

The Story of Obamacare

**The Patient Protection &
Affordable Healthcare Act**

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Issues in US healthcare

- USA has a private healthcare market with most people covered by insurance schemes – paid for by themselves or their employer
- the very poor & the elderly covered through [Medicaid](#) & [Medicare](#) respectively (and children in less-well off families by SCHIP).
- Hospitals have by law to treat emergency patients, even if they can't pay – > drives up costs for hospitals -> passed on to those buying insurance.
- of c300M Americans about c45M were uninsured in 2009
- Healthcare cost c18% of GDP, more than any other country:
 - of which half is funded by the American taxpayer via Medicare, Medicaid, Veterans benefits, SCHIP, etc.
 - compare to c9% of GDP spent in UK, almost all of it by the govt on the NHS , which ensures everyone is covered – a [Single-Payer](#) system
 - major issue in tax level differences between USA and most European countries/Canada – in USA a family's tax + health costs often exceeds their tax burden in Europe.

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Issues in US healthcare, cont.

- Particular problems for those with pre-existing medical conditions
 - e.g. cancer survivors or those with heart problems, who insurance co.s either refuse to insure or price policies at unaffordable levels.
- Health cost inflation outstrips normal cost of living inflation (& wages) everywhere, but esp in the USA
 - lacks single-buyer for drugs that European countries often have, so pharma costs higher and Generic Drugs much less used.
 - Advertising and American culture also lead patients to demand the latest drugs regardless of cost, even if they are only marginally more effective than much cheaper older treatments.
 - and doctors typically paid per procedure and liable to being sued (under tort laws) if they miss something in diagnosis – so incentivised to give patients every possible test available.
 - As a result, health outcomes (e.g. of cancer) for richer Americans (or those with “gold-plated” or “Cadillac” insurance policies, e.g. those negotiated by powerful auto unions for their members) are the best in the world, but there is much more variation in outcome than in Europe.

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The Politics of Healthcare Reform

- Universal healthcare coverage sought by every Dem Pres from 1960s onwards (& Nixon), priority for Dem activists.
 - esp promised by Clinton and a major failure of his first two years, where even with Dem majorities in both houses of Congress he could not get through a scheme produced by a Exec task-force led by First Lady Hillary Clinton.
- Brought into sharp relief by rapidly rising health insurance costs in 2000s...
 - hard on families but also led some companies to stop offering health benefits to employees.
 - exclusions from policies (illnesses or treatments not covered) and co-payments (an out-of-pocket payment required for every treatment – like an excess in a car insurance claim in the UK) also increased.
 - meant many people who were not poor enough for Medicaid could not afford private insurance.
- ... and by the onset of recession with millions of job losses – because most Americans get their health insurance through their employer, so when job lost insurance also lost.
- Made possible by size of Dem victories in Nov 2008, as very unusually Senate had filibuster-proof 60 seat majority (if all Dems voted together)

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Obama's reform aims

- Basic premise followed Obama campaign pledges, built on MassCare introduced in 2006 by Mitt Romney in Massachusetts
 - Key aim to provide health insurance to more than 30 million previously uninsured Americans.
 - Individual mandate requirement to buy insurance or pay a penalty.
 - Subsidies for people on lower income to help them buy insurance
 - State insurance exchanges to ensure competitive range of products
 - Require insurers to cover anyone and not set higher rates for people with pre-existing conditions
 - Require all but the smallest companies to offer employees health insurance or money to buy it themselves
 - Control costs and so avoid the looming insolvency of Medicaid and Medicare, esp as baby boomer generation retire, as well as dealing with the LT deficit. Possibility of a public option.

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Passage & politics

- Obama left it to Democrats in Congress to write the Bill, rather than presenting a preferred draft bill – much criticised but reacting to Clinton’s problems in 1993.
- MSNBC Timeline - <http://www.msnbc.msn.com/id/35986022/>
- Separate versions of the bill began in the House and the Senate in the spring of 2009, working their way through committee stages.
- Public opinion appeared to be turning against the bill during the summer recess, as Democrat Congressmen were attacked on the issue during [town hall meeting](#) consultations
 - Opposition to expansion of government, socialist policies, cost in taxes
 - Fear that existing health care benefits would be lost
 - Fear of “death panels” controlling costs by denying treatments
- Republicans heartened by public opposition, rise of Tea Party; returned to Congress determined to oppose the bill vigorously.

