



# The 2018 Election and the Prospects for Healthcare Policy

Naomi Lopez Bauman

**DIRECTOR OF HEALTHCARE POLICY, THE GOLDWATER INSTITUTE**

**T**he Maldonado family is the kind of Florida family we might imagine when we think about achieving the American dream. As small business owners, the family founded and runs a small but stable computer repair and IT support company.

Unfortunately, they are also part of a

small and growing slice of small business owners and families struggling to maintain health insurance coverage for their own family and the families of their loyal employees.

The uncertainty around the future of healthcare for the Maldonados and countless others is about to become even

more uncertain. While there isn't enough voter discontent currently to force any grand, comprehensive reform, there may be enough voter pressure to bring about targeted, strategic reforms.

Florida finds itself at a precipice in 2018 with regard to healthcare policy. The path forged by policymakers since 2010 (which included a refusal to embrace the Affordable Care Act, commonly known as "Obamacare," and expand Medicaid to able-bodied working-age adults, a desire to move in the direction of expanding market access to services, and an embrace of innovative concepts like Direct Primary Care) is at stake. With the office of the governor, the entire Florida House of Representatives, and more than one-third of the Florida Senate up for election, Floridians will make decisive choices with their votes.

### **Unmet promises**

According to the annual Milliman Medical Index, which measures the total average medical care costs nationally, annual coverage costs now exceed \$28,000 per year per family.<sup>1</sup> This total includes an average employer contribution of \$15,788, an average employee contribution of \$7,674, and an average out-of-pocket contribution of \$4,704 for a typical family of four (two adults and two children) in an employer-provided PPO insurance plan.<sup>2</sup>

While the rate of increase for this coverage has slowed in the past couple of years, more of these cost increases are borne directly by employees and still represent average monthly cost increases of \$100 per month. That these premium increases are outpacing increases in wages is attributed, in part, to a predicted decline in the number

of Americans with employer-based health insurance coverage over the next decade according to the Congressional Budget Office (CBO).<sup>3</sup>

For small business owners like the Maldanados and their employees, Obamacare has not delivered on the promises of healthcare access and affordability. The same holds true for those individuals purchasing individual coverage but who do not qualify for significant income-based subsidies.

According to federal documentation, "The average exchange premium in the 39 States that are using [www.healthcare.gov](http://www.healthcare.gov) in 2017 is more than double the average overall individual market premium recorded in 2013. The Patient Protection and Affordable Care Act (PPACA) has also largely failed to provide meaningful choice or competition between insurers, resulting in one-third of America's counties having only one insurer offering coverage on their applicable government-run exchange in 2017."<sup>4</sup>

### **What comes next?**

While there has been little political will from the White House or Congress to move forward on additional legislative reform attempts, lawmakers may ultimately have little choice in the matter. After campaigning against the ACA for eight years, Congressional Republicans failed to deliver on the almost decade-long promise to either fully repeal or repeal & replace the ACA. With the most recent partial repeal and replace failure in Congress, many state lawmakers, members of the media, and the public are left wondering if the healthcare reform effort is over.

The answer may depend on whether Republicans, who are going into the mid-term elections with few legislative wins on healthcare, begin feeling pressure from their constituents to act. Despite voter enthusiasm from some segments of the population, healthcare remains a second-tier issue for voters on both sides of the aisle.

In other words, voters care about healthcare, but they aren't calling for an overhaul of the healthcare system. According to a recent Kaiser Health Tracking Poll, Republican voters are not currently identifying healthcare as a top election issue:

“Health care is among the top issues that voters want to hear candidates talk about during their congressional campaigns but ranks much lower among Republican voters, including those living in areas where there are competitive House, Senate, and Governor’s races.”<sup>5</sup>

Looking across the aisle, Democrat voters are highly motivated, but healthcare is not currently driving their enthusiasm:

“Democrats have a clear edge when it comes to voter enthusiasm six months out from the 2018 midterm elections. Similar to 2014, no issue – including health care – seems to be a driving force among enthusiastic voters.”<sup>6</sup>

