Mark Masselli: This is Conversations on Healthcare, I am Mark Masselli.

Margaret Flinter: And I am Margaret Flinter.

Mark Masselli: Well, Margaret, the 2017 Congressional Delegation had its official swearing in, Congress is opened for business and the leadership wasted no time getting down to the business of voting to repeal, the Affordable Care Act as promised.

Margaret Flinter: Republic Senator Mike Enzi of Wyoming introduced a resolution just hours after the new Congress convened that will serve as the vehicle to try and repeal much of President Obama's signature healthcare law.

Mark Masselli: Republicans have to use a budget resolution to undo the Affordable Care Act, so lawmakers will be able to repeal the parts of the law that have budget and tax implications.

Margaret Flinter: Essentially they get to gut the law without fully repealing the entire piece of legislation by removing all the subsidies that are in place to help low and middle income people buy health insurance.

Mark Masselli: But in the meantime there are still many legal and legislative questions that need answering. So we invited today's guest Professor Timothy Jost to weigh in with us.

Margaret Flinter: Professor Jost is the Emeritus Professor of Law at Washington Allied University School of Law. He is a frequent contributor to Health Affairs and really one of the nation's leading scholars on health law and health policy.

Mark Masselli: Lori Robertson, also weighs in, the Managing Editor of FactChecks.org. Always on the hunt from the statement spoken about health policy in the public domain. But no matter what the topic, you can hear all of her shows by going to <a href="https://www.chcradio.com">www.chcradio.com</a>.

Margaret Flinter: And as always if you have comments, please email us at <a href="www.chcradio@chc1.com">www.chcradio@chc1.com</a> or find this on Facebook or Twitter because we would love hearing from you. We will get to our interview with Timothy Jost in just a moment.

Mark Masselli: But first, here is our producer Marianne O'Hare with these weeks, headline news.

#### (Music)

Marianne O'Hare: I am Marianne O'Hare with the healthcare headlines. As promise the new sworn in Republican control Congress assured in their vision of

the future, by introducing a bill to repeal the Affordable Care Act. The so called American Healthcare Reform Act of 2017, seems to establish state-based highrisk pools, increase health savings accounts and allow insurance sales across state lines. The bill was sponsored by the Conservative Republican Study Committee to quote "Rest healthcare out of the hands of Bureaucrats". There are other replaced measures emerging from different camps within the GOP, some from an extreme of repealing the ACA and replacing it with almost nothing, other plans from conservative think-tank suggested it would be better to keep Obama Care intact and replaced portions of the law that aren't working.

One thing that plans all share in common, the poor are looking at significant loss of coverage and therefore loss of access to healthcare. One way millions of the nation's poor gain access to healthcare is through Planned Parenthood House Speaker Paul Ryan is put forth a bill that would eliminate hundreds of millions of dollars in funding, Ryan saying the defunding would be fast tracked and go through as soon as next month, millions of poor Americans gain a wide degree of health services through Planned Parenthood's clinics including regular preventive care, cancer screenings and STD screening and treatment.

Meanwhile, members of the Congressional Democratic Minority are pushing back on a number of points asking the independent Congressional Ethics Committee, to look into allegations of HHS secretary nominee Tom Price, who they say profited of legislation, he pushed through Congress, the Wall Street Journal last month reported, Price bought and sold more than \$300,000 in stock and about 40 healthcare, pharmaceutical and biomedical companies all the while sponsoring and advocating legislation that could influence those company's shares.

In a major health recommendation reversal the National Institute of Health is giving the okay, for parents of young babies to start introducing peanuts into their diets to stay off the onset of deadly peanut allergies, study show, low doses of peanut exposure at a very early age can actually prevent the onset of deadly peanut allergies which we have seen a dramatic rise in recent decades. Study showed the best time to exposed children to allergens is when their immune systems aren't fully formed, which takes a few years, suggesting, introducing small amounts of peanut butter into the diets of babies as young as 4 to 6 months old as long as they are eating other solid foods. So want to keep your little peanut allergy free, try peanut dosing during their first year of life.

I am Marianne O'Hare with these healthcare headlines.

# (Music)

Mark Masselli: We are speaking today with Timothy Jost, Emeritus Professor of Law at the Washington and Lee University School of Law, prolific writer and author of Health Law casebook used widely at many U.S. Law Schools.

Professor Jost is a frequent blogger for the renowned journal Health Affairs. Professor Jost is an elected member of the National Academy of Medicine and the American Society of Law and Medicine here in this J.D. with Honors from the University of Chicago, welcome back to Conversations on Healthcare.

Timothy Jost: Thank you.

Mark Masselli: You know recent Health Affairs blog, you noted that in wake of the 2016 election, Obama Care is facing a far more dramatic threat and I am wondering if you can help our listeners understand the cross roads where we stand right now.

