



Brian Sandoval
Governor

Florence Jameson, MD
Chairwoman

Heather Korblic
Executive Director

Silver State Health Insurance Exchange

2310 South Carson Street, Suite 2 Carson City, NV 89701 T: 775-687-9939 F: 775-687-9932

www.nevadahealthlink.com/sshix

AGENDA ITEM

For Possible Action

Information Only

Date: August 10, 2017
Item Number: VI.
Title: Affordable Care Act status report

PURPOSE

The purpose of this report is to provide information to the Board and public regarding the status of the Exchange’s implementation of a state based health insurance exchange and other operational matters of the Exchange.

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GENERAL COMMENTS

Senators in Washington D.C. spent the month of July focused on a high-stakes, high-drama debate over a repeal of the Affordable Care Act (ACA); and while the debate seems to have quieted for the time being, healthcare reform continues to make headlines. Many lawmakers have begun to focus on stabilizing the marketplace through federal certainties regarding payments of Cost Sharing Reductions (CSRs) and enforcement of the individual mandate despite President Trump’s call to let ObamaCare implode.

On Tuesday, July 25, 2017 the Senate narrowly voted to begin debate to repeal major provisions of the ACA, hours later Republican leadership faced a setback when the Better Care Reconciliation Act (BCRA) fell short of the necessary 60 votes needed for passage. Because the BCRA did not meet reconciliation rules the bill required 60 votes and came up short with only 43 Senators voting in support while nine republicans opposed.

On Wednesday, July 26, 2017 seven Republican Senators voted against the ObamaCare Reconciliation Act (ORRA), the bill that would have effectively repealed the ACA with a two year window to develop a replacement plan. Following the failed vote on ORRA the Senate heard motions and amendments, which were in large part symbolic and failed to garner the necessary votes for passage. Senator Heller proposed a non-binding amendment requesting that should a bill pass the Senate and move to conference between the House and the Senate the conference body would not cut Medicaid or shift costs to states. This amendment was defeated with 90 Senators in opposition.

On Thursday, July 27, 2017, Republican leadership focused on development of its final bill which was largely known as “Skinny Repeal.” Majority Leader Mitch McConnell’s goal with the Skinny Repeal was to gather sufficient votes and move the process into conference between the House and the Senate. The eight page Skinny Bill was released around 10pm Eastern Standard Time (EST) and included a repeal of the individual mandate, repeal of the employer mandate, repeal of the medical device tax, ban on funding for Planned Parenthood, changes to Health Savings Account contribution limits, and other items. The bill made no changes to Medicaid or the Children’s Health Insurance Program. The Skinny Bill was put up for a vote around 1:30am EST on July 27, 2017 and ultimately failed with three Republican Senators (Murkowski, Collins, and McCain) voting in opposition.

While the Republican Majority still has the ability to continue with repeal efforts, they have signaled that they want to move on to other matters of national importance. In his speech closing the session on July 27, 2017 Leader Mitch McConnell said, “It’s time to move on.”

Many lawmakers on both sides of the aisle are eager to work on bipartisan efforts to stabilize the ACA marketplaces. This would involve measures to address the CSRs, enforcement of the individual mandate, and redevelopment of federal reinsurance programs. Stabilizing actions are important for Nevada’s unsteady individual market; however Department of Health and Human Services Secretary Dr. Tom Price, has invested effort and time in an ACA repeal. The Department has produced taxpayer-funded videos portraying the ACA as ineffective, and Dr. Price himself was deeply involved in lobbying lawmakers to pass a repeal bill. It is now up to Dr. Price and the Administration to make decisions about funding CSRs, outreach, and mandating enforcement of the tax penalty. President Trump’s first tweet after the failed vote said, “3 Republicans and 48 Democrats let the American people down. As I said from the beginning, let ObamaCare implode, then deal. Watch!”

On August 1, 2017 the U.S. Court of Appeals for the District of Columbia Circuit ruled that Democratic state attorney generals can defend the ACA CSR payments to insurers, despite President Trump indicating that he may cut them off. The ruling could make it more difficult for the Trump Administration to unilaterally end the payments of CSRs. The Nevada Exchange has brought this lawsuit to the attention of the Office of the Nevada Attorney General.

By August 16, 2017 health insurers have to make final adjustments to their proposed 2018 premiums. Clarity from the Trump Administration as to whether the CSR payments will be made for the long-term will be critical for insurers to finalize these rates. Some insurers are proposing

higher rates as a result of this uncertainty. These premium rates will also likely increase if the Administration announces that it will not enforce the individual mandate. The next CSR payments are due by August 21, 2017. The Trump Administration has been making these payments on a month-to-month basis; many Republicans in Congress have spent the week encouraging the Administration to continue making the payments to assure stability in the marketplace.

Chair of the Senate Health Committee, Senator Lamar Alexander (TN), has announced hearings starting the week of September 4, 2017 to begin discussions on actions that Congress should take to stabilize and strengthen the individual market. His stated goal is to help stabilize markets for 2018. Some media have reported that this may include funding of the CSRs for at least one year, among other provisions.

Actions from Congress over the next several months will have tremendous impacts on Nevada's individual market. The Exchange will continue to monitor these actions closely, analyze impacts of proposed changes, and continue to work toward a successful open enrollment period whereby Nevadans have access to affordable health insurance.