



CONFIDENTIAL

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MEMORANDUM

For: Speaker Boehner, Leader Cantor, and House Republicans
From: Dick Arney, Matt Kibbe, and Dean Clancy
Subject: To Replace Obamacare, Reform Health Care

Congratulations on last month's historic full repeal vote. Far from being "symbolic," House passage of repeal fulfilled your pledge, revealed your strength, and inspired Senate Republicans to follow your lead.

Reversing the government takeover of health care now has the support of a majority of the public, a majority of the states, a majority of the House, and (almost) a majority of the Senate. Plus, we're batting .500 in the courts. (If this effort is "symbolic," we'd like to see what "real" looks like.)

During the floor debates, we had to smile whenever defenders of the status quo accused reformers of having "no ideas" on how to replace Obamacare. Apparently, they haven't heard of your various health care bills, which are growing in number daily.

We're sending this memo because we believe your ultimate success depends as much on how you handle the "replace" as the "repeal" side of the strategy. ***We think it's time to start emphasizing what you're for as much as what you're against.***

It's understood that the Democrats control the Senate and White House (for now), and that many of the reform ideas we propose below are big, controversial, complicated, or difficult to accomplish. We don't expect you to enact them all tomorrow, or even many of them prior to having a Senate and President who will go along with them. But we do want to help you understand the thinking that led us to propose them.

A Patient-Centered System: Some Basic Principles

When we talk about adopting a "patient-centered" approach, we mean an approach in which patients control the dollars and make the important decisions about their own health care. Here are 7 principles we think underlie "patient-centeredness" (guess how many of them are respected in Obamacare):

1. Every intelligent, adult human being has a right to make his or her own health care choices.
2. Patients are customers and have a right to shop around and take their business elsewhere.
3. Health care professionals have a right to be paid for their services, at market rates.
4. Doctors and patients should have the right to freely enter into contracts with each other.
5. People should bear the consequences of their own free choices.
6. People should be free to opt out of public insurance programs.
7. In a free society, the moral way to help those who are less fortunate is through private charity -- or failing that, through targeted subsidies -- not mandates and regulations.

So how do we make these principles a reality?

Six Key Strategies

1. **Focus on reducing costs and expanding freedom, not on expanding coverage.** Don't focus on "how many people are covered." That criterion puts us in a policy box that leads to more coercion. By the way, despite the individual mandate, Obamacare doesn't achieve (and didn't really try to achieve) universal coverage. And neither should we.
2. **Make federal health care programs voluntary.** The essence of federal health "insurance" programs like Obamacare and Medicare is coercion, because these programs are structured like monopolies that restrict choice and competition. The essence of a patient-centered approach is individual freedom and choice – the antithesis of monopoly. Therefore, to the extent possible, we should try to frame every debate around who decides.
3. **Defend true insurance and expand the individual market.** True insurance, which exists to help people pool risks, should be kept distinct in our minds from group "insurance," which is really a form of pre-paid benefits. With true (individual) insurance, prices need to vary according to risk and purchasers need to plan ahead. You can't buy fire insurance after your house has burned down. By contrast, pre-paid benefits are generally open to everyone in the group (guaranteed issue) and the price is the same for everyone, regardless of the amount of risk each person brings to the plan (community rating). Many states and Obamacare try to regulate true insurance as if it were pre-paid benefits. That's misguided in the extreme. When government does that, it merely drives up the costs of the insurance or causes it to become unavailable. Therefore, we should always favor policies that lower the costs of true insurance and increase the number of people who can obtain it. We should grow the individual market.
4. **Reduce reliance on third-party payment.** Nobody spends other people's money as wisely as he spends his own. The main cause of excessive medical inflation (which is itself the main cause of people being uninsured) is the fact that most Americans are over-insured. The reason most Americans are over-insured lies in the big federal health care subsidies: Medicare, Medicaid, and the tax code subsidy for employer-sponsored health plans. These open-ended subsidies cause most people's health coverage to have low deductibles and cost sharing, which makes them overly reliant on third parties to pay their medical bills. Health care costs would be lower, if more patients were spending their own money. The tax code subsidy, which sustains the employer-based health care system, needs to be reformed to give consumers (i.e., patients) greater control over their own health care.
5. **Convert federal health care subsidies into defined contributions.** To save our federal government from bankruptcy, we need to bring down excessive medical inflation, the biggest single driver of our massive debt and deficits. To bring down excessive medical inflation, we need to restructure federal health care programs to put individuals (or in some cases, states) in charge of the money. Specifically, Congress should convert Medicare, Medicaid, and the tax code subsidy for employer-sponsored health benefits into defined contributions to individuals (in the form of tax credits or vouchers), or defined contributions to the states (in the form of block grants). Paul Ryan's "Roadmap for America's Future" does just this, by giving individuals money to purchase good private health coverage in a broad, competitive marketplace. There's no need for a massive government bureaucracy. More important, by putting patients in charge of the dollars, the Roadmap forces the health care industry, for the first time, to operate efficiently in order to serve patients. Unlike Obamacare, the Roadmap bends the cost curve downward.
6. **Stay on offense.** Every day Washington talks about health care is a good day for reformers.

