

# FYI<sup>®</sup> In-Depth

## For Your Information<sup>®</sup>

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## ERISA@40: ERISA, Nixon, and the ACA

This is the fifth in a multi-part series of articles to be published over the next several months celebrating the 40th birthday of the Employee Retirement Income Security Act. ERISA was signed into law by President Gerald Ford on September 2, 1974 — Labor Day. This landmark law regulates many aspects of employer-sponsored retirement and welfare benefit plans. The series looks back to explore how the employer-sponsored employee benefits industry has evolved, highlights lessons learned, and looks forward to what employers may expect in the future.

This article looks at the Nixon administration's proposal to reform the US health care system, presented to Congress in 1974 — the same year ERISA was enacted. Although it wasn't adopted, the proposal included a number of provisions that are surprisingly similar to those appearing in the Affordable Care Act.

### Background

When ERISA was enacted in 1974, its primary purpose was to ensure that employees would receive the retirement benefits they had been promised. While the law contained some provisions generally applicable to employee welfare benefit plans, it did not specifically address health care coverage.

Nevertheless, reform of the US health care system was a “hot topic” in the early 1970s. Numerous plans to provide more Americans with access to affordable comprehensive health care were proposed, including one by the Nixon administration. Under the [Comprehensive Health Insurance Plan](#) (CHIP), presented by President Richard Nixon (R) to Congress on February 6, 1974, most Americans would have access to health coverage under one of three programs:

#### President Richard Nixon to Congress, February 6, 1974

“Beyond the question of the prices of health care, our present system of health care insurance suffers from two major flaws: First, even though more Americans carry health insurance than ever before, the 25 million Americans who remain uninsured often need it the most and are the most unlikely to obtain it. ... Second, those Americans who do carry health insurance often lack coverage which is balanced, comprehensive and fully protective....”

- Full-time employees and their families could obtain coverage through the Employer Health Insurance (EHI) program.
- Individuals under age 65 not offered coverage under the EHI program (e.g., unemployed, disabled, or self-employed) could obtain coverage through the Assisted Health Insurance (AHI) program. The Assisted Health Insurance program also would replace state-run Medicaid for most services.
- Those age 65 and older would be eligible for an enhanced Medicare program that also covered prescription drugs.

Benefits under the EHI and AHI programs would have been provided through policies offered by private insurance companies. The CHIP plan itself was a refinement of a comprehensive reform plan proposed by the Nixon administration to Congress three years earlier in 1971.

## Nixon's CHIP and the Affordable Care Act

Nixon's CHIP is particularly interesting because some of its key elements are also prominent features of the Affordable Care Act.

### Benefit Mandates

Like Nixon's CHIP, the ACA requires insurance policies to provide certain benefits with limits on cost-sharing.

**Nixon's CHIP.** Insurance policies would have been required to provide benefits for hospital care, physician services, prescription drugs, laboratory services and x-rays, medical devices, ambulance services, maternity care, mental illness and substance use disorder services, and certain convalescent services. They would also have been required to cover the following pediatric care: preventive care up to age six, eye and hearing examinations, and regular dental care up to age 13.

### President Richard Nixon to Congress, February 6, 1974

"As part of this program, every American who participates in the program would receive a Health-card when the plan goes into effect in his State. This card, similar to a credit card, would be honored by hospitals, nursing homes, emergency rooms, doctors, and clinics across the country. This card could also be used to identify information on blood type and sensitivity to particular drugs – information which might be important in an emergency."

The individual annual deductible for the EHI and AHI programs would have been \$150 (with a separate \$50 deductible for outpatient prescription drugs). The family maximum would have been three times the individual amount. The maximum amount a family would have to pay out-of-pocket for covered services during a year would be limited to \$1,500. The individual annual Medicare deductible would have been \$100, with a \$750 annual out-of-pocket maximum.

### Comparing 1974 and 2014 Dollars

In 2014 dollars, the Nixon plan's \$1,500 annual out-of-pocket limit for family coverage would be almost \$7,500. The maximum out-of-pocket limit for family coverage under the ACA is \$12,700 in 2014 and \$13,200 in 2015.

**ACA.** Policies offered through the state marketplaces must provide coverage of "essential health benefits." These include benefits for ambulatory patient services, emergency

services, hospitalization, maternity and newborn care, prescription drugs, laboratory services, rehabilitative and habilitative services and devices, mental illness and substance use disorder services, and preventive and wellness services. Pediatric services, including oral and vision care must also be covered.

### Assistance for Lower- and Middle-Income Individuals

Nixon's CHIP and the ACA both include provisions to reduce the amount that lower- and middle-income individuals would have to pay for health care coverage and services.

**Nixon's CHIP.** Low-income individuals purchasing coverage through the AHI program and Medicare would have been eligible for subsidies to defray a portion of premium cost — working families with incomes up to \$5,000 (just over \$24,000 in 2014 dollars) would pay no premiums at all. They also would be eligible for reductions in deductibles, coinsurance and out-of-pocket maximum. These subsidies would have been pegged to income levels. AHI would have replaced state-run Medicaid programs for most services.

**ACA.** The ACA provides two forms of coverage assistance for low- and middle-income Americans. The ACA expands Medicaid coverage for those with annual income under 133% of the federal poverty level — \$31,720 for a family of four in 2014. Additionally, the ACA provides that middle-income Americans — those with annual income up to 400% of the federal poverty level (\$95,400 for a family of four in 2014) — who purchase coverage through a public marketplace may be eligible for a subsidy in the form of a premium tax credit to offset premium cost. They may also be eligible for reduced cost-sharing.

### Employer Mandate

Both Nixon's CHIP and the ACA contemplate that full-time employees would obtain health coverage through their employers.

**Nixon's CHIP.** Employers would have been *required* to offer their full-time employees health coverage that satisfied the benefit mandates described above, including cost-sharing limits. Employers could choose to offer additional benefits.

Employers would have been required to pay 65% of premium cost for the first three years of the program and 75% thereafter; employees would have been responsible for the balance. A temporary federal subsidy would be available to employers that faced significant cost increases.

**ACA.** Large employers are not required to offer coverage, but if they fail to make affordable, minimum value coverage available to their full-time employees and their dependent children, they are potentially subject to nondeductible assessments. Employer-sponsored plans do not have to cover essential health benefits, but if they do, they cannot impose annual or lifetime dollar limits on those benefits.

#### Individual Mandate

Under the ACA's "individual mandate" individuals who don't obtain health coverage may have to pay a penalty tax. Nixon's CHIP did not include a similar requirement.

#### ERISA@40 Series

Check out the four previous publications in our ERISA@40 series:

[ERISA@40: A History Lesson](#)

[ERISA@40: ERISA Preemption and the ACA](#)

[ERISA@40: ERISA, COBRA, and the ACA](#)

[ERISA@40: Happy Birthday, ERISA!](#)

## What Happened to Nixon's CHIP?

President Nixon began negotiations with leaders in Congress in early 1974 to advance his CHIP proposal. Efforts to reach a compromise failed in the spring of 1974, and momentum for national health care reform was lost as the Watergate scandal deepened in the summer, and President Nixon subsequently resigned. President Gerald Ford did not pursue health care reform, although less than a month after becoming president, he signed ERISA into law. Thirty-six more years would pass before comprehensive health care reform legislation would be enacted in 2010.

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