

# Health Care Reform Update – What's in store for the year ahead?

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*This document is intended to build awareness and understanding of potential changes and issues related to the future regulatory environment for health care. This document is to be used as an educational tool only - it is not intended to provide predictions of future outcomes, comprehensive implications, or to impart legal advice. Further, the information contained in this document is only informed as of the date of its creation and does not replace a more rigorous review of additional guidance pending from the federal government.*

1. Current status of legislative discussions
2. Focus of reform discussions
3. What's next?

# Congressional status



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May  
4

House approves  
American Healthcare  
Act

July 25 –  
28

Senate votes down  
BCRA (43-57),  
Obamacare Repeal  
Reconciliation Act  
(45-55) and the  
“skinny bill” (49-51)

June  
22

Senate releases  
Better Care  
Reconciliation Act  
language

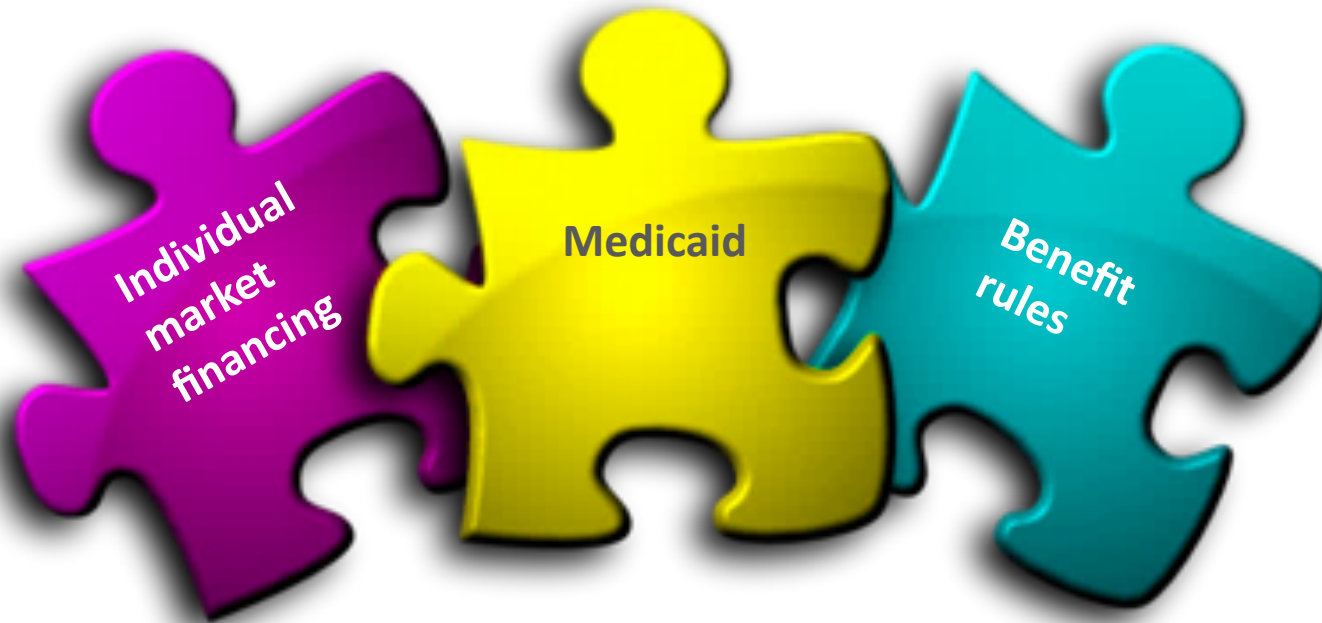
Sept 5

Congress returns  
from recess

# Key challenges to reaching consensus on broad changes to the ACA



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## Near-term ACA related priorities will focus on the individual market, but there are many potential paths

