

# WHAT'S NEXT FOR THE ACA?

## *REPEAL & REPLACE HITS A ROADBLOCK*

### *TIME TO RETHINK*

**TrumpCare vs. ObamaCare**

**Round 1 – Score for ObamaCare**

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# Promises to Repeal the ACA

- President Trump stated unequivocally during the campaign that he would “get rid of Obamacare.”
- With Republican majorities in the House of Representatives and the Senate, he appears to have the legislative support to do so.
- Opposition to and the promise to repeal the Affordable Care Act (ACA) has been a mainstay of Republican campaigns since 2010.
  - There have been more than 60 attempts by House Republicans to repeal all or parts of the ACA in the last seven years.
- Voters who elected an outspoken President and Republican majorities in both houses of Congress will expect results.

# 10 ACA Items We Like and Dislike

	Likes	Dislikes
1	Lower the cost of healthcare, by making preventive care affordable	Increased coverage raised health care costs in the short-term due to higher utilization and preventive care usage
2	Requires all insurance plans to cover 10 essential health benefits	Insurance companies canceled many plans because policies didn't cover 10 essential health benefits. Replacement plans covered less, cost more.
3	Eliminates pre-existing conditions	ACA taxed those who didn't purchase insurance (many avoided tax via increasing exemptions)
4	Eliminates lifetime and annual coverage limits	4 million people paid tax rather than premium (CBO estimated cost \$54 billion)
5	Allows dependent children to stay on their parent's plan up to age 26	"Tax the rich" 1.45% to 2.35% income tax rate increase for 5 million individuals/couples with incomes above \$200,000/\$250,000, Also increased Medicare tax 3.8%

# 10 ACA Items We Like and Dislike

	Likes	Dislikes
6	Creates Public Exchanges in every state	2.3% excise taxes on medical device manufacturers and imports (suspended 2016-18) 10% excise tax indoor tanning services
7	Middle class tax credits ≤ 400% of Federal Poverty Level (FPL) Expands Medicaid to 138% FPL	Family medical expense deduction increased from deducting expenses in excess of 7.5% to 10% of income
8	Eliminates the gap in Medicare coverage "doughnut hole" by 2020	Pharmaceutical companies pay extra \$84.8 billion in fees between 2013 and 2023 to close Medicare "doughnut hole"
9	Businesses with >50 employees must offer health insurance (can receive tax credits)	4 million people lost their employer-sponsored health care plans
10	Lowers budget deficit \$143 billion by 2022 1. Reduces government's healthcare costs 2. raises taxes: businesses /higher income 3. shifts cost burdens to health care providers and pharmacy companies	2020, Insurance companies will be assessed a 40% excise tax on "Cadillac" health plans with annual premiums exceeding \$10,200 for individuals or \$27,500 for families

# You've got to be joking!

E-mail received 2/17/17

Hello Bordan,

“FYI ...

we have a large claim notification....

this patient just started Spinraza therapy ...

