

# ISSUE BRIEF

No. 4736 | JULY 18, 2017

## Recent Health Bills' Key Provisions to Undo Obamacare Damage: A Comparative Overview

*Jean Morrow, Edmund F. Haislmaier, and Marie Fishpaw*

Congress should maximize every opportunity to undo Obamacare's damage. The current Senate bill, the Better Care Reconciliation Act (BCRA),<sup>1</sup> falls short of repealing Obamacare and replacing it with a new system that fully supports patients and doctors.<sup>2</sup> Many actions are by definition outside the scope of this legislative effort, which is limited by the constraints of the congressional budget reconciliation process.<sup>3</sup>

As drafted, the Senate bill is better than the status quo. When compared to the 2015 repeal bill<sup>4</sup> vetoed by President Obama, the Senate bill rolls back more of Obamacare's damage. It provides states greater regulatory relief than the House-passed bill, which will help reduce insurance premiums and promote access to insurance in the short run. Like the House-passed bill, it provides major Medicaid reform to help refocus the program on those most in need.

Provisions in the Senate bill that will help Americans by undoing Obamacare's damage:

- **Regulatory relief.** The Senate bill helps those most hurt by Obamacare—the middle-class self-employed and small-business employees who have faced escalating premiums and declining

coverage options under Obamacare. It also gives states the opportunity to help individuals in the 70 percent of U.S. counties that have little or no insurer choice in the Obamacare exchanges. The bill repeals or waives the Obamacare insurance mandates most responsible for driving up health care premiums. It leaves in place a number of insurance provisions and consumer protections that have small effects on premiums.

- **Financing reforms.** The Senate bill eliminates the individual and employer mandate tax penalties. It repeals three taxes that directly impact the cost of care and premiums: taxes on health insurance, drugs, and medical devices. It makes it easier for middle-income and upper-income families to save for routine health costs and pay premiums (via Health Savings Accounts). Finally, it provides Americans with significant tax relief.
- **Medicaid reform.** The Senate bill would both put federal financing of Medicaid on a sustainable path and restore its pre-Obamacare focus on the most vulnerable—the elderly, disabled, children, and pregnant women in poverty. This is major entitlement reform long recommended by health policy experts.<sup>5</sup>
- **Restoring states' leadership role.** States regulated health insurance long before Obamacare; there was no need for the federal government to intervene. The damage caused by that intervention is well documented.<sup>6</sup> The Senate bill enables states to pursue more aggressive reforms of insurance markets and their Medicaid programs

This paper, in its entirety, can be found at <http://report.heritage.org/ib4736>

The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002  
(202) 546-4400 | [heritage.org](http://heritage.org)

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

TABLE 1

## How Recent Bills Would Undo Obamacare

Action	2015 Repeal Bill	House Bill (AHCA)	Senate Bill (BCRA)
<b>REGULATORY REFORM</b>			
States can get a waiver to exempt insurers from several provisions, of which the ones most likely to effect premiums are those that: <ul style="list-style-type: none"> <li>• Limit enrollee cost-sharing (deductibles and co-pays)</li> <li>• Impose federal standards for qualified health plans sold on the Obamacare exchange</li> <li>• Require insurers to treat enrollment both on and off the exchange as a single risk pool for individual plans and for small group plans</li> </ul>	N	N	Y <sup>a</sup>
Allows states to get a waiver to restructure their individual market tax credits and their insurance exchanges	N	N	Y <sup>a</sup>
States can waive “essential health benefits” package that individual and small group plans must offer so that they can create lower premium plans	N	Y	Y <sup>b</sup>
Repeals actuarial value mandate	N	Y	Y <sup>b</sup>
Repeals minimum medical loss ratio mandate	N	N	Y
Repeals prohibition on insurers varying premiums by age using a ratio of greater than 3:1	N	Y <sup>c</sup>	Y <sup>c</sup>
Incentivizes continuous coverage	N	Y <sup>d</sup>	Y <sup>e</sup>
<b>FINANCING REFORM</b>			
Eliminates individual and employer tax penalties	Y	Y	Y
Repeals taxes on health insurance, drugs, and medical devices	Y	Y	Y
Repeals all non-healthcare taxes	Y	Y	N <sup>f</sup>
Repeals Cadillac Tax on “high-cost” employer plans	Y	N	N
Caps employer plan tax exclusion (similar to other benefits like 401Ks)	N	N	N
Improves Health Savings Accounts <sup>g</sup>	Y	Y	Y <sup>h</sup>
Repeals cost-sharing subsidies	Y	Y <sup>i</sup>	Y <sup>i</sup>
<b>MEDICAID REFORM</b>			
Reforms Medicaid financing through per-capita federal funding approach	N	Y	Y
Phases out Medicaid expansion and returns focus of Medicaid to the elderly, disabled, children, and pregnant women in poverty by removing Obamacare’s higher reimbursements for able-bodied adults	Y	Y	Y

