

The Affordable Care Act What Now?

October 5, 2017



Repeal and Replace

- House of Representatives
 - ✓ Passed American Health Care Act (AHCA) on May 4, 2017
 - ✓ 217-213 vote

- Senate
 - ✓ Introduced Better Care Reconciliation Act (BCRA) in June
 - ✓ Not enough support to pass
 - ✓ July 25: voted 50-50 to open floor for debate and amendments; VP broke tie
 - ✓ July 28: Health Care Freedom Act (HCFA), aka “Skinny Repeal,” defeated 51-49
 - ✓ September 26: Senate Pulls Graham-Cassidy

What's The Problem?

Graham-Cassidy

- Repeal of Penalties for Individual and Employer Mandates
 - ✓ Back to 2016

- Individual Insurance Assistance - \$25 Billion
- Transfer of Medicaid Expansion to Grants
 - \$1.2 Trillion
- State Waivers for ACA Requirements
- Per Capita Medicaid Caps
- Tax on Medical Devices Gone
- Liberalize HSA Contribution Rules
- Eliminate ACA Public Health and Prevention Fund

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Too Cold

"My promise to the voters was to repeal Obamacare - not block grant and keep Obamacare," he adds. "If Obamacare were truly repealed, this entire trillion dollars would not be spent. This is the primary obstacle to my support, and only a significant reassessment of this trillion-dollar spending regime would get my support."

Rand Paul

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Too Hot

"Sweeping reforms to our health care system and to Medicaid can't be done well in a compressed time frame, especially when the actual bill is a moving target..."

The bill would also "open the door for states to weaken protections for people with pre-existing conditions, such as asthma, cancer, heart disease, arthritis and diabetes."

Susan Collins

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Not Right

"This bill and the process it's gone through is clearly wrong," Schumer said, referring to the reconciliation process that requires only 51 votes rather than the usual 60 votes. He also said that the process has "damaged this institution."

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Impact of the ACA

- Three Major Focuses
 - ✓ Market Reforms
 - ✓ Coverage Expansion
 - ✓ Taxes and Fees



Impact of the ACA

- Market Reforms
 - ✓ No lifetime or annual maximums
 - ✓ Preventive care
 - ✓ No preexisting condition limits
 - ✓ Dependent eligibility to age 26
 - ✓ Out-of-pocket maximums
 - ✓ Excessive waiting periods
 - ✓ Wellness programs
 - ✓ Summaries of Benefits and Coverage
 - ✓ Community rating for small groups
 - ✓ Essential health benefits package (small group and individual plans)



Impact of the ACA

- Coverage Expansion
 - ✓ Individual Mandate
 - ✓ Establishment of exchanges
 - ✓ Employer Mandate
 - ✓ Medicaid Expansion

- Taxes and Fees
 - ✓ Transitional Reinsurance
 - ✓ PCORI
 - ✓ Health Insurance Provider Tax
 - ✓ Cadillac Tax

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Impact of the ACA

- Employers
 - ✓ Plans had to adopt most market reforms
 - ✓ Employer mandate: biggest issue was coverage of 30+ hour employees
 - ✓ Employer reporting: huge burden
 - ✓ Cadillac tax

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Impact of the ACA

- Individuals
 - ✓ 26 million additional people covered*
 - ✓ 15 million of these were Medicaid enrollees*
 - ✓ Average premium increase for mid-level Marketplace plan in 2017 was 25%
 - ✓ Major insurers (Aetna, UHC, Humana) have pulled out of Marketplace in many areas
 - ✓ In KY, Anthem is cutting in half the number of counties where it participates, leaving each county with only one carrier (CareSource is the other)
 - ✓ Great uncertainty for 2018

*Kaiser

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Impact of the ACA

- Marketplace uncertainty
 - ✓ Two types of assistance for Marketplace coverage: **premium subsidies** and **cost-sharing reduction (CSR) payments**
 - ✓ Premium subsidies mandated by ACA, but cost-sharing reductions were not
 - ✓ Lawsuit challenging legality of payments is working its way through federal courts
 - ✓ HHS under Trump Administration has continued to make payments to insurers, but may stop
 - ✓ If CSR payments discontinued, Marketplace premiums for 2018 could skyrocket, and insurers might pull out of more markets

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What's Next?



Executive

- Regulatory/Executive Action
 - ✓ President Trump issued Executive Order 1/20/17
 - ✓ Ordered agency heads to use all authority available to them to “waive, defer, grant exemptions from, or delay” implementation of ACA provisions that are burdensome
 - ✓ Agencies could propose changes to current ACA regulations or take a non-enforcement position
 - ✓ Executive Order Affecting State Lines



Congress

- After Senate failed to pass reform, Senator McConnell said Republicans would move on to other issues
- Could reintroduce “skinny” repeal or other new repeal and replace legislation
- Time is out for Reconciliation: deadline was 9/30



Congress

- If Congress takes up tax reform, some ACA provisions could be addressed there
- Examples:
 - ✓ Employer and individual mandate penalties
 - ✓ Taxes, including Health Insurance Provider Tax and Cadillac Tax



Congress

- Could something bipartisan be in the works?
- Congress may try to stabilize the individual marketplace through more limited, targeted legislation
- Bipartisan “Problem Solvers Caucus” introduced principles to guide future legislation
 - ✓ Advocate bringing cost-sharing subsidies under Congressional control, instead of leaving them up to the executive branch
 - ✓ Would raise employer mandate large employer threshold from 50 to 500 full-time employees
 - ✓ Would change definition of “full-time” from 30 to 40 hours

States

- Governors proposing ACA fix
- Ohio’s Kasich and Colorado’s Hickenlooper have proposed bipartisan proposal to stabilize individual markets and give states greater flexibility in designing alternative programs
- 6 other governors have joined

States

- Section 1332 of ACA allows states to request 5-year Innovation Waivers from certain ACA provisions beginning in 2017
 - ✓ EHB provisions
 - ✓ “Metal” tiers
 - ✓ Cost-sharing limits
 - ✓ Tax credits/cost-sharing reductions for Exchange coverage
 - ✓ Individual and Employer Mandates
- Must be able to demonstrate coverage would be as comprehensive and affordable, and cover as many state residents as ACA plans
- 6 states have applied; more may follow
- Ohio’s legislature voted to apply for one, and it is in the works

What Should We be Watching?

Cadillac Tax

- Excise tax of 40% on the value of employer-sponsored plans that exceed certain values
- \$10,200 Self-Only; \$27,500 Other than Self-Only
- Originally scheduled to be effective in 2018; now 2020
- Could potentially affect many employers
- Unpopular with both Republicans and Democrats
- Could be revisited under tax reform
- Regulators still need to flesh out details through regulations
- Start planning

Employer Mandate and Reporting

- IRS issued two letters earlier this year emphasizing that Executive Order giving agency heads enforcement latitude did not change Employer and Individual Mandates, so must still comply
- Reporting is needed to enforce these
- Might they be lenient with penalties?
- If Problem Solvers Caucus proposal passes, employers with fewer than 500 full-time employees would not be subject to the Employer Mandate; hopefully would not be required to do Section 6056 reporting

Cost-Sharing Reduction (CSR) Payments

- Employer plans could be affected if CSR payments end and individual coverage becomes more expensive or options become fewer
 - ✓ Pressure from part-time employees for affordable or better coverage
 - ✓ COBRA rates more attractive
 - ✓ Employers assisting retirees with individual coverage may find it more expensive or find retirees asking for group coverage again

My Surprise Slide

Questions?



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