

HEALTH CARE REFORM: SENATE FAILS TO REPEAL THE AFFORDABLE CARE ACT

It was a drama filled week in the U.S. Senate as Republicans pushed forward on their quest to repeal the Affordable Care Act (ACA). However, after three days of debate and voting, they came up short. This *Briefing* outlines the events that unfolded over the last few days, what may happen next, and what this all means for employers.

The first hurdle for Majority Leader Mitch McConnell was getting enough votes to even start debate on the American Health Care Act (AHCA) passed by the U.S. House of Representatives in May 2017. With a tie-breaking vote from Vice President Pence, the Senate narrowly agreed 51-50 to start debate and that set the stage for introducing numerous amendments to the AHCA. Rather than making minor changes to the House bill, the key amendments would have actually replaced the AHCA with alternative plans.

SENATE'S VERSION OF REPEAL & REPLACE

The first major amendment offered by Republicans was a revised version of their Better Care Reconciliation Act that would have repealed and replaced parts of the ACA and made significant changes to Medicaid. It also included a controversