

Health Care Legislation Status

Repealing the ACA: Recap of Developments in DC Approaching the July 4th Congressional Recess

June 30, 2017

This summary recaps the legislative and regulatory developments in the highly contentious efforts in Washington DC to repeal and replace (“repeal, replace, repair, repackage...”) the Affordable Care Act (ACA) leading to the July 4th Congressional recess.

- On Tuesday, June 27th, Senate Majority Leader Mitch McConnell (R., Ky.), abruptly postponed the vote on the Senate’s 142 page discussion draft, the **Better Care Reconciliation Act of 2017 (BCRA)** until after the congressional July 4th recess. The BCRA follows the passage of the **American Health Care Act (AHCA)** to replace the Affordable Care Act (ACA) in the House of Representatives on May 6th.
- The vote delay follows efforts to appease Senators on both ends of the GOP political spectrum, and now, McConnell must bridge this challenging gap. Consolidating the **simple majority of 51** votes is a fragile balance of conservative and moderate Republicans. McConnell can only afford to lose two of the 52 Republican Senators with Vice President Pence to potentially break a 50-50 tie.
- On the day of the vote delay, **President Trump** held a meeting with GOP Senators at the White House. Following the meeting, McConnell said, “the one thing I would say is that I think everybody around the table is interested in getting to yes because we know the status quo is simply unacceptable and unsustainable, and no action is simply not an option.”
- Several Senate Republicans stated the delay was unavoidable after the nonpartisan Congressional Budget Office (**CBO**) **report** found the BCRA may result in 22 M more uninsured individuals than the ACA over the next decade.
- The Senate leadership may take comfort from the experience of House Republicans since the AHCA was initially declared dead following a delayed vote, yet **House Republicans regrouped**.
 - *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 continues.*

- During the July 4th congressional recess, deal-making and lobbying to sway Senators is expected as voters voice opinions in **town-hall meetings**.
- McConnell stated that a revised version of the BCRA (or even a different proposed bill) will be introduced when Congress returns the week of July 10 with the intent to vote before the **August recess**.
- Of note, as of June 22, 2017, 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.*

Looking Ahead

- Senate procedural rules vary substantially from those in the House. If a revised version of the BCRA is introduced and the vote tally rises to the point to proceed, an **open amendment process** on the Senate floor will begin.
- If the BCRA passes in the Senate, a new deliberation will begin in a **conference committee** with members from both chambers. Then, both the House and Senate must vote on the compromise bill. 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.
- 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.

As additional details and legislative developments continue, 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 remains the law today; therefore, all current compliance requirements remain in place today.