MEMO TO THE TEXAS CONGRESSIONAL DELEGATION

Subject: Obamacare Repeal and Replace Legislation
Date: May 1, 2017

As you consider the latest version of the American Health Care Act (AHCA) being discussed ostensibly to repeal Obamacare and replace it with better policy, the following information may help to frame the analysis of its worthiness to accomplish the primary objective of increasing access for all Americans to high quality, affordable healthcare.

Measuring against the Right Approach(es)

In order to ensure Americans can access high quality care, we believe it is fundamental to have a full, 100% repeal of Obamacare at a date certain in the future, coupled with several additional federal reforms to free up markets and empower states to regulate appropriately. Some of these reforms include block granting Medicaid to the states, equalizing tax treatment to encourage portability and access to insurance, and allowing competition across state lines.

In that environment, decision-making would largely be returned to the states for innovation and patient empowerment. States would then be free to develop their own mechanisms for lowering costs and improving quality of care and able to better tailor reforms to meet the specific healthcare needs of their respective populations.

Executive Summary of Latest Version of AHCA

The draft MacArthur-Meadows amendment would move the AHCA in a positive direction by permitting states to seek waivers from some Obamacare regulations. If those waivers were to be exercised, granted and maintained – this would be a welcomed step in the right direction. It is generally good for states to have the ability to opt out of federal regulation.

But to be clear, this language leaves Obamacare's onerous cost-driving regulations and mandates as the de facto law of the land. Giving states the option to only partially withdraw from *some* of Obamacare's regulations does not constitute repeal (as pointed out by Rep. Meadows) and will likely not go far enough to reverse rising premiums and deductibles. Furthermore, this approach unfortunately will not create the maximum competition and freedom in the markets needed to resuscitate America's badly battered healthcare system.

With the proposed modifications to the AHCA still maintaining Obamacare's regulatory architecture, it is unclear how many states would even apply for a waiver that only partially extricates states from a couple of Obamacare's regulations. To date, *no governor* has stated that he or she will ask for the waiver – but even as some no doubt do, it will only happen in the face of extraordinary public scrutiny and pressure.

This leaves in place a bill that perpetuates significant federal control over supply and demand of healthcare which will likely continue to result in higher premiums and deductibles for individuals and families. Its policy shortcomings are significant despite good faith efforts of those who worked on the MacArthur-Meadows amendment.

More Detailed Analysis:

1. **Does the bill repeal Obamacare?**
    - In a word, no. *It is an optional, partial repeal*. Its default position is to leave in place almost the entire regulatory framework of Obamacare, but then require Governors/States to seek permission from the federal government to waive out of a handful, but not all, of the cost-driving regulations.

2. **What has changed between the original GOP proposal and the new modified "waiver" proposal?**
    - *In the positive*:
        ⇒ There are now waivers for Governors to seek to lower premiums by extracting their states from the most expensive regulations regarding the cost of insurance for individuals with pre-existing conditions and the so-called federal essential health benefits. It is unclear whether these waivers will be sought and if so, if they will be effective (see below).
    - *In the negative*:
        ⇒ The so-called essential health benefits which were removed from Obamacare in the first GOP proposal are now reinstated at the federal level, but are waivable should states seek to withdraw from them.

3. **What is repealed from Obamacare?**
    - *The individual mandate and the employer mandate are fully repealed.*
        ⇒ This has the benefit of freeing up individuals and employers to make their own choices on coverage, which is good for the economy and for employees (to be employed). But it also has the unfortunate effect of leaving the system financially unsound because Obamacare's regulatory structure is being left in place at the federal level.
    - *The Medicaid expansion is modified, in part, but with important caveats.*
        ⇒ The vast majority of new Obamacare "coverage" has come as a result of able-bodied Americans being added to Medicaid. While the bill ends the enhanced federal match for the expansion after three years, it allows all states – both those that expanded, and those that have not done so – to cover able-bodied adults within Medicaid in perpetuity, albeit at the traditional Medicaid match rate.