And how to turn those strategies into action? We propose the following reform agenda:

A Concise “Replace” (Health Care Reform) Agenda

1. **Make participation in tax-subsidized health coverage more voluntary and portable.** Either: (a) adopt a Flat Tax and replace the tax code subsidy for employer-sponsored health benefits with a universal health insurance tax credit or voucher. Or: (b) significantly increase the medical expense deduction; create targeted tax credits or vouchers for those who lack an offer of job-based coverage; and let employers contribute tax-free to individual insurance plans owned by their employees. *Either of these approaches would end any need for Obamacare, and make it all but impossible to revive.*
2. **Ensure full funding for state high-risk pools and reinsurance programs.** This is a critical step to help us expand and strengthen the individual (true insurance) market by making it possible for more people with preexisting conditions to afford coverage in that market.
3. **Lower prices through greater transparency and competition.** Allow Americans to buy insurance across state lines (end the anti-competitive monopoly currently held by state insurance regulators). Require greater price disclosure, to patients, by insurers and health care professionals who do business with Medicare and Medicaid.
4. **Increase consumer choice in federal health programs.** Convert Medicare and Medicaid into vouchers that beneficiaries can use to buy good private health coverage. Make participation in Medicare voluntary for seniors (let them permanently opt out and repeal restrictions on their ability to purchase private health insurance).
5. **End Medicare price controls and prevent rationing.** End Medicare price controls on doctors and hospitals (by letting them charge more than the Medicare rate without being excluded from Medicare), and prevent rationing (by letting seniors voluntarily add their own money on top of what Medicare pays).
6. **Give individuals greater control and security through strengthened Health Savings Accounts.** Increase HSA contribution limits, e.g., to \$8,000 for an individual and \$16,000 for a family. Give HSA owners greater flexibility on deductibles. Let employers deduct the cost of their contributions to an employee’s HSA. Allow people to keep their HSA after turning 65 and to roll their IRA or 401k funds over into an HSA during retirement.
7. **Encourage states to lower costs and increase competition.** States should adopt sensible medical malpractice reforms, increase the scope of practice of allied health professionals, repeal “certificate-of-need” restrictions on new hospitals, and repeal guaranteed issue and community rating mandates in the individual (true insurance) market.

The agenda above is bold, principled, and far-reaching. It would, in a dramatic way, change the world for the better. In addition to reforming health care, we still need to be working to reverse the government takeover, and thus we also need:

A Concise Repeal Agenda

1. **Make repeal unavoidable: pass a Balanced Budget Amendment.** Under a BBA, Obamacare is toast. Therefore, passing it should be health care reformers’ number one priority. The bad news is passing a constitutional amendment requires a two-thirds vote in both chambers. The good news is it doesn’t require the President’s approval.
2. **Keep working to put full repeal on the President’s desk.** We’re 4 votes from a majority in the Senate, 13 votes from breaking a filibuster. Full repeal probably has to wait until 2013. And yet picking up those 4 votes for partial repeal -- psychologically important to our momentum -- may

not be entirely implausible, if, for example, the Supreme Court finds the individual mandate unconstitutional.