Timothy Jost: Yes, the Republican leadership in Congress introduced a budget resolution in the Senate that would open the way for repealing many of the provisions of the Affordable Care Act through a simple majority vote, through the budget reconciliation process, Congress can move forward with making major changes in laws and in particular laws that affect the revenues or outlays of the United States government, without having to worry about a filibuster. And so with that 52 votes that the Republicans have in the Senate in the overwhelming majority in the House, they could move forward with repeal of the Affordable Care Act. The Republican Study Committee, a group of conservative Republicans introduced legislations that would take the country in a radically different way in terms of healthcare access.

The Republicans have not come together yet but when any concrete suggestion for replacing the Affordable Care Act or for dealing with the 20 to 30 million Americans who would lose coverage through repeal. So I think we are heading into a very dangerous time for low and moderate income. Americans who do not have coverage through their employers and also for Americans with preexisting conditions.

Margaret Flinter: Professor Jost does feel like déjà vu all over again. You know back in 2009, we had a House Speaker Nancy Pelosi, on the show she was one of the legislations chief architects and she took a tremendous amount of heat from our GOP opponents at the time by saying publicly, for sometimes she have to pass laws without being entirely sure what's in them, but it seems like the same thing is coming to pass with this repeal and replace agenda, very few details are clear about what the replaced legislation will look like or when it will happened, so what elements or the law can actually be repealed legislatively as you said with the budget reconciliation, but with aspects of the law might prove much harder to dismantle.

Timothy Jost: Well it's ironic that what Nancy Pelosi actually meant and she has been very, very widely misquoted on this, was that, once we passed the legislation, the American people would realize all of the good things that were in the legislation. And what is actually happening now is that we are in a very

different situation where in fact, we do not know and cannot know what will be in the replaced legislation because there is no single proposal yet to replace the Affordable Care Act, the Republicans are nowhere close to coming together. The Budget Reconciliation Process is a process through which Congress could address things like the premium tax credits, the Medicaid expansions, the individual and employer mandates. It probably could not address things like the guaranteed issue and guaranteed renewal, the ban on health status, underwriting the ban on gender underwriting which is very important before the Affordable Care Act, women almost universally paid more than men for health coverage.

It could not address the ban on preexisting condition exclusions, so any kind of repeal and replaced based on budget reconciliation is going to have a lot of holes in it and probably won't work very well. You can't have a ban on preexisting condition exclusions that will work if you don't have the premium tax credits and some things like the individual mandate. What the republicans are talking about now is what would be called repealed and delay where they would repeal key provisions at this point. And then just say, oh let's wait a couple of years before we get rid of the premium tax credits and maybe the Medicaid expansion and see if we can think of something to replace it with.

The problem with that is that insurers are not charities and might very well not stick around for a couple of years to find out what the Republicans come up with. So I think we are faced with the potential crash of not just the marketplaces but the entire individual market leaving 20 million people without any way of getting the health insurance coverage.

Mark Masselli: Let's look at some of the gains under Obama Care and you have noted that it's not only the 20 million plus uninsured people that have gained access, you had some longitudinal data on other gains that have been made, I am wondering if you can help us understand what some of those gains are that the typical health consumer might not be aware of.

Timothy Jost: Sure, and I think everybody knows by this point that the levels of the uninsured are rates are now at the lowest levels in history. But many of your listeners may not know that improvements in hospital care leading to fewer hospital acquired infections have saved about a 125,000 lives since the ACA was adopted. And expanded coverage is preventing about 24,000 deaths a year. National Health Expenditures over the 2010 to 2019 period are projected to be \$2.6 trillion less than the expenditures that were projected just before the ACA became law.

Coverage has written for children, young adults and all age levels, all income levels, all ethnic and racial groups. An expanded coverage has also resulted and improved access to care, with a share of Americans report, not having received medical care due to cost dropping by 1/3<sup>rd</sup> since 2010. The burden of uncompensated care born by hospitals is declined by about one quarters since

2013. The ACA has also helped people with employee coverage which is the majority of Americans. The number of employees within annual capital and their out of pocket cost has increased by \$22 million since the ACA has been adopted. Growth and per employee cost of employer based coverage has fallen to 5.6% from the decade before the ACA annual growth, to 3.1% since the ACA was adopted. And private sector employee has grown continuously since the ACA was adopted and the fall in the uninsured rate has not negatively influenced job growth that some had predicted. So there has just been a lot of improvements in quality of care, in reduction of the cost of care as well as the dramatic gains and access.

Margaret Flinter: Well, we recently had Sara Collins from the Commonwealth Fund on the show and she was outlining some of the dramatic step except could occur if the repeal goes through as has been proposed by the GOP leaders and she quoted studies that also show the repeal of Obama Care leading to more uninsured Americans even then there were prior to the law's passage. But she makes the point that the lower-income, vulnerable Americans are the most at-risk in the wake of a repeal, why is it going to target them particularly and what's the role that Medicaid plays in all of this.

