HEALTH CARE REFORM: WHERE TO NOW?

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It appears the old adage, "the more things change, the more they stay the same" seems particularly true around the topic of "Health Care Reform", or the so-called "Obamacare Repeal and Replace" initiative. Despite the topic being one of the key topic items during the 2016 national election cycle, and a topic that has predominated in the news and has served as THE key initiative during President Trump's first six months in office, as of the date of the writing of this article there have in fact been no actual results to either "repeal" or "replace" the Affordable Care Act of 2010 (i.e., "Obamacare" or the "ACA"). Senator John McCain possibly said it best during his recent speech on the floor of the Senate that, "[w]e Republicans have looked for a way to end [Obamacare] and replace it..and…[a]ll we've managed to do is make more popular a policy that wasn't very popular when we started trying to get rid of it." To make matters worse, all of this inactivity comes right before the annual Congressional summer recess but right before very important deadlines loom around healthcare options that will soon be upon us for the 2018 open enrollment cycle. This article endeavors to summarize the current state of "Health Care Reform" in light of where we are today, and what options will likely exist for 2018…until things change again.

Of course just two short weeks ago, the Senate ignored the President's threats to decide "by the end of the week around the Administration's continued payment of the roughly $7 Billion in "bailout" funds to insurers (i.e., the "cost-sharing reduction subsidy" (CSR) payments to help insurers offset the cost of providing lower deductibles, copayments and coinsurance limits to individuals electing coverage on an exchange if their income is less than 250 percent of the federal poverty level). Of course, the Senate did go ahead and reject the last proposal to amend the ACA and then the end of that week came and went without even a further mention by the Administration about whether the Administration will or won't continue authorizing the payment of CSR reimbursements to the insurers who provide coverage to eligible members who elect state or federal exchange coverage. Speaker McConnell all but then announced that the Senate's efforts to "repeal and replace" the ACA would likely be redirected to other major policy initiatives after the Congressional break (even though the President continues to tweets against Senator McConnell for his "failure" to repeal and replace Obamacare).

Despite the Congressional recess, the CSR installment payment issue remains of major significance to all of us, including those in the employer market, since it is a major component of the reduced rate structure that makes coverage on the state and federal exchanges more affordable to a majority of the at least 11 Million individuals who elect exchange coverage for themselves and their family members. Complicating matters worse, insurers were originally required to submit new rates for 2018 by August 18, 2017, which was three days before the next CSR payment deadline on August 21st, so insurers were scrambling to determine what rates to use for the 2018 renewal process. Rumblings began that more and more states would either pull out of the exchange marketplace completely, or at least significantly increase projected rates given the continued uncertainty around the CSR payment issue. Fortunately, the Department of Health and Human Services gave a bit more breathing room on this issue by now extending the deadline to September 5, 2018 for 2018 insurer rates to be submitted. This then allows everyone to fully know by August 21, 2017 whether the

President will or won't follow through with his threat to cease the continued payment of all CSR payment amounts, which would then likely push the obligation off on insurers and the states to solve the problem themselves if such payments ceased.

Meanwhile, the states and Congress continue to take other steps to neutralize whatever decision President Trump ultimately makes. From the states' perspective, they strengthened their ability to force the President's hand when 18 states joined to request and receive a ruling in the ongoing appeal of the previous *House v. Price* litigation presently sitting dormant since the lower court held that the Office of the President has no constitutional authority to appropriate funds for the CSR program; the Democrats appealed but the case was suspended when a GOP president was elected. By the court's ruling, the states now have a legal foothold to at least temporarily force the President to continue making CSR payments, or at least until the court hears the pending appeal. Congress has also at least begun efforts to neutralize the issue in a bipartisan way, with the House and Senate both initiating the filing of bills that would, among other things, put the CSR payment issue back in the hands of the congressional budget approval process. Of course, nothing will happen on any pending legislation until well after the CSR payment deadline has passed. Meanwhile, for the better or worse, the ACA still remains the law of the land and employers remain obligated to comply with all current requirements of the law. Despite what tweets you may read otherwise. For now.