But there may be growing recognition that voters across the political spectrum remain very concerned about healthcare costs.<sup>7</sup> Those lingering worries may be re-ignited in the run-up to the mid-term elections later this year (see Figure 2). That is because the same dramatic, double-digit insurance rate hikes that are revealed every October – about one month before Election Day -- are expected again this year.<sup>8</sup>

### **More uncertainty to come**

Another recent development may further increase voter attention on healthcare – and may create upward pressure on premium rates. In June 2018, the Trump administration announced that it would not defend the ACA against a lawsuit brought by a group of state attorneys general. At issue is the constitutionality of the parts of the law tied to the individual mandate.

In a 2012 Supreme Court ruling, the ACA’s individual mandate (the penalty for not having coverage) was ruled as a tax. But late last year, Congress zeroed out the tax beginning in 2019, making the penalty for not having coverage \$0.

In the legal challenge filed in the United States District Court, Northern District of Texas earlier this year, the plaintiffs representing 20 states maintain that, because there will no longer be a tax, the ACA (or part of the law tethered to the individual mandate) is unconstitutional.<sup>9</sup> While the outcome of this challenge may take months or years to determine, the more immediate effect may be in how insurance premiums are affected.

While many states did have some of the same insurance market rules contained in the ACA that did not allow insurers to charge more for pre-existing conditions or charge higher rates based on age (subject to age rating band limits) or gender, some experts believe that this additional uncertainty going into the 2019 plan year will further destabilize the market.<sup>10</sup> More uncertainty could mean that insurers will re-price their rates (higher).

## A new path forward?

Even though there has been little appetite among policymakers for revisiting the ACA, they may have little choice in the matter. Sen. Bill Cassidy recently quipped that the GOP shouldn't be a 'Don Quixote' on ACA repeal.<sup>11</sup>

His strategy, which is outlined in his recently-released blueprint, will be to pursue smaller, impactful reforms that aim to address healthcare affordability for health insurance and prescription drugs.<sup>12</sup>

The "new approach" to healthcare reform, which is more strategic and incremental than the wholesale ACA repeal, may not appeal to some of the die-hard ACA opponents but it will be required if a proposal has any chance of getting Senate approval and making it to the president's desk.

The Kaiser Health Tracking Poll (Figure 2) shows a plurality of support among Republicans, Democrats, and Independents for candidates who promote bringing down prescription drug costs and reducing the costs of health insurance coverage.<sup>13</sup> While the devil is always in the details, these are goals that can be supported by Senate moderates, as well as conservatives.

In addition to the anticipated rising premiums that will be unveiled in the midst of campaign season, a targeted reform effort may also get a boost from a bottom-up initiative to create a consensus reform plan. A group of more than 30 conservative and free-market policy leaders (including this author and Sal Nuzzo, Vice President of Policy at The James Madison Institute and publisher of this journal) are signatories to an open letter to the American public highlighting shared goals that allow for a

path forward on healthcare reform.<sup>14</sup>

The plan recognizes the need for providing relief to Americans struggling to access and pay for healthcare and coverage, as well as the recognition that states will need far more flexibility in delivering what works for their unique geographies and demographics. More important, this is an effort that builds on broad coalition support from across the country that aims to engage members in continuing the work to deliver on the still unmet promises of healthcare access and affordability.

Regardless of whether health insurance cost increases are significant enough to rattle voters into elevating healthcare when they go to cast their vote, who voters see as most responsible for the state of the healthcare system come November, and what changes, if any, Congress has enacted by the time the midterms arrive, the issue of healthcare access and affordability will return. That is because there are no simple solutions to the problems that affect the system.

## No silver bullets

Florida families like the Maldanados cannot wait on Washington to cure the ills of the healthcare system. State lawmakers in Florida and across the country are already striving for meaningful health care reforms to impact the cost of care in their states. Reforms such as expanding state scope of practice laws, allowing for Direct Primary Care (DPC) arrangements, rescinding Certificate of Need (CON) laws, allowing for telemedicine, and protecting charity care efforts can impact healthcare access and cost of services. Articulated below are several policy concepts that policymakers in Florida will have at their disposal. The question

remains as to whether Floridians will send legislators who embrace market-based solutions to the Capitol to represent them.