Timothy Jost: The Medicaid expansions has been very important in expanding coverage to millions of Americans who previously lacked access to healthcare and played a very important role in bringing down the uncompensated care burden of hospitals. The Republican Study Committee proposals would replace the tax credit with a tax deduction. Now if you are not paying taxes, a tax deduction is completely worthless. This is just the flat-out transfer of income, transfer of access to healthcare from low-income Americans to high-income American. In addition repealing the tax increases on Americans are any more than \$200,000 a year under the Affordable Care Act would result in literally hundreds of billions of dollars of tax cuts for high income Americans over 10 years, even \$6 tax credits would be essentially worthless to low-income Americans because they either would not provide enough money to purchase the health insurance policy or they would only cover up a very, very high deductible health insurance policy.

I think a lot of people don't realize however, how many other things were in the Affordable Care Act, I mean there were loan and grant programs for people trying to pursue an education in healthcare. There was expanded funding for community public health institutions, of course closing the donut hole for seniors on Medicare. So there is a lot in the Affordable Care Act if it were repealed as a hole that Americans may never have noticed was there but would certainly noticed that it was gone.

Mark Masselli: We are speaking today with health policy expert Timothy Jost, Emeritus Professor of Law at the Washington and Lee University School of Law and frequent contributor to the noted publication Health Affairs. You know we

have certainly have alignment on the repeal and replace side. We have got a couple of big cases out there in 2015, Judge Collyer ruled that the house republicans had standing to sue the executive branch over a spending dispute and that the Obama Care administration had been distributing health subsidies in violation of the Constitution and I wonder your thoughts about if that ruling is appalled/appealed, would we start to see lawsuits on the other side as well.

Timothy Jost: Well the House speaker well, I think is the most immediate threat to the stability of the individual insurance market in the United States. Judge Collyer held at several billion dollars that have been paid each year to insurers who are required under the Affordable Care Act to reduce the deductible and coinsurance and copayments, Judge Collyer held that there have been no appropriation for those payments and thus we had to stop, the Obama administration has been vigorously contesting that, the House recently got a delay in that litigation claiming that the Trump administration may take a different position and the court should wait until February to find out what the Trump administration's position was, if the Trump administration agrees with the House and withdraws the appeal, I think that could in very quick order destroy the individual market in the United States and the individual market isn't that important to many of them and they may have just say, forget it we are leaving and it certainly wouldn't come back for 2018. We still have the contraceptive cases and I would expect that we are now going to see possibly dozens of cases filed challenging the Trump administration.

Margaret Flinter: Right, well professor you talked about the jeopardy of the Medicaid expansion, the potential privatizing of Medicare, what's the political risk when we make the laundry list of all who are likely to be very angry at loss of benefits we have, the denial for preexisting conditions we have, people literally dying in the streets from opioid overdose and what coverage there is, could easily slip away, it seems like a potential for enormous political risk.

Timothy Jost: Well that is an issue of concern, I think going shows that a lot of the lowest-income Americans are simply discouraged and I think a lot of people also voted for Donald Trump because they really were dissatisfied with the current political situation and wanted to change but didn't really believe that he was going to get rid of the Affordable Care Act under which many of them are covered. If you look at the things that the administration is talking about doing in terms of immigration and climate change, judicial appointments, they won't affect voters over a long period of time.

On the other hand if you cut off someone's insurance coverage, it's going to be day where they realize what's happened. And so I do think that there could be a tremendous political backlash, it's generally accepted that the Democrats really suffered because of misunderstandings of the Affordable Care Act as much as what the Affordable Care Act actually did. Now the healthcare system belongs to

the Republicans and they are going to have to take responsibility for all of the things that are going to go wrong.

Mark Masselli: What do you think there may be some commonality because clearly, I think everybody admits that it was an imperfect piece of legislation, you think there is any common ground to be found that chart out for us, areas of commonality that might find the light of day?

Margaret Flinter: Well, I think that there are actually substantial ground for working together bipartisanly, the recently adopted Cures Act, the MACRA Act which was adopted last year I think across the whole range of issues like investment and my healthcare research and a quality improvement, in the cost control, I think there is a lot of common ground. Unfortunately, in the area of access to healthcare, actually I think the country is far less divided than the political parties are, the recent polling shows that only about a quarter of Americans want to repeal the Affordable Care Act and almost half want to either keep it or expand it.

The proposals that we are seeing I think would pretty radically shift the focus of access from trying to provide access for the lowest income Americans, to trying to improve and expand on the income of the highest income Americans and I would say that one of the problems of the Affordable Care Act is that, it did not do enough for middle-income Americans whose income was too high to qualify for the subsidies that it provided. And if a replacement planned provides tax credits for higher income Americans in the individual market it would probably to some extent help address that issue. But I think the proposal like this, else Republican study group that would offer nothing to low-income Americans and a great deal to high-income Americans is not going to get bipartisan support.

