



Top 3 Takeaways: Burr-Hatch-Upton Plan to Replace the ACA

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On February 4, 2015, three Republican legislators released a plan to replace the Affordable Care Act (ACA). The Burr-Hatch-Upton plan (BHU) is titled the Patient Choice, Affordability, Responsibility, and Empowerment Act. After reading the legislators' summary of the proposal,¹ NHeLP identified three key takeaways:

1. The BHU actually supports many ACA provisions.

The BHU proposal is predicated on nothing short of full repeal of the ACA. Yet, the proposal actually *reiterates* many components of the ACA. The BHU incrementally adjusts some of these ACA features, but ultimately supports the framework of the ACA by endorsing two of its basic pillars: (1) a large coverage expansion based on tax subsidies, and (2) stronger regulation of insurance markets to curb insurance abuses. Among the long list of retained ACA provisions:

- Coverage expansion through tax subsidization of individual market coverage.
- Cover dependent children up to age 26 (but see below).
- Ban on lifetime limits on insurance coverage.
- Ban on bad-faith rescission of health coverage.
- Guaranteed renewability of coverage.
- Pre-existing conditions exclusion (but see below).
- Rating bands to prevent insurers from overcharging the most costly enrollees (but see below).
- Annual enrollment periods for insurance application and enrollment, including accommodations for life events.
- Transparency in insurance markets through insurance and hospital disclosures to the public.
- Tax on high-value employment insurance to generate revenue and control costs.
- Financing coverage expansion and other policies through \$700 million dollars of savings by improving Medicare.

2. But, there are some critical differences.

While the BHU imitates the ACA framework and adjusts some of the details, the differences are important, and the BHU will lead to **increases in the number of the uninsured** (compared to the

ACA). Most of the differences reduce consumer protections and open the door to future state action further limiting access to care. For example:

- The BHU offers tax credits, but only up to 300% of the poverty level (the ACA offers credits up to 400%).
- The BHU is silent about cost-sharing reductions like the ones the ACA offers.
- The BHU covers individuals below 138% through the tax subsidized market, not Medicaid expansion.
- The BHU implements the requirement to provide dependent coverage up until age 26, but states can opt out of it in the future.
- The BHU's prohibition on pre-existing condition exclusions creates a one-time opportunity to purchase coverage fairly, after which uninsured consumers might never have the protection again.
- The BHU rate band protecting older adults is set at 5-to-1 (the ACA's was 3-to-1), and states have future flexibility to weaken or eliminate it.

The BHU also includes a few proposals that differ from the ACA. For example:

- The BHU repeals the individual mandate (and replaces it with a one-time offer of coverage without pre-existing condition exclusions to incentive enrollment).
- The BHU repeals the employer mandate, though tax credits are only available to smaller employer employees (creating an incentive for large employers to maintain coverage).
- The BHU tax credit is limited to "American citizens."
- The BHU gives states the option to default individuals eligible for tax credits into coverage, and individuals can then opt out of the default plan.
- The BHU promotes interstate insurance markets through "interstate compacts" (the ACA uses multi-state plans).
- The BHU promotes malpractice reform.

3. The BHU proposes an extremely harmful Medicaid spending cap.

Apart from the above insurance market provisions, the BHU proposes radical cuts to the Medicaid program. The BHU sets spending caps ("capped allotments") on federal Medicaid dollars, meaning states would lose federal support after they hit their cap. Interestingly, the BHU applies the caps to spending for children, pregnant women, and adults, and for long term services and supports, but not for acute care services for older adults and persons with disabilities. It is important to note that the BHU formula would not only create state budget shortfalls but would also *increase* those budget gaps every year. And, along with capping federal funding, the BHU would give states flexibility to ignore federal Medicaid standards. In short, the BHU would result in a massive cost-shift to states and ultimately lead to huge Medicaid cuts.

¹ Available at: <http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/114/20150205-PCARE-Act-Plan.pdf>