

# HCR ALERT

August 1, 2017

## ACA Survives Latest Repeal Efforts

Last week, we saw four days of fast-paced, around-the-clock Senate activity surrounding the latest GOP efforts to repeal and replace the Affordable Care Act (“ACA”). In the end, after hours of debate, numerous amendments, and a little drama, the ACA lived to see another day. The flurry of activity came to conclusion Friday morning when the Health Care Freedom Act (“HCFA”) was defeated by the narrowest of margins. Below are details of how the week’s suspenseful events transpired:

- Tuesday afternoon, the Senate held a procedural vote on a motion to proceed to debate on health care legislation to replace the ACA, which narrowly passed with a tie-breaking vote cast by Vice President Mike Pence.
- Tuesday night, an amended version of the Senate’s Better Care Reconciliation Act (“BHCR”) of 2017 was voted down 43-57. This defeat was expected because the vote occurred prior to Congressional Budget Office (CBO) scoring, but it kicked off the debate process and started the clock running on the 20 legislative hour limit on debate.
- Wednesday, Senators voted on the Obamacare Repeal and Reconciliation Act – a resurrected version of a 2015 “repeal and delay” bill that would give Congress two years to devise a replacement plan. A 2/3 majority vote of 60 was needed due to not meeting budget reconciliation requirements and was it was defeated 45-55.
- Thursday morning, another amendment to BHCR was proposed, which called for adoption of a single-payer health care system (“Medicare for all”). Zero votes were cast in favor of it on either side of the aisle.
- Thursday afternoon, talk of a yet unseen “skinny repeal” bill picked up steam as a strategy to avoid a chaotic all-night vote-a-rama on amendments and get a bill through the Senate simply for the purpose of triggering a conference committee with the House that would provide opportunity to hammer out a new bill. Four Republican Senators announced they would not support a skinny repeal unless House leaders gave assurances they would conference on the bill rather than pass it as-is. House Speaker Paul Ryan subsequently issued a statement indicating the House’s willingness to do so.
- Thursday night, a draft skinny repeal bill (HCFA) debuted. Key features included repeal of the individual mandate as of 2016, suspension of the employer mandate from 2016-2024, continued suspension of the medical device tax through 2020, and health savings account contribution limits matching maximum out-of-pocket limits for HSA-eligible high deductible health plans.

- Friday morning, a final tally of 49-51 failed to get the HCFA through the Senate after a dramatic “no” vote from GOP Senator John McCain. He was one of the four Senators who indicated his support was contingent upon House cooperation and many assumed Speaker Ryan’s statement had secured his backing.

What happens now? Senate Republicans appear divided on how to proceed from here. Some want to remain steadfast, adamant that they’ve come too close on ACA repeal to give up on the GOP-only approach. Some are urging fellow Senators to start anew and seek a bi-partisan plan, expressing optimism that members of both parties can work together to change and improve what’s in place. Others suggest it’s time to pivot away from health care and focus on other initiatives on the GOP agenda, such as tax reform.

Now the short-term focus will shift to the Trump administration, particularly the Department of Health & Human Services (“HHS”) and the Internal Revenue Service (“IRS”). Following Friday’s vote, President Trump suggested in a tweet that the ACA is on a path to implosion. The Trump administration now has important decisions to make regarding certain ACA operations – choices that could either serve to help stabilize a fragile individual marketplace or undermine it. Key matters include:

- Cost-sharing subsidies for marketplace coverage: Thus far, HHS has paid the subsidies on a month-to-month basis without funding from Congress while repeal efforts were playing out. Uncertainty about the future of the payments has already caused insurers to raise premiums or pull out of markets. If payments were to cease, additional cost increases and insurer defections would be certain.
- Mandate enforcement: President Trump previously hinted he may not want the IRS put great energy into enforcement of the individual mandate. Additionally, HHS has the authority to broaden criteria for hardship exemption from the mandate. The mandate’s effectiveness at creating a stable marketplace to-date is matter of debate. Loosening of enforcement and exemption criteria would not serve to improve the current marketplace risk pool.
- Marketplace enrollment efforts: Marketplace enrollment to-date has been lower than original CBO projections and enrollment maintenance and growth will be critical for marketplace survival. Curtailment of enrollment outreach efforts would not have a bolstering effect on marketplace stability.

Consequences of ACA marketplace deterioration could cause pains for individuals and the federal government alike:

- Insurer departures from the marketplace and/or rate spikes would affect more than 10 million individuals who current receive their health care coverage there.
- Premium spikes would increase 2018 federal government expenditures for premium tax credits. Because an individual’s cost is a fixed percentage of income, the government picks up the balance of the premium for a silver plan, which means the government picks up the cost of premium increases.
- Marketplace insurers say they’re prepared to sue the federal government if cost-sharing subsidies are cut off.

Any changes to administrative or operational policy will take time to develop. In the meantime, the ACA is here to stay for the foreseeable future. Employers and other stakeholders should stay the course with execution of their ACA compliance strategies. Trion will continue to monitor and update you as new developments occur.

###

Your Trion Strategic Account Managers are here to answer any questions you might have as you prepare to comply with upcoming ACA requirements. If you are not currently a Trion client and would like assistance navigating the changes required by health care reform, please contact us today by emailing [trionsales@trion-mma.com](mailto:trionsales@trion-mma.com).