- Key individual market issue: cost sharing reduction subsidies
- Alexander/Murray efforts – HELP committee hearings
  - Potential proposal: CSR appropriation paired with 1332 (state innovation waiver) changes
- Problem Solvers Caucus
  - CSR appropriation
  - Reinsurance funding (unspecified)
  - Employer mandate thresholds increased to 500 employees and 40 hours per week
  - Repeal medical device tax
  - Flexibility for 1332 waivers (unspecified)
- Freedom Caucus effort to force repeal-only vote
- Graham-Heller-Cassidy block grant proposal

**\*\* Other proposals could emerge or re-emerge \*\***

# When Congress returns in September, ACA efforts will be competing with other near-term priorities



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- Hurricane Harvey relief and federal flood insurance reauthorization
- Debt ceiling
- Budget/appropriations
- Continuing resolution
- Tax reform
- Children's Health Insurance Program reauthorization
- Federal Aviation Administration reauthorization

# Health policy changes impacting group coverage may be pushed to later in the year



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- Health insurer tax
- Cadillac tax
- HSA expansion
- Additional ACA tax and fee changes (see appendix)
- Prescription drug prices
- Employer mandate
- Coverage reporting
- Claims Tax



# What's next for repeal/replace legislative discussions



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Will cost share subsidies be paid in 2017, 2018 and 2019?

Will a bipartisan market stabilization law pass?

When will repeal and replace efforts regain momentum?

What legislation could be vehicles for healthcare changes?

Will regulatory changes take center stage?





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# Questions?



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# Appendix

# Appendix A: High-level comparison of key ACA provisions in Republican legislation

	House-passed AHCA	Senate's BCRA	Obamacare Repeal Reconciliation Act (2015 Repeal Bill modified)
<b>Individual and employer mandates</b>	Repealed effective 2016	Repealed effective 2016	Repealed effective 2016
<b>Cost sharing reduction subsidies</b>	<ul style="list-style-type: none"> <li>Retains CSRs in 2017-2019, but without an express appropriation</li> <li>CSRs eliminated in 2020</li> </ul>	<ul style="list-style-type: none"> <li>Express appropriation retains CSRs in 2017-2019</li> <li>CSRs eliminated in 2020</li> </ul>	<ul style="list-style-type: none"> <li>Express appropriation retains CSRs in 2017-2019</li> <li>CSRs eliminated 2020</li> </ul>
<b>Premium tax credits</b>	<ul style="list-style-type: none"> <li>ACA's tax credits modified in 2018 and 2019, eliminated in 2020.</li> <li>New tax credit structure beginning in 2020: age-adjusted flat tax credit that phases out at higher incomes.</li> </ul>	<ul style="list-style-type: none"> <li>In 2020, modifies ACA tax credit design.</li> <li>Tax credits available for 100-350% FPL (and under 100% for those not eligible for Medicaid).</li> <li>Percentage of income table changed to make tax credits more generous for younger and less generous for older individuals.</li> </ul>	ACA premium tax credit structure repealed 2020
<b>Funding for high-risk enrollees</b>	\$138 billion to states from 2018-2026 (\$115 billion likely allocated to reinsurance or similar programs)	Provides \$182 billion total from 2018-2026. <ul style="list-style-type: none"> <li>\$50B from 2018-2021 for reinsurance</li> <li>\$62B from 2019-2026 for high risk pools, reinsurance, CSRs or payments directly to providers.</li> <li>\$70B from 2020-2026 for high-cost enrollees.</li> </ul>	No funding included
<b>Benefit flexibility</b>	Beginning in 2020: state can modify or eliminate EHBs via a waiver, and AV requirements repealed	State can apply for 1332 waiver to change EHBs, AV and OOP max	Not addressed
<b>Rating rules</b>	Allows for 5:1 rating or an alternative state-set age curve, beginning in 2018	Allows for 5:1 rating or an alternative state-set age curve, beginning in 2019	Not addressed
<b>Medicaid</b>	<ul style="list-style-type: none"> <li>Medicaid expansion enhanced funding phased out – new enrollees as of 2020 receive lower funding.</li> <li>Beginning in 2020, move to per-capita caps with option for state block grant</li> </ul>	<ul style="list-style-type: none"> <li>Medicaid expansion enhanced funding phased out from 2021 to 2024.</li> <li>Beginning in 2020, move to per-capita caps with option for state block grant</li> </ul>	Repeals Medicaid expansion effective 2020
<b>Taxes and fees</b>	<ul style="list-style-type: none"> <li>Health insurance tax repealed 2017</li> <li>Cadillac tax delayed until 2026</li> </ul>	<ul style="list-style-type: none"> <li>Health insurance tax repealed 2017</li> <li>Cadillac tax delayed until 2026</li> </ul>	<ul style="list-style-type: none"> <li>Health insurance tax repealed 2017</li> <li>Cadillac tax delayed until 2026</li> </ul>

