

# REPORT OF THE BOARD OF TRUSTEES

B of T Report 10-I-22

Subject: Redefining AMA’s Position on ACA and Healthcare Reform

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1 At the 2013 Annual Meeting of the House of Delegates (HOD), the HOD adopted Policy  
2 D-165.938, “Redefining AMA’s Position on ACA and Healthcare Reform,” which calls on our  
3 American Medical Association (AMA) to “develop a policy statement clearly outlining this  
4 organization’s policies” on several specific issues related to the Affordable Care Act (ACA) as well  
5 as repealing the SGR and the Independent Payment Advisory Board (IPAB). The adopted policy  
6 also calls for our AMA to report back at each meeting of the HOD. Board of Trustees Report  
7 6-I-13, “Redefining AMA’s Position on ACA and Healthcare Reform,” accomplished the original  
8 intent of the policy. This report serves as an update on the issues and related developments  
9 occurring since the most recent meeting of the HOD.

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## 11 IMPROVING THE AFFORDABLE CARE ACT

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13 Our AMA continues to engage policymakers and advocate for meaningful, affordable health care  
14 for all Americans to improve the health of our nation. Our AMA remains committed to the goal of  
15 universal coverage, which includes protecting coverage for the 20 million Americans who acquired  
16 it through the ACA. Our AMA has been working to fix the current system by advancing solutions  
17 that make coverage more affordable and expanding the system’s reach to Americans who fall  
18 within its gaps. Our AMA also remains committed to improving health care access so that patients  
19 receive timely, high-quality care, preventive services, medications, and other necessary treatments.  
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22 Our AMA continues to advocate for policies that would allow patients and physicians to be able to  
23 choose from a range of public and private coverage options with the goal of providing coverage to  
24 all Americans. Specifically, our AMA has been working with Congress, the Administration, and  
25 states to advance our plan to cover the uninsured and improve affordability as included in the  
26 “2022 and Beyond: AMA’s Plan to Cover the Uninsured.” The COVID-19 pandemic initially led  
27 to many people losing their employer-based health insurance. This only increased the need for  
28 significant improvements to the Affordable Care Act. Recent data indicate that the uninsured rate  
29 has decreased during the COVID-19 pandemic, due to the temporary ACA improvements included  
30 in the American Rescue Plan Act, continuous Medicaid enrollment, state Medicaid expansions, and  
31 the 2021 special enrollment period for ACA marketplaces.

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33 We also continue to examine the pros and cons of a broad array of approaches to achieve universal  
34 coverage as the policy debate evolves.

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36 Our AMA has been advocating for the following policy provisions:

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### 38 Cover Uninsured Eligible for ACA’s Premium Tax Credits

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- Our AMA advocates for increasing the generosity of premium tax credits to improve premium  
40 affordability and incentivize tax credit eligible individuals to get covered. Currently, eligible

1 individuals and families with incomes between 100 and 400 percent federal poverty level  
2 (FPL) (133 and 400 percent in Medicaid expansion states) are being provided with refundable  
3 and advanceable premium tax credits to purchase coverage on health insurance exchanges.

- 4 • Our AMA has been advocating for enhanced premium tax credits to young adults. In order to  
5 improve insurance take-up rates among young adults and help balance the individual health  
6 insurance market risk pool, young adults ages 19 to 30 who are eligible for advance premium  
7 tax credits could be provided with “enhanced” premium tax credits—such as an additional \$50  
8 per month—while maintaining the current premium tax credit structure which is inversely  
9 related to income, as well as the current 3:1 age rating ratio.
- 10 • Our AMA also is advocating for an expansion of the eligibility for and increasing the size of  
11 cost-sharing reductions. Currently, individuals and families with incomes between 100 and 250  
12 percent FPL (between 133 and 250 percent FPL in Medicaid expansion states) also qualify for  
13 cost-sharing subsidies if they select a silver plan, which leads to lower deductibles, out-of-  
14 pocket maximums, copayments, and other cost-sharing amounts. Extending eligibility for cost-  
15 sharing reductions beyond 250 percent FPL, and increasing the size of cost-sharing reductions,  
16 would lessen the cost-sharing burdens many individuals face, which impact their ability to  
17 access and afford the care they need.

