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Where there's willingness, there's a way for Congress, Trump to fix ACA

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Now that the GOP effort to repeal and replace the Affordable Care Act is in limbo, is there a way to make it work better?

Democrats and Republicans don't agree on much when it comes to the controversial federal health law, but some party leaders from each side of the aisle agree it needs repairs.

"No one ever said the Affordable Care Act was perfect," said Senate Minority Leader Chuck Schumer (D-N.Y.) on the Senate floor March 27. "We have ideas to improve it. Hopefully our colleagues on the Republican side do as well."

A day later, Speaker Paul Ryan (R-Wis.) said, "We all want a system in health care where everybody can have access to affordable coverage, where we have more choice and competition." And several GOP senators have moved away from the party's long-held call for a total repeal and are offering bills that would amend the measure.

Health policy analysts say that some of the health law's marketplace problems could be improved with a bipartisan spirit. Here are some of the possibilities:

Stabilize The Insurance Market

Insurance companies have only a [matter of weeks](#) before they must tell the federal government and/or [individual states](#) whether they plan to offer coverage in 2018 on the health law's online marketplaces, which serve customers who don't get job-based or government insurance.

As of now, many companies say the uncertainty of what the market will look like — or the rules under which they will operate — is making that decision difficult. At least one insurer, [Humana](#), has already said it would not offer coverage.

Two key moves that insurers are looking for from the administration are a promise to continue providing certain subsidies for those with lower incomes and enforcing the requirement for most people to either have insurance or pay a tax penalty.

The subsidies — known as "cost-sharing reductions" — are different than the tax-credit subsidies that many marketplace customers get to help pay their premiums. The cost-sharing subsidies help those with incomes between the poverty line (\$20,420 for a family of three) and nearly 2½ times that (\$50,400 for that same family) pay their deductibles and other out-of-pocket costs. The House of Representatives [sued](#)

[the Obama administration](#) in 2014 for providing the subsidies without a formal congressional appropriation for the money, and a federal judge sided with the lawmakers.

The Obama administration appealed the decision, but if the Trump administration were to drop that appeal, the subsidies would disappear. At a [House hearing March 29](#), Health and Human Services Secretary Tom Price would not say what the administration plans to do about the lawsuit or the subsidies.

“I’m a party to that lawsuit and I’m not able to comment,” he said. But Ryan, who is also a party to the suit, said March 30 that he believes the administration should continue paying the subsidies until the lawsuit is resolved.

The administration has been similarly quiet about how strictly it will enforce the “individual mandate” that requires most people to have health insurance or pay a fine. On his first day in office, President Donald Trump issued an [executive order](#) directing federal agencies to “minimize the unwarranted economic and regulatory burdens” of the health law. But other than the [IRS backtracking on a plan](#) to enforce the mandate more strongly, little has happened on that front.

Yet those two provisions together — the cost-sharing subsidies and the individual mandate — could result in 25 to 30 percent increases in premiums if they were to disappear, said Andy Slavitt, who oversaw the health law for the final years of the Obama administration. Assuring that the subsidies will remain and the mandate will be enforced “would send a strong signal to (insurance companies) that they should continue to participate in the market,” he added.

Some [GOP health policy analysts](#) — including economist Gail Wilensky, who previously ran the Medicare and Medicaid programs — have proposed replacing the individual mandate with penalties for signing up for insurance late, which is what Medicare does. Republicans did that in their proposed replacement bill, by adding a 30 percent premium surcharge to those with a break in coverage longer than two months. But [insurance actuaries](#) and the [Congressional Budget Office](#) said that might eventually prompt fewer people to enroll because it would encourage healthy people to remain uncovered.

Entice People To Enroll

Getting young and healthy people to sign up for coverage is not just a benefit for them. If there are not enough healthy people in the insurance pool, then premiums rise for everyone, because risk is being spread across a mostly sicker population. And someday even the healthy people will need medical care.