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Political lessons from the bill's progress

- Importance of committees
 - but Congressional leadership can override committees
- Partisanship
 - no Republicans voted for final version of bill, despite offers of major concessions
 - attempt to win support from a few moderate Republicans in the Senate failed
 - but conservative Democrats also had to be bought off – e.g. Stupak amendment, Louisiana Purchase, Ben Nelson and Nebraska exemption
 - this further eroded public support for the bill
- Power of the filibuster in the Senate
 - unified minority can block progress with 41 votes
 - Can give Senate advantage in negotiations with House

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Political lessons from the bill's progress, cont.

- Text book legislative process can be by-passed by leadership
 - Pelosi inserting anti-abortion amendment in House
 - Reid reinserting then withdrawing public option in Senate
 - Obama promising executive order re. no funding for abortion
 - HoR persuaded to pass Senate version unamended, in order to avoid returning a compromise bill after a Conference Stage to the Senate, where it could be filibustered.
 - This was achieved by promising to put amendments to the Senate version demanded by House Democrats into a second bill.
 - This second bill was [The Health Care and Education Reconciliation Act of 2010](#), and was passed in the Senate as a budget reconciliation measure, which under the Senate rules meant that debate was limited and it could not be filibustered.
 - Republicans complained at misuse of reconciliation process, but Democrats pointed out that reconciliation was used to pass several major bills in recent years, including George W. Bush's 2001 and 2003 tax cuts.
 - Also complaints that the final bills were so huge and complicated that those voting for them hadn't read them in their entirety.

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Lobbying

- Estimated over \$1Bn spent on lobbying around the Bill
 - Estimated 8 lobbyists to every Congressmen
 - But lobbying not confined to opposition to healthcare reform. Insurance co.s, doctors groups, hospitals, etc. keen to shape the detail of the bill to their own advantage
 - the heart of the bill was a deal with the insurance industry: the individual mandate would give them millions of healthy new customers in exchange for coverage of those with pre-existing conditions.
 - By the end of the legislative process, hopes that healthcare costs could be reduced as a result of the reform disappeared.
- Ads also run by all sides to rally public opinion
- White House used Obama campaign database to encourage supporters to pressure wavering Congressmen into supporting bill

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Passage and Provisions

- Obama victory speech -
http://edition.cnn.com/2010/POLITICS/03/23/health.care.main/index.html?_s=PM:POLITICS
- Healthcare.gov on the main provisions in the Act, by the year in which they will be implemented -
<http://www.hhs.gov/healthcare/facts/timeline/timeline-text.html>
- Cost estimated by neutral Congressional Budget Office at \$940 bn over 10 years, but measures also predicted to reduce the budget deficit by over \$ 1 tr over 20 years.
- Worth noting that Obamacare swallowed up a lot of goodwill/ time/ President's mandate
 - so jobs bills, climate change legislation, immigration reform received a lower priority and all ultimately failed. Obama criticised for this.
- But healthcare reform potentially the most important domestic legislation for several decades – a major achievement that Obama and the Democrats will fight hard to preserve.

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Reaction and Implementation

- Major issue for conservatives and tea-partiers, who see Obamacare as socialism.
 - Contributed to unpop of Obama and Dems and Nov 2010's mid-term losses.
 - Has now become Republican orthodoxy to oppose the reforms, even though individual mandate was originally a conservative idea.
- New Republican majority in House of Reps symbolically passed a repeal bill immediately on assembling in 2011
 - but no chance of passage in Senate (til Jan 2015) or of overcoming a Presidential veto from Obama (til Jan 2017).
c60 House Votes vs Obamacare 2011-2016)
 - so 2012, 2014 & 2016 Presidential and Senate elections were critical for future of Act
 - but many of the most popular provisions in the bill were to be implemented by 2013, making it harder for Republicans to overturn it
 - e.g. keeping children on parent's insurance up to age 26,
 - e.g. requiring coverage for pre-existing conditions.