## Appendix B: The Healthcare Freedom Act or “Skinny Bill”

The “skinny bill” failed in the Senate, 49-51, on July 28, with Republican Senators Collins, Murkowski and McCain joining the 48 Democrats in opposition.

The Healthcare Freedom Act included the following provisions:

- Individual mandate repeal effective 2016
- Employer mandate repealed from 2016-2024, reinstated 2025
- Moratorium on medical device tax extended through 2020
- Maximum HSA contribution increased to OOP limit from 2018-2020
- Defunded Planned Parenthood for 1 year
- Repealed Prevention and Health Fund effective 2018
- Additional \$422 million for Community Health Center program
- 1332 waiver language - \$2 billion appropriated through end of FY 2019 to provide grants to states for purposes of submitting or implementing 1332 waiver; cuts approval time from 180 to 45 days; makes waiver effective for 8 years



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# **Appendix C**

## **Detailed proposal comparison**

	House-passed AHCA	Senate BCRA
<b>Medicaid expansion</b>	<ul style="list-style-type: none"> <li>Maintains enhanced funding for expansion through 2019.</li> <li>As of January 1, 2020, enhanced funding is maintained for Medicaid expansion beneficiaries enrolled as of December 31, 2019 who do not have a break in eligibility for more than one month after January 1, 2020.</li> </ul>	<ul style="list-style-type: none"> <li>Maintains enhanced funding through 2020,</li> <li>Beginning in 2021, enhanced FMAP is reduced: <ul style="list-style-type: none"> <li>85% for 2021</li> <li>80% for 2022</li> <li>75% for 2023</li> </ul> </li> <li>Medicaid expansion funding reduced to state standard funding beginning in 2024 (ranges from 50% - 75%; about 65% in Michigan)</li> </ul>
<b>Medicaid per-capita caps</b>	<p><b>Categories:</b> Aged, blind and disabled adults, children, expansion adults, other adults</p> <p><b>Start date:</b> FY2020</p> <p><b>Base year:</b> FY2016</p> <p><b>Growth rate</b></p> <ul style="list-style-type: none"> <li>Aged, disabled: CPI-medical + 1%</li> <li>Adults, kids, expansion: CPI-medical</li> </ul>	<p><b>Categories:</b> Aged, blind and disabled adults, children, expansion adults, other adults</p> <p><b>Start date:</b> FY2020</p> <p><b>Base year:</b> 8 consecutive quarters (state's choice) from Q1 2014 through Q3 2017 (or 4-7 quarters if state expanded after Q4 2015).</p> <p><b>Growth rate</b></p> <ul style="list-style-type: none"> <li>Aged, disabled: CPI-medical + 1% (2020-2024)</li> <li>Children, expansion, other adults: CPI-medical (2020-2024)</li> <li>CPI-U for all groups starting 2025</li> </ul>
<b>Medicaid block grant option</b>	<p>Starting in 2020, state can receive a flexible block grant for adult and child population for 10 years.</p> <ul style="list-style-type: none"> <li>Funded by same base year calculation as for per capita. Calculate per capita cost multiplied by number of enrollees in prior year.</li> <li>Funding increases by growth in consumer price index. Unused funds rollover.</li> </ul>	<p>Starting in 2020, state can receive a flexible block grant for nonelderly, nondisabled, non-expansion adults.</p> <ul style="list-style-type: none"> <li>Funded using the state's FMAP multiplied by the target per capita amount and the number of enrollees in each category</li> <li>Funding increases by CPI-U. Unused funds rollover.</li> </ul>