⇒ Keeping the enhanced federal match rate for expansion states in place until 2020 maintains an inequity between expansion and non-expansion states and provides a potential rush-to-enrollment scenario before the December 31, 2019 deadline.

⇒ The addition of mandatory per capita caps and optional block grants is an improvement to the policy, however the growth rate for the block grant is lower than the growth rate for the per capita cap. This means that there is little incentive for states to adopt the block grant approach.

⇒ The addition of work requirements is also a welcomed change. But if states have not expanded to able-bodied adults, then they're largely moot. A better solution is to end the expansion to able-bodied adults outright and then implement a work requirement.

- *[Certain] Obamacare Taxes*
  - ⇒ The AHCA repeals almost all the Obamacare taxes and in the latest iteration, rightfully moves up the repeal date by one year to take effect on January 1, 2018.
  - ⇒ The Cadillac Tax is not fully repealed, but rather postponed until 2026.
  - ⇒ The Economic Substance Tax is also *not* repealed.
- *Existing Subsidies (but replaced with new subsidies)*
  - ⇒ The Obamacare subsidies are repealed, but are replaced with different and arguably more far-reaching subsidies that don't completely phase out until $115,000 for an individual and $290,000 for a household.

4. What Remains the Same as Obamacare?

- Medicaid expansion largely remains in place for the next three years with non-expansion states permanently allowed to expand the program at normal federal match rates.
- New and Expanded Subsidies
  - ⇒ The GOP plan increases eligibility for subsidies with the implementation of the new refundable tax credit. As structured, the AHCA phases out eligibility for the credit for individuals at $115,000 and families at $290,000.
  - ⇒ This approach has shifted subsidization up the income ladder, resulting in a broadening of the base from what was first implemented under Obamacare. Increasing the range of Americans who receive federal subsidies will only strengthen Washington's power over the healthcare system.
- Obamacare's regulatory framework remains fully in place as the default setting.

5. Will the Waivers be exercised? Will they work?

- The waivers require states to approach the federal government to allow them to opt out of three of Obamacare's regulations—thus flipping proper federalism on its head. Instead of just outright repealing Obamacare's regulations and mandates, this requires Governors to carry the load of messaging the fundamental need to free up markets to drive down premiums. It is worth noting that to date, not a single governor has publicly championed the waiver.
- The modified AHCA would only provide limited relief and is not guaranteed to lower premiums or deductibles.
- Despite an opt out of pricing under "community rating," states will have to operate within the mandated framework regarding high risk pools (i.e. whatever they're told to do through federal law).
- The language in the amendment appears to allow the HHS Secretary to deny states even a limited opt out if they reapply for the waiver in the future.
- There is no guarantee that a future Governor in a state that has been granted a waiver will not then reject the waiver and re-adopt Obamacare in full, since that is the default setting at the federal level.
- The perverse incentives of the waiver mean that Congress is expecting states to do what Washington explicitly considered, yet explicitly refused to do.
- The waivers, even if sought, may well not be effective if not sought by sufficient numbers of Governors/States.
    - ⇒ The idea of removing these regulations is to free up the market to drive down costs, yet the AHCA almost certainly will be adopted by a smaller minority of states/Governors and thus leave a massive patchwork of regulations to further complicate and distort costs.

6. Will the Patient and State Stability Fund be effective?

- The creation of the Patient and State Stability Fund is especially troubling. With the addition of changes, this fund now sits at $130 billion and is little more than bailout money to insurers to coerce them to remain in highly regulated markets due to AHCA's retention of Obamacare regulations/mandates.
- Congress has spent years fighting the previous administration on reinsurance and risk corridors. Following the implementation of Obamacare in the fall of 2013, insurers have shown they are not shy about coming to Congress and asking for more money to maintain their solvency for participating in the exchanges. The Patient and State Stability Fund exacerbates this problem.
- Because the Obamacare mandates and regulations remain largely intact, the concern is that this fund is an open-ended spigot for insurers akin to the "doc fix" wherein Congress will be required to provide more and more funds every year to ensure stability within the maintained Obamacare architecture. This is one of many features within the AHCA that calls in to question the alleged savings cited by the Congressional Budget Office.