**Scope of practice:** Healthcare practitioners should be allowed to practice at the top of their education and training. For example, pharmacists are not allowed to administer vaccinations in some states even though pharmacists are well qualified to undertake this task with minimal risks to the patient. Furthermore, rolling back scope-of-practice laws can help alleviate the shortage of healthcare providers, especially in rural areas.

**Certificate of Need:** Facilities and services should be available on the basis of able and willing providers, not on government-sanctioned boards deciding who should be allowed to serve patients. Rather than restraining costs, Certificate-of-Need laws consistently restrict healthcare access and competition.

**Charity care:** States can also enact Good Samaritan laws that provide legal protection for those offering healthcare services. These protections can be particularly helpful for allowing charity groups to provide large-scale charity operations and for medical personnel wishing to assist in response to natural disasters.

**Direct Primary Care:** Direct Primary Care, or DPC, is an innovative healthcare arrangement that allows patients or their employers to contract with a provider for primary care medical services directly. This allows patients to directly and more immediately access non-emergency care and, under many arrangements, allows them to do so as many times as needed at no additional cost.

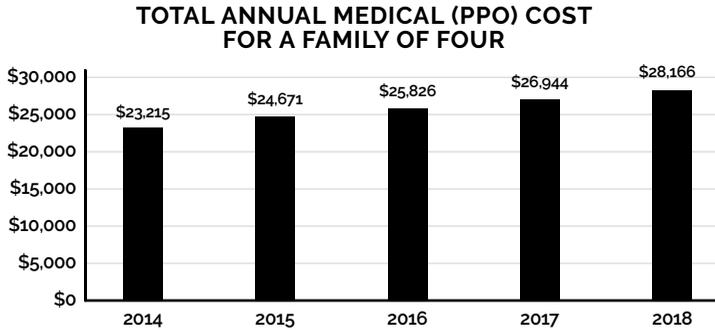
Unlike a typical healthcare arrangement,

DPC operates independently of traditional health insurance. But in some states, decades-old regulations originally designed to govern the health insurance market are being imposed on these arrangements, stifling the potential growth of this new healthcare option. This reform was signed into law by the governor this year and goes into effect on July 1.<sup>15</sup> Expansion of these networks and experimenting with DPC arrangements for specialized populations can further drive both health outcomes and healthcare costs in better directions.

**Telemedicine:** In many states, it is legal for doctors to prescribe treatments through the Internet without ever meeting a patient in person. Unfortunately, there is an increasing push in some states to impose new regulatory burdens on practitioners that have no significant bearing on patient safety. For example, some states have adopted distinct clinical practice rules for these new services that are more onerous than those imposed on traditional providers.

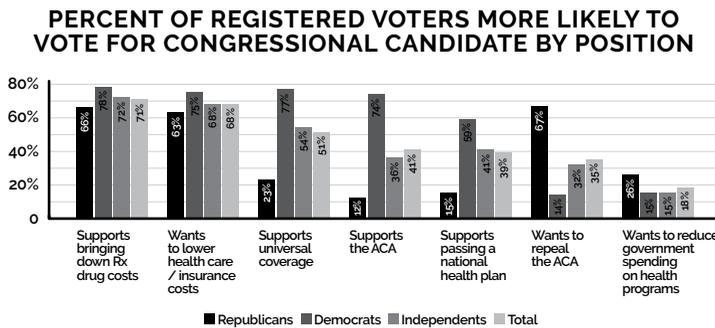
While there is no silver bullet for the challenges facing the American health care system, we do know that the answer to our healthcare woes is not bigger bureaucracies and less accountability to the American people. The answer to our healthcare problems lies in market-based reforms that encourage competition and expand the access to and affordability of care for all consumers in a way that allows families like the Maldanados to best meet their own healthcare needs and preferences – free from top-down Washington rules and edicts. State action alone won't be sufficient, but it provides an important start on the hard work ahead.