#### 18 19 Cover Uninsured Eligible for Medicaid or Children’s Health Insurance Program

20  
21 Before the COVID-19 pandemic, in 2018, 6.7 million of the nonelderly uninsured were eligible for  
22 Medicaid or the Children’s Health Insurance Program (CHIP). Reasons for this population  
23 remaining uninsured include lack of awareness of eligibility or assistance in enrollment.

- 24  
25 • Our AMA has been advocating for increasing and improving Medicaid/CHIP outreach and  
26 enrollment, including auto enrollment.
- 27 • Our AMA has been opposing efforts to establish Medicaid work requirements. The AMA  
28 believes that Medicaid work requirements would negatively affect access to care and lead to  
29 significant negative consequences for individuals’ health and well-being.

#### 30 31 Make Coverage More Affordable for People Not Eligible for ACA’s Premium Tax Credits

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33 Before the COVID-19 pandemic, in 2018, 5.7 million of the nonelderly uninsured were ineligible  
34 for financial assistance under the ACA, either due to their income, or because they have an offer of  
35 “affordable” employer-sponsored health insurance coverage. Without the assistance provided by  
36 ACA’s premium tax credits, this population can continue to face unaffordable premiums and  
37 remain uninsured.

- 38  
39 • Our AMA advocates for eliminating the subsidy “cliff,” thereby expanding eligibility for  
40 premium tax credits beyond 400 percent FPL.
- 41 • Our AMA has been advocating for the establishment of a permanent federal reinsurance  
42 program, and the use of Section 1332 waivers for state reinsurance programs. Reinsurance  
43 plays a role in stabilizing premiums by reducing the incentive for insurers to charge higher  
44 premiums across the board in anticipation of higher-risk people enrolling in coverage. Section  
45 1332 waivers have also been approved to provide funding for state reinsurance programs.
- 46 • Our AMA also is advocating for lowering the threshold that determines whether an employee’s  
47 premium contribution is “affordable,” allowing more employees to become eligible for  
48 premium tax credits to purchase marketplace coverage.
- 49 • Our AMA has been strongly advocating for the Internal Revenue Service (IRS) proposed  
50 regulation on April 7, 2022 that would fix the so-called “family glitch” under the ACA,

1       whereby families of workers remain ineligible for subsidized ACA marketplace coverage even  
2       though they face unaffordable premiums for health insurance coverage offered through  
3       employers. The proposed regulation would fix the family glitch by extending eligibility for  
4       ACA financial assistance to only the family members of workers who are not offered  
5       affordable job-based family coverage. Our AMA is urging the Biden Administration to finalize  
6       the proposed rule as soon as possible.

#### 7 8       EXPAND MEDICAID TO COVER MORE PEOPLE

9  
10      Before the COVID-19 pandemic, in 2018, 2.3 million of the nonelderly uninsured found  
11      themselves in the coverage gap—not eligible for Medicaid, and not eligible for tax credits because  
12      they reside in states that did not expand Medicaid. Without access to Medicaid, these individuals  
13      do not have a pathway to affordable coverage.

- 14  
15      •     Our AMA has been encouraging all states to expand Medicaid eligibility to 133 percent FPL.

16  
17      New policy adopted by the AMA HOD during the November 2021 Special Meeting seeks to assist  
18      more than 2 million nonelderly uninsured individuals who fall into the “coverage gap” in states that  
19      have not expanded Medicaid—those with incomes above Medicaid eligibility limits but below the  
20      FPL, which is the lower limit for premium tax credit eligibility. The new AMA policy maintains  
21      that coverage should be extended to these individuals at little or no cost, and further specifies that  
22      states that have already expanded Medicaid coverage should receive additional incentives to  
23      maintain that status going forward.

