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Affordable Care Act Repeal (and Replace) in the Senate/ Better Care Reconciliation Act – What was in the BCRA? (cont'd)

- ▶ Would have retained the per capita cap Medicaid restructuring in [House Bill 1628](#), but squeezed tighter, with a reduced annual inflation index beginning in 2025, down from CPI-Medical Urban to CPI-Urban, and with no 1 percentage point add-on for aged, blind, disabled.
 - BUT would have allowed states to choose their base periods (rather than mandating FY 2016)—any eight quarters from FY 2014 through the third quarter of FY 2017.
- ▶ Would have delayed the rollback of the enhanced match for Medicaid expansion beyond House date of 2020 to 2023.
- ▶ Would have eliminated the essential health benefits requirement for Medicaid benchmark plans after December 31, 2019.
- ▶ Would have added \$2 billion in Fiscal Year 2018 (only) for State responses to the opioid crisis, usable for both mental health and substance use purposes.
- ▶ Would have permitted 30 consecutive days of Medicaid coverage of psychiatric IMD services, effective October 1, 2018 at 50 percent FMAP.
- ▶ Would have required a 6-month waiting period for enrollment if 63-day or more break in coverage.

Affordable Care Act Repeal (and Replace) in the Senate/ Better Care Reconciliation Act (cont'd) – What Was in the BCRA?

- ▶ Would have created a block grant alternative to the per capita cap restructuring of Medicaid approved by the House that states could have elected.
 - The state in a block grant program would have had to provide mental health services and substance use disorder services.
- ▶ Would not have eliminated essential health benefits in marketplace plans, but would have significantly lowered the actuarial value requirements and permitted state § 1332 waivers to drop EHBs.
- ▶ Would have amended § 1332 of the ACA authorizing state innovation waivers to provide for alternative means of, and requirements for, increasing access to comprehensive coverage, reducing average premiums, and increasing enrollment.
 - Would have eliminated the § 1332 waiver budget neutrality requirement, requiring instead that they not increase the Federal deficit.
 - Would have permitted a state to request that all of, or any portion of, the aggregate amount of tax credits or cost sharing reductions due state enrollees be paid to the state.
 - A § 1332 waiver would have been in effect for 8 years, and could have been renewed for unlimited additional 8-year periods, without cancellation by the Secretary during an 8-year period.

Affordable Care Act Repeal (and Replace) in the Senate/ What was in the *revised* BCRA? (cont'd)

- ▶ [July 13 revised version of bill](#) would have exempted Medicaid spending from the per capita caps during public health emergencies, and would have allowed states to apply for a waiver from the cap for home-based services for aged, blind and disabled enrollees.
 - Would have allowed states in alternative block grant option to add the Medicaid expansion population.
- ▶ Would have increased FMAP for Indian tribes and tribal organizations to 100 percent.
- ▶ Would have increased the special fund for substance use/mental illness from \$2 billion to \$45 billion.
- ▶ Would have added \$70 billion to the \$112 billion already in the "stability fund" created to bring down premiums.
 - 1 percent of the expanded stability fund grants would have had to be reserved specifically to subsidize insurance in states where premiums are at least 75 percent higher than the national average (Alaska).
- ▶ Cruz language added permitting insurers with ACA-compliant plans to also sell noncompliant plans.
 - Cruz language opposed by insurance industry, which said it would increase premiums significantly for compliant plans as healthier enrollees left those plans and their risk pools.

Affordable Care Act Repeal (and Replace) in the Senate

- ▶ ACA Repeal undertaken under Budget reconciliation process required only 51 votes to pass, limiting debate on any House bill and amendments to 20 hours.
- ▶ Procedural vote to bring the [House bill](#) to the floor passed July 25, 51-50, with Republican Senators Susan Collins (ME) and Senator Lisa Murkowski (AK) opposing and Vice President Mike Pence breaking the tie.
- ▶ A number of Republican Senators who had previously indicated they might not vote to bring H.R. 1628 to the floor all voted to move the bill —Senators John McCain (returning from brain surgery) and Jeff Flake (AZ), Ted Cruz (TX), Mike Lee (UT), Dean Heller (NV), Shelly Moore Capito (WV), Jerry Moran (KS), Rob Portman (OH), Ron Johnson (WI), Rand Paul (KY), Bill Cassidy (LA).
 - Senator Johnson was last vote in favor, creating the tie, convinced after heated discussion with Senator McConnell regarding process on the floor of the Senate. Senator McCain lamented the process in remarks.
- ▶ First vote, also July 25: a McConnell Amendment to approve the latest [Senate version of H.R. 1628](#), the “Better Care Reconciliation Act,” itself amended to include Sen. Portman amendment to use Medicaid moneys to provide cost-sharing assistance to exchange enrollees with incomes less than 133 percent of the Federal Poverty Level.