Figure 1



Source: Christopher S. Girod, Susan K. Hart, Scott A. Weltz, “2018 Milliman Medical Index (MMI),” May 21, 2018, p. 3 at <http://www.milliman.com/uploadedFiles/insight/Periodicals/mmi/2018-milliman-medical-index.pdf>.

Figure 2



Source: Ashley Kirzinger, Bryan Wu, Cailey Muñana, and Mollyann Brodie, “Kaiser Health Tracking Poll: Preview of the Role of Health Care in the 2018 Midterm Campaigns,” Henry J. Kaiser Family Foundation, May 10, 2018 (conducted April 20-30, 2018) at <https://www.kff.org/health-costs/poll-finding/kaiser-health-tracking-poll-preview-role-of-health-care-2018-midterm-campaigns/>.

- 1 Christopher S. Girod, Susan K. Hart, Scott A. Weltz, “2018 Milliman Medical Index (MMI),” May 21, 2018 at <http://www.milliman.com/uploadedFiles/insight/Periodicals/mmi/2018-milliman-medical-index.pdf>.
- 2 In 2018, out-of-pocket expenses are capped at \$14,700. If a family were to hit their annual deductible, the total annual cost would be more than \$38,000 for the year.
- 3 Congressional Budget Office, “Federal Subsidies for Health Insurance Coverage for People Under Age 65: 2018 to 2018,” May 2018, pp. 3-4 at <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/53826-healthinsurancecoverage.pdf>.
- 4 Executive Office of the President, Executive Order 13813 on October 12, 2017 at <https://www.federalregister.gov/documents/2017/10/17/2017-22677/promoting-healthcare-choice-and-competition-across-the-united-states>.
- 5 Ashley Kirzinger, Bryan Wu, Cailey Muñana, and Mollyann Brodie, “Kaiser Health Tracking Poll: Preview of the Role of Health Care in the 2018 Midterm Campaigns,” Henry J. Kaiser Family Foundation, May 10, 2018 (conducted April 20-30, 2018) at <https://www.kff.org/health-costs/poll-finding/kaiser-health-tracking-poll-preview-role-of-health-care-2018-midterm-campaigns/>.
- 6 Ibid.
- 7 Ibid.
- 8 According to the CBO and JCT, the benchmark ACA plan premiums are expected to increase by 15 percent for plan year 2019. Congressional Budget Office, p. 2.
- 9 [https://www.texasattorneygeneral.gov/files/epress/Texas\\_Wisconsin\\_et\\_al\\_v.\\_U.S.\\_et\\_al\\_-\\_ACA\\_Complaint\\_\(02-26-18\).pdf](https://www.texasattorneygeneral.gov/files/epress/Texas_Wisconsin_et_al_v._U.S._et_al_-_ACA_Complaint_(02-26-18).pdf).
- 10 Stephanie Armour, “Justice Department Won’t Defend Affordable Care Act in Lawsuit Brought by States,” Wall Street Journal, June 7, 2018 at <https://www.wsj.com/articles/justice-department-wont-defend-affordable-care-act-in-lawsuit-brought-by-states-1528419363>.
- 11 Politico’s Pulse Check, Episode 104: Sen. Bill Cassidy, June 6, 2018 at <https://simplecast.com/s/40ae849e>.
- 12 Sen. Bill Cassidy, M.D. (R-LA), “Ideas to Make Healthcare Affordable Again,” May 29, 2018 at <https://www.cassidy.senate.gov/imo/media/doc/Dr%20Bill%20Cassidy%20-%20Make%20Health%20Care%20Affordable%20Again.pdf>.
- 13 Kirzinger, Wu, Muñana, and Brodie, Figure 11.
- 14 Grace-Marie Turner and Marie Fishpaw, “Here’s the Path Forward for Health Reform in 2018,” The Daily Signal, April 18, 2018 at <http://galen.org/2018/the-path-forward-for-health-reform-in-2018/>.
- 15 HB 37: Direct Primary Care Agreements at <https://www.flsenate.gov/Session/Bill/2018/37>.