**NOTES:**

- a — Simplifies requirements for states obtaining Sec. 1332 waivers
- b — Through Sec. 1332 state waiver
- c — Sets new default limit of 5:1 and states can opt to set their own ratios
- d — Default 30 percent premium surcharge and option for state waiver to use health status related premiums for those without continuous coverage
- e — Six-month waiting period before coverage takes effect for those without continuous coverage

- f — Bill leaves net investment income tax, the additional Medicare Health Insurance (HI) Tax, and the remuneration tax on executive compensation for certain health insurance executives
- g — Allows higher contributions and purchasing over-the-counter drugs through account
- h — Also allows individuals to use account funds to pay premiums
- i — Provides new state stability funding

and do more to maximize flexibility for state officials who wish to pursue new and innovative solutions for the care of the poorest and most vulnerable members of society.<sup>7</sup>

—*Jean Morrow is a Research Assistant in Domestic Policy Studies, of the Institute for Family, Community, and Opportunity, at The Heritage Foundation. Edmund F. Haislmaier is Preston A. Wells Jr., Senior Research Fellow in Domestic Policy Studies. Marie Fishpaw is Director of Domestic Policy Studies.*

- 
1. Better Care Reconciliation Act of 2017. The discussion draft is available at U.S. Senate Committee on the Budget, “Discussion Draft,” 115th Congress, 1st Session, July 13, 2017, <https://www.budget.senate.gov/imo/media/doc/BetterCareJuly13.2017.pdf> (accessed June 25, 2017).
  2. See Edmund F. Haislmaier, Robert E. Moffit, Robert E. Rector, and Marie Fishpaw, “Better than the Status Quo, Senate Health Care Bill Still Misses Major Opportunities,” Heritage Foundation *Issue Brief* No. 4723, June 26, 2017, <http://www.heritage.org/health-care-reform/report/better-the-status-quo-senate-health-care-bill-still-misses-major>.
  3. For example, President Trump’s proposal to allow interstate commerce in health insurance products would not meet the Senate standards for consideration under the budget reconciliation process.
  4. Restoring Americans’ Healthcare Freedom Reconciliation Act of 2015, H.R. 3762, 114th Congress, <https://www.congress.gov/bill/114th-congress/house-bill/3762> (accessed July 8, 2017).
  5. See, for instance, the recommendation for reforming federal Medicaid financing in The Heritage Foundation, *Blueprint for Reform: A Comprehensive Policy Agenda for a New Administration in 2017*, Mandate for Leadership Series (2016), p. 55, <http://www.heritage.org/budget-and-spending/report/blueprint-reform-comprehensive-policy-agenda-new-administration-2017>.
  6. See, for example, Edmund F. Haislmaier and Drew Gonshorowski, “Freeing States from the Obamacare Insurance Mandates,” Heritage Foundation *Issue Brief* No. 4689, April 26, 2017, <http://www.heritage.org/health-care-reform/report/freeing-states-the-obamacare-insurance-mandates>.
  7. For a discussion of the possibilities, see James C. Capretta, “Health Care Reform from the Bottom-up,” American Enterprise Institute, September 3, 2015, <https://www.aei.org/publication/health-care-reform-from-the-bottom-up/> (accessed June 21, 2017).
-