#### 24 25      AMERICAN RESCUE PLAN OF 2021

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27      On March 11, 2021, President Biden signed into law the American Rescue Plan (ARPA) of 2021.  
28      This legislation included the following ACA-related provisions that will:

- 29  
30      •     Provide a temporary (two-year) 5 percent increase in the Federal Medical Assistance  
31            Percentage (FMAP) for Medicaid to states that enact the Affordable Care Act’s Medicaid  
32            expansion and covers the new enrollment period per requirements of the ACA.
- 33      •     Invest nearly \$35 billion in premium subsidy increases for those who buy coverage on the  
34            ACA marketplace.
- 35      •     Expand the availability of ACA advanced premium tax credits (APTCs) to individuals whose  
36            income is above 400 percent of the FPL for 2021 and 2022.
- 37      •     Give an option for states to provide 12-month postpartum coverage under State Medicaid and  
38            CHIP.

39  
40      ARPA represents the largest coverage expansion since the Affordable Care Act. Under the ACA,  
41      eligible individuals, and families with incomes between 100 and 400 percent of the FPL (between  
42      133 and 400 percent FPL in Medicaid expansion states) have been provided with refundable and  
43      advanceable premium credits that are inversely related to income to purchase coverage on health  
44      insurance exchanges. However, consistent with Policy H-165.824, “Improving Affordability in the  
45      Health Insurance Exchanges,” ARPA eliminated ACA’s subsidy “cliff” for 2021 and 2022. As a  
46      result, individuals and families with incomes above 400 percent FPL (\$51,520 for an individual  
47      and \$106,000 for a family of four based on 2021 federal poverty guidelines) are eligible for  
48      premium tax credit assistance. Individuals eligible for premium tax credits include individuals who  
49      are offered an employer plan that does not have an actuarial value of at least 60 percent or if the  
50      employee share of the premium exceeds 9.83 percent of income in 2021.

1 Consistent with Policy H-165.824, ARPA also increased the generosity of premium tax credits for  
2 two years, lowering the cap on the percentage of income individuals are required to pay for  
3 premiums of the benchmark (second lowest-cost silver) plan. Premiums of the second lowest-cost  
4 silver plan for individuals with incomes at and above 400 percent FPL are capped at 8.5 percent of  
5 their income. Notably, resulting from the changes, eligible individuals and families with incomes  
6 between 100 and 150 percent of the FPL (133 percent and 150 percent FPL in Medicaid expansion  
7 states) now qualify for zero-premium silver plans, effective until the end of 2022.

8  
9 In addition, individuals and families with incomes between 100 and 250 percent FPL (between 133  
10 and 250 percent FPL in Medicaid expansion states) also qualify for cost-sharing subsidies if they  
11 select a silver plan, which reduces their deductibles, out-of-pocket maximums, copayments, and  
12 other cost-sharing amounts.

#### 13 14 LEGISLATIVE EXTENSION OF ARPA PROVISIONS

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16 On August 16, President Biden signed into law the Inflation Reduction Act of 2022 through the  
17 highly partisan budget reconciliation process, which allows both the House and Senate to pass the  
18 bill with limits on procedural delays. Most significantly, reconciliation allows the Senate to bypass  
19 the filibuster and pass legislation with a 50-vote threshold so long as it meets a series of budgetary  
20 requirements. The Inflation Reduction Act includes provisions that would extend for three years to  
21 2025 the aforementioned ACA premium subsidies authorized in ARPA.

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23 The Inflation Reduction Act does not include provisions to close the Medicaid “coverage gap” in  
24 the states that have not chosen to expand.

