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The Dust is Still Settling: What We Know One Week After the Defeat of the American Health Care Act

Despite the best attempts of President Donald Trump and Speaker [Paul Ryan](#), Republican rank and file balked at bringing the [American Health Care Act](#) (AHCA) to a vote last Friday, March 24, 2017. Both more moderate Republicans and far right members, including the Freedom Caucus, expressed serious reservations on the bill, albeit for very different reasons. This lack of consensus meant that the AHCA did not have the votes to pass the House. While the defeat of the AHCA, which promised to decimate Medicaid, gut consumer protections, and sharply limit federal financial support in the Marketplaces, is a win for access to care, advocates should not assume that the “war has been won.” There are reports that Republican leadership may try to restart the repeal and replace process or to try to pass lower profile legislation with similar policies.

Even if the AHCA is permanently waylaid, the Administration, acting through the Department of Health and Human Services (HHS), has the ability to dramatically impact health policy. The Administration may undermine the ACA from within through administrative actions, but it could also seek to co-opt the ACA and essentially revise it to its own liking. It is also uncertain as to how the new leadership at HHS will react to states seeking to promote ACA programs, such as states currently exploring expanding Medicaid.

In the face of these numerous potential paths forward, the signals coming from Congress and the White House are decidedly mixed. To further complicate the health policy milieu, Democrats have also begun to float some of their own health policy ideas, including action on drug pricing.

Advocates should:

1. Continue to monitor any Congressional developments, including attempts to reintroduce legislation that would repeal and replace the ACA, or otherwise recycle ideas from the AHCA into other bills.
2. Understand the impact that decisions made by HHS could have on access to care, and begin to educate new HHS leadership on the importance of preserving the ACA’s consumer protections and programs, including keeping the Marketplaces strong and expanding Medicaid.
3. Monitor state level developments, including state Medicaid waiver requests, Medicaid expansion plans, and other state legislative efforts.
4. Follow the development of drug pricing legislation in Congress and the Administration.

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Congress Unclear on Next Steps for Health Care

Although the AHCA appeared to be unpopular with moderate and far right Republican representatives alike, it is possible that Republican leadership will continue to press forward with health care reform. This may either take the form of reviving the repeal and replace effort or using some of the AHCA's ideas in smaller, lower-profile bills over the course of the next several months.

Although after last Friday, the AHCA was widely considered to be completely dead, recent statements by key members of Congress suggest that the repeal and replace effort may be revived. Representative [Greg Walden](#) (R-OR), for example [quipped that](#), "some things rise from the dead." Starting on March 29, 2017, reports have leaked that House Republicans are continuing to negotiate on health care reform. The leader of the Freedom Caucus, Representative [Mark Meadows](#) (R-NC), publicly [stated](#) that the AHCA is still a potential vehicle for health care reform. This is surprising because Meadows, last Friday, was opposed to the AHCA as still being too similar to the ACA. Leadership, including House Majority Leader [Kevin McCarthy](#) and Speaker Ryan, have also stated that discussion continues, and that the plan is still to repeal and replace the Affordable Care Act (ACA), although no timelines were given for that process. It is unclear how serious these continued discussions are, or if they will be sidetracked so that Congress can focus on tax reform. There have been considerable competing back-and-forth comments from Congressmen and representatives of the Administration regarding whether the repeal effort has, or has not, drawn to a close. Advocates should continue to educate their elected representatives on the impact that the AHCA could have on access to care and monitor Congress closely for signs of renewed interest in health reform.

Another potential concern is that many of the policies in the AHCA that reduced access to care will be recycled in future legislation over the next several years. Many of the ideas espoused in the various drafts of the AHCA, such as eliminating essential health benefits and actuarial value requirements and moving Medicaid to a per capita or block grant funding structure, remain popular among the Republican Party. It is likely that these policies will be included in future legislation, especially with the [perception](#) that the ACA needs "fixing." Advocates should not assume that health care changes will come only in the form of a single massive health care bill. Instead, advocates should make sure to continue to monitor Congressional developments and remain committed to being vocal on proposed legislation that could limit access to care.

Administration Faced with Many Options, With Significant Potential Impact on Access to Care

Although the Administration cannot repeal the ACA on its own, its choices can have a [dramatic impact](#) on the continued success of the ACA and access to care for vulnerable individuals. After the defeat of the AHCA, President Trump [stated](#) that "the best thing we can do, politically speaking, is let Obamacare explode." It is possible that HHS, helmed by Secretary Tom Price, himself a former prominent critic of the ACA, will consciously pursue policies that will undermine the ACA and access to care.

