



## Insight

# The Health Care Debate Has Moved to the Senate Floor, What Happens Next?

CHRISTOPHER HOLT | JULY 25, 2017

## TIME TO VOTE

On Tuesday, the Senate approved the motion to proceed to consideration of the House-passed [American Health Care Act \(AHCA\)](#). Where the debate proceeds from here remains to be seen, but the Senate is likely to consider several directions.

Of course, the Senate is currently considering the AHCA, and could debate and amend that legislation—eventually returning the bill to the House with any provisions that run afoul of the Senate’s [reconciliation process](#) stripped out. Rumors are already circulating that two provisions seeking to limit abortion coverage—also included in some of the Senate’s potential substitute amendments—will not be allowed.

## OPTIONS

Every indication is that Majority Leader McConnell will offer one of four substitute amendments to serve as the basis of the Senate debate. They are described below.

1. **Better Care Reconciliation Act (BCRA):** Leader McConnell could offer the BCRA as a substitute amendment to the AHCA. The most recent iteration of this legislation was [scored](#) by the Congressional Budget Office (CBO) last week, so it would be ready to go. But an earlier version of this same measure failed to reach the fifty-vote threshold and it’s unclear that the changes are enough to move recalcitrant Republicans to embrace it this time. Key features of the legislation include:
  - Income-based tax credits for those below 350 percent of the federal poverty level (FPL) adjusted for age, and with a [maximum income contribution](#) range between 2 percent and 16.2 percent.
  - 5:1 [age-rating](#).
  - Requires the Secretary of Health Human Service’s to approve all section 1332 waivers that would not increase the federal deficit.
  - Adds \$182 billion in market stabilization funding for 2018 through 2026.
  - Repeals most of the Affordable Care Act’s (ACA) taxes, except the net investment income tax and 0.9 percent increase in the Medicare payroll tax for high earners.
  - Reduces the federal share of spending on the Medicaid expansion population to 75 percent by 2023, which will then match that of the other Medicaid populations in each state.
  - Changes Medicaid [funding](#) to a [per-capita cap](#) system in 2020, with a state option to receive a block grant for a select group of enrollees, and a state option to institute [work requirements](#) for Medicaid

enrollees.

2. **Straight Repeal of the ACA:** Leader McConnell has floated reviving the 2015 reconciliation bill which previously passed the Senate, but was vetoed by then President Obama. While this legislation is also not a total repeal of the ACA, it would repeal all of the ACA's taxes, health subsidies and the [Medicaid expansion](#), but leave in place the insurance market reforms among other provisions. This legislation includes no replacement policies, and the repeals would not go into effect until 2020. This move would effectively start the clock on a renewed health reform process. The updated 2015 reconciliation bill was also scored by CBO last week, so can move to the floor without issue on that front.
3. **BCRA with Cruz Amendment:** The Senate could take up BCRA, but with Senator Ted Cruz's [Consumer Freedom Amendment](#). The Cruz amendment—which has raised concerns about bifurcated risk pools and potential death spirals in the Exchanges—would allow insurers to offer plans that do not conform to the ACA's requirements for a qualified health plan (QHP) off the Exchange in any market where they are also offering at least one gold, silver, and bronze plan option. These non-QHPs would also be freed from the ACA's ban on discriminating against people with pre-existing conditions and medical underwriting, among other ACA rules. Anyone purchasing these plans would be ineligible for tax credits and these plans would not meet the requirement for creditable coverage. That last point may be moot as reports are the Senate parliamentarian has ruled the proposed [six-month waiting period](#) to begin coverage for those who do not maintain creditable coverage violates the Byrd rule. The Senate parliamentarian could also conclude the Cruz amendment itself violates the standards for reconciliation. If the Cruz amendment cannot survive a Byrd challenge, then option three turns back into option one.
4. **Graham/Cassidy State Block Grant:** Finally, there is a proposal developed by Senators Graham and Cassidy—not to be confused with the Cassidy/Collins bill from earlier in the year. The Graham/Cassidy proposal would take the entirety of the monies currently being spent by the federal government on health insurance in the individual market and give it to the states in the form of block grants. It would retain the ACA's insurance market reforms, but repeal the individual and employer mandates. It would also continue the ACA's myriad taxes, with the lone exception of the medical device tax. The block grant itself would be indexed to inflation, and states would have broad discretion in utilizing it; however, funds would be strictly limited to health care expenditures.

## OUTLOOK

It is unclear if any of these potential substitute amendments can attract the 50 votes necessary to allow Vice President Pence to provide a tie-breaking vote in favor. Of course, it's also important to keep in mind that with the Senate now formally considering the AHCA, anything can happen. Senators are free to offer any number of substitute amendments taking the debate in unanticipated directions. At this time, however, the possible courses of action listed above seem the most probable.