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Legal Challenges

- c30 states + business groups sued govt over, claiming the Act is unconstitutional under the Commerce Clause – Congress lacks the authority to insist on an individual mandate.
 - (ironically, a full single-payer European style system funded out of general fed taxation would not have constitutional problems as individual mandate does)
- Rulings in 4 US Fed Appeals Cts – 2 upheld whole Act, 1 ruled against the individual mandate but upheld the rest, 1 ruled that it could not be litigated until provisions and penalties kick in from 2014.
- Supreme Court decided to take the case (**National Federation of Independent Businesses vs Sebelius**) in Nov 2011, with oral hearings in March set at a very rare 5 ½ hours – the 9 justice would decide linked cases on the individual mandate and whether the rest of the Act is valid, even if the mandate rule was struck down.
 - Oral hearings went badly for Administration, with Solicitor-General Verrilli widely seen as having done a bad job and key swing justice Kennedy clearly hostile, along with conservatives Scalia, Alito and Ch Justice Roberts. Conservatives rejoiced and liberals assumed Obamacare was doomed.
 - But in June 2012 the [Court voted](#) to uphold the core of Obamacare, with Roberts the surprise swing vote. He reasoned that the individual mandate could not be justified under the Commerce Clause, but that it could be upheld under Congress' right to tax for the general welfare. Another element of Obamacare was struck down, as the Ct found states could not be penalised by the Fed Govt if they chose not to expand the reach of Medicare to 133% of the poverty line. [Obama victory speech](#)

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Implementation & ongoing controversy

- Having mostly survived the Supreme Court's ruling in 2012, 2013 was a key year in Obamacare's implementation. However the Affordable Care Act has run into several major problems:
- **Employer Mandate** - in **July** the Administration delayed by one year (from 2014 to 2015) the requirement for employers of >50 full-time workers to offer insurance after firms complained of too little time to comply.
- **The Medicaid Expansion** – the ACA offers federal money to states who expand Medicaid to those who are poor but not destitute. If states cover all those earning up to 133% of the poverty level (= c\$16000 for single adults in 2013), then the Federal Govt will pay all the extra costs up to 2016; from 2017 to 2020 the subsidy will gradually reduce to 90% of the extra cost. This was originally going to be compulsory, but the Supreme Ct required it to be voluntary for the states.
- As of Feb 2017, 19 states dominated by GOP have chosen not to accept this deal, even though even in 2020 they would be net savers under the reforms – & these states contain many of USA's poor uninsured (c4-5M in the “coverage gap”). So where you live in will make a huge difference to what healthcare you can obtain & Obamacare's overall impact will be considerably limited.
- This continues to be a [major issue in state politics](#), with some staunch Republicans like Gov Jan Brewer of Arizona choosing to expand Medicaid and accept the federal money, while Rick Scott of Florida wanted to do so but was prevented by the GOP in the state legislature. So it is becoming a state election issue in future, with more and more states opting in over time – e.g. following the Nov 2015 elections, Kentucky's new GOP Governor tried to cancel Medicaid expansion (affecting c600 000 in KY), while Louisiana's new Democrat Governor chose to opt in.

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- On 1st **October 2013** enrolment began on the new Healthcare Marketplaces Exchanges – govt online comparison websites where Americans can find out if they are eligible for subsidies and choose a plan. Americans had to sign up for a plan by December 15th to ensure they have healthcare insurance coverage by January 2014 to meet the **Individual Mandate** – those not in a plan by March faced a fine (small but fines will rise in cost over time).
- But although every state was meant to operate its own online exchange, only 14 (+ DC) chose to do so. 36 Republican-controlled states refused to cooperate and the Federal Department of Health and Human Services was forced to build and operate a giant online exchange where citizens of the other 36 states can shop for new healthcare plans.
- Disaster struck for the Obama Administration as soon as the Federal Exchange opened – it proved almost impossible to use, full of glitches and incapable of passing the right data to insurance companies. The Administration scrambled to fix the problems, with Health Secretary Kathleen Sibelius forced to apologise while testifying to Congressional Committees. Obama himself has also expressed his frustrations and apologised to the American people.
- In the first month only 106 000 Americans had chosen a plan on the exchanges, and $\frac{3}{4}$ of those were via the various state exchanges, rather than the error-prone Fed Exchange serving the other 36 states.
- The wider danger is that the essential deal at the heart of Obama care – better coverage for all Americans, including sick ones, by insurers in exchange for requiring all Americans, including healthy young ones, to buy coverage – will now unravel. If lots of healthy, younger people don't sign up (being prepared to pay the quite small fines), then the ACA could enter a **“death spiral”**
- Conservative opponents hope this happens and are campaigning to put off younger Americans from applying for coverage and subsidies - <https://www.youtube.com/watch?v=77GEhLz8WRM>

