

## What's next for health care policy?

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While legislative efforts to repeal and replace the Affordable Care Act (ACA) have stalled, changes to health care policy may still occur in the year ahead. There are several avenues to move forward through congressional action or with executive orders directly from the White House. In the face of continuing hurdles on the legislative front, more use of Executive Branch authority is expected to make significant changes, even as the ACA remains in place.

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### Administrative Action

- » **Executive order (EO):** The White House is looking to take more aggressive regulatory action in light of stalled ACA legislative efforts. President Trump signed an EO on Oct. 12, 2017, that directs federal regulatory agencies to address three specific areas, including:
  - » **Association health plans (AHPs):** Expanding the ability of small employers to form association health plans that are treated as large group health plans and, thus, outside of many of the ACA mandates.
  - » **Short-term, limited-duration insurance (STLDI):** Rolling back the regulations that restrict short-term duration insurance to less than three months (it was up to one year before changes last year).
  - » **Health reimbursement arrangements (HRAs):** Expanding the use of health reimbursement arrangements, including potentially allowing employers to pay for individual market insurance for employees.

**Although the details still need to be worked out by the federal regulatory agencies, this EO is expected to ultimately have a significant influence on both individual and small-group markets. Excepted benefits, including Aflac's voluntary products, however, should not be effected.**

- » **Payment of cost-sharing reductions halted:** On Oct. 12, 2017, President Trump announced the immediate cessation of payments to reimburse insurers for cost-sharing reductions for qualified low-income individuals provided by the ACA. These payments are an important factor in insurers' willingness to participate in the public exchange market. Lawsuits challenging the administration's action have already been filed. **How this issue is resolved could have a significant influence on the individual major medical plan market.**

## Further Congressional Action

Congressional efforts to repeal and replace the ACA using the fast-track budget reconciliation process, which requires only 50 votes in the Senate, has failed for now. With the reconciliation process not currently available, there are still other legislative avenues that could be used to make changes to the ACA, but hurdles still remain.

- » **Bipartisan action:** There is some bipartisan agreement on issues such as the Children's Health Insurance Program (CHIP), but a general bipartisan approach to the ACA continues to be elusive. Senate Health, Education, Labor and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) have indicated they are continuing to work on a package of market stabilization proposals. **Assuming they do come to agreement, it's still not clear whether they can get something passed.**
  
- » **Tax reform:** There is no mention of ACA-related taxes in the "Unified Framework for Fixing Our Broken Tax Code" released in September by the "Big Six," House Speaker Paul Ryan (R-WI), Ways and Means Committee Chairman Kevin Brady (R-TX), Senate Majority Leader Mitch McConnell (R-KY), Finance Committee Chairman Orrin Hatch (R-UT), Treasury Secretary Steven Mnuchin and National Economic Council Director Gary Cohn. Nevertheless, there will be pressure to address at least some health care tax issues in tax reform, such as the Cadillac tax. The employer community generally favors repeal or delay of the Cadillac tax and opposes any cap on the employee tax exclusion, but employers will generally have higher-priority issues in tax reform that could change the dynamics. **The Big Six's tax reform framework leaves much to the committee process, so it is possible that the Ways and Means and/or Finance Committees could decide to address some health care issues in tax reform – for instance, potentially delaying the Cadillac tax or repealing and replacing that tax with a cap on the employee exclusion.**
  
- » **Miscellaneous bills:** A number of separate health care bills have been introduced, including proposals for small-business association health plans, the sale of insurance across state lines and Health Savings Account (HSA) expansion, and some have passed the House. While the House could move more of these bills, action in the Senate is not likely, as this stand-alone legislation **would not have the protection of reconciliation and would require 60 votes.**

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