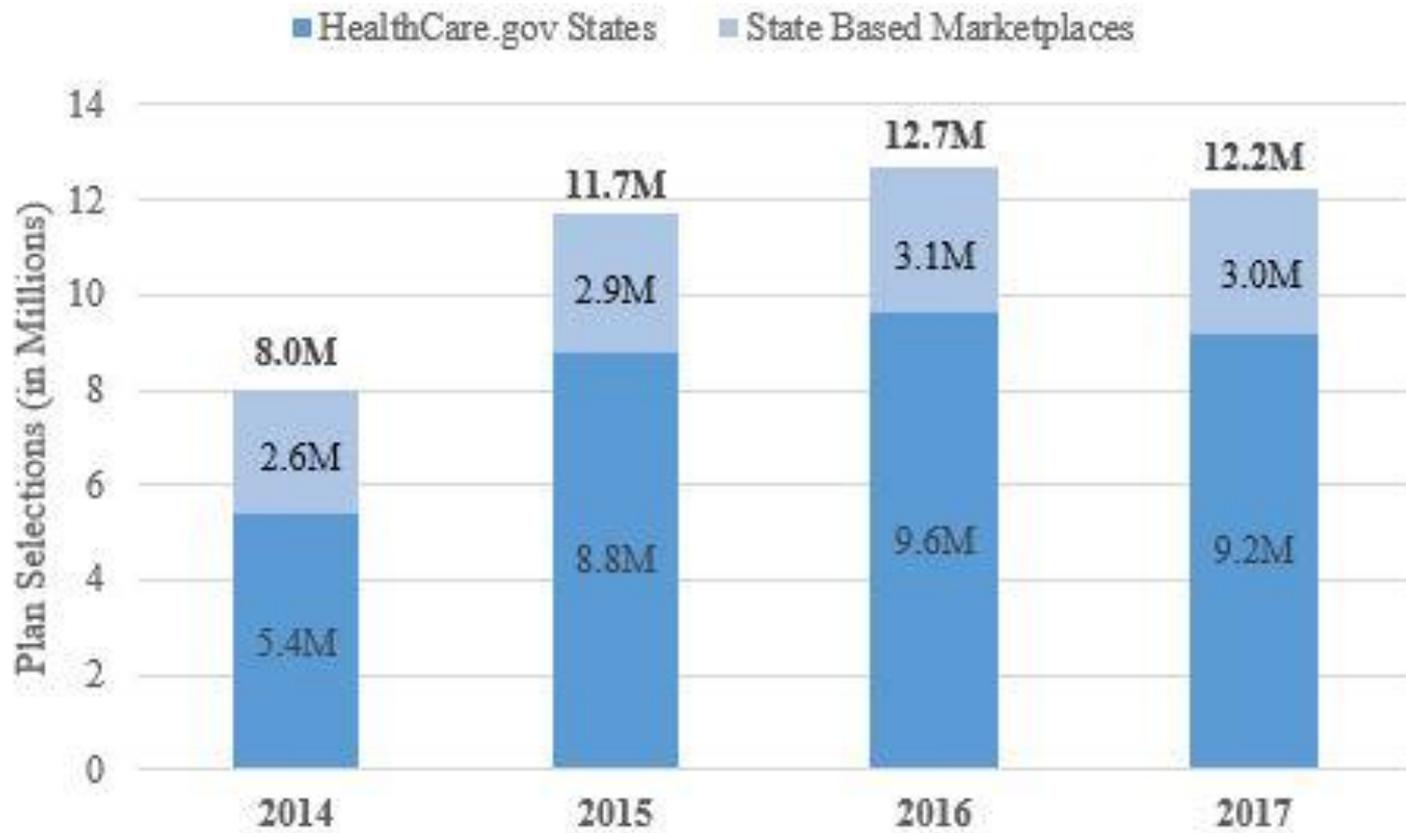
First drug to treat muscular atrophy

The drug was just FDA approved in December 2016 and per the manufacturer (Biogen), the projected cost is \$750,000 the first year and then \$375,000 for subsequent years...”