#### 25 26 ACA ENROLLMENT

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28 According to the U.S. Department of Health and Human Services (HHS), 14.5 million Americans  
29 have signed up for or were automatically re-enrolled in the 2022 individual market health insurance  
30 coverage through the marketplaces since the start of the 2022 Marketplace Open Enrollment Period  
31 (OEP) on November 1, 2021, through January 15, 2022. That record-high figure includes nearly 2  
32 million new enrollees, many of whom qualified for reduced premiums granted under ARPA. In  
33 August, the Department of Health and Human Services issued a report noting that the uninsured  
34 rate in the U.S. had dropped to an all-time low of 8 percent.

#### 35 36 *TEXAS VS. AZAR* SUPREME COURT CASE

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38 The Supreme Court agreed on March 2, 2020, to address the constitutionality of the ACA for the  
39 third time, granting the petitions for certiorari from Democratic Attorneys General and the House  
40 of Representatives. Oral arguments were presented on November 10, 2020, and a decision was  
41 expected before June 2021. The AMA filed an amicus brief in support of the Act and the  
42 petitioners in this case.

43  
44 On February 10, 2021, the U.S. Department of Justice under the new Biden Administration  
45 submitted a letter to the Supreme Court arguing that the ACA’s individual mandate remains valid,  
46 and, even if the court determines it is not, the rest of the law can remain intact.

47  
48 This action reversed the Trump Administration’s brief it filed with the Court asking the justices to  
49 overturn the ACA in its entirety. The Trump Administration had clarified that the Court could  
50 choose to leave some ACA provisions in place if they do not harm the plaintiffs, but as legal  
51 experts pointed out, the entire ACA would be struck down if the Court rules that the law is

1 inseparable from the individual mandate—meaning that there would be no provisions left to  
2 selectively enforce.

3  
4 On June 17, 2021, the Supreme Court in a 7-2 decision ruled that neither the states nor the  
5 individuals challenging the law have a legal standing to sue. The Court did not touch the larger  
6 issue in the case: whether the entirety of the ACA was rendered unconstitutional when Congress  
7 eliminated the penalty for failing to obtain health insurance.

8  
9 With its legal status now affirmed by three Supreme Court decisions, and provisions such as  
10 coverage for preventive services and pre-existing conditions woven into the fabric of U.S. health  
11 care, the risk of future lawsuits succeeding in overturning the ACA is significantly diminished.

#### 12 13 *KELLEY VS. BECERRA* FEDERAL COURT CASE

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15 A case before a federal district court judge in the Northern District of Texas, *Kelley v. Becerra*,  
16 would eliminate the ACA requirement that most health insurance plans cover preventive services  
17 without copayments. Those filing the case object to paying for coverage that they do not want or  
18 need, particularly for those items or services that violate their religious beliefs, such as  
19 contraception or PrEP drugs. If the case is successful, health plan enrollees will also lose access to  
20 full coverage for more than 100 preventive health services, including vaccinations and screenings  
21 for breast cancer, colorectal cancer, cervical cancer, heart disease, and other diseases and medical  
22 conditions.

23  
24 The AMA and 61 national physician specialty organizations issued a joint statement on July 25,  
25 sounding the alarm about the millions of privately insured patients who would be affected by an  
26 adverse ruling.

#### 27 28 SGR REPEAL

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30 The Medicare Access and CHIP Reauthorization Act (MACRA) of 2015 repealing and replacing  
31 the SGR was signed into law by President Obama on April 16, 2015.

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33 The AMA is now working on unrelated new Medicare payment reduction threats and is currently  
34 advocating for a sustainable, inflation-based, automatic positive update system for physicians.

#### 35 36 INDEPENDENT PAYMENT ADVISORY BOARD REPEAL

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38 The Bipartisan Budget Act of 2018 signed into law by President Trump on February 9, 2018,  
39 included provisions repealing IPAB. Currently, there are not any legislative efforts in Congress to  
40 replace the IPAB.

#### 41 42 CONCLUSION

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44 Our American Medical Association will remain engaged in efforts to improve the health care  
45 system through policies outlined in Policy D-165. 938 and other directives of the House of  
46 Delegates.