



September 13, 2017

The Honorable Lindsey Graham
United States Senate
Washington, DC 20510

The Honorable Bill Cassidy
United States Senate
Washington, DC 20510

Dear Senators Graham and Cassidy:

On behalf of the American College of Physicians (ACP), I am writing to share our opposition to your proposal to repeal and replace the Affordable Care Act (ACA) with legislation that would provide funding to states to develop their own plans to provide health care coverage to their residents. We believe that the substantial cuts to Medicaid authorized by this legislation would cause a significant increase in the number of uninsured patients and that it would undermine essential benefits provided for patients insured under current law. We urge you to set aside this legislation and instead allow the Senate to consider any improvements to the ACA, through a more deliberative process of regular order, in which hearings are held to solicit the advice of health care experts and stakeholders, with any such improvements considered in a bipartisan manner in which both parties may offer amendments.

The American College of Physicians is the largest medical specialty organization and the second largest physician group in the United States. ACP members include 152,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness.

ACP has developed criteria, [10 key questions](#), that should be asked to ensure that any legislation that would alter the coverage and consumer protections under current law *first, do no harm* to patients and ultimately result in better coverage and access to care for essential medical services. We remain concerned the Graham-Cassidy legislation falls well short of meeting the criteria that we have established to ensure that the health of patients is improved rather than harmed by changes to current law.

Medicaid

The Graham-Cassidy legislation would eliminate or weaken coverage for individuals insured through Medicaid by eliminating the enhanced federal match provided under the ACA for states that opt to expand the Medicaid program starting on January 1, 2020. It would allow states to re-determine Medicaid eligibility for individuals eligible every six months or more frequently for individuals eligible for Medicaid through the ACA expansion or the state option

for coverage for individuals with income that exceeds 133 percent of the federal poverty level. This change would result in a substantial number of citizens who reside in states that expanded their Medicaid population that would lose coverage under this legislation, with no assurance that they would be covered under a state plan or in the marketplace. It would put at risk the gains that we have made under the ACA in ensuring that low income individuals would have coverage and a regular source of care to maintain their well-being or treat illness when they are sick.

It would also significantly decrease federal funding for the Medicaid program by converting the current federal financing formula to a per capita cap model. The proposed per capita cap on federal funding would be devastating to coverage and access to care for many of the 72 million people currently enrolled. Because most states are required by law to balance their budgets, a reduction in and/or a cap on federal matching funds will necessarily require them to greatly reduce benefits and eligibility and/or impose higher cost-sharing for Medicaid enrollees, most of whom cannot afford to pay more out of pocket—or alternatively and concurrently, reduce payments to physicians and hospitals (including rural hospitals that may be forced to close), enact harmful cuts to other state programs or raise taxes.

The Graham-Cassidy proposal would also allow states the option to participate in a Medicaid Flexibility block grant program beginning in Fiscal Year 2020. Under the Medicaid Flexibility Program, states would receive block grant funding instead of per capita cap funding for non-elderly, non-disabled, and non-expansion adults. We remain opposed to this block grant funding structure as we believe it would be devastating to coverage and access to care especially under this legislation as overall federal funding for Medicaid would be reduced from current law. Under block grants, because states do not get any additional payment per enrollee, strong incentives would be created for states to cut back on eligibility, resulting in millions of vulnerable patients potentially losing coverage. Block grants will not allow for increases in the federal contribution should states encounter new costs, such as devastating hurricanes, flooding or tornadoes that may injure their residents or destroy health care facilities. Under either block grants or per capita spending limits, states would be forced to cut off enrollment, slash benefits, or curb provider reimbursement rates.

The Graham-Cassidy legislation would also permit states, effective October 1, 2017, to require non-disabled, non-elderly, non-pregnant individuals to satisfy a work requirement as a condition for the receipt of Medicaid medical assistance. We oppose this work requirement because Medicaid is not a cash assistance or job training program; it is a health insurance program and eligibility should not be contingent on whether or not an individual is employed or looking for work. While an estimated 80 percent of Medicaid enrollees are working, or are in working families, there are some who are unable to be employed, because they have behavioral and mental health conditions, suffer from substance use disorders, are care-givers for family members, do not have the skills required to fill available positions, or there simply are no suitable jobs available to them. Skills—or interview-training initiatives, if implemented for the Medicaid population—should be voluntary, not mandatory. Our Ethics, Professionalism and Human Rights Committee has stated that it is contrary to the medical profession's commitment

to patient advocacy to accept punitive measures, such as work requirements, that would deny access to coverage for people who need it.

Medicaid is an essential part of the health care safety net. Studies show that reductions in Medicaid eligibility and benefits will result in many patients having to forgo needed care, or seek care in costly emergency settings and potentially have more serious and advanced illnesses resulting in poorer outcomes and even preventable deaths. As an organization representing physicians, ACP cannot support any proposals that would put the health of the patients our members treat at risk. We believe though that improvements can and should be made in Medicaid, including more options for state innovation, without putting the health of millions of patients at risk.