- There are also concerns about the $15 billion Schweikert-Palmer amendment for invisible high-risk pools. While the intention to mirror reforms in Maine is laudable, the amendment unfortunately in no way resembles the invisible high-risk pool model that proponents claim it does. The language is vague and has no clear direction or specificity for how it would work other than allocating another $15 billion within the already troubled Patient and State Stability Fund.
- Furthermore, there is significant federalism concerns for why Washington has to dangle $15 billion in front of states to adopt Maine's reforms when they could already do so at the state level. The easiest way to replicate Maine's approach is to repeal Obamacare's regulations and mandates and return decision-making for dealing with preexisting conditions to state capitals.

7. **Could states offer regulations of their choosing if Obamacare is just fully repealed?**
    - Yes. But instead, the default will be Obamacare's federal regulation.
    - Some Congressional members have said they want their home states to be able to maintain the existing federal regulations. However, the refusal to fully repeal Obamacare's mandates and regulations at the federal level belies that desire by preventing states from proactively making that decision.

Conclusion:

The American Health Care Act has undergone several revisions since its introduction in March. While some of the intervening changes are welcomed and have moved the legislation in a positive direction, the simple fact is that the underlying bill does not repeal Obamacare's cost-driving regulations and mandates, maintains far too much of Obamacare's flawed policies, strengthens Washington's control over the supply and demand of healthcare, and will not do enough to lower premiums and deductibles for individuals and families across Texas and the nation writ large.

This is despite good faith efforts by some to improve the bill.

Congress should have taken the opportunity back in March to start over and reset the debate around the three key principles originally outlined by the Texas Public Policy Foundation:

1. Fully repealing Obamacare.
2. Preventing Washington from making key healthcare decisions for people.
3. Respecting the role of the states.

It is not too late for Congress to get this right.

Side-by-Side Summary Comparison of the Legislation

	Obamacare	GOP Plan	GOP "Waiver" Plan
Individual Mandate	Yes	No	No
-Continuous Coverage Penalty	Yes	Yes	Yes – But Waivable*
Employer Mandate	Yes	No	No
Subsidies	Yes	Yes	Yes
	Up to $47,550 per individual (400% FPL)	Up to $115,000 per individual	Up to $115,000 per individual
	Up to $97,200 per household (400% FPL)	Up to $290,000 per household	Up to $290,000 per household
Medicaid			
- Expansion	Expanded to 138% FPL	Expansion continues in perpetuity, but enhanced match rate phased out after 3 years	Expansion continues in perpetuity, but enhanced match rate phased out after 3 years
- Reform	No significant reform	Per Capita Cap Reform Optional Block Grant	Per Capita Cap Reform Optional Block Grant
Regulations			
- Essential Health Benefits (Mandatory coverages such as maternity, mental health, x, y, z)	Yes	No	Yes – but Waivable *
- Guaranteed Issue (for Pre-Existing)	Required	Required	Required
- Community Rating (Able to Set Pricing based on age/health/other factors)	No / Fixed except age rating (3 to 1 ratio)	No / Fixed except age rating (5 to 1 ratio)	No / Fixed except age rating (5 to 1 ratio) – but also waivable
Verification of Residential Status	Fails to Restrict Illegal Immigrants from Access to Obamacare	Fails to Restrict Illegal Immigrants from Access to AHCA-Care	Fails to Restrict Illegal Immigrants from Access to AHCA-Care
Insurance Company Subsidies	Yes - $20-30 billion	Yes – up to $100 billion	Yes – up to $130 billion
Taxes	Yes	Two remaining	Two remaining