# Individual market subsidies

	ACA	House-passed AHCA	Senate BCRA
<b>Cost sharing reduction subsidies</b>	<p>Purchase silver (70% AV), receive:</p> <ul style="list-style-type: none"> <li>• 100-150% FPL – 94% AV</li> <li>• 150-200% FPL – 87% AV</li> <li>• 200-250% FPL – 73% AV</li> </ul>	<ul style="list-style-type: none"> <li>• Retains CSRs in 2017-2019, but without an express appropriation</li> <li>• CSRs eliminated in 2020</li> </ul>	<ul style="list-style-type: none"> <li>• Express appropriation to retain CSRs in 2017-2019</li> <li>• CSRs eliminated in 2020</li> </ul>
<b>Premium tax credits</b>	<p>Cost of benchmark plan limited to 2-9.5% of income for individuals with income 100-400% FPL who are not eligible for coverage such as Medicaid, Medicare or employer sponsored coverage</p>	<ul style="list-style-type: none"> <li>• ACA's tax credits modified in 2018 and 2019, eliminated in 2020.</li> <li>• New tax credit structure beginning in 2020: age-adjusted flat tax credit that phases out at higher incomes.</li> </ul>	<ul style="list-style-type: none"> <li>• In 2020, modifies ACA tax credit design.</li> <li>• Tax credits available for 100-350% FPL (and under 100% for those not eligible for Medicaid).</li> <li>• Percentage of income table changed to make tax credits more generous for younger and less generous for older individuals.</li> </ul>
<b>Benchmark plan</b>	Second-lowest-cost silver plan (70% AV)	Not applicable – subsidy not tied to cost of premiums	Median cost 58% AV plan



# Individual market: Reform bills would add funding for high-cost enrollees, create new continuous coverage incentive

	ACA	House-passed AHCA	Senate BCRA
<b>Funding for high-cost enrollees</b>	Reinsurance for individual market: \$20 billion from 2014-2016	Stability Fund - \$138 billion to states from 2018-2026 (\$115 billion likely allocated to reinsurance or similar programs)	Provides \$182 billion total from 2018-2026. <ul style="list-style-type: none"> <li>• \$50B from 2018-2021 for reinsurance</li> <li>• \$62B from 2019-2026 for high risk pools, reinsurance, CSRs or payments directly to providers.</li> <li>• \$70B from 2020-2026 for high-cost enrollees.</li> </ul>
<b>Continuous coverage incentives</b>	Individual mandate	<ul style="list-style-type: none"> <li>• Individual mandate repealed</li> <li>• 30% premium surcharge in individual market if gap in coverage of more than 63 days during the past 12-month period</li> <li>• State option to replace 30% surcharge with health status rating</li> </ul>	<ul style="list-style-type: none"> <li>• Individual mandate repealed</li> <li>• Six-month waiting period in individual market if gap in coverage of more than 63 days during the past 12-month period</li> </ul>