Note: Treat 1,000 patients for 18 months, created a \$1 Billion market

# ACA and Healthcare Exchanges

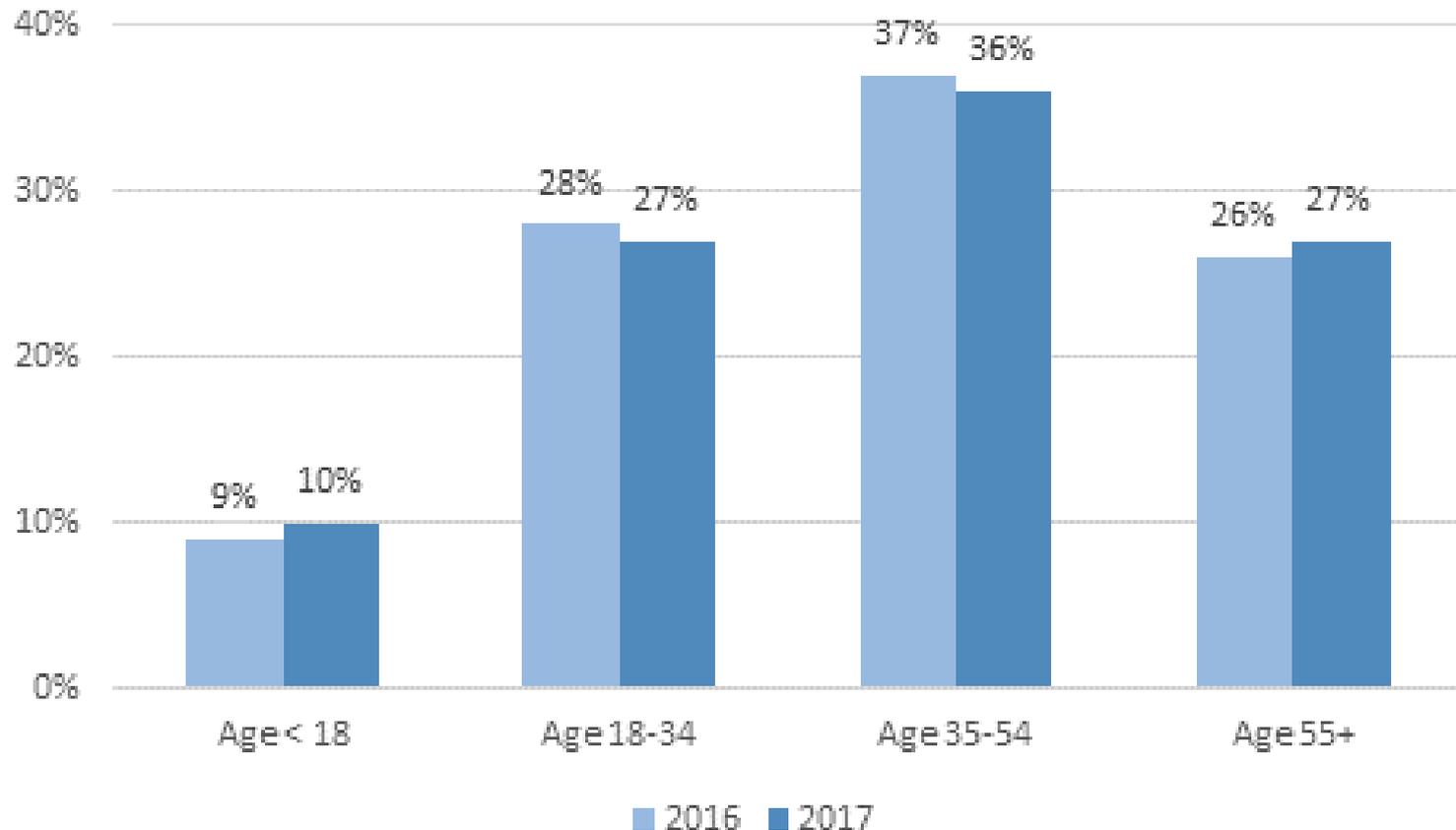
Plan Selections during the 2014 – 2017 Open Enrollment Periods



