

## **GUEST OPINION: What the American Health Care Act could mean for Idaho**

On May 4, the U.S. House of Representatives accomplished the first step in repealing and replacing the Patient Protection and Affordable Care Act, or ACA, by passing the American Health Care Act, or AHCA.

Strongly supported by House leadership and President Trump, the AHCA passed with one vote to spare, 217-214. It remains to be seen what the U.S. Senate will do with the AHCA. With a very narrow Republican majority, the table is set for a contentious fight in the Senate between the majority and minority parties, as well as among the various factions of the majority party.

The ACA, commonly referred to as Obamacare, was passed in 2010 by the narrowest of margins in what was then a House, Senate and White House all controlled by Democrats. For good and bad, the ACA has had a major impact on Idaho's businesses, especially Idaho's health care and health insurance industries.

A basic requirement of the ACA was that health insurance policies meet certain minimum coverage standards and not exclude enrollment based on pre-existing conditions. However, the primary focus of the ACA was to reduce the number of individuals without health insurance. In theory, reducing the number of individuals without insurance would help contain health care costs and the costs of health insurance. Because more than 800,000 individuals in Idaho receive health insurance through their employer's health plans, Idaho's business community certainly has a significant stake in the effort to contain the cost of health care and health insurance.

The ACA included several requirements which attempted to provide insurance coverage for the millions of individuals in the United States who, at the time, had no health insurance. The ACA includes the so-called "individual mandate" which requires individuals to have qualifying health insurance or pay a tax penalty equal to the greater of \$695 per year, indexed for inflation, or 2.5 percent of household income. The intent of the individual mandate was to force healthy individuals to purchase insurance thereby expanding the pool of covered individuals and providing premium income to pay the health expenses for less healthy individuals.

The ACA also requires employers of 50 or more employees to provide insurance to full-time employees working more than 30 hours per week. An employer who fails to do so faces stiff tax penalties. Again, the intent of requiring all employers to provide health insurance was to expand the pool of healthy covered individuals to offset the costs of providing coverage to sicker individuals.

In addition to requiring employers to provide health insurance to their full-time employees, the ACA also sought to provide insurance to those individuals and families who do not have access to health insurance through an employer. This group of mostly low-income individuals includes those who are employed by small employers,

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those not employed, and those who may be working in part-time or multiple part-time jobs. Given the high cost of health insurance in today's world, this group of individuals and families are, unfortunately, simply never going to be able to afford health insurance. Unfortunately, under the ACA, the premiums charged to these individuals for health insurance has dramatically increased.

As originally passed, the ACA provided two pathways to provide health insurance for low-income individuals and families who did not have health coverage through an employer. First, the ACA established health insurance exchanges where subsidized health insurance coverage could be obtained by those making between 100 percent of the federal poverty level (or \$24,250) and those earning up to 400 percent of the federal poverty level (or \$97,000).

Second, the ACA allowed states to expand their Medicaid programs to provide health care coverage to those individuals and families who make less than 138 percent of the federal poverty level (\$33,465 for a family of four). For states that expanded their Medicaid programs, the ACA required the federal government to pay 90 percent of the long-term costs associated with that expansion, with states paying 10 percent of those costs.

Idaho partially implemented the ACA by enacting legislation in 2013 that established Idaho's health insurance exchange, now known as "Your Health Idaho." Idaho's legislature repeatedly declined to expand Idaho's Medicaid program to provide basic health coverage for the 78,000 residents of Idaho who live below 100 percent of the federal poverty level and do not have health care coverage.

With that background in mind, the question becomes what effect would a repeal of the ACA have on Idaho? According to the U.S. Department of Health and Human Services, the percentage of Idaho residents without insurance dropped from 17.7 percent in 2010 to 11 percent in 2015, as an additional 109,000 Idahoans obtained coverage as a result of the ACA. The costs of providing care to the indigent through the counties and the State's Catastrophic Health Care Fund, or CAT Fund, dropped from \$55 million in 2012 to less than \$34 million in 2016. The CAT Fund's portion of those costs has dropped from \$38.6 million in 2012 to \$16.6 million in 2016.

