

# Health Care Legislation Status

## August Congressional Recess & 2018 Rates

August 11, 2017

While Congress takes an August recess, officials in all states are working to determine insurance rates for 2018. As a result, President Trump's administration faces several imminent health care choices. These choices will define the administration's approach following the stalled legislative process to repeal and replace the Affordable Care Act (ACA). The **primary consideration** is the continuation of ACA subsidies to insurance companies.

President Trump's administration has suggested an end to these subsidies as a way to advance the ACA's gradual repeal following failed congressional legislative efforts. However, on August 10<sup>th</sup>, as a temporary stop-gap measure, the administration gave insurers a **three week extension** to submit rates to healthcare.gov. As of August 10, 2017, HHS Secretary, Tom Price, has confirmed that **no permanent decision** has been made to continue the subsidies, known as the cost-sharing reductions (CSRs). The subsidies are paid monthly to health insurance companies with the next payment due on Aug. 21<sup>st</sup>.

ACA subsidies are a political issue in D.C., yet continuing the subsidies is an immediate concern for health insurers and those facing escalating premiums. Without the payments to insurance companies to offset rising costs, consumers will face substantially higher premiums and limited plan options. In addition, the risk of more insurers exiting the health insurance exchanges remains amidst uncertainty. In short, subsidies (funding) is necessary for the exchanges to remain solvent.

The Trump administration made the payments as a place-holder during the congressional negotiations, but in a recent tweet, President Trump wrote, "...if a new health care bill is not approved quickly, BAILOUTS for Insurance Companies and BAILOUTS for Members of Congress will end very soon!"

### State Department of Insurance Options

What will state insurance departments do? State insurance companies are considering all options to help those facing rising costs. As an example, in Florida, insurers may include the extra cost within the price to purchase a benchmark silver plan on the exchange. The federal government would then absorb the cost through another subsidy program (as a tax credit to help individuals pay premiums).

### The Problem Solver Caucus

This week, a bipartisan group of health policy experts, in conjunction with a group of 43 moderate members of congress, offered a draft proposal to stabilize the market. It is intended as a blueprint for members willing to seek a bipartisan solution. Below are a few of the plan's recommendations:

- Encourage lawmakers to authorize the ACA's "cost-sharing reduction" payments.

- Endorse two key Republican platforms: 1) expands state innovation waiver options and 2) expands options for Health Savings Accounts (HSAs).
- Endorse an essential Democratic platform: entice individuals to enroll through additional incentives and affordability mechanisms (recommends some states may waive in favor of different methods).
- Ensure funding for the Children's Health Insurance Program

## July – August 2017 Legislative Recap

On July 28<sup>th</sup>, at 1:23 am, Republican Senator John McCain (R., AZ.) joined two other GOP Senators, Susan Collins (R., ME.) and Lisa Murkowski (R., AK.), to stop progress on a narrowed “skinny” version of an Affordable Care Act (ACA) replacement bill. Months of efforts by the Republican leadership to pass several versions of replacement legislation collapsed with these three GOP votes (49-51) on the Health Care Freedom Act (HCFA), i.e., the skinny repeal bill.

The “skinny” bill would have eliminated the individual mandate penalty and temporarily repealed the employer mandate and penalty exposure until 2025. The tax on medical devices would have been delayed through 2020, among tax changes.

On July 25<sup>th</sup>, 50 of 52 Senate Republicans voted to pass a motion to advance the health care debate. Following the motion to proceed, the Senate considered amendments to the AHCA in an **open amendment process**, known as “vote-a-rama,” in which numerous amendments had potential to reshape the legislation. Two separate votes occurred: 1) Better Care Reconciliation Act (BCRA) and 2) Obamacare Repeal Reconciliation Act (ORRA). Both failed.

Senate Majority leader, Mitch McConnell (R., KY.) remains unable to find a compromise between conservatives focusing on a complete ACA repeal and more moderate Republicans focusing on patient protections. “I regret that our efforts were simply not enough, this time,” Senate Majority Leader Mitch McConnell said on the Senate floor after the vote. “This is clearly a disappointing moment and it’s time to move on.”

## Looking Back

Efforts to consolidate enough votes from the various Republican caucuses to advance ACA replacement legislation has dominated the political landscape since day-one of the 115<sup>th</sup> congress.

Senator McConnell can only lose two Republican Senators to pass any legislation during the **budgetary reconciliation** process. If future legislative efforts are deemed beyond the limited scope of a budget-specific reconciliation bill, Republicans will need at least eight Democrats to move forward. It remains unclear whether the Republican Senators will switch their agenda items to tax reform or attempt further ACA replacement efforts. Both Republicans and Democrats have expressed an idealistic goal to work together to stabilize the health insurance marketplace. Time will tell.

- On July 17<sup>th</sup>, progress in the Senate appeared to halt when two additional Republican Senators announced they would not support BCRA.

- Following political backlash for failing to achieve the procedural vote to repeal and replace the ACA with the BCRA, McConnell released the “Obamacare Repeal Reconciliation Act of 2017” (ORRA). ORRA is similar to the bill passed in congress in 2015, which was vetoed by President Obama.
- ORRA repeals various provisions of the ACA, but delays the effective date of repeal for two years, allowing time to draft the replacement legislation.
- Following months of wrangling votes, on May 6, 2017, the House passed the **American Health Care Act (AHCA)**.

## What to Expect Next

Regardless of whether ACA replacement legislation gains traction during this term following the August recess, **regulatory action is anticipated**. Republican leadership may pursue other ways to dismantle or modify the ACA, including regulatory action, regulatory non-enforcement or executive action. Regulatory action and executive orders are expected to assist in stabilizing the individual health insurance marketplace.

Within the ACA, the language “*HHS Shall...*” instructs the Department of HHS to execute the law’s intent with broad regulatory options. The instructions may vary significantly under the new HHS Secretary, Dr. Tom Price, than those issued by the HHS Secretaries under the direction of under President Obama.

Until any replacement legislation is signed by the President, the ACA remains the law today and all current compliance requirements remain in place.

## Takeaways

As additional information is 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.

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