3. **Don't reward collaborators.** Don't repeal the IPAB rationing board, or reduce any of the various Obamacare taxes, unless the affected industries endorse full repeal. Don't re-fund Medicare Advantage unless the health insurance lobby publicly endorses full repeal. If you do cut any of the Obamacare taxes, look to Obamacare itself as the source of offsets (for example, by delaying the effective dates of the subsidies and Medicaid expansion).
4. **Don't make a bad bill better.** "Improving" Obamacare is OK, so long as the improvements don't significantly increase its support. By this test, we see no problem with clearing the popular 1099 repeal bill for the President. (It's peripheral to the law, and has overwhelmingly passed the Senate.)
5. **Unravel the law by repealing or delaying its core elements.** (1) Make participation voluntary for *individuals* by repealing the individual mandate. (2) Make participation voluntary for *employers* by permanently grandfathering employer-sponsored health benefit plans. And (3) make participation voluntary for *states* by giving them a complete, immediate opt-out, as recently demanded by 21 governors – rather than the false "Mother, may I?" flexibility of Wyden-Brown.
6. **Defund implementation and eliminate egregious provisions.** Unfortunately, much of the money required to implement Obamacare has already been appropriated as open-ended mandatory spending and is therefore not easily brought under congressional control. This seriously complicates the defunding effort, because it shifts much of the advantage to the Executive Branch. Nevertheless, Republicans should try to put Congress back in the driver's seat by defunding Obamacare as much as it can, in every passing bill it can -- and especially on must-pass bills like a continuing resolution or a debt ceiling increase. Among our top priorities should be defunding aid to states for Obamacare exchanges and defunding the obscure Office of Multi-State Qualified Health Plans, which provides the infrastructure for a future "public option," meaning single-payer. Let's also use these opportunities to defund the notorious backroom deals, such as the Gator-Aid, the Louisiana Purchase, and the various giveaways to AARP.
7. **Keep building the case for repeal.** Highlight the special interest deals and corrupt bargains. Scrutinize the hundreds of waivers and thousands of pages of regulations issuing from HHS. Publicize the premium cost increases and coverage losses. Keep Dr. Berwick talking.

In the remainder of this memo, we respond to the main arguments against repeal, and discuss possible fallbacks to the individual mandate.

Arguments Against the Arguments Against Repeal

"The public opposes repeal." According to January's Kaiser Family Foundation Tracking poll:

Repeal, Don't Replace	20%
Repeal & Replace	23%
Leave It Alone	19%
Expand It	28%
Other	10%
TOTAL	100%

While in this poll only 43 percent support repeal, that's still a high figure. And remarkably, disapproval of the law is *still* rising: 50 percent don't like it, up from 41 percent in December. Among independents, disfavor has risen to 57 percent. In a word, *the Democrats have failed to seal this deal.*

“Repeal will increase the deficit.” No one takes this argument seriously, not even CBO, which is handcuffed by the bill’s inclusion of \$700 billion worth of gimmicks and double-counting.

“Repeal will increase the number of people without health insurance.” Don’t grant the premise that “reform equals providing more coverage.” (See Strategy 3, above.)

“Repeal will reverse important protections.” The law’s “protections” and other alleged benefits can be grouped into three categories:

1. Items we can support, and which can be passed separately as freestanding measures. These are: (1) the ban on fraudulently rescinding coverage when a person gets sick (already on the books in every state); (2) the ban on rescinding coverage due to a paperwork mistake; and (3) the requirement that the W-2 tax form includes how much employers contribute to their employees’ health benefits.
2. Items that don’t deserve our support. These include the unnecessary small-business tax credits; the actuarially unsound CLASS Act; and most of the costly insurance mandates. The latter include the cap on annual limits, the ban on lifetime limits; the adult children coverage mandate, the caps on insurance company profits (“minimum loss ratios”), and HHS’s roundabout limits on premium increases.
3. Items that should be replaced with better approaches. These include “free” preventive care for Medicare seniors (better idea: let seniors have HSAs and reap the rewards of their own smart choices), as well as the ban on preexisting condition exclusions (better idea: fully fund state high-risk pools and reinsurance programs).

