



## HEALTH REFORM ADVISORY PRACTICE

### Weekly Legislative Update



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April 14, 2017

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## Congress in Recess, but Health Reform Rumors Swirl, and the Individual Market Looks for Help

There's little activity to report this week as Congress nears the end of the first half of its two-week recess. But rumors continued to swirl that the White House, leadership in the House of Representatives, and the conservative Freedom Caucus were close to a deal on the American Health Care Act (AHCA). That's the Affordable Care Act (ACA) repeal-and-replace bill that House Speaker Paul Ryan (R-WI) pulled from the House floor on March 24, minutes before a scheduled vote, after the Freedom Caucus denied him the needed 216 votes by declining to support the bill.

Rep. Mark Meadows (R-NC), chairman of the Freedom Caucus, said Tuesday he and Ryan were close to a deal and that he was expecting a call from the Speaker at noon. But the silence that followed Tuesday afternoon and through the end of the week suggested that perhaps the call had not gone well.

**Lockton comment:** Progress toward a deal may have been further hindered this week by the praise some Freedom Caucus members received from constituents at town hall meetings back in their districts. Constituents encouraged the members to continue opposition to the AHCA. Such open displays of support might embolden the members to hold the line on their opposition. The support at least somewhat counters warnings the members received from the White House and others, that their opposition to the AHCA might jeopardize their re-election in 2018.

### The Individual Market's Woes

Meanwhile, much of Washington D.C.'s attention on health insurance was focused on the individual health insurance market. Depending on what stories you read, that market is either teetering on catastrophe but might be stabilizing, is in a death spiral, or is already a complete and utter disaster.

Most of the discussion focused on cost-sharing reduction subsidies under the ACA. These “CSRs,” as they are commonly called, are payments from the federal government to insurers, to compensate them for reducing deductibles and other out-of-pocket expenses under individual policies issued to certain individuals in the ACA’s online marketplaces. The payments amount to \$7 billion annually, and benefit about half of the individuals buying insurance in the marketplaces.

The question is whether the federal government will continue to make those payments.

House Republicans don’t believe the payments are authorized and in 2014 sued the Obama administration for funding them. But many Congressional Republicans, particularly in the Senate, are willing to pass legislation authorizing the payments, which are intended to help stabilize the individual market. Health insurers are warning that they may pull out of the market without a federal commitment to the subsidies.

Early in the week the White House appeared to support paying the subsidies, but later backed off that position. Mid-week, President Trump announced he’s willing to authorize the funding if Congressional Democrats demonstrate a willingness to work out a deal on health reform. The response of some Democrats, however, was to demand that CSR funding be added to a spending bill that must be adopted by April 28 to avoid a government shutdown.

Newly finalized marketplace-related regulations from HHS cleared the Office of Management and Budget on Thursday, and were set to be released late this week. The regulations are designed to mend certain aspects of the ACA that create challenges for the individual market. The proposed rules would:

- Require more front-end verification of marketplace “special enrollment” events before an individual would be allowed to enter the market outside of the annual enrollment period.
- Narrow the annual enrollment window.
- Permit insurers a bit more leeway in determining the appropriate “metal value” (i.e., bronze, silver, gold, etc.) for the policies they offer in the marketplace.
- Allow insurers to withhold coverage due to unpaid premiums, which results in a limited continuous coverage requirement.

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