Original 2018 Forecast +30 million

# ACA and Healthcare Exchanges

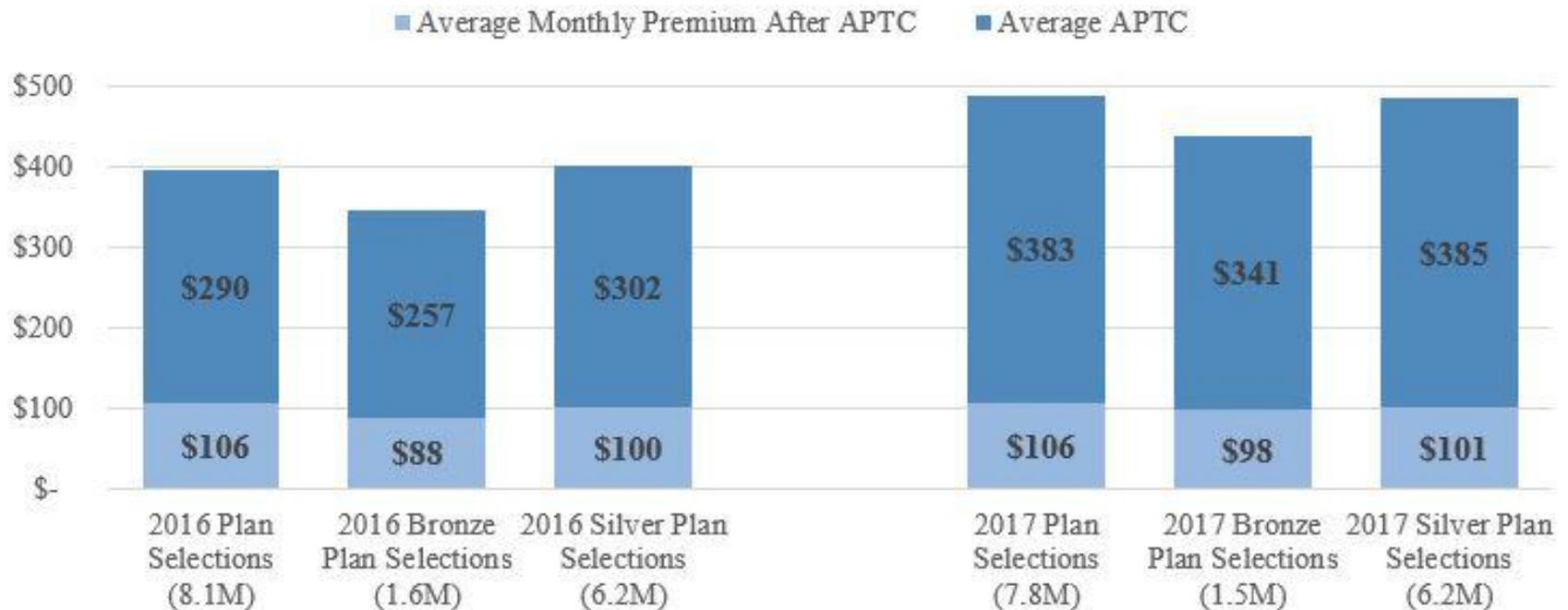
Proportion of Open Enrollment Consumers, by Age