As of March 2017, YHI has helped 105,977 residents of Idaho obtain health insurance, with 81,722 of those plan enrollees receiving advance premium tax credits, or APTC, to help pay for coverage under the ACA. The average monthly subsidy for these marketplace enrollees is \$270.

Idaho's low income residents receive about \$265 million each year from the federal government to help pay for their health insurance premiums. The ACA also provided cost-sharing subsidies which reduced deductibles, co-pays, and out-of-pocket limits for individuals in the range of 100 percent to 250 percent of the federal poverty level. Cost-sharing subsidies dramatically reduced the average deductible, co-pays and out of pocket limits for the poorest of those eligible for subsidized coverage on the exchange.

If the AHCA — now passed by the U.S. House of Representatives — becomes law, it will eliminate or, at a minimum, change some aspects of the ACA that have helped lower the number of individuals and families

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without health insurance in Idaho. According to initial estimates by the Congressional Budget Office, the net effect of these changes will lead to a loss of health insurance for 24 million Americans.

The AHCA eliminates the individual mandate. The AHCA eliminates the ACA's prohibition of allowing insurance companies to "rate" their policies based on age. This change will allow insurance companies to charge premiums based on age, certainly leading to premium increases for older individuals. Also, under the AHCA and beginning in 2020, the ACA's tax subsidies for low income individuals to purchase health insurance policies will be replaced with income tax credits based on age.

Under those provisions, individuals up to age 29 will receive tax credits of \$2,000 per year whereas individuals age 60 and over will receive \$4,000 per year. Although higher tax subsidies will be available to older individuals, the expected increase in insurance premiums for these individuals will likely lead to net premium increases. The AHCA also eliminates the cost-sharing subsidies which will lead to an increase in deductibles, co-pays and out-of-pocket limits to low income individuals.

Overall, it remains to be seen what effect a restructured system of tax subsidies will have on Idaho's uninsured.

On the employer side, the AHCA eliminates the employer penalties for not providing health insurance to employees, a fact that will certainly lead to fewer employers providing insurance. With fewer insured individuals, Idaho's CAT Fund expenditures and the amounts paid by Idaho's counties for indigent care are likely to increase.

Each year at renewal time, Idaho's businesses face the ever-increasing costs of providing health insurance for their employees. However, many businesses fail to realize that a portion of each health insurance premium reflects the costs associated with health care provided to Idaho residents who have no insurance. Idaho's health care providers write off millions of dollars of uncompensated care each year for services provided to patients with no insurance. Those very real costs are then passed on to the health insurance companies who have no choice but to pass these costs on to their customers.

It's fair to say that the enactment of the AHCA would likely lead to more Idahoans again being uninsured. Unfortunately, these uninsured individuals will delay receiving health care until their condition becomes acute. What could have been managed through blood pressure and cholesterol medication is now a serious heart condition requiring surgery. Cancer which would have been diagnosed in a routine office visit instead will be diagnosed at an advanced stage.

These uninsured individuals will resort to receiving care at the emergency room, where the cost is the highest and where they will not be turned away based on their inability to pay. The high cost of emergency care, coupled with the more extensive care that is often needed, leads to hospital and physician bills that are simply unaffordable to those without insurance. As a result, the patient ends up in bankruptcy court and/or these costs are written off as uncollectible by hospitals and physicians.

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To stay in business, these same hospitals and physicians seek additional higher reimbursement rates from private insurance companies who provide coverage to your company and your employees. This is an unsustainable cycle.

Whether the AHCA will become law remains to be seen. Unfortunately, it looks like the AHCA is a replacement solution that would lead to a significant increase in the number of individuals without health insurance. Unfortunately, Idaho's businesses simply cannot afford a major step backwards when it comes to subsidizing the health care costs incurred by Idaho's uninsured.

*Tom Mortell is a partner at Hawley Troxell and is chairman of the firm's health law group.*

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