Margaret Flinter: We have been speaking today with Timothy Jost, Emeritus Professor of Law at the Washington and Lee University School of Law. You can learn more about his work by going to the Health Affairs blog at <a href="https://www.healthaffairs.org/blog">www.healthaffairs.org/blog</a>. Professor Jost, thank you so much for joining us again on Conversations on Healthcare.

Timothy Jost: And thank you very much for inviting me.

## (Music)

Mark Masselli: Conversations on Healthcare, we want our audience to be truly in the 'No' when it comes to the facts about healthcare reform and policy, Lori Robertson is an award-winning journalist and Managing Editor of FactChecks.org a non-partisan, nonprofit consumer advocate for voters that aim to reduce the level of deception in U.S. politics, Lori, what have you got for us this week?

Lori Robertson: President elect Donald Trump claimed that former President Bill Clinton called the Affordable Care Act quote "crazy" and that Minnesota Governor Mark Dayton said the law "is no longer affordable", did they really say that? Not exactly. Trump made his claim on Twitter to support his arguments that the Affordable Care Act "doesn't work" and provides "lousy" healthcare. He has vowed to repeal and replace the ACA and the Republican controlled Congress has already taken a step towards repealed. As for Clinton calling the ACA crazy, the former President made these comments while campaigning for his wife, but the fuller context shows he wasn't calling the entire law crazy, and he was blaming Republicans for refusing to make changes to improve it.

Clinton said that it was "the craziest thing in the world" that those who buy their own insurance but make too much to get subsidies, were facing escalating premiums on the individual market. He went on to say that his wife, Hillary supported allowing those people to buy into Medicare and Medicaid as a way to fix the problem. Similarly Minnesota Governor Mark Dayton called proposed individual market rate increases in his date, "severe" and said "the reality is the Affordable Care Act is no longer affordable" to increasing numbers of people.

Dayton went on to blame a "totally deadlock" Congress for failing to make "necessary changes or improvements". So Trump leaved out key context from both Clintons and Dayton's remarks to make its point. And that's my factcheck for this week, I am Lori Robertson, Managing Editor of FactChecks.org.

Margaret Flinter: FactChecks.org is committed to factual accuracy from the country's major political players and is a project of the Annenberg Public Policy Center at the University of Pennsylvania. If you have a fact that you would like checked, email us at <a href="https://www.chcradio.com">www.chcradio.com</a> we will have FactCheck.org, Lori Robertson, check it out for you, here on Conversations on Healthcare.

#### (Music)

Margaret Flinter: Each week conversations highlights a bright idea about how to make wellness, a part of our communities and to everyday lives. When long time IBM executive Sharon Linder left the corporate world, she thought she would ease into semi-retirement, but then breast cancer diagnosis for her mother and two sisters shifted her focus. She watched as all three of them went through multiple surgeries and treatments, were in the ubiquitous Johnny, the hospital gowns that tie in the back and leave patients often feeling vulnerable and exposed during time when they are also scared and then uncomfortable during their treatments.

Sharon Linder: The hospital gown was never meant to closing the back, it was meant to make easy for you to go to the Johnny. And so when you put it in the front, it really doesn't close.

Margaret Flinter: The former corporate executive decided that the 1 in 8 women going through breast cancer treatment needed a power suit of their own to navigate this challenging experience and she launched her own research project into which fabrics and which designs, might provide a better alternative to the standard hospital gown, but wonder for us it would be an easy addition to hospital laundering services.

Sharon Linder: Nonstop, so the fabric we came up with, is a waffle leaves fabric but it's a knit. So the feel of it is very much like a cotton cashmere.

Margaret Flinter: She called her invention Janes as opposed to Johnny's, creating a gown that thousands of users have called **comfortable starch** and a vast improvement from their predecessors.

Sharon Linder: It may fit people in a comforting way, it's you know be you are totally covered.

Margaret Flinter: And she developed a gown in time for her own cancer diagnosis.

Sharon Linder: Janes did give me a really a leg up, I think that I felt better about all of my treatments, just feeling like I looked better.

Margaret Flinter: Janes, a hospital gown designed for enhancing the female patient experience providing comfort, dignity, easier access during challenging procedures, or just providing an easier experience for new breastfeeding mothers, now that's a bright idea.

#### (Music)

Margaret Flinter: This is Conversations on Healthcare, I am Margaret Flinter.

Mark Masselli: And I am Mark Masselli, peace and health.

Conversations on Healthcare broadcast from the campus of WESU at Wesleyan University streaming live at wesufm.org and brought to you by the community health center.