Administration

With Donald J. Trump winning the White House November 8, 2016, and the Republicans winning both the House and the Senate, the Republicans are now poised to repeal, and perhaps replace, the ACA. Then-candidate Trump's website said, “On day one of the Trump Administration, we will ask Congress to immediately deliver a full repeal of Obamacare,”<sup>11</sup> and Senate Majority Leader McConnell vowed to dismantle Obamacare on “day one” of the 115th Congress. That said, campaign rhetoric is hard to translate into legislative reality.

The Senate repeal process must follow special voting rules—House and Senate voting rules differ. The House can pass legislation with a simple majority vote—218 votes in a 435-member chamber if all members are present. In the Senate, most legislation requires 60 votes—a filibuster-proof majority. Since the Senate Republican majority is 52/48, they do not have a filibuster-proof majority. However, there is an exceptional Senate budgetary voting process, reconciliation, that allows passage of Senate legislation with a simple majority if the bill concerns federal spending or taxation. Therefore, policies in the ACA that deal with spending or taxation can be passed in the Senate through reconciliation, but policy that does not deal with spending or taxation, such as guaranteed insurance issue for pre-existing conditions, cannot be repealed through reconciliation, and would require a filibuster-proof majority.

Former Speaker John Boehner (R-OH) warned that

the Republicans would not be able to repeal and replace Obamacare, but felt that it could be fixed.<sup>12</sup>

Pres. Trump has been grappling with the complexities of the changing American health care system, and in a meeting with Governors in February stated, “Nobody knew health care could be so complicated.”<sup>13</sup>

The legislative process to attempt to repeal (partially through reconciliation) the ACA began March 6, when the House released its bill, The American Health Care Act (H.R. 1628). The two House committees of jurisdiction—Ways and Means, and Energy and Commerce—voted along party lines on March 9 to move the bill out of committee. The House Budget Committee approved the bill March 16, and the floor vote on The American Health Care Act was scheduled for Friday, March 24.

When it became apparent that there would not be 216 members to vote in favor of the bill, the House went into recess and the bill was withdrawn after Speaker Paul Ryan (R-WI) spoke to the President. Even with a substantial Republican majority in the House, the Speaker was unable to get the necessary votes because The Tuesday Group (an informal caucus of about 50 moderate members of the House), was concerned about the adverse effect repeal would have on constituents in their districts. Also, members of the Freedom Caucus (conservative and libertarian House members), felt the bill did not go far enough in repealing and replacing the ACA.

On May 4, sufficient amendments were added to the AHCA to bring the bill to the House floor. The bill was brought quickly to the floor by the Speaker, without a Congressional Budget Office (CBO) score to determine the economic impact, or the impact on the health care of millions of Americans and constituents of the members of Congress.

The bill passed 217–213, with 20 Republicans joining all 193 Democrats in voting against it.

The legislation as passed by the House would replace the income- and cost-based subsidies for insurance in the ACA with an age-based tax credit beginning in 2020. It would end the expansion of Medicaid in 2020, and would repeal taxes for wealthier people with investment income, medical device manufacturers, health insurers, and others. It would allow states to obtain waivers to exempt insurers from the ACA-mandated essential health benefits, and the prohibition on charging higher premiums to those with preexisting conditions, but would provide \$8 billion over five years to help people with medical conditions whose insurance premiums rose after a state received a waiver. It also created a \$15 billion federal program to help cover the costs of high

medical claims. Based on the CBO score for the March 24 version of the AHCA, 24 million Americans would lose health care insurance coverage over the next 10 years.<sup>14</sup>

### **What's next for health care in America?**

The ACA will remain the law of the land for now, but its future remains uncertain. The House AHCA bill, called TrumpCare, will now go to the Senate where Sen. McConnell will guide the legislation through the Senate, mindful of the Byrd Rule (after Sen. Richard Byrd (D-WV)), which governs legislation passed under the special budget rules Republicans are using to pass the health care legislation. To meet the Byrd Rule requirements, legislation must primarily address the deficit; therefore only provisions with a budgetary impact can be included in the reconciliation legislative process.

Sen. Charles Schumer (D-NY), the Senate Minority Leader, has offered to work with the Republican majority to improve the ACA, but only if they drop repeal and replace.<sup>15</sup>

The Senate Republicans have formed a “working group” charged with developing a Senate version of the AHCA. The group is composed of 13 members from the Senate political and geographic spectrum. Key members of the working group are the Senate HELP Committee Chair Lamar Alexander (R-TN), Senate Finance Committee Chair Orrin Hatch (R-UT), and Budget Committee Chair Mike Enzi (R-WY) who are overseeing compliance with the Byrd Rule under the reconciliation rules.<sup>16</sup> Any legislation adopted by the Senate must be approved by, or reconciled with, the House of Representatives.

Sen. Susan Collins (R-ME), a critic of the House bill, during a May 7 appearance on ABC’s “This Week” said, “The House bill is not going to come before us. The Senate is starting from scratch. We’re going to draft our own bill. And I’m convinced that we’re going to take the time to do it right. Speaker Ryan today said that he hoped that the Senate would improve the House bill. I think we will do so and that we will come up with a whole new fresh approach...”<sup>17</sup>

Clearly, there are several items in the current law that need to be improved. Insurance markets need to be strengthened with more competition in selected areas of the country so premiums can come down. Unfortunately, the current approach to reducing insurance premiums focuses on reducing benefits for the consumer, but does not address lowering the overall cost of care. The U.S. has, by far, the most expensive care in the world without commensurate improvements in health care quality or life expectancy.

People covered under the ACA with preexisting conditions, the poor, and older people below the Medicare eligibility level are legitimately worried. Taking away benefits patients already have is particularly threatening to them, and politically difficult to do.

Major medical organizations such as the American Medical Association, the American College of Physicians, the American Hospital Association, and AARP, among others, strongly oppose the Congressional repeal and replace efforts now under way.

The Administration can, and should, take the lead in improving the exchanges. Medicare and Medicaid are now linchpin health care programs for the elderly and poor, and need to remain steadfast components of America's health care system.

As a country, we should put the interests of our people first. In recent polls, the majority of the public supports the ACA. And, among those who don't favor it, the majority want to fix it rather than repeal it.<sup>18</sup>

We need to learn from other countries around the world that have found a way to make health care a right for all. It won't be easy. It will require leadership, civility, judgment, and courage to negotiate, to compromise, and to put American's health care interests first.

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