

# Health Care in Motion

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August 4, 2017 9:30AM EST

## Senate Heads Home Without Repeal While Trump Threatens to Undercut ACA and Medicaid

After failing in their efforts to repeal the Affordable Care Act (ACA) the Senate rebuffed President Trump's demands that they try again, and have instead headed out of town for their August recess. While health care advocates should rightly cheer these developments, a word of caution is advised—a battle may be won, but the war still looms. The Trump Administration is a continued threat to the ACA and Medicaid. Even absent Congressional action, the Administration has consistently voiced its opposition to the ACA, and has a wide array of tools at its disposal to actively undermine the law's programs and protections that ensure access to care for people living with chronic illnesses and disabilities. The Administration wields considerable influence over the future of the ACA's programs, as well as the future of Medicaid, and may use this influence to undermine access to care. Because the Administration may take action to force the ACA to "implode" and to chip away at Medicaid through the waiver process, advocates must not let last week's victory lull them into a false sense of security.

### Advocates should:

1. Continue to monitor Congress for any new health care proposals that may gain traction among congressional Republicans.
2. Closely follow Administrative action that may undermine the ACA and access to care for vulnerable populations.
3. Watch for any Medicaid waivers drafted by their states. Advocates should be involved with the waiver process and push back against proposals that would serve as barriers to care for individuals living with chronic illnesses and disabilities and other vulnerable populations.

### White House Pushes For New Health Bill, Senate Moves On For Now

After the dramatic defeat of the 115<sup>th</sup> Congress' effort to repeal the ACA last Friday, July 28<sup>th</sup>, Senate Majority Leader [Mitch McConnell](#) (R-KY) [declared](#) it "time to move on." The White House, however, has refused to walk away from the issue. President Donald J. Trump pressured Republicans to return to their failed attempts over the weekend, [threatening](#) to

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withhold key ACA subsidies unless a new bill is passed quickly. At least in the short term, however, Senate leadership has no plans to revive their repeal efforts, instead focusing on confirming presidential [nominations](#) until the Senate leaves for recess.

Early this week, in an attempt to revive the repeal effort, Trump met with Senators [Bill Cassidy](#) (R-LA), Lindsey [Graham](#) (R-SC), and [Dean Heller](#) (R-NV) to discuss their alternative health care bill. The [proposal](#)—yet another amendment to the Better Care Reconciliation Act (BCRA)<sup>1</sup>—is concerning for proponents of access to care. It would preserve much of the original bill’s provisions, including the stunning cuts to Medicaid. However, the proposal would end the ACA’s premium tax credits, cost-sharing reductions, and enhanced federal financial support for Medicaid expansion, instead offering states block grants beginning in 2020 and ending in 2026. These grants would be [well below](#) the amount states would otherwise receive under the ACA, and could be used for a vast array of health care purposes with few standards to ensure meaningful and affordable coverage. This is particularly concerning for people living with chronic illnesses and disabilities who rely on the credits and subsidies to purchase coverage. Ultimately, the Cassidy-Graham-Heller proposal is getting little traction as Republican leadership [ignored](#) President Trump’s call to continue debate, and instead [left town](#) for their August recess.

## The ACA and Medicaid Under a Hostile Administration

After the defeat of the Republicans’ repeal efforts last Friday, President Trump [weighed in](#), stating that Congress should “let [the ACA] implode...” and deal with the aftermath later, and later [threatened](#) to actively undermine the ACA’s programs if a new bill was not passed. The administration’s persistence on the Congressional effort to repeal and replace the ACA signals how it will execute the law moving forward. Advocates should remember that the Administration wields [considerable influence](#) over the future of both the ACA and Medicaid, regardless of congressional action. Regulations and executive actions can have a dramatic impact on policies and programs that effect access to care, and the President has stated his willingness to undermine programs that ensure affordable coverage for vulnerable populations.

## ACA Marketplaces

On the private insurance side, the most immediate threat is the future of the ACA’s [cost-sharing reductions](#) (CSRs). The ACA requires insurers to offer reduced cost-sharing plans to eligible consumers, and in return the federal government makes CSR payments directly to insurance companies to compensate for the added cost. In 2016, nearly [6 million](#) individuals benefitted from CSR assistance.

