

Federal Affairs Update: Changes to Senate Health Care Legislation

July 14, 2017

On July 13th, 2017, the Senate released a revised version of its health reform legislation known as the Better Care Reconciliation Act, or BCRA. While the July 13th version is largely a duplication of the version released in June 2017, it nonetheless contains numerous additional provisions that concern the practice of psychiatry and the treatment of individuals with serious mental illness. This is a supplement to our analysis of the June version of this bill:

Medicaid

- The July version retains the per-capita cap for Medicaid expenditures, but calculates them differently for individuals enrolled in states that expanded Medicaid eligibility between 2015 and 2016. The July version also grants the Secretary of Health and Human Services the authority to exempt Medicaid expenditures from the per capita cap in the event of a public health emergency declared by the Secretary under the Public Health Service Act.
- The July version creates a new demonstration waiver for home and community-based services, subject to program rules and an overall funding limit.
- The July version retains the June version's sunset of the ACA's Medicaid expansion, and hospitals in states that chose not to expand Medicaid will receive a temporary increase in Disproportionate Share Hospital (DSH) funding. The July version calculates the DSH subsidies differently than the June version.
- In states that choose to develop an optional Medicaid block grant program (the "Medicaid Flexibility Program"), the July version identifies specific categories of enrollees in these programs.

Individual Insurance Market

- In addition to the June version's changes to the calculation of insurance subsidies, the July version of the BCRA would allow the use of tax-exempt funds in a Health Savings Account (HSA) for the purchase of insurance premiums.
- The July version also allows all individuals to purchase "catastrophic plans" that, under the ACA, were limited to individuals under 30 years old. These plans carry impose very high cost-sharing requirements on their enrollees. By 2019, these plans would be eligible for subsidies.

- **The “Cruz Amendment”:** The July version of the bill contains an optional provision that may or may not appear in the final version of the bill. If it does, the amendment would allow insurers to offer plans that do not comply with the ACA’s mandatory coverage provisions, including:
 - The requirement that plans cover certain “essential health benefits”
 - Mandatory coverage of individuals with pre-existing conditions
 - The prohibition against insurers increasing premiums for individuals with pre-existing conditions
 - The requirement that plans offer a free annual preventative care visit to enrollees

Insurers seeking to offer non-compliant plans under the Cruz amendment would be required to offer at least one Gold-rated and one Silver-rated ACA-compliant plan in the same area.

The Cruz amendment also creates a fund to assist insurers offering non-ACA compliant plans with coverage of high-risk individuals enrolled in ACA-compliant plans.

Additional provisions affecting access to and delivery of evidence-based mental health and substance use disorder treatment services:

- The June version of the BCRA created a \$2 billion fund “to provide grants to States to support substance use disorder treatment and recovery support services for individuals with mental or substance use disorders.” The July version of the BCRA boosts this appropriation to approximately \$45 billion, comparable to the House version of the bill. This fund is intended to provide funding for substance abuse disorder treatment services, as well as research on “addiction and pain related to the substance abuse crisis.”
- The July version of the bill retains some ACA-created taxes, including a tax on investment income, that were eliminated under the June version of the bill.