Premium Tax Credits

This proposal would repeal the ACA premium tax credits as of January 1, 2020 and allocate some of the funds that were used for that purpose on a new State-Based Health Care Grant Program. States would be able to use payments allocated from the program for one or more of the following activities:

- To establish or maintain a program or mechanism to help high-risk individuals purchase health benefits coverage, including by reducing premiums for such individuals, who have or are projected to have high health care utilization (as measured by cost) and who do not have access to employer-sponsored insurance;
- To establish or maintain a program to enter into arrangements with health insurance issuers to assist in the purchase of health benefits coverage by stabilizing premiums and promoting market participation and plan choice in the individual market;
- To provide payments for health care providers for the provision of services specified by the CMS Administrator;
- To provide health insurance coverage by funding assistance to reduce out-of-pocket costs (such as copayments, coinsurance, and deductibles) for individuals with individual health insurance coverage.

We remain concerned that this formula provides less funding than currently in place for individuals to purchase health insurance in the individual market and that states could use these funds for a broad range of health care purposes, not just coverage, with essentially no guardrails or standards to ensure affordable meaningful coverage. Rather than grant states large sums of funding to use on the options listed in this legislation that offer no assurance of increased access to coverage, we wish to work with you to enact meaningful reforms to strengthen the individual market and build on the gains in health care coverage ensured by the ACA. ACP has offered [a forward looking document](#) that provides our prescription for meaningful reforms to accomplish these goals.

Waivers for State Innovation and Essential Health Benefits

The Graham-Cassidy legislation would allow states to obtain Section 1332 waivers for state innovation plans that bypass guidelines required by current law for tax credits or cost sharing reduction payments. It would grant states automatic approval of Section 1332 waivers 45 days after submission by a state. There is no mandate in this legislation that prescribes that a state must provide an essential benefit package if it is granted a waiver under this bill. While we do not oppose such policies to encourage state innovation and bring more choice and competition into insurance markets, we remain opposed to the guaranteed approval of these waivers granted by this legislation as it may weaken consumer protections such as essential health benefits guaranteed under current law.

We believe that Congress should consider additional policies to encourage state innovation and bring more choice and competition into insurance markets **without rolling back current coverage, benefits and other consumer protections guaranteed by the ACA and other federal laws and regulations.** Provided that coverage and benefits available in a particular state would be no less than under current law, Congress should encourage the use of existing section 1332 waiver authority to allow states to adopt their own innovative programs to ensure coverage and access. Section 1332 waivers offer states the opportunity to test innovative ways to expand insurance coverage while ensuring that patients have access to comprehensive insurance options. However, ACP believes that Congress should *not* weaken or eliminate the current-law guardrails that ensure patients have access to comprehensive essential health benefits and are protected from excessive co-payments and deductibles. The waiving of essential benefits would undermine the assurance that insurance policies would cover essential health care services such as physician and hospital benefits, maternity care and contraception, mental health and substance use disorder treatments, preventive services, and prescription drugs.

Unfortunately, if existing requirements were removed (e.g. that waivers provide comprehensive, affordable coverage that covers a comparable number of people as would be covered under current law), a backdoor would emerge for insurers to offer less generous coverage to fewer people and to make coverage unaffordable for patients with preexisting conditions. As long as a state's waiver program meets the ACA's standard of comprehensiveness at the same cost and level of enrollment, it can test a more market-based approach, or make other, more targeted revisions to continue existing state initiatives.

Elimination of the Individual and Employer Mandate

The Graham-Cassidy legislation eliminates the mandate that requires individuals to pay a penalty if they do not acquire health insurance or employers with 50 or more full time workers to pay a fine if they do not provide health insurance for their employees. We are concerned that the elimination of this mandate would allow individuals to wait until they are ill to purchase insurance and that insurers would need to increase premiums to compensate for the resulting sicker risk pool and the destabilization of the insurance market. Maintaining effective adherence to the mandate helps balance the market's risk pool, attract healthier employees, and avoid dramatic premium rate increases. In addition, Congress should not enact any

legislation to weaken or repeal the individual insurance requirement absent an alternative that will be equally or more effective.

Conclusion

In July of this year, the Senate failed to garner the necessary votes in the process of moving forward with legislation to repeal and replace the Affordable Care Act in a budget reconciliation bill. Rather than continue with an effort to repeal and replace the Affordable Care Act, we urge you to set aside this legislation and instead, focus on bipartisan efforts to stabilize the health insurance marketplaces, create competition among insurers, and lower the costs of health care for all Americans. We also urge that any legislation to amend current law should be developed through regular order, with hearings, debate, and committee mark-ups, and with sufficient time for independent analysis by the Congressional Budget Office (CBO), independent experts, and the clinicians and patients directly affected by the proposed changes. We stand ready to work with you should our expertise be of help. Should you have any questions, please do not hesitate to contact Brian Buckley at bbuckley@acponline.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Ende", with a long, sweeping horizontal stroke extending to the right.

Jack Ende, MD, MACP
President