



ACA COMPLIANCE BULLETIN

HIGHLIGHTS

- The Senate rejected a skinny repeal bill, effectively ending their 20-hour debate period on ACA repeal and replacement legislation.
- As a result, the ACA remains current law.
- The Senate may choose to reintroduce its skinny repeal bill, or some other ACA repeal and replacement, in the future.

IMPORTANT DATES

July 25, 2017

Senate Republicans voted to open up ACA repeal legislation for debate and amendments.

July 28, 2017

The Senate rejected a skinny repeal bill, effectively ending the debate.

SENATE REJECTS EFFORTS TO REPEAL THE ACA

OVERVIEW

In the early morning hours of July 28, 2017, members of the U.S. Senate voted 49-51 to reject a “skinny” version of a bill to repeal and replace the Affordable Care Act (ACA), called the [Health Care Freedom Act](#) (HCFA).

This was the final vote of the Senate’s 20-hour debate period, and effectively ends the Republicans’ current efforts to repeal and replace the ACA. However, the skinny repeal bill may be reintroduced at some point in the future.

IMPACT ON EMPLOYERS

Because the Senate was unable to pass any ACA repeal or replacement bill, **the ACA remains current law, and employers must continue to comply with all applicable ACA provisions.**

Following the vote, Senate Majority Leader Mitch McConnell indicated that Republicans now intend to focus on other legislative issues, although they remain committed to repealing the ACA. Despite this, the Senate may choose to reintroduce the skinny repeal bill, or pursue their own ACA repeal and replacement, in the future.

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Legislative Process

Currently, Republicans in both the Senate and the U.S. House of Representatives have been using the budget reconciliation process in their efforts to repeal and replace the ACA. This means that the proposed bills can only address ACA provisions that directly relate to budgetary issues—specifically, federal spending and taxation. **As a result, these proposals cannot fully repeal the ACA.** Budget reconciliation legislation can be passed by both houses with a simple majority vote. However, a full repeal of the ACA must be introduced as a separate bill that would require 60 votes in the Senate to pass.

On May 4, 2017, the House voted 217-213 to pass the [American Health Care Act](#) (AHCA), which is its proposal to repeal and replace the ACA. As a result, the AHCA moved on to the Senate for consideration. In response, the Senate originally drafted the [Better Care Reconciliation Act](#) (BCRA) as its own ACA repeal and replacement bill, followed by [amendments to the BCRA](#) on July 13, 2017. However, on July 18, 2017, Senate Republicans abandoned the BCRA due to a lack of votes.

Then, on July 25, 2017, the Senate voted 50-50 to open up the AHCA for debate and amendments, with Vice President Mike Pence casting the tie-breaking vote in favor of the measure. As a result of the vote, the Senate began a 20-hour debate period, where amendments would be introduced and voted on in succession. The HCFA was the last amendment that was introduced during the 20-hour debate period.

Overview of the Health Care Freedom Act

Introduced by Senator McConnell, the HCFA is a skinny bill to repeal the ACA. After it was introduced, Senate Democrats moved to commit the bill to the Senate committee on Health, Education, Labor and Pensions (HELP committee), but that motion failed on a 48-52 vote.

Similar to the AHCA and the BCRA, the HCFA would **repeal the ACA's individual and employer mandate penalties**, effective Dec. 31, 2015. However, the employer mandate repeal would only be effective through 2024. In addition, the ACA's reporting requirements under Sections 6055 and 6056 would remain intact.

The HCFA would also:

- ✓ Extend the moratorium on the medical devices excise tax (from Dec. 31, 2017, to Dec. 31, 2020). However, unlike the AHCA and the BCRA, it would not affect any other ACA taxes;
- ✓ Increase the contribution limit for health savings accounts (HSAs) up to the maximum out-of-pocket limits allowed by law for high deductible health plans (at least \$6,650 for self-only coverage and \$13,300 for family coverage) for 2018 through 2020; and
- ✓ Amend the ACA's existing Section 1332 State Innovation Waivers to add \$2 billion in funding for states that submit and implement state innovation waivers, add stricter requirements for the Department of Health and Human Services in approving waivers, and extend waivers to eight years (instead of five), with unlimited renewals.

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Congressional Budget Office (CBO) Report

On July 27, 2017, the CBO issued a [cost estimate report](#) on the HCFA, estimating that the bill would:

- ✓ Reduce the deficit by \$135.6 billion;
- ✓ Increase the number of uninsured by 15 million; and
- ✓ Increase premiums in the individual market by roughly 20 percent relative to the ACA in all years between 2018 and 2026.

Next Steps

Because the Senate was unable to pass any ACA repeal or replacement bill, **the ACA remains current law, and employers must continue to comply with all applicable ACA provisions.** The Senate's rejection of the HCFA was the final vote of the Senate's 20-hour debate period, and effectively ends the Republicans' current efforts to repeal and replace the ACA.

Following the vote, Senator McConnell indicated that Republicans now intend to focus on other legislative issues, although they remain committed to repealing the ACA. Despite this, the Senate may choose to reintroduce the HCFA, or pursue its own ACA repeal and replacement, in the future.