Based on States with Healthcare.gov Exchanges

# ACA and Healthcare Exchanges

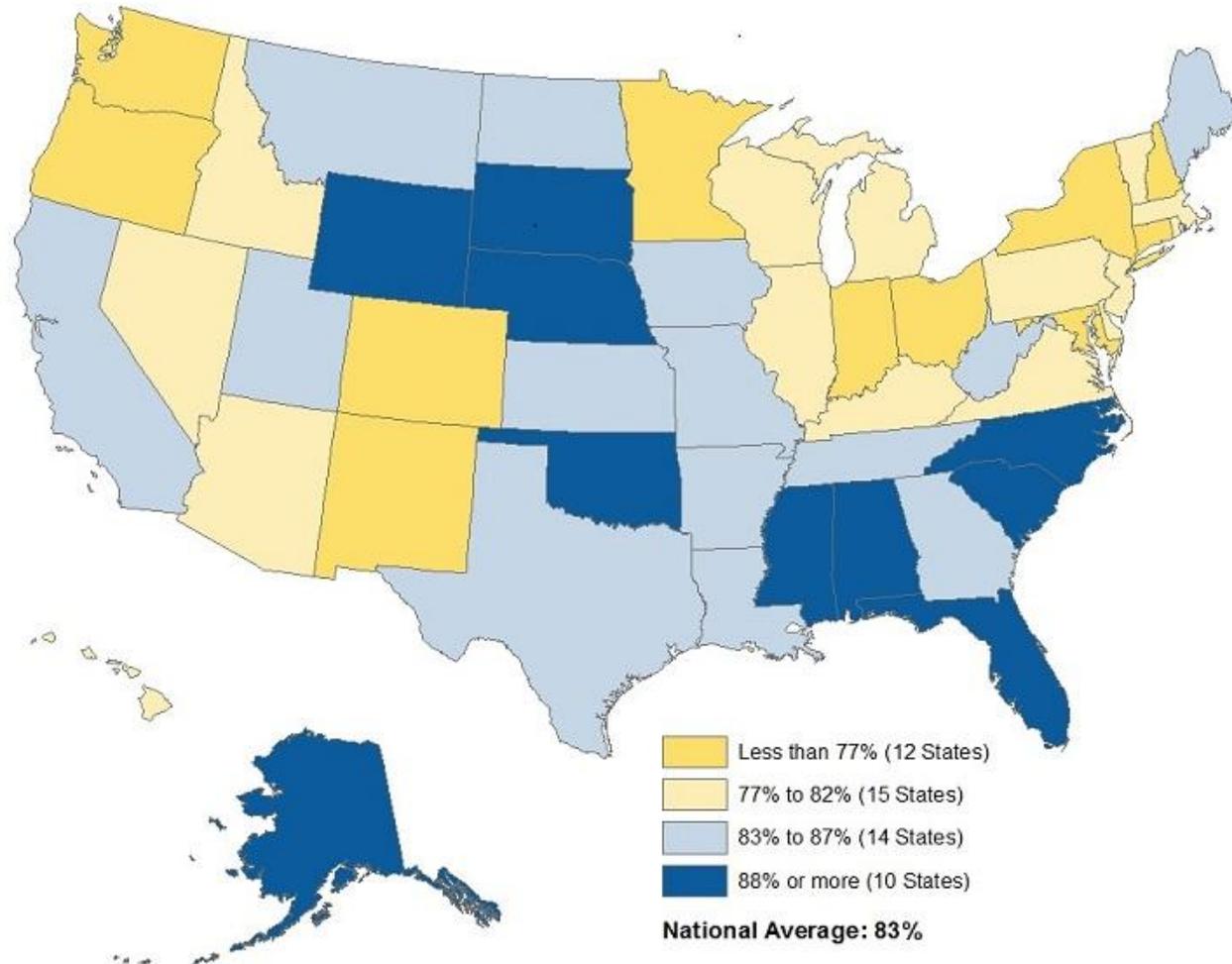
Average Monthly Premiums after Advanced Payment of Tax Credit (APTC)



Based on States with Healthcare.gov Exchanges

# ACA and Healthcare Exchanges

Percent of 2017 Marketplace Plan Selections with APTC, by State



# ACA and Healthcare Exchanges

## The Story of our States

The nation's largest insurer, UnitedHealth, has pulled out of exchanges in all but a handful of states

Blue Cross Blue Shield of Minnesota lost half a billion in the public exchange



Blue Cross lost \$300 million in Tennessee

Blue Cross lost \$185 million in Arizona

Blue Cross lost \$280 million in North Carolina

Blue Cross affiliate pulled out of New Mexico's exchange after the state denied 50% premium hike

Blue Cross lost \$135 million in Alabama

*Keenan*  
Associates

*Innovative Solutions. Enduring Principles.*

# ACA and CO-Ops

## The Story of our States

### Health CO-Ops

(Consumer Oriented and Operated Insurance Plans)  
To introduce competition in regions where consumers had few choices, the federal government funded (\$2.5 billion) the creation of nonprofit insurance companies / CO-OPs. The assets were supposed to last for 20 years



