



Senate Republicans Launch Their Affordable Care Act Rewrite

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After much internal discussion and negotiation, the Senate's Republican leadership unveiled its proposed revisions to federal health insurance legislation on June 22. Senate Majority Leader Mitch McConnell (R-KY) has announced his intention to bring this measure to a vote before the Senate departs for its July 4 recess. Given the Senate's rules and procedures, it's likely that the legislation first released as a discussion draft will see quite a few changes before any final votes are taken. The Senate Budget Committee has posted an initial draft of the Better Care Reconciliation Act (BCRA) on its website at <https://www.budget.senate.gov/imo/media/doc/SENATEHEALTHCARE.pdf>.

While many of the specifics differ, the Senate's draft bill has much in common with the American Health Care Act (AHCA) legislation that the House of Representatives passed on May 4. Both the Senate and House bills are promoted as the Republican leadership's promised repeal and replace of the Affordable Care Act. In both the House and Senate legislation, however, the greatest impact – both in terms of budget impacts and the number of individuals affected – is in the Medicaid program.

The Senate Health Bill and Transit

Even as the initial draft of the Senate's Better Care Reconciliation Act became public, both Democratic and Republican Senators were making statements about modifications that would have to happen in order to gain their possible vote. By the end of its first day of its public life, it was clear that this bill would not get enough votes to pass the Senate, at least not without some serious amendments. Therefore, it's all but guaranteed that aspects of the bill will change before the Senate votes its passage. Furthermore, there is a real possibility that the votes won't line up, and the bill may not see passage.

In whatever form it takes to pass the Senate, there then would be another daunting hurdle: negotiation or conference with the House of Representatives, which would have to result in a compromise bill that can be accepted by both chambers before being presented to the President for his sought-after signature.

Thus, it's important to remember that everything in this draft legislation is subject to change as it works its way through Congress.

With that very important caveat, the initial draft of the BCRA, just like the House-passed AHCA, has the possibility of affecting community and public transportation providers in four ways, one of which may cause murmurs of alarm among providers of Medicaid-supported non-emergency medical transportation:

1. By removing the employer mandate under which the Affordable Care Act requires many employers to make health insurance coverage available to all their employees who work more than 30 hours a week, both the Senate and House health care proposals could remove the costs of providing health insurance from many employers' staffing plans and decisions.
2. The Senate bill would begin winding down the category of Medicaid eligibility for people whose income is up to 138 percent of the poverty line in those states that adopted the Medicaid expansion option under the Affordable Care Act, beginning in 2021. While the House bill's complete shutdown of this Medicaid expansion category in 2020 is more sudden and more immediate, both chambers' bills would lead to the disappearance of many individuals from their states' Medicaid rolls, including some who have been depending on non-emergency medical transportation (NEMT) for access to their Medicaid-covered health care services.
3. Both the Senate and House bills would create a fundamental change in the methodology by which the federal government allocates Medicaid funds to the states, starting in 2020. As a result, it's likely that many states would have to take a fresh look at the ways in which they provide Medicaid-funded services, which has tremendous – but incredibly uncertain – potential to change the game for NEMT.
4. **As drafted, the Senate's bill creates a path that states could use to exit the Medicaid NEMT business altogether.** The Medicaid Flexibility Program that this bill would launch in 2020 is almost a sort of super waiver for which states could apply to the federal Centers for Medicare and Medicaid Services (CMS). Once awarded, a participating state would receive its Medicaid dollars as a block grant (instead of getting federal Medicaid dollars to reimburse part of their medical assistance and program administration expenses), and these grant funds would have to be spent on 14 specific types of medical services listed in what would be a new Section 1903B(d)(4)(A) of the Social Security Act (as a reminder, all Medicaid statutes are found at Title 19 of the Social Security Act)....and non-emergency medical transportation is not on the list of approved uses of these block grant dollars in the Senate's bill.

What Happens Next With This Health Care Bill?

The period between June 22 and July 1 will be interesting times on the floor of the U.S. Senate. If the Senate bill's advocates succeed in their efforts, there will be much cajoling of Senators and the offering of amendments that may lead to the 51 votes this bill would need to get for its passage by the Senate. If that fails to happen, it's quite possible the Senate will drop the whole matter, take a July 4 recess, and move on to other legislative topics when it resumes its session.

Assuming the Senate succeeds at passing some form of this bill, there's still the matter of negotiating with the House. Compromise health legislation would then need to be in a form that once again can satisfy a majority – probably slim – of votes in both the House and Senate before any such measure can then be presented to the White House for signature into law.