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- **“You can Keep your plan”** row – In **November 2013** Obama’s 2009-10 promise about his healthcare plans – *“If you like your current plan, you can keep your plan”* came back to haunt him as thousands of Americans with cheap healthcare plans that don’t meet Obamacare’s coverage standards started to get cancellation notices from their insurers.
- ACA supporters conceded that Obama’s original promise was misleading, but argued that these existing cheap plans were of poor quality because they didn’t cover common healthcare needs (e.g. pregnancy) and require holders to pay such a big share of claims that any major health problem will still lead to bankruptcy. And because most of those on such plans are on lower incomes, almost all of them benefit from subsidies in the new Health Marketplace.
- But to Obama’s opponents he had broken his promise and betrayed millions of Americans, who would now be forced to pay more for their health insurance. And the simultaneous problems of the Federal Exchange meant that those seeing their current policies cancelled could not easily find the better deals promised.
- By mid-November 2013 Democrats were panicking, fearing for their prospects in the 2014 mid-terms, and calling for a fix. On Nov 15th 39 House Democrats broke ranks to vote with Republicans in passing a bill allowing insurers to keep selling plans that would otherwise be banned for not complying with ACA standards.
<http://politicalticker.blogs.cnn.com/2013/11/15/house-passes-proposed-gop-obamacare-changes/>
- Obama threatened veto in the unlikely event it passed the Senate, but forced into concessions. He instead proposed a regulatory change (not requiring legislation) that allowed individuals to stay on their old plans until 2015, even if they didn’t meet ACA standards.