Affordable Care Act Repeal (and Replace) in the Senate (cont'd)

- ▶ Amendment included provisions of the Senate's Better Care Reconciliation Act which the Parliamentarian had ruled out of order under the Byrd Rule, including:
 - Sunset of Medicaid essential health benefits.
 - Provisions withholding funding for Planned Parenthood for one year and prohibiting use of tax credits to cover abortion costs.
 - 6-month waiting period for enrollment if continuous coverage not maintained by enrollee.
 - “Buffalo Bailout” blocking states (like New York) from using county monies to meet state Medicaid match.
 - Shifting to states the determination of an appropriate Medical Loss Ratio for insurance plans.
 - Allowing states that spend less than their targeted block grant amount to roll over funds to the following year and to use those funds for non-health purposes.

Affordable Care Act Repeal (and Replace) in the Senate (cont'd)

- ▶ Also, no Congressional Budget Office score on the Portman amendment or on language promoted by Sen. Ted Cruz to allow ACA-compliant plans to also sell non-compliant plans in the same marketplace.
 - Insurance industry opposed Cruz language, saying younger, healthier enrollees would choose the lesser policies, leaving the risk pool for the more robust policies to older, less healthy enrollees and resulting in significantly higher premiums to cover costs.
- ▶ Motion to waive the Byrd Rule and move ahead with a vote on the amended BCRA as an amendment to the House bill failed, 43-57, with Republican Senators and Susan Collins (ME), Bob Corker (TN), Tom Cotton (AR), Lindsey Graham (SC), Dean Heller (NV), Mike Lee (UT), Jerry Moran (KS), Lisa Murkowski (AK), Rand Paul (KY) joining the Democrats in voting no.

Affordable Care Act Repeal (w/o Replace) in the Senate

- ▶ July 26: At insistence of Senators Lee and Paul, Senate voted on an amendment to (almost) fully repeal ACA, using [budget reconciliation language](#) approved by Congress in January 2016, then vetoed by President Obama. Repeal would have been delayed 2 years while Congress worked out a replacement.
- ▶ Amendment failed, 45-55, with Republican Senators Lamar Alexander (TN), Capito, Collins, Heller, McCain, Murkowski, and Portman joining Democrats in opposition.
- ▶ Would have ended the Medicaid expansion, but would not have retained the language restructuring Medicaid into a per capita cap/block grant program.
- ▶ Would not have funded cost-sharing subsidies (CSRs) paid to marketplace insurers but never authorized by Congress, leaving the insurance industry even more uncertain in the face of threats by President Trump to halt CSR payments.
 - White House has agreed to make July payments (only).

Affordable Care Act Repeal and Replace in the Senate (cont'd)

- ▶ Tongue-in-cheek amendment introduced by Montana Republican Senator Steve Daines to enact “Medicare for All,” [H.R. 676](#), failed 57-0, with most Democrats voting “present” at Senator Bernie Sanders (D-VT) suggestion.
- ▶ At 2 a.m. on July 28 on Senate Majority Leader McConnell’s [“skinny repeal” amendment](#) failed, 51-49, with Senator McCain joining Senators Collins and Murkowski and all Senate Democrats in voting no.
- ▶ Intent behind “skinny repeal” (released only 4 hours earlier by Senator McConnell) was to pass provisions all Republicans agreed on, then revisit in Conference Committee with House. “Skinny repeal” included:
 - repeal of individual mandate,
 - repeal of the employer mandate until 2024,
 - expansion of § 1332 waivers to allow noncompliance with ACA, making the waivers good for 8 years, indefinitely renewable, and immune from cancellation by the Secretary of Health and Human Services;
 - elimination of the ACA’s Prevention and Public Health Fund, beginning in 2019;
 - extension through 2020 of the existing moratorium on the excise tax on manufacturers and importers of medical devices; and
 - an increase in the maximum contribution limit to Health Savings Accounts (HSAs) from 2018 through 2020.

Affordable Care Act Repeal and Replace in the Senate (cont'd)

- ▶ BUT, earlier, House Speaker Paul Ryan and his press spokesman at first signaled the House might just vote on “skinny repeal” without sending it to conference.
- ▶ Senators McCain, Graham, Cassidy, and Johnson held press conference saying they could not vote for “skinny repeal” without Speaker’s assurances it would go to conference.
 - Graham, Cassidy wanted chance to include their proposal to block grant ACA exchange moneys given to states, allowing states to make the choice whether to retain the ACA provisions and structure.
- ▶ Speaker Ryan relented after press conference, saying he would send bill to Conference Committee, but House would not vote on Conference report until Senate had passed it.
- ▶ McCain was never convinced Ryan would keep his word, despite phone call from Ryan.
- ▶ CBO scored “skinny repeal” as leaving 43 million individuals uninsured (as many as 28 million in the first year), including 7 million Medicaid enrollees, and cutting \$235 billion from Medicaid over 10 years.
- ▶ McCain voted against, calling for regular order, committee hearings, bipartisan approach in trying again in the future to repair the ACA.

