

Health Care Legislation Status

Senate Unveils ACA Replacement Bill

June 22, 2017

On June 22, 2017, the Senate released a 142 page discussion draft, the **Better Care Reconciliation Act of 2017**, to replace the Affordable Care Act. This legislation follows the passage of the American Health Care Act (AHCA) in the House of Representatives on May 6th.

Wrangling to consolidate votes from the various Republican caucuses continues with a teetering balance between conservatives largely focusing on long-term funding and more centrist Republicans largely focusing on patient protections. Additionally, several governors have expressed concern over a phase out of the ACA's Medicaid expansion and the potential cost impact to the states. In short, the Better Care Reconciliation Act of 2017 (BCRA) is another step in fulfilling the long-standing GOP campaign promises to repeal and replace the ACA, but this legislative debate is far from complete.

What to Expect Next

- Senate procedural rules vary substantially from those in the House. Following the initial unveiling of the draft legislation, an open amendment process on the Senate floor will begin. This amendment process, which is casually known as “vote-a-rama,” will provide all stakeholders with additional information and details prior to the Senate vote (if a vote occurs).
- Senate majority leader, Mitch McConnell, can only lose two Republican Senators to pass the bill and it is expected to be a thin margin. McConnell stated that he would like the vote to occur prior to the July 4th congressional recess.
- If the BCRA passes in the Senate, a new deliberation will begin in a conference committee with members from both chambers. Both the House and Senate must vote on the compromise bill.
- Importantly, until the AHCA or the BCRA is signed by the President, the Affordable Care Act (ACA) remains the law today and all current compliance requirements remain in place.

BCRA – Highlighted Components

- **Eliminates** the employer and employee coverage mandates
- **Eliminates** the individual coverage mandate
- **Eliminates / Phases out** the majority of ACA taxes
- **Delays** implementation of the Cadillac Tax
- **Retains** certain popular ACA provisions, including the dependent child coverage expansion to age 26, the ban on pre-existing condition exclusions and the ban on annual and lifetime limits
- **Expands** Health Savings Accounts (HSAs)

- **Alters** the approach to tax credits to purchase coverage. Tax credits will be offered to those with incomes up to 350% of the Federal Poverty Level (FPL) rather than 400% as is under the ACA
- **Continues** payments to insurers for the ACA's cost-sharing reductions for lower-income exchange enrollees until 2019, but then phases out these payments
- **Phases out** the ACA's Medicaid expansion. This may cause the 31 states that expanded Medicaid to eliminate this coverage
- **Funds** a temporary reinsurance and stabilization program through 2026 to assist with the rising premiums in the health insurance exchange, which is causing insurance carriers to exit several markets. Specifically, a short-term stabilization fund to provide \$15 B per year in 2018 and 2019 and \$10 B in each of the next two years

Of note, as of June 22nd, Anthem Inc. announced that it would exit the health insurance Exchange in Ohio, Indiana and Wisconsin next year. Similar to the decisions of several carriers across varying regions of the country, Anthem cited the volatile market and ongoing uncertainty regarding future cost-sharing payments to offset rising costs. Notably, Humana Inc. and Aetna Inc. have previously announced that they will exit all of their current health insurance Exchanges in 2018.

These critical decisions directly impact the individual health insurance marketplace, as well as the marketplace for small group health insurance. Collectively, consolidation drives up costs for employer-sponsored health insurance, as well, and adds pressure to Republicans to pass a replacement for the ACA, whether the AHCA, the BCRA or a combination.

Crystal Ball

Leading the passage of the AHCA in the House, the Freedom Caucus, a group of approximately 30 members from the conservative wing, insisted on greater state flexibility in defining Essential Health Benefits (EHBs). As a compromise, the revised AHCA allows insurers in states that receive waivers to define EHBs, potentially limiting coverages and creating greater state-by-state disparity. As a result, more centrist Republicans voiced concern regarding access and potential for additional charges for those with pre-existing conditions if coverage lapses. This back-and-forth, ongoing debate is anticipated to repeat on the Senate floor.

The Congressional Budget Office (CBO), which scores all proposed legislation by issuing a projected cost assessment, has yet to release a score for the BCRA. This is anticipated by Monday, June 26th and may further influence the fragile vote tally.

Overall, the GOP leadership has stated consistently the process to repeal and replace the ACA will occur in three phases.

Phase One is the AHCA or BCRA, which are both budget reconciliation bills and therefore limited to budget-specific provisions. A reconciliation bill requires a simple majority vote in the Senate, rather than the typical 60-vote requirement to avoid a filibuster.

Phase Two focuses on regulatory directives, as instructed by President Trump's Executive Order. Similarly to the ACA, the language "*HHS Shall...*" appears in the AHCA and the BCRA, thereby instructing the Department of HHS to execute the law's intent.

Phase Three occurs outside of the initial reconciliation budget-focused legislative efforts and requires 60 votes in the Senate, rather than a simple 51 majority. In the Senate, legislation outside of the budget reconciliation process needs at least eight Democrats to support any changes.

Takeaways

As additional details and the CBO scoring assessment are released, Oswald will provide ongoing guidance and strategic direction for employers. We will remain vigilant in monitoring all regulatory actions, and through our relationships with **industry experts in Washington, DC**, we will continue our proactive communication efforts to anticipate change. Importantly, until the AHCA or BCRA is signed by the President, the Affordable Care Act (ACA) remains the law today; therefore, all current compliance requirements remain in place today.

Oswald Companies | Health Care Reform Implementation

Andrea Esselstein, J.D. | aesselstein@oswaldcompanies.com; 216.658.5012

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