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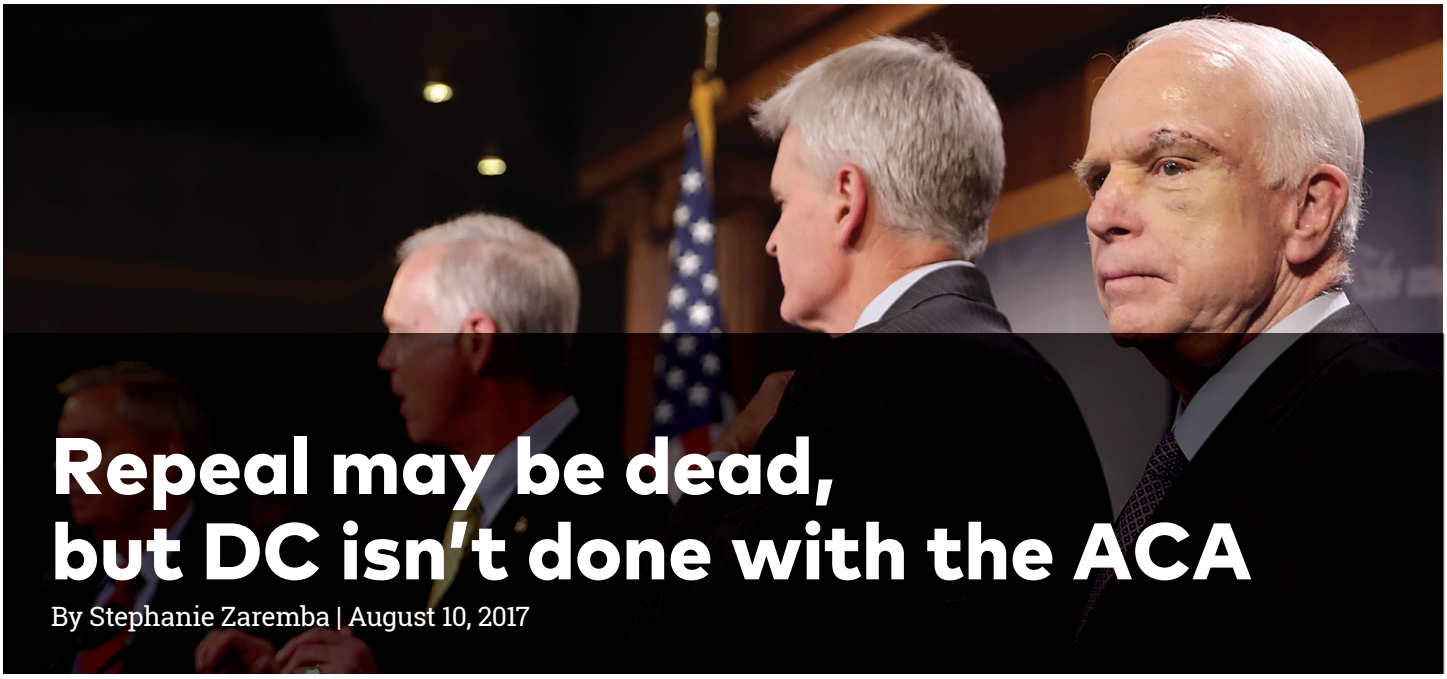

Repeal may be dead, but DC isn't done with the ACA

By Stephanie Zaremba | August 10, 2017

It can be dizzying to try to keep up with Congress's attempts to repeal the Affordable Care Act and figure out what happens now that the Senate failed to pass a repeal bill. As always, we've got you covered.

Here's a quick summary of where things stand today:

No major repeal bill ... for now

Sen. John McCain, R-Ariz., cast the deciding no vote on Senate Republicans' last chance at putting a major ACA repeal bill on the president's desk in the near future.

Senate Majority Leader Mitch McConnell, R-Ky, and Finance Committee Chairman Orrin Hatch, R-Utah, — arguably the two most important voices in deciding whether the Senate continues to try for ACA repeal — have both made it clear that they are ready to move on to tax reform.

It is unlikely that the Senate will continue to devote major energy toward a full-scale ACA repeal this year.

Congress keeps talking, with a glimmer of hope for bipartisanship

However, there are plenty of members in both the House and the Senate that continue to meet and talk about potential ACA solutions. These range from a bipartisan group quietly hashing out options to key Republican voices in healthcare continuing to search for solutions. After August recess, a Senate committee with jurisdiction over healthcare will hold bipartisan hearings on ways to stabilize the individual insurance markets.

While the chances of a major ACA repeal might now be slim, the conversation is far from over. The individual marketplaces are genuinely in bad shape in some states, with some counties having no insurer at all and others seeing dramatic premium increases again for 2018. Members representing those states and districts in particular will be working hard to find fixes that stabilize those markets.

Cost-sharing reduction subsidies will increasingly be in the spotlight

Cost-sharing reduction subsidies are considered by insurance companies to be absolutely essential to their continued participation in the individual market and to their ability to provide affordable coverage to low-income people. But they have been opposed by the GOP for years, and the administration has since January taken a "maybe we will, maybe we won't" approach to funding the subsidies, creating monthly uncertainty.

The administration surely thought that ACA repeal would pass and save it from needing to take a permanent position on whether it would fund these subsidies. But with repeal essentially off the table, the president finds himself in a bit of a bind. Insurers have to decide by the end of September whether and at what rates they will offer coverage in the individual market, and many say that their decision depends on whether the subsidies are funded. Congress will look at stepping in with a solution, but there may not be enough time. Expect a showdown as the September deadline for insurers looms.

The administration has a number of options

You've likely heard the president casually float the option of simply letting the ACA fail (or explode, or implode). What would that actually look like? It's likely that if the insurance marketplaces fail, it will be with a little help from the administration.

First, the IRS can decline to enforce the individual mandate, essentially removing that requirement from the ACA. Insurers believe that without that requirement to purchase insurance, younger, healthier people will forgo coverage, skewing the risk pool of those purchasing insurance toward the sicker population. That would drive up the cost of coverage and make the market increasingly unaffordable and unsustainable.

Second, HHS can use its discretion in a number of places, the most significant of which would likely be a more lenient approval process for states seeking waivers from various ACA provisions. The House and Senate bills both featured processes enabling states to innovate outside of ACA requirements, but HHS can and quite possibly will implement a lot of that policy without legislative action.

And finally, as outlined above, the president can make the decision to no longer fund the cost-sharing reduction subsidies, which would have a large impact on the price of insurance and the volatility of the individual marketplaces.

Stephanie Zaremba is director of government and regulatory affairs for athenahealth.

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