

# PUBLICATION

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## Senate Fails to Advance Health Care Reform Bill; Next Steps Remain Uncertain

Authors: Sheila P. Burke

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After a late-night defeat, it appears that Senate Republicans' years-long push to repeal the Affordable Care Act (ACA) has stalled following deep divisions between moderate and conservative members over the goals and various provisions of the reform legislation. In the early hours of July 28, the Senate voted 49 to 51 on the "skinny repeal bill" that represented Senate Republicans' last resort measure to advance health care reform. The deciding vote came from Senator John McCain (R-AZ), who joined Senators Susan Collins (R-ME) and Lisa Murkowski (R-AK) in voting with all 48 Democrats against the bill. In the short-term, it remains uncertain how Congress will proceed on health care reform, which may place greater emphasis on the Trump Administration's actions regarding questions on the stability of the individual market.

All this follows several major developments over last week, summarized below.

### Motion to Proceed on House-Passed American Health Care Act

On Tuesday, July 25, by a vote of 51 to 50, the Senate approved a motion to proceed to consideration of the House-passed American Health Care Act (AHCA). The successful vote to open debate followed days of negotiations aimed at winning over holdout Republican Senators. All 48 Democratic Senators, along with Senators Collins and Murkowski, voted in opposition. Vice President Mike Pence broke the tie in favor of beginning debate.

Senate Majority Leader Mitch McConnell (R-KY) emphasized the procedural vote as a first step towards repealing and replacing the ACA, framing it as an opportunity for Senators to offer amendments. Prior to the motion to proceed, it was unclear which bill the Senate would ultimately vote on, with potential options including a Repeal-and-Delay bill (closely matching the 2015 reconciliation bill), the Better Care Reconciliation Act (BCRA), or an alternate "skinny repeal bill" that would primarily target the ACA's individual and employer mandate provisions. Leadership indicated interest in pursuing whichever approach seemed most likely to garner the minimum 50 votes.

### Votes on Better Care Reconciliation Act and Obamacare Repeal Reconciliation Act

Following the motion to proceed, on Tuesday night, July 25, by a vote of 43 to 57, the Senate failed to approve a procedural vote to advance the BCRA. In addition to all 48 Democratic Senators, Republican Senators Collins, Murkowski, Dean Heller (R-NV), Bob Corker (R-TN), Tom Cotton (R-AR), Lindsey Graham (R-SC), Mike Lee (R-UT), Jerry Moran (R-KS) and Rand Paul (R-KY) voted against the bill.

Subsequently, on Wednesday, July 26, by a vote of 45 to 55, the Senate failed to approve the Obamacare Repeal Reconciliation Act (ORRA), the 2017 version of the Repeal-and-Delay bill. Once again, all 48 Democratic Senators voted in opposition, along with Republican Senators Collins, Heller, Murkowski, McCain, Lamar Alexander (R-TN), Shelley Moore Capito (R-WV) and Rob Portman (R-OH).

### Final Vote on Health Care Freedom Act

Finally, late in the evening on Thursday, July 27, Leader McConnell released the much-anticipated "skinny repeal bill," framed as the Senate's endgame option to advance to a conference committee with the House. The bill – titled the "Health Care Freedom Act" (HCFA) – would:

- Retroactively zero out the penalty for the individual mandate, effective in 2016;
- Retroactively zero out the penalty for the employer mandate from 2016 – 2024 (after which it would go back into effect in 2025);
- Delay the effective date of the medical device tax until 2021;
- For 2018-2020, increase the maximum contribution limit of HSAs;
- Defund Planned Parenthood for one year;
- Eliminate the Prevention and Public Health Fund beginning in FY19;
- Add an additional \$422 million in funding for community health centers for FY17; and
- Modify the Section 1332 waiver provisions, leaving the "guardrails" – requiring states to have coverage that is at least as comprehensive and covers at least as many people – in place, while giving HHS less discretion on whether to approve a waiver, requiring HHS to approve waivers more quickly, extending approved waivers from five to eight years and prohibiting HHS from cancelling waivers mid-period, and allowing states to automatically renew approved waivers.

The Congressional Budget Office (CBO) and Joint Committee on Taxation (JCT) estimated the HCFA would reduce the federal deficit by \$178.8 billion over 2017 – 2026. Relative to current law, CBO also estimated HCFA would increase the number of uninsured by 15 million next year and increase premiums for plans in the individual market by roughly 20 percent in all years between 2018 – 2026.

**Takeaway:** After the Senate ultimately failed to approve the HCFA on a vote of 49 to 51, Leader McConnell pulled the reconciliation measure from the floor. After the failed vote, President Trump stated that Republicans should hold another vote on health care or otherwise "let Obamacare implode." With all immediate options for health care reform off the table, it is unclear how Congress will proceed.

One of the greatest concerns regarding the ACA is stability of the individual market, as premiums continue to rise and insurer participation remains unsettled for plan year 2018. The future of the ACA's Cost-Sharing Reductions (CSRs) payments to insurers remains murky, which has been a key concern. President Trump is reportedly holding a meeting on Tuesday, August 1, to discuss the CSR program, which suggests that a decision may be announced this week. The next payment from the Trump Administration to insurers participating in the insurance exchanges is scheduled to occur in three weeks. Insurers argue that the viability of the exchange market would be in jeopardy if CSRs were to be abruptly discontinued.

While members of both parties have called for stabilizing the fragile individual market, Leader McConnell did not explicitly endorse an approach in his brief remarks on the Senate floor. On Monday, July 31, the Problem Solvers caucus, a bipartisan group of 43 House lawmakers led by Rep. Tom Reed (R-NY) and Josh Gottheimer (D-NJ), is expected to release a package of proposals aimed at stabilizing the insurance market and enacting ACA changes that have received bipartisan support in the past. Insurers and the National Association of Insurance Commissioners are also urging lawmakers to address market stability before the August Recess. Republicans may elect to work with Democrats on a bipartisan market stabilization package, however the substance, timing, and process for any such steps remain highly uncertain.