# Benefit and rating rules

	ACA	House-passed AHCA	Senate BCRA
<b>Essential health benefits and actuarial value (individual and small group)</b>	<ul style="list-style-type: none"> <li>Plans must cover benefits for 10 categories of EHBs established through state-determined benchmark</li> <li>Plans must be bronze (60% AV), silver (70%), gold (80%) or platinum (90%)</li> </ul>	<ul style="list-style-type: none"> <li>Beginning in 2020, state can modify or eliminate EHBs via a waiver</li> <li>AV requirements repealed in 2020</li> </ul>	State can apply for 1332 waiver to change EHBs and AV
<b>Rating rules (individual and small group)</b>	Rating factors limited to age (3:1 cap), geography and tobacco use (1.5:1 cap)	<ul style="list-style-type: none"> <li>Allows for 5:1 rating or an alternative state-set age curve, beginning in 2018</li> <li>Health status rating permitted for individual market only, and only for individuals without continuous coverage</li> <li>Other rules same as ACA</li> </ul>	<ul style="list-style-type: none"> <li>Allows for 5:1 rating or an alternative state-set age curve, beginning in 2019</li> <li>Other rules same as ACA</li> </ul>

	ACA	House-passed AHCA	Senate BCRA
<b>Employer mandate</b>	Tax penalty for large employers not offering affordable, minimum value coverage	Repealed 2016	Repealed 2016
<b>Association health plans</b>	No provision	Not included in AHCA, but separate legislation passed by House allows for voluntary pooling arrangements that are exempt from most state and federal small group rules	Allows for voluntary pooling arrangements that are exempt from most state and federal small group rules
<b>Small business tax credit</b>	<p>Tax credit of 50% of cost of premiums for employers with 10 or fewer full-time equivalent employees and average wages no greater than \$25,000. Must provide coverage through the SHOP.</p> <p>Tax credit phases out as FTEs increase from 10 to 25 and as average wages increase from \$25K to \$50K.</p>	Repealed 2020	Repealed 2020

# Additional noteworthy reform changes

	ACA	House-passed AHCA	Senate BCRA
<b>HSA expansion</b>	N/A	<p>Effective 2018:</p> <ul style="list-style-type: none"> <li>Maximum contribution to HSAs increased to deductible and out-of-pocket maximum limits (currently \$6,550 for an individual and \$13,100 for a family).</li> <li>Allows spouses to make catch-up payments to the same HSA account</li> <li>Allows HSA payment for medical expenses incurred during the 60-day period before the account became effective.</li> </ul>	<p>Same as House bill, plus...</p> <p>Allows, beginning in 2018, premiums for individual market HDHPs to be covered by HSA funds if premiums are not deductible for a self-employed individual and premiums exceed tax credit.</p> <p>ACA technical correction: HSA may be used to cover qualified medical expenses for an account beneficiary's child under the age of 27.</p>
<b>MLR</b>	Requires rebates to be paid if an insurer's medical loss ratio is below 80% in individual or small group markets or 85% in large group	ACA rules retained	Effective 2019: repeals federally run MLR program, but requires states to set MLR ratio and determine the amount of MLR rebates.

Federal Tax / Fee	Definition	Current Status	AHCA	BCRA
<b>Health insurance tax</b>	<p>Tax on health insurance that is required to raise \$14.3 billion nationally in 2018.</p> <p>Tax began as an \$8 billion national assessment in 2014.</p>	<p>Federal law signed in December 2015 established moratorium from the tax for 2017. Under current law, the tax returns for 2018 remittance (based on 2017 premiums).</p>	Repealed effective 2017	Repealed effective 2017
<b>Cadillac tax</b>	<p>40% excise tax on the value of employer-sponsored benefits for an employee that exceeds specified thresholds. The base thresholds in the ACA were \$10,200 for self-only plans and \$27,500 for coverage other than self only, beginning in 2018.</p>	<p>Implementation was delayed from 2018 until 2020 via previous legislation</p>	Delayed to 2026	Delayed to 2026
<b>Limitation on excessive remuneration</b>	<p>For health insurance companies, tax deductibility of compensation for certain employees is limited to \$500,000 (rather than the \$1 million threshold that generally applies to businesses)</p>	<p>Impacts federal income tax liability for health insurance issuers</p>	ACA change eliminated 2017	Retained