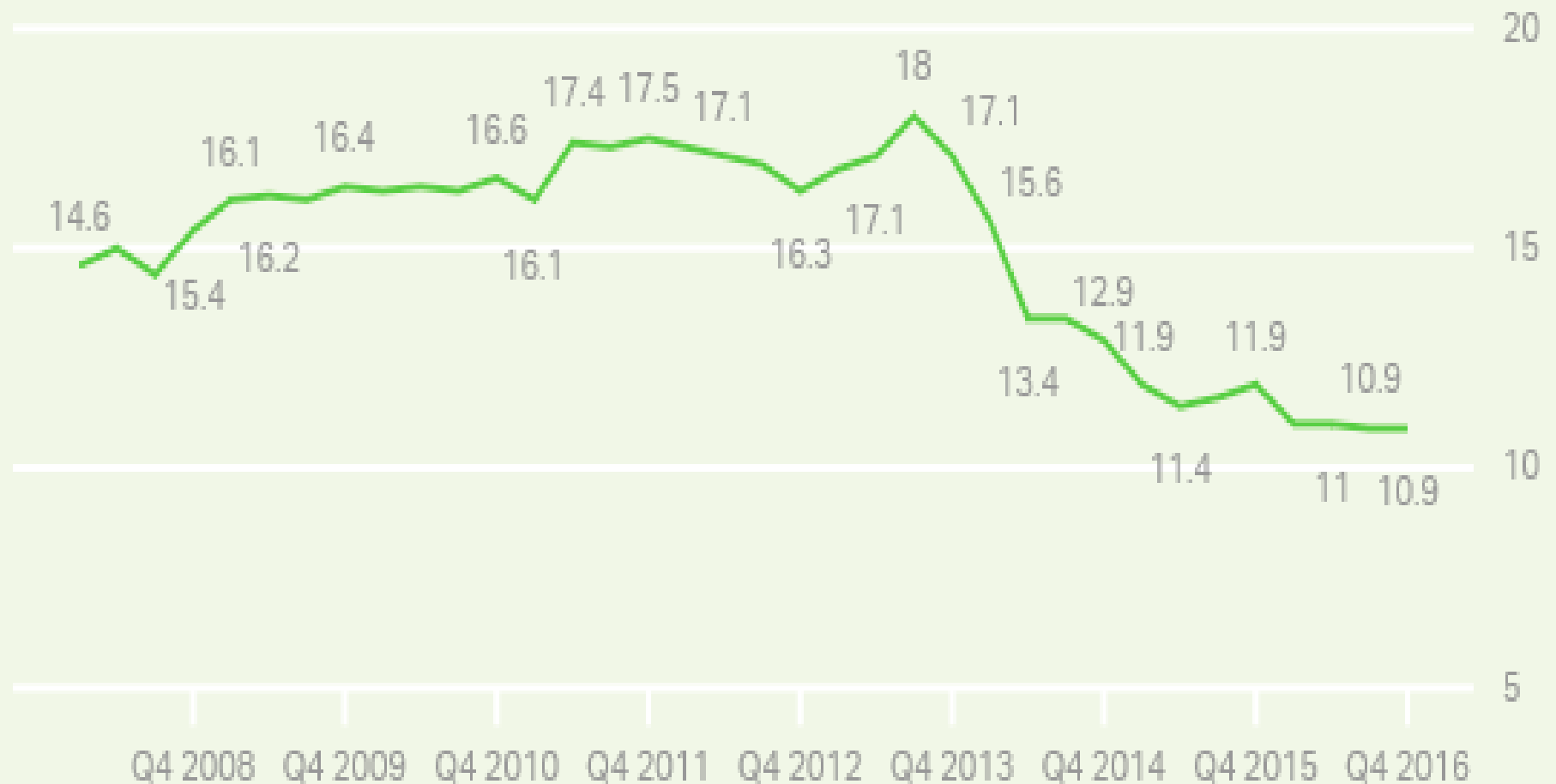
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Continued Legal Troubles

- In Nov 2012 the Ct ordered a [review](#) of whether Obamacare violates religious liberty - ***Burwell vs Hobby Lobby Stores***. The case was brought by the conservative Christian owners of a privately-owned company, who objected to the reproductive coverage elements of Obamacare, believing some contraceptive methods included amount to forms of abortion.
The Court heard the case in March 2013 and decided it against the Obama Administration on 30th June 2013, ruling 5-4 that closely-held private co.s could join religious organisation (e.g. Catholic hospitals) in excluding such birth control methods from their employee healthcare insurance packages.
- In 2015 the Supreme Court heard ***King vs Burwell*** - a case about whether subsidies for individual health insurance can only be obtained through exchanges run by those states (16 Democrat-controlled states at present) who have chosen to set them up. Citizens of the other 34 states currently have to obtain subsidies through the Federally-run exchange.
- However, the Affordable Care Act includes the language language "*enrolled in through an Exchange established by the State under 1311*" – and the plaintiffs argue that "State" can only mean one of the 50 states, and that subsidies should therefore be unavailable through the Federal Exchange. If the Obama Administration lost, then 5M Americans could lose their subsidy.
- In June 2015 the Supreme Court ruled 6-3 that the subsidies would be available to all eligible Americans, regardless of whether their state runs an exchange or if they have to use the Federal exchange. Chief Justice Roberts and Justice Kennedy sided with the 4 liberals on the Court – the second time Roberts has saved Obamacare.