On the private insurance side, HHS holds the future of the Marketplaces in its hands. For example, HHS must decide whether to aggressively recruit insurers to sell in Marketplaces that have recently been emptying out. It will also have to decide whether or not to continue paying for cost sharing reduction subsidies, which many people living with chronic illnesses and disabilities rely upon to make their care affordable. House Republicans previously [filed suit](#), arguing that these subsidies are illegal, which the Obama Administration chose to litigate. It is unclear if the Trump Administration will continue the litigation, although Ryan recently [indicated](#) that Congress would fund these subsidies until the litigation was resolved. If the Administration declines to continue these subsidies, it would have major ramifications on the ACA's continued tenability. Even something as simple as the [number of ads](#) HHS chooses to run for 2018 enrollment will have an impact on the number of Americans who enroll and have meaningful access to care. It is possible that under Price's leadership, the Marketplaces, which are currently [stable](#) in most areas, will wither.

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The Administration will also have a substantial impact on Medicaid, through HHS and the Centers for Medicare and Medicaid Services (CMS). Price and CMS Administrator Seema Verma recently issued a [letter](#) encouraging states to apply for 1115 waivers, which allow them to creatively modify their Medicaid programs. Some states could use this opportunity to submit 1115 waivers that would set up barriers to enrollment in their Medicaid programs, or limit the benefits enrollees are entitled to. Under the Obama Administration, HHS acted as a backstop, preventing states from implementing policies that would undermine access to care in their Medicaid programs. Administrator Verma, however, is a champion of Medicaid policies that could reduce access to care, such as work requirements. Furthermore, some of the [18 states](#) that have still not expanded Medicaid, such as Georgia, are beginning to express interest in doing so post-AHCA. It is unclear how supportive the new leadership at HHS will be of these attempts to expand, or if they will throw up administrative roadblocks to slow or stop expansion.

Because of the potential risk to the ACA and access to care, advocates should monitor developments at HHS closely. Advocates should work to establish relationships with new HHS leadership to better educate them on the importance of the strong consumer protections and financial supports for access to care programs. Advocates should also closely monitor and be involved with any waivers drafted by their states before they are submitted to CMS. Advocates in states considering Medicaid expansion should work with their state leaders to educate HHS on the importance of being supportive of expansion efforts.

Democrats Introduce Legislation Targeting Drug Pricing

In the midst of Republican in-fighting, Democrats have sought to advance health policy proposals that, while opposed in traditional Republican circles, could elicit interest from the Trump Administration. Democrats in the House and Senate have introduced identical bills aimed at combatting the high price of prescription drugs. The "[Improving Access to Affordable Prescription Drug Act](#)," proposes allowing foreign importation of prescription drugs as well as authorizing HHS to negotiate prescription drug prices with manufacturers, among other changes to America's drug pricing system. While traditional Republicans are strongly opposed to these proposals, Democrats are hoping that President Trump's campaign promises around drug prices could entice the Administration's support.

During his campaign, President Trump proposed forcing drug manufacturers to bid for the right to sell their products to Medicare. Since taking office, President Trump has continued to be vocal about taking steps to reduce the cost of prescription drugs. Within the first week of his presidency, his press secretary, Sean Spicer, [confirmed](#) that this issue will be an Administration priority. On March 7, 2017, Trump reaffirmed his commitment to this issue, [tweeting](#) "I am working on a new system where there will be competition in the Drug Industry. Pricing for the American people will come way down!" Further, on [March 8, 2017](#), President Trump, along with Secretary of Health & Human Services, Tom Price, met with Representatives [Elijah Cummings](#) (D-MD) and [Peter Welch](#) (D-VT) to discuss ways to combat high drug prices. Cummings stated that the President was enthusiastic about tackling the issue and working in a bipartisan manner and Trump [tweeted](#) that it was a "Great Discussion!" Democrats may be looking to capitalize on this potential area of agreement to push for action on prescription drug pricing.

While prescription drugs represent approximately 10% of all health spending, drug pricing is one of the drivers of increases in health care spending. For example, according to Massachusetts's [Center for Health Information and Analysis](#), in 2015 total health care spending in that state increased 4.1% to \$57.4 billion. Prescription drug spending of \$8.1 billion accounted for 36% of the overall growth in health care spending. Spending on new branded drugs is a major driver of pharmaceutical spending. For example, in 2014 and 2015 [spending on brands](#) launched within the past 24 months more than tripled relative to the 2013 spending level. In response to these spending increases, [3 out of 4 Americans](#) have called the cost of prescription drugs unreasonable.

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Advocates should be aware that pharmaceutical pricing is an issue that will likely continue to gain attention on Capitol Hill. The issue may also become increasingly important for access to care if Congress eliminates insurance protections put in place by the ACA as well as if states are permitted to impose new coverage restrictions under Medicaid. Advocates should make sure to track proposed legislation closely, and be aware that this issue, unlike other access to care issues, may be a rare opportunity for across the aisle collaboration in today's increasingly partisan political atmosphere.

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