**Montana (Alive)**  
Montana Health Cooperative

**Oregon (2 CO-OPs, both failed)**  
Health Republic  
Insurance of Oregon  
Community Care of Oregon

**Colorado (failed)**  
Colorado Health OP

**Nevada (failed)**  
Nevada Health Cooperative

**Arizona (failed)**  
Meritus Health  
Partners Service lost \$78.0 million

**New Mexico (alive)**  
New Mexico Health Connections

**Utah (failed)**  
Arches Mutual Insurance

**Michigan (failed)**  
Michigan Consumer's Healthcare CO-OP lost \$16 million

**Illinois (failed)**  
Land of Lincoln Health Mutual Health Insurance lost \$90.8 million

**Ohio (failed)**  
InHealth Mutual

**Iowa/Nebraska (failed)**  
CoOpportunity Health (formerly Midwest Members Health)

**Kentucky (failed)**  
Kentucky Health Cooperative lost \$50+ million

**Tennessee (failed)**  
Community Health Alliance Mutual Insurance

**Louisiana (failed)**  
Louisiana Health Cooperative

**Maine/NH (failed)**  
Maine Community Health Options (MCHO) lost \$17 million

**Vermont (failed)**  
License Denied 2013  
The Vermont Health CO-OP

**Massachusetts/NH (financially troubled)**  
Minuteman Health

**Connecticut (failed)**  
HealthyCT,

**New York (failed)**  
Health Republic Insurance of New York lost \$125+ million

**New Jersey (failed)**  
Freelancers CO-OP of New Jersey

**Maryland (failed)**  
Evergreen Health Cooperative

**South Carolina (failed)**  
Consumers' Choice Health Insurance

**Wisconsin (alive)**  
Common Ground Healthcare Cooperative

# *ACA and Public Exchanges*

## **Covered California**

Covered California renewal rates averaged of 13.2 for 2017

The state's two largest insurers, Anthem and Blue Shield, increased rates by 17.2% and 19.9% respectively.

Enrollment among 18- to 34-year-olds accounted for just 28% (unchanged) but far below the 40% needed to keep the exchanges stable.

Key to Covered California's survival? Competition in the market place!

# Repeal All or Parts?

- Complete repeal is challenging, if not impossible, for two reasons:
  - Republicans do not have a filibuster proof majority in the Senate.
  - Parts of the law have proven to be popular.
- Instead, Republicans planned to repeal parts of ACA through the budget reconciliation process, which requires a simple majority of 51.
  - But there are limits on what can be enacted or repealed through budget reconciliation.
  - Provisions must be related to revenue.
- Both the Senate and House approved a budget resolution in January setting the stage for the reconciliation process.