House Budget Proposes Cutting \$ 1.5 Trillion from Medicaid over 10 Years

- ▶ FY 2018 House Budget Resolution encapsulated in the “[Budget Plan](#),” passed July 20, sets fiscal goals for Congress.
 - Budget is seen as aspirational, not mandatory, but gives reconciliation instructions to 11 House committees to achieve at least \$203 billion in mandatory savings and reforms in FY 2018.
- ▶ Budget proposes to cut (see [Summary Tables](#)):
 - approximately \$26 billion from Medicaid and CHIP in 2018, \$1.5 trillion over 10 years (2018-2027);
 - 2024: \$193 billion; 2025: \$208 billion; 2026: \$223 billion; 2027: \$250 billion
 - \$3 billion from Medicare in 2018, \$487 billion over 10 years; and
 - \$4 billion from Social Security over 10 years.

House Has Set Maximum FY 2018 Funding for Agencies under § 302 Rule, Labor-HHS Appropriations Cuts MHBG

- ▶ Labor-HHS funded at \$158B – a \$3B cut. SAMHSA funded at \$3.5B – \$306M below FY 2017, but \$68M above President’s request.
- ▶ The Administration’s FY 2018 SAMHSA Mental Health Proposal: \$912M. The House FY 2018 Mental Health Number: \$949.7M, \$231,330,000 below the FY 2017 enacted program level.
 - 25 percent cut (\$141.5M) in the Mental Health Block Grant, from \$542.5M to \$421M.
 - 10 percent set-aside for FEP remains in the Mental Health appropriation, but 25 percent cut would apply to set-aside as well.
- ▶ \$15M for Rep. Tim Murphy’s Assisted Outpatient Treatment pilot, extended under 21st Century Cures Act.
- ▶ House took the majority of Trump Administration’s line-item cuts to offset Substance Use Grant increases, which included the MHBG cut, but rejected Trump Administration proposed elimination of Behavioral Health Workforce Education and Training Grants, Mental Health First Aid, and Promoting Integration of Primary and Behavioral Health Care (PIPBHC) Grants.
- ▶ Senate unlikely to make cuts as deep, with \$8.1B more set as the maximum for Labor-Health and Human Services-Education funding.

House Has Set Maximum Budgets for Agencies under § 302 Rule, Substance Use Block Grant Fares Better

- ▶ \$1.86B for the Substance Abuse Block Grant – the same as FY 2017 and \$3.4M above the President’s budget request.
- ▶ \$78M for Criminal Justice activities – equal to FY 2017 level and the Administration request – including \$60M specifically for drug courts.
- ▶ The bill also includes \$747M to address opioid and heroin abuse, the FY 2017 level and \$44M above the White House request.
 - Includes \$500M for the state response grants authorized in the 21st Century Cures Act, along with funding for programs authorized in the Comprehensive Addiction and Recovery Act.
- ▶ BUT, Health Resources and Services Administration (HRSA) funding eliminated for Health Careers Opportunity Program (\$14 million), consistent with Trump intent to eliminate “redundant” programs.
 - Program provides grants to eligible accredited health professions schools and public and private non-profit health or educational entities, including those who offer graduate programs in behavioral and mental health.

Upcoming Events

- ▶ Nomination Hearing on appointment of SAMHSA Assistant Secretary Elinore McCantz-Katz and Surgeon General Appointee Jerome Adams in Senate Health Education Labor and Pensions Committee on August 1 at 2:30 p.m.
 - Hearing will be web-streamed at <https://www.help.senate.gov/hearings/nomination-hearing5>.
- ▶ Day-long stakeholder summit at the Centers on Medicare and Medicaid Services on September 8 to consider suggestions for innovations in payment for and delivery of behavioral health services.
 - Summit proposed by the Centers for Medicare and Medicaid Innovation, so not limited to Medicaid only. Can include Medicare, CHIP suggestions.
 - Four discussion panels, then suggestions from the audience (2 minutes only).
 - ***Must register to attend.*** Information at <https://www.gpo.gov/fdsys/pkg/FR-2017-07-21/pdf/2017-15374.pdf>.