Percentage of U.S. Adults Without Health Insurance, 2008-2016

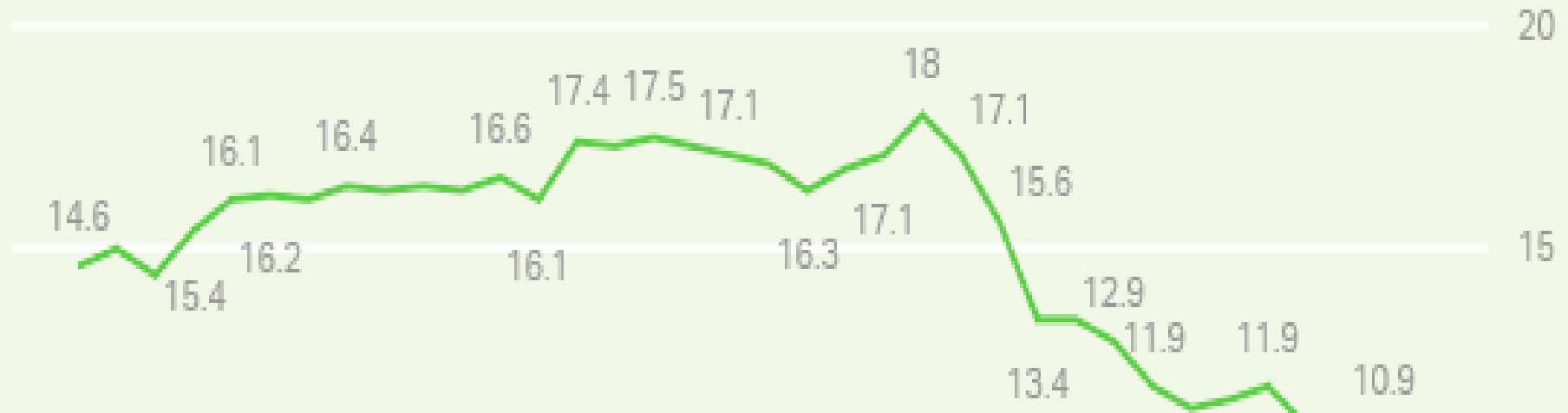
■ % Uninsured



GALLUP-HEALTHWAYS WELL-BEING INDEX

Percentage of U.S. Adults Without Health Insurance, 2008-2016

■ % Uninsured



As of early Feb 2017 -

- 12.2 M now enrolled via (now working) state or Fed exchanges - at annual cost of \$130 Bn in subsidies/tax credits)
- with c18M more covered via the Medicaid expansion 31 states have implemented - cost \$75 Bn p.a.

Paid for by –

- reducing Medicare fees to Drs/hospitals by \$75 Bn pa
- raising \$30 Bn in additional taxes on pharmaceuticals, med devices + “cadillac plans”
- plus \$35 Bn from extending Medicare payroll tax to self-employed and investment income

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Trump, the GOP & Obamacare's prospects in 2017

- All GOP Congressional and Presidential candidates pledged to “Repeal and Replace” Obamacare over the past 4 elections – but until Trump’s victory the emphasis in 60+ symbolic HoR votes had been on repeal, with no clear plan developed for replacement.
- GOP well aware that removing coverage from millions of Americans (c20-30M) will be unpopular, and that although Obamacare as a brand has been unpopular with their voters, esp the individual mandate requiring insurance, aspects of it are popular, esp coverage for pre-existing conditions & keeping children up to age 26 on parents’ policies.
- Trump has promised to replace Obamacare with –

...implying in this and other remarks that he wants to keep the popular parts while scrapping the unpopular aspects – but this is likely to crash the insurance market as companies can’t afford to cover sicker people on favourable terms, if healthier people aren’t compelled to participate in the risk pool.

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Trump, the GOP & Obamacare's prospects in 2017, cont.

- GOP lacks agreement on what to replace Obamacare with, although former House Budget Chair & Ryan ally Tom Price is now confirmed as HHS Secretary
 - Price favours full repeal with high risk pools used to offer some insurance coverage for the sickest in the population – critics contend this will leave many uninsured and the sickest with only sketchy policies without Obamacare's minimum standards
 - It isn't yet clear how much leeway Price will be allowed by President Trump to pursue his strongly conservative agenda. Trump has criticised high deductibles and poor coverage for particular conditions under Obamacare, putting him at odds with GOP conservatives like Price who want “skinnier” policies that disincentivise claims and hold down costs.
- Another problematic issue for Republicans is what to do about Medicare (covering 57M citizens) and Medicaid (77M) – conservative GOP including Paul Ryan and Price have sought to address inexorably rising costs (combined \$1 Tr p.a., projected to nearly double in 30 years) for these long-standing entitlement programmes by:
 - turning Medicaid over to the states via Fedl block grants that could be eroded by inflation
 - and changing Medicare to a “premium support” model which would define govt contributions rather than benefits, again reducing costs over time – Democrats charge this would amount to privatisation and break a promise going back to 1965

But Trump promised on the campaign trail to preserve existing benefits

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Trump, the GOP & Obamacare's prospects in 2017, cont.