# Lack of Agreement on Strategy

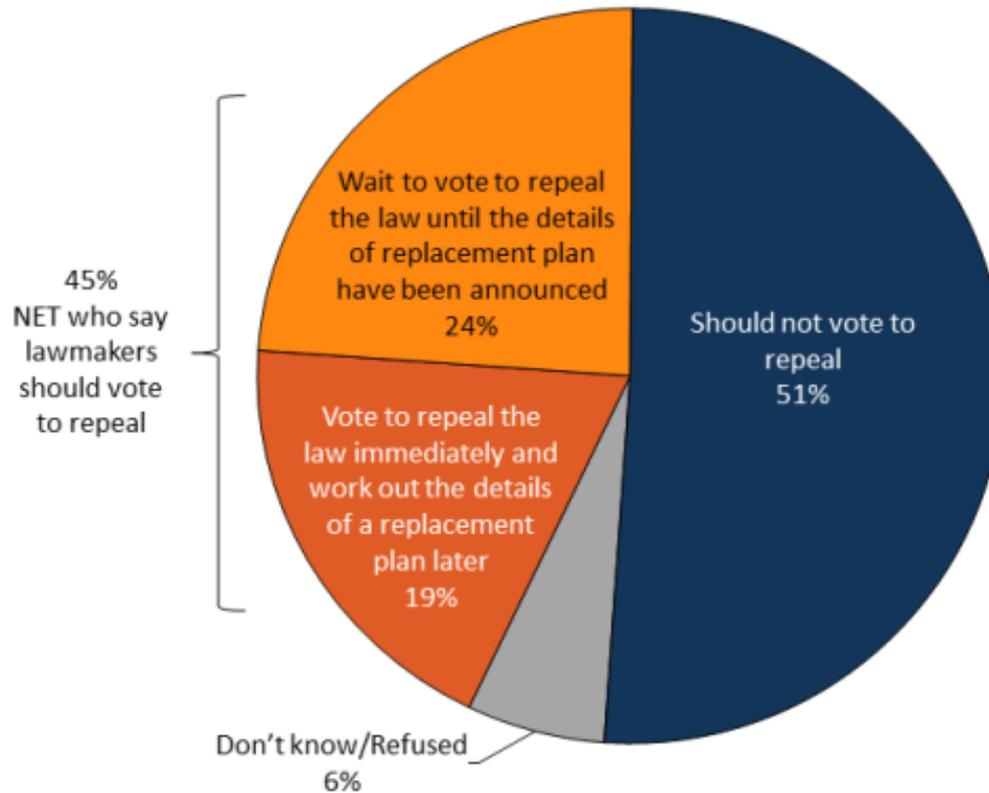
- The initial strategy in Congress was to repeal and delay.
- But there were concerns that repeal and delay could unravel the individual insurance market.
- Repeal without replacement would significantly increase the number of uninsured.
  - The Congressional Budget Office (CBO) previously estimated increase of 18 million in the first year and climbing to 32 million by 2026 if no replacement plan offered.
- At odds with comments from President Trump who previously stated the goal is to have “insurance for everybody.”
- Approach favored by the Trump Administration is repeal and replace simultaneously.

# Lack of Agreement on Strategy

- But simultaneous repeal and replace is challenging under the budget reconciliation rules.
  - Some Republicans started to shift focus from repeal and replace to “repair.”
  - Others adamant the entire law needs to be ripped out “root and branch.”
- Public opinion also divided.
  - On whether to repeal and replace the ACA.
  - Even those favoring repeal are divided on how Congress should proceed.
    - Repeal and then figure out replacement details?
    - Repeal only after replacement details worked out?

# Americans Divided on ACA Repeal and Replacement

Percent who say they would like to see lawmakers do each of the following with the 2010 health care law:



SOURCE: Kaiser Family Foundation Health Tracking Poll (conducted March 6-12, 2017)



# Final Strategy

- Three step approach:
  1. Repeal and replace parts of ACA through budget reconciliation.
  2. Make regulatory and sub-regulatory changes through Health & Human Services (HHS), the Internal Revenue Services (IRS) & the Department of Labor (DOL) (subject to formal rulemaking process).
  3. Pass additional legislation outside of the budget reconciliation process (but will require 60 votes in the Senate).
- But some Republicans were skeptical about this approach, in particular, the last step.
  - Sen. Tom Cotton (R., AR) stated, “If we had those Democratic votes, we wouldn’t need three steps. We would just be doing that right now on this legislation altogether.”

# The American Health Care Act

- House Republicans released the American Health Care Act (AHCA) on March 6, 2017 as their proposal for repealing and replacing parts of the ACA through budget reconciliation.
- CBO estimated AHCA would reduce federal deficit by \$150 billion over next decade but increase number of uninsured by 14 million in 2018, climbing to 24 million in 2026.
- AHCA pulled from House floor on March 24, 2017 by Speaker Ryan due to lack of votes.
- The bill was profoundly unpopular.
  - A Quinnipiac University poll from March 23, 2017 found only 17% supporting the bill while 56% were opposed and 26% were undecided.

# The American Health Care Act

- Majority of changes were directed at the individual insurance market and Medicaid:
  - Eliminated the option for states to expand Medicaid, restructured overall financing of Medicaid to per capita or block grants and gave states option to impose work requirements.
  - Replaced the Individual Mandate with a continuous coverage incentive.
    - Insurers could charge a 30% late enrollment penalty if individual had lapse of coverage for 63 or more days during prior 12 months.
  - Premium tax credits replaced with advance payable, refundable flat-tax credit that is adjusted for age.
    - Could use to purchase individual coverage on or off an Exchange, excluding grandfathered or grandmothers plans, or to pay for unsubsidized COBRA premiums (i.e., not paid by the employer).

