



Health Care Reform in Indian Country

Self-Governance Communication & Education

Self-Governance Tribes Striving Towards Excellence in Health Care

The Message Is Straightforward: “No Repeal Without First a Replacement Plan”¹

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The partisan battle is increasing over the future of the Patient Protection and Affordable Care Act (Affordable Care Act or ACA). During this intensifying legislative process, a strong, clear message is needed to protect the interests of Indian Tribes and their American Indian and Alaska Native (AI/AN) citizens. The primary message does not require wading into the partisan brawl. ***The core message is simple, and straightforward: “No repeal without a clear replacement plan.”*** A commitment is sought for no repeal of the ACA without first identifying, evaluating, and enacting replacement provisions.

A recent report in *Kaiser Health News* highlights the extreme risk of moving forward with the repeal of the ACA without having identified an alternative plan.

“Sen. Mike Lee, R-Utah, one of the leading conservative voices in that chamber, said he will vigorously oppose efforts for Republicans to wait until they have a plan ready to replace the law before they repeal it. ‘There is a lot less agreement about what comes next,’ he said. ‘If we load down the repeal bill with what comes next, it’s harder to get both of them passed.’”²

Ending up with no replacement law enacted would be devastating to AI/ANs and Indian health care programs that draw on the expanded Medicaid coverage and federal financial assistance for Marketplace coverage (premium tax credits and cost-sharing protections) made available by the ACA to improve access to health care services. And one important point is becoming clearer and clearer to policymakers: If the taxes and other funding mechanisms in the ACA are repealed now, the Republicans will lack the necessary funding, as well as the will or ability to re-establish the necessary funding, when they attempt to enact a replacement.

Here is what is lost by repealing the ACA through the “budget reconciliation” process, which provides a vehicle for Republicans to move forward without any Democratic support:

¹ This brief is for informational purposes only and is not intended as legal advice. For questions on this brief, please contact Doneg McDonough, TSGAC Technical Advisor, at DonegMcD@Outlook.com.

² Julie Rovner, “Conservatives Urge Speedup of Health Law Repeal, Dismiss Calls for Caution,” *Kaiser Health News* (Washington, D.C.), February 8, 2017. See http://khn.org/news/conservatives-urge-speed-up-of-health-law-repeal-dismiss-calls-for-caution/?utm_campaign=KHN%3A+First+Edition&utm_source=hs_email&utm_medium=email&utm_content=42290624&_hsenc=p2ANqtz-XlFYv8GdUvZdamNnhGCNZHRl4ewwyptZH9YGms16L75jvNuIkzjOUP6b9X4me456T6ExCfKMoY0WlQov71aqaRlFDag&_hsmi=42290624.

- Elimination of the Medicaid expansion authority that provides an entitlement to health insurance coverage for all AI/ANs (and other Americans) in households with income up to 138% of the federal poverty level.
- Elimination of premium tax credits available through the Marketplace.
- Elimination of the comprehensive Indian-specific cost-sharing protections available to all enrolled Tribal members with Marketplace coverage, as well as the general cost-sharing protections available for other low- and moderate-income AI/ANs.
- Elimination of Internal Revenue Code section 9021, which excludes from taxable income health benefits provided by Tribal governments to AI/ANs, whether provided or purchased by the IHS, Tribes, or Tribal organizations.

The ACA's Medicaid expansion, in particular, has led to a significant reduction in the number of uninsured AI/ANs. It is estimated that Medicaid enrollment among AI/ANs increased by more than 217,368, or 14.9%, from 2013 to 2015,³ with additional enrollment growth occurring in 2016 as outreach efforts have continued and more states have implemented the expansion.⁴ Significant potential exists for future enrollment growth, as among the 35 states with federally-recognized Tribes, 16 have not yet authorized the Medicaid expansion. Another 251,000 AI/ANs will be able to secure coverage as, over time, each of the remaining non-Medicaid expansion states move to implement the expansion.⁵ These health insurance coverage advances would be reversed with the repeal of the ACA.

In addition, the repeal of the ACA would eliminate a number existing provisions designed to facilitate AI/AN enrollment in Marketplace coverage. At present, none of the proposed Republican "replacement" plans⁶ would retain the availability of comprehensive Indian-specific cost-sharing protections or the ability of enrolled Tribal members and their families to enroll in Marketplace coverage at any time during the year, rather than only during the annual open enrollment period.

The bottom line: "Insurers and others, including the Congressional Budget Office, have said that repealing parts of the law without a replacement could plunge the individual insurance market into chaos and increase the number of people without any insurance by 32 million over 10 years."⁷

Devising a "replacement" plan that maintains the health insurance coverage levels achieved by the Affordable Care Act but does so with lower federal expenditures is difficult, complicated, and might not be possible. **Requesting a commitment that the replacement plan be (1) identified, (2) evaluated, and (3) enacted before voting to repeal the ACA is straightforward, reasonable, and necessary in order to protect the recent progress made in expanding the availability of health care services to many AI/ANs.**

³ Census Bureau, 2013-2015 American Community Survey, 1-Year Estimates.

⁴ Alaska, Montana, and Louisiana implemented the Medicaid expansion in September 2015, January 2016, and July 2016, respectively.

⁵ Matthew Buettgens, *Estimates of Health Coverage Changes Under the ACA and How Actual Progress Could Be Evaluated* (Washington, DC: Urban Institute, Feb. 19, 2015), 10. The figure applies to the start of the 2015; the current figure might be lower, as several states have begun to implement the Medicaid expansion since that time.

⁶ Review of House Speaker Paul Ryan's "A Better Way" proposal; Rep. Tom Price's "Empowering Patients First Act"; and President Trump's statements on White House.gov (as of Feb. 27, 2017).

⁷ Julie Rovner, *Kaiser Health News*, February 8, 2017.