- Trump issued an early **Exec Order** on Inauguration Day, directing the Secretary of Health and Human Services, as well as other agencies, to interpret Obamacare regulations as loosely as possible to minimize the cost to individuals, insurers, doctors, hospitals, business, etc.
- Trump out of step with much of GOP over willingness to take on big pharma companies over **high drugs costs**, declaring in Jan 2017 they had been “politically protected, but not any more” and that he wanted the Fed govt to negotiate with them directly to get a better deal for Medicare, despite this being currently banned by a 2003 law.
- **Senate Republicans** took the first step towards change in early January, with a procedural vote that will allow them to repeal aspects of Obamacare (e.g. penalties for not getting insurance, subsidies to buy it) through **Budget Reconciliation** processes –
 - this will allow them to avoid a Democrat filibuster
 - but it won't cover all aspects of repeal (incl individual mandate and exchanges, plus national insurance standards)
 - and can't be used for a replacement option – for those normal legislative processes are needed, giving Senate Democrats a potential veto via a filibuster.

Medicare – Govt-funded social insurance programme, passed in 1965 and entirely run and funded by the Fed Govt. Provides health insurance coverage to people who are aged 65+ and those with disabilities. Covers 80% of the costs of a medical treatment, requiring citizens to pay the remainder (can be covered through buying top-up insurance policies). Extended in 2006 under President G W Bush with costly prescription drug benefits.

Medicaid – Govt-funded health programme for those on low incomes (and so mean-tested). Created in 1965 and jointly funded by the state and federal governments, and managed by the states within overall guidelines, so eligibility and provision vary considerably. States do not have to participate, but all have done so since 1982. Extended with SCHIP from 1997 (expanded 2009) in order to cover more children in lower-income families.

Single payer system – a public health care system such as the NHS or Canada's health system where the government pays for all the cost of health treatments out of tax revenues – the govt is the single payer. Contrasts with US system with its mixture of direct out-of-pocket payments for each treatment, private insurance, employer-provided benefits, and govt schemes such as Medicare, Medicaid, SCHIP, etc.

Generics – New pharmaceutical drugs enjoy some years of patent protection, when only the company that invented them can profit from their production. This keeps the prices of new drugs very high (can be thousands of dollars for a course of new cancer drugs) and allows companies to recoup their enormous R&D costs, while incentivising them to undertake new research. Once the patent has expired, other companies can produce versions of the drug, known as generics, and the price tumbles.

Individual mandate – idea that the government can require every citizen to obtain health insurance, so widening the insurance pool by including relatively healthy, relatively well-off individuals who might otherwise avoid taking out health insurance. This should drive down average insurance costs for everyone (as with car insurance). Seen in Switzerland and promoted in the USA in 1990s by conservative think-tanks (including Gingrich) as a free-market alternative to govt-run health schemes. Introducing individual mandates with subsidies for the poor and an insurance exchange were the basic ideas of MassCare, introduced by Mitt Romney and a Democratic-controlled legislature in Massachusetts in 2006 (see New Yorker article supplied previously)

Insurance exchanges – each state to set up schemes to make it easy for individuals and small businesses to compare insurance schemes and pool resources when buying insurance, encouraging simpler, low-cost basic products. Another feature of MassCare in 2006.

Public option – idea that the government should itself offer a basic health insurance product that would offer competition (esp because of economies of scale) with private products in the marketplace. Supported by progressives and opposed by conservatives – both on the grounds that it could over the long-term out-compete private products and so become a state monopoly system (similar to that in Germany).