President Trump has repeatedly [threatened](#) to withhold the CSR payments, which many people living with chronic illnesses and disabilities rely on to afford the out-of-pocket costs of insurance such as deductibles, copayments, and coinsurance. House Republicans previously [filed suit](#) alleging that these subsidies are illegal—arguing that Congress had not appropriated money for the CSR payments – which the Obama administration chose to litigate. While the outcome of the lawsuit remains uncertain, the Administration could unilaterally discontinue the subsidy payments absent congressional action. This would have dramatic consequences for the health of the ACA’s Marketplaces.

Should the CSR payments end, insurers are likely to react in one of two ways. First, insurers would need to raise premiums significantly in order to offset the loss of funds from the federal government. As CSR plans are only available

<sup>1</sup> For an in-depth discussion of the BRCA, please see our previous *Health Care in Motion* pieces [here](#) and [here](#).

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for consumers selecting a [silver-level](#) health plan, insurers would most likely raise premium rates for these plans only. However, the [majority](#) of individuals purchasing coverage through the Marketplaces qualify for premium subsidies that would insulate them from these premium increases. This would lead to an unintended consequence: the increase in federal premium subsidies associated with the raised rates would end up costing the federal government about [23% more](#) than the projected savings from eliminating the CSR payments. Second, already [skittish insurers](#) could decide to exit the Marketplaces in response to the prospect of shrinking profits, potentially leaving consumers with no insurers offering subsidized coverage. This is particularly concerning for individuals living with chronic illnesses and disabilities who rely on the robust financial supports to purchase comprehensive, affordable coverage in the Marketplaces.

Beyond the CSRs, the Administration has several tools at its disposal to shape the Marketplaces. For example, the Department of Health and Human Services (HHS) must decide whether to aggressively recruit insurers to sell in Marketplaces that have recently lost insurers. Recent [press statements](#) released by HHS have consistently tried to emphasize that the ACA is failing, pointing to a small number of counties in which no insurers plan to offer coverage for the 2018 plan year. This indicates that HHS has not engaged in the same kind of [active recruitment](#) of insurers as the Obama administration, instead focusing on messaging aimed at pointing out the shortcomings of the ACA.

The Administration also plays a substantial role in promoting outreach and education for the 2018 open enrollment. Especially in light of the fact that the open enrollment period was cut in half under HHS's Market Stabilization Rule finalized in April,<sup>2</sup> decisions as simple as [how many ads](#) HHS chooses to run for 2018 enrollment will impact the number of Americans who enroll and have meaningful access to care. The Administration has previously acted to reduce enrollment by [cutting advertising](#) during the last enrollment period, has reportedly [used funds](#) designed to promote ACA enrollment to support anti-ACA messaging, and has [ended contracts](#) for outreach programs designed to help people sign up for coverage. If the Trump Administration rolls back these outreach programs, it is likely to result in fewer individuals signing up for coverage as individuals may miss the shortened enrollment window or find it difficult to navigate their options absent assistance.

## Consumer Protections and Administrative Discretion

The ACA delegated a considerable amount of authority to define and implement the law to regulatory agencies, particularly HHS. As a result, the Trump Administration has considerable discretion to reshape the law's contours. HHS Secretary Tom Price [noted](#) that the ACA says "the Secretary shall" or "the Secretary may" some 1,442 times throughout the law's text, giving him wide authority to change the ACA's rules in ways that undermine the law's robust consumer protections and negatively impact access to care for people living with chronic illnesses and disabilities.

For example, while the individual mandate, the ACA provision that requires all individuals to either purchase coverage or face a penalty, remains the law of the land, the ACA gives Secretary Price authority to substantially weaken the mandate's teeth. The individual mandate requires that all individuals purchase minimum essential coverage (MEC) in order to avoid a penalty. While the ACA affirmatively lists certain types of coverage as MEC, including Medicare, Medicaid, and plans purchased on the ACA's Marketplaces, it also gives the Secretary of HHS discretion to designate other types of coverage as MEC. While the Obama administration promulgated administrative [rules](#) requiring that any coverage designated as MEC must meet "substantially all" of the ACA's private insurance market reforms, the Trump Administration could weaken this requirement and allow for far less robust plans to qualify for MEC.