# Taxes and Fees

Federal Tax / Fee	Definition	Current Status	AHCA	BCRA
<b>Medical device tax</b>	The tax applies to sales of taxable medical devices after Dec. 31, 2012. The tax is 2.3% of the sale price of the medical device.	Federal law signed in December 2015 established moratorium from the tax for 2016 and 2017.	Repealed effective 2017	Repealed effective 2018
<b>Branded pharmaceutical tax</b>	Market share tax imposed on branded pharmaceutical manufacturers/importers.	Tax began at \$2.5 billion in 2011, increases to \$4.1 billion in 2018, and is \$2.8 billion in 2019 and subsequent years.	Repealed effective 2017	Repealed effective 2018
<b>Comparative Effectiveness Research Fee (PCORI)</b>	Funds research through PCORI on the effectiveness of medical services	<ul style="list-style-type: none"> <li>• Payment due 7/31/17 is \$2.17 or \$2.26 per covered life (depending on end date of plan year).</li> <li>• Indexed in future years.</li> </ul>	Not addressed, but expires in 2019-2020 under current law.	Not addressed, but expires in 2019-2020 under current law.
<b>Reinsurance Fee</b>	Fee to cover portion of high-cost claims for individual plans on or off marketplace.	<ul style="list-style-type: none"> <li>• Set to end in 2016, will not be assessed in 2017</li> <li>• Final payment (\$5.40 per covered life) due November 15, 2017</li> </ul>	Not addressed, but has expired as of 2016	Not addressed, but has expired as of 2016

# Taxes and Fees

Federal Tax / Fee	Definition	Current Status	AHCA	BCRA
<b>Tax treatment of retiree drug subsidy</b>	ACA modified tax treatment, such that expenses allocable to the received subsidy were no longer tax deductible.	In effect, the ACA change reduced the value of the RDS by the firm's marginal income tax rate and led some groups to shift to Part D group coverage or to drop group drug coverage.	ACA tax treatment is reversed effective 2017	ACA tax treatment is reversed effective 2017
<b>Increase in hospital insurance tax</b>	Increases employee portion of Medicare payroll tax from 1.45% to 2.35%	Applies to wages in excess of \$200K for individuals and \$250K for married couple.	Eliminated effective 2023	Retained
<b>Investment income tax on high income earners</b>	In general, 3.8% tax on investment income	Applies to individuals with income above \$200K and married couples with income above \$250K	Eliminated effective 2017	Retained
<b>Marketplace fee</b>	Premium tax: 3.5% of on-Marketplace premium for individual and small group	Applies to individual and small group market via single risk pool (pro rata to share of market that is on Marketplace)	Retained	Retained



# Taxes and Fees

Federal Tax / Fee	Definition	Current Status	AHCA	BCRA
<b>Flexible Spending Arrangement cap</b>	\$2,500 annual cap on employee contributions to flexible spending arrangements	Cap is \$2,600 for 2017, due to inflation adjustments	Eliminated effective 2017	Eliminated effective 2017
<b>HSA/MSA non-qualified distribution tax</b>	Tax on distributions from HSAs or MSAs not used for medical expenses	20% tax penalty	Tax to be lowered to 10%/15% effective 2017	Tax to be lowered to 10%/15% effective 2017
<b>Over the counter drugs for spending arrangements</b>	ACA limited definition of qualified medical expense to prohibit use of HSA, FSA or HRA for OTC drugs with exception for insulin and prescriptions	Same as definition	ACA policy on OTC drugs reversed effective 2017	ACA policy on OTC drugs reversed effective 2017
<b>Income threshold for medical expense deduction</b>	Itemized deduction for unreimbursed medical expenses in excess of an income threshold. Cannot combine with other tax-favored health spending.	The ACA raised the income threshold from 7.5% to 10%, beginning in 2013.	Reduces the threshold to 5.8%, beginning in 2017.	Returns the threshold to 7.5%, beginning in 2017.