Banning preex condition clauses is counterproductive, because it raises premiums and causes coverage to be dropped. It’s also unnecessary, because federal and state laws already offer significant protections, and there are (as we just noted) better ways to help the small group (1 percent) of Americans who face a genuine barrier.

“The law is fixable.” Team Obamacare is stuck between a rock (the public’s growing dissatisfaction with the status quo) and a hard place (their own inability to amend the law’s core elements). It’s telling that the only “fixes” they’ve suggested to date are 1099 repeal and some tentative form of medical malpractice reform. Nice ideas, but *fixes*? Not even close.

Whither the Individual Mandate?

The Left is now discussing fallbacks to the individual mandate, should it be struck down by the Supreme Court (which, if it happens, probably won’t occur sooner than mid-2012). The main fallback ideas being discussed are: (a) auto-enrollment with an opt-out; (b) a late penalty; and (c) a five-year irrevocable opt-out. MIT Professor Jonathan Gruber, a progressive, has found all three options wanting. The third, he rejects as politically unsustainable. The first two, he modeled, with the following (underwhelming) results:

Alternatives to the Individual Mandate Are Underwhelming to Progressives

In 2019:	Status Quo Obamacare with individual mandate	“Disaster” Scenario Obamacare without individual mandate	Fallback A Obamacare with auto-enrollment	Fallback B Obamacare with late penalty
# of people covered by proposal	32 million	16 million	24 million	12 million
% of uninsured covered by proposal	60%	30%	45%	22.5%
Federal budget savings, relative to status quo	\$0	~\$50 billion	\$0	~\$50 billion

Source for status quo and “disaster” scenario estimates: CBO. Source for fallback estimates: Jonathan Gruber, “Health Care Reform without the Individual Mandate,” Center for American Progress, February 2011.

Some Senate Republicans are worried about the Democrats coming up with some clever fallback that splits Republicans and lets Democrats off the hook politically. But given Gruber’s findings, and the low likelihood that Harry Reid can peel off 7 Republicans to support a compromise, we don’t think the Democrats can wriggle off the hook that easily. Therefore, we make bold to predict: ***Team Obamacare will not voluntarily propose an alternative to the individual mandate that isn’t basically as coercive as the mandate.*** If we’re right, we can assume any such “alternative” will be fairly easy to oppose (and possibly unconstitutional, to boot). Which means we can safely press ahead with efforts to repeal it (and save \$252 billion over 10 years), knowing that the other side can’t counter with a politically effective alternative. Our advice: Don’t fear “tough votes” on the mandate. Rather, oppose coercive approaches on principle.

We’re also aware of the argument that repealing the mandate will hurt our chances to overturn Obamacare in court. The theory is that if the mandate is found unconstitutional, the Act’s lack of a severability clause will cause the whole 2,801-page bill to fall; therefore, repealing the mandate paradoxically helps *preserve* the rest of the Act. Unfortunately, based on the precedents, it’s quite possible the Court will read severability into the statute.

To be honest, we wouldn’t worry too much about the effect of the individual mandate debate on the court cases. We can’t count on the courts. And if we do our work right, we won’t need to.

Conclusion

G. K. Chesterton once observed: “The whole modern world has divided itself into Conservatives and Progressives. The business of Progressives is to go on making mistakes. The business of the Conservatives is to prevent the mistakes from being corrected.”

Substitute “Republicans” for “Conservatives,” and we unfortunately have a not-unfair statement of the GOP record on health care – up until Obamacare.

In this area, the only serious way to prevent future “mistakes” is to correct past ones. This past month, you’ve built up some real legislative momentum for repeal. Now America needs you to provide the same kind of leadership for reform.