But it takes more than just the requirement for coverage to get people to enroll. Slavitt said it requires a real effort by both federal and state officials to reach people and help them understand that having health insurance is a good thing, even if they are healthy. “What they should be doing is increasing marketing and the outreach budget,” he said. “You’re trying to reach people who are uninsured and are unsure how it all works, and it does take a lot of hand-holding.”

So far, however, the administration’s only move on that front was to [cancel ads](#) encouraging people to sign up at the end of the enrollment period that overlapped with Trump’s first days in office. The [HHS Inspector General](#) is now [investigating](#) the results of this action. Some analysts have estimated canceling the last-minute push lowered enrollment in the exchanges by as much as a half-million people.

Help Offset Insurer Losses

Democratic lawmakers who wrote the Affordable Care Act knew that the market might be hard for insurers to navigate for the first few years, and they built in [several programs](#) to help reimburse those who lost money.

Republicans, however, [blocked funding](#) for one of the major programs, which was intended to reimburse insurance plans that enrolled sicker-than-average populations for the first three years of the marketplace operations. Republicans called the money “[insurer bailouts](#).” The loss of that money was a major reason for the collapse of many of the nonprofit insurance co-ops created under the law and some other insurance companies said it contributed to their decisions to leave the marketplaces.

Now, however, there are indications that Republicans might support some efforts to provide more funding for insurers.

On March 13, Price sent [a letter to governors](#) encouraging them to apply for waivers of the ACA rules in order to make insurance more affordable and available in their states. Among the state innovations singled out in the letter is a “[reinsurance](#)” [program in Alaska](#) that helps insurers pay for extremely high-cost patients. That plan, said Price, “significantly” offset what was a projected 40 percent premium increase in the state, and might be an option elsewhere under the waivers, which could allow states to get federal funding for such a program.

And the [GOP health bill](#), the American Health Care Act, included \$100 billion for a “[Patient and State Stability Fund](#)” that states with limited insurer competition could use to lower costs and help encourage insurers to stay in the market.

“They have a potential fix staring them in the face,” said Larry Levitt of the Kaiser Family Foundation of the GOP proposal for a stability fund. “It was a clever mechanism because the states could use it for any of a variety of purposes.” (Kaiser Health News is an editorially independent project of the Foundation.)

Assist Patients With High Out-Of-Pocket Costs

Democrats and Republicans agree that people who buy their own insurance are paying too much out-of-pocket, in premiums as well as deductibles and cost sharing.

Democrats mostly want to increase federal subsidies to help with affordability — something Republicans are not likely to embrace.

But there are other ways to lower consumer spending.

For example, Sabrina Corlette of Georgetown University’s Center on Health Insurance Reforms [calls for](#) “smarter, not skimpier benefit design.” One way to do that is to set federal rules to push insurers that offer coverage with high deductibles to add more benefits that would be available without paying thousands of dollars first, like a few trips to the doctor or urgent care center or a few prescriptions. She writes that could keep people from dropping coverage because they feel they are not getting any value for their premiums. And if those mostly healthy people feel they are getting benefits they might use, they are more likely to continue to purchase coverage, thus reducing premiums for everyone.

Another potential way to lower insurance costs is to lower health care costs. Even if there are multiple competing insurers in an area, if there's one dominant hospital system, it can pretty much charge whatever it wants.

"There's no other price in the U.S. economy that's growing as fast as a hospital price," said Bob Kocher, a former Obama administration health official now at the venture capital firm Venrock. And in areas with not much hospital competition, "prices are 30 to 50 percent higher for everything."

But how to get hospital prices down is almost as hard as regulating insurance. Kocher said one way would be for federal regulators to be more discriminating about approving hospital mergers, which tend to give hospitals more negotiating power over insurers.

More controversial would be to require hospitals that dominate their markets "to just accept Medicare prices" from marketplace insurers, Kocher suggested. While that would tend to bring prices down, it's not likely to fly with free-market Republicans.

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