



# PATIENT FREEDOM ACT

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*Distributed by Sen. Bill Cassidy for the 115<sup>th</sup> Congress*

## Title 1—Health Reform

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### Subtitle A—Ending Obamacare’s “One Size Fits All” approach to health care by freeing states to choose better paths to expand access, empower patients, reduce costs, and protect consumers.

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*Sec. 101. Ends the ACA’s “One Size Fits All” approach – Repeals Title I of ACA, including the Individual and Employers mandates, as default option for states.*

*Maintains essential consumer protections – Protects individuals with preexisting conditions, prohibits annual or lifetime caps, maintains guaranteed issue and guaranteed renewability, prevents discrimination, maintains coverage for mental health and substance abuse disorders, and allows adult children to remain on their parent’s health insurance plan to age 26.*

*Sec. 102. Lets states choose the best path forward – States may:*

- 1- Adopt a market-based health insurance system (described in section 103 of the PFA) using federally funded Roth Health Savings Accounts.
- 2- Design it’s own health insurance system without federal funding.
- 3- Opt to reinstate Title I to recreate status quo.

States which do not chose an option within one year of enactment are assumed to have elected Option 2. States may change their election at any time.

*Sec. 103. The State Alternative – Allows states to adopt a market-based health insurance system under which Roth HSAs will be created for residents enrolled in qualified health plans.*

- Roth HSAs will be funded through advanceable, refundable federal tax credits.
- Enrollees may receive federal funding for new Roth HSAs if they are not eligible for coverage under Medicare, and are not enrolled in Medicaid, CHIP, TRICARE, FEHB or programs providing veterans’ health benefits.
- States may allow the federal government to administer this system or administer it themselves. States that administer it themselves will receive 2 percent of amounts deposited annually for enrollees in Roth HSAs for population health initiatives.
- States may include Medicaid expansion population in this market-based alternative.

- States electing Option 2 must adopt rules protecting consumers from excessive out-of-network charges for emergency services.

*Sec. 104. Computation of the Individual Tax Credit for Health Insurance–*

- Directs the Secretary of HHS to adopt a formula to be used by the federal government and by states for advanceable, refundable tax credits deposited monthly into Roth HSAs established for enrollees. Tax credits shall be adjusted for an enrollee’s age, income, and geographic location.
- On average, the amount of the tax credits shall equal 95 percent of the total projected ACA premium tax credits and cost-sharing subsidies received in the state, divided by the number of Roth HSA enrollees in the state. In states that did not expand Medicaid, the total available for the Roth HSA tax credits will be increased to reflect federal expenditures that would have been made if the state had expanded Medicaid.
- Allows “patient-grant” electing states to increase tax credits to match amounts enrollees would have received if their current ACA coverage had continued.
- Allows low-income enrollees with employer-sponsored coverage to receive partial tax credits, adjusted by the value of the tax benefit to the enrollee of the employer’s contribution.
- Phases-out the Roth HSA tax credits beginning at \$90,000 for single enrollees (\$150,000 for married couples).
- Requires that federal expenditures for the market-based health insurance system under Option 2 be budget-neutral relative to the ACA.

*Sec. 105. Improving Access to Health Insurance Coverage–*

- Allow states to use the infrastructure of ACA state or federal exchanges, or to create new marketplace portals, to help residents shop for health plans.
- Allows states to auto-enroll uninsured residents in Roth HSA + HDHP plans, so long as residents who choose to opt-out may easily do so.
- To limit volatility in health insurance premiums, states may implement risk corridor, reinsurance, or other risk mitigation mechanisms without using federal funds. Any risk mechanisms shall be specific to the actual health status of enrollees in the market.

*Sec. 106. Returning regulation of health insurance markets to the states–*

- Provides states with the flexibility they need to manage their own health insurance markets.

*Sec. 107. Protecting Patients–*

- Requires states to have uniform annual and clear special enrollment periods, including an initial open enrollment period.
- Requires states to provide a standard health plan that consists of a HDHP and a drug benefit for a Tier 1 pharmacy benefit. This standard health plan must meet network adequacy requirements consistent with HHS guidelines, and must cover childhood immunizations recommended by ACIP/CDC, without cost sharing.
- Allows states to enroll uninsured residents in the standard health plan, but must provide a simple method for enrollees to opt out of this default coverage.
- Individuals who fail to maintain continuous coverage after the initial open enrollment period face a late enrollment penalty and medical underwriting when they enroll in any health plan other than the state’s standard health plan.
  - The late enrollment penalty is modeled after the Medicare Part D late enrollment penalty. It will be paid for two years and will go into the federal treasury.
  - The medical underwriting period shall be for as long as the individual was uninsured, up to 18 months.
- Uninsured individuals who want coverage may enroll in the state’s standard plan at any time, without medical underwriting or a late enrollment penalty.
- Enrollees may change plans without medical underwriting during annual open enrollment periods.

*Sec. 111. Roth HSA assets and Medicaid eligibility–*

- Roth HSA assets shall be excluded when determining Medicaid eligibility, other than for long-term care services.

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## **Subtitle C – Provider Price Transparency**

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*Sec. 121. Ensuring access to emergency services without excessive charges for out of network services–*

- Protects individuals from excessive out of network charges for emergency services by limiting the price of those services to the lesser of the cash price established pursuant to section 121, or 85 percent of the usual, customary, and reasonable charge for such services set by the state department of insurance.
- The cost of drugs provided by out-of-network hospitals shall not exceed the lesser of twice the hospital’s acquisition cost, or the acquisition cost plus \$250.
- Medical providers must post prices for services in a manner that makes it easy for consumers to compare prices charged by different providers.

## Title 2—Reform of Health Care Related Tax Provisions

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### Subtitle A – Health Savings Accounts

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#### *Sec. 201. Creation of Roth Health Savings Accounts—*

- In addition to federally funded credits, approximately \$5,000 geographically adjusted per insured individual may be contributed each year to enrollee Roth HSAs. \$1,000 more may be contributed annually for each individual age 55 or older.
- Roth HSA contributions are not deductible, but balances grow tax-free.

#### *Sec. 202. Roth HSA funds can be used, tax free, to pay for medical care not otherwise paid by insurance, including –*

- Health insurance premiums
- Out-of-pocket expenses such as deductibles and co-pays.
- Long-term care insurance.
- Direct Primary care (which shall not be regulated as insurance).
- Roth HSA funds used for non-qualified purchases are included in income and are subject to a 10 percent penalty (which does not apply to individuals reaching age 65 or who die or become disabled).
- Funds may be rolled over tax free from an individual's Roth HSA to an account beneficiary's Roth HSA.
- Tax-deductible HSA contributions are phased out.

### Subtitle B – Health Care Tax Credit

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#### *Sec. 211. Limited Application of ACA Health Premium Credit—*

- States that continue the ACA must ensure that individuals receiving premium tax credits are qualified residents.
- Sets a budget neutral rule to align federal funding provided to states that continue the ACA to federal funding provided to states that opt to implement the market based state alternative.

#### *Sec. 212. Creation of a New Roth HSA Credit—*

- Creates the new Roth HSA tax credit and sets rules for reconciling excess advance payments.
- Sets an effective date of January 1, 2018.