# The American Health Care Act

- Eliminated cost-sharing subsidies for Exchange coverage.
- Repealed most of the ACA's taxes and fees, such as the Health Insurance Provider's Fee, the medical device tax and the tanning tax.
- Other changes under the AHCA:
  - Prohibited federal funding for Planned Parenthood for one year.
  - Established a Patient and State Stability Fund to provide \$100 billion in funds to states for high-risk pools, stabilizing individual market premiums, promoting access to preventive services and other purposes.
  - Additional \$15 billion would be available through the Patient and State Stability Fund for maternity, newborn, mental health and substance abuse coverage.

# Provisions Impacting Employers

- There were also some provisions that would have affected employer-sponsored group health plans:
  - Employer Mandate penalty reduced to \$0 as of January 1, 2016.
  - But reporting requirements on Forms 1094-C and 1095-C would have remained in place.
  - Cadillac Tax effective date delayed until January 1, 2026.
  - Limits on contributions into health FSAs removed for plan years beginning on or after January 1, 2018.
  - HSA contribution limits increased to \$6,500 for self-only and \$13,100 for family coverage effective January 1, 2018.
  - Each spouse over 55 allowed to make catch-up contributions of up to \$1,000 to the same HSA effective January 1, 2018.
  - Reimbursing Over the Counter (OTC) medications allowed starting January 1, 2018.

# Provisions Impacting Employers

- HSA penalty for non-qualified expenses reduced to 10% as of January 1, 2018.
- Changes to individual market could have impacted employers:
  - Tax credits to buy coverage for plans, including COBRA.
  - Health plans would be required to certify whether COBRA coverage is eligible for the credit (i.e., that it does not cover elective abortions).
  - In order to implement new continuous coverage incentive, health plans would also be required to provide notices similar to the HIPAA Certificates of Creditable Coverage that ceased being necessary under the ACA.

# What Went Wrong?

- Speaker Ryan and House Republicans needed to bridge a big divide to pass the AHCA.
  - Conservative members wanted to see ACA repealed as much as possible but moderate members were concerned about the impact on their constituents.
  - Concessions made to conservative members forced moderate members to come out against the bill.
- Democrats were unified in their opposition.
- Disconnect with public opinion.
  - Former Republican House Speaker Newt Gingrich tweeted, “Why would you schedule a vote on a bill that is at 17% approval?”

# What's Next for the ACA?

- Speaker Ryan said after withdrawing the bill, “We’re going to be living with ObamaCare for the foreseeable future.”
- For now, it appears the Trump Administration and Speaker Ryan plan to move onto other legislative items rather than focus on amending the AHCA.
- Some Republicans are trying to revive negotiations but it is unclear if progress will be made on bridging the divide.
- Window for repealing and replacing parts of the ACA through budget reconciliation this year is quickly closing.
- Some want to work with Democrats to reform the ACA instead of trying to find votes from conservatives to repeal it.

# What's Next for the ACA?

- We could possibly see legislation targeting specific issues rather than attempting to repeal and replace the ACA.
  - Any such legislation would require 60 votes in the Senate.
  - Republicans currently only hold 52 seats and would need to get Democrat support to actually pass legislation.
- Regulatory and sub-regulatory changes are also possible.
  - It is expected HHS Secretary Tom Price will review existing rules and possibly propose changes to those rules.
  - DOL and IRS may do the same.
  - This would be subject to a formal rulemaking process that would take time.

# What's Next for the ACA?

- Most likely, any regulatory changes or additional legislation would target the individual market and possibly the small group market.
- The bottom line for now is that the ACA is the law of the land and all of its statutory and regulatory provisions remain in full force.
- Employers should continue to administer their plans in full compliance with existing law.

# Questions?