<sup>2</sup> For an in-depth discussion of this rule, please see our previous *Health Care in Motion* pieces [here](#) and [here](#).

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This could potentially allow plans that do not meet the standards required by the ACA, such as limited-benefit plans, short-term coverage, and critical illness plans, to qualify as MEC. Because these plans offer fewer benefits than ACA-compliant plans, they generally cost less and thus would attract healthier individuals that do not expect to use their health insurance often. This adverse selection would concentrate those that need robust coverage in the Marketplaces, while healthier individuals would be siphoned away. The result would be that the ACA's Marketplaces may become unsustainable, leaving individuals living with chronic illnesses and disabilities without affordable options to purchase comprehensive health coverage.

## Medicaid

The Administration can also have a substantial impact on Medicaid, through HHS and the Centers for Medicare and Medicaid Services (CMS). Price and CMS Administrator Seema Verma issued a [letter](#) in May encouraging states to apply for 1115 waivers, which allow them to modify their Medicaid programs. Some states could use this opportunity to submit 1115 waivers that would reduce access to care by setting up barriers to enrollment or by limiting the benefits enrollees are entitled to.

For example, Wisconsin recently submitted an 1115 waiver request to CMS to allow the state to, among other harmful proposals, impose a work requirement for certain adults as a condition of receiving health care. This proposal, if approved, would negatively impact access to Medicaid for those living with chronic conditions. Individuals who do not qualify for Medicaid through a disability pathway, but may still be living with conditions that preclude them from attaining employment, would be barred from obtaining needed care and treatment, forcing them to seek costlier late-stage interventions like emergency room visits. Previous experience with work requirements in welfare programs shows that individuals with physical and mental health disorders are [disproportionately likely](#) to be punished for not completing work requirements, and that states often incorrectly administer them, [sanctioning](#) those living with disabilities that are meant to be excluded from the requirement.

Wisconsin's proposal is only one of many put forth by states with Republican Governors (such as Indiana, Arkansas, Kentucky, Arizona, and Maine) that seek to add additional barriers to Medicaid enrollment such as mandatory drug screening, time-limited eligibility, and others that have never been approved before under previous administrations. However, given the volume of rhetoric espoused by the Administration regarding giving states additional flexibility to design their health care program, including Medicaid, these harmful proposals have a possibility of becoming reality despite being [legally suspect](#).

Under the Obama Administration, HHS acted as a backstop, preventing states from implementing policies that would undermine access to care in their Medicaid programs. However, the Administration, particularly Administrator Verma, has championed Medicaid policies that could reduce access to care for those living with chronic conditions.<sup>3</sup> Furthermore, some of the 19 states that have still not expanded Medicaid have begun to express interest in doing so. It is unclear how supportive Trump's HHS will be of these attempts to expand, or if they will throw up administrative roadblocks to slow or stop expansion.

<sup>3</sup> For an in-depth discussion of Administrator Verma's policy proposals, please see our previous *Health Care in Motion* piece [here](#).

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## Advocates Must Remain Vigilant

While advocates achieved a great success in defeating this round of congressional efforts to repeal and replace the ACA, the fight is far from over. There is still a possibility that Republican leadership could once again attempt to reinvigorate their failed legislative proposals. Advocates should continue to monitor Congress for any new health care proposals that may gain traction among congressional Republicans.

Further, because of the potential risk to the ACA and access to care, advocates should monitor Administrative developments closely. Advocates should work to establish relationships with new HHS leadership to better educate them on the importance of strong consumer protections and financial supports for access to care programs. Advocates should also closely monitor and get involved with any waivers drafted by their states before they are submitted to CMS. Advocates should push back against any waiver proposals that would serve as barriers to care for individuals living with chronic illnesses and disabilities, including (but not limited to) work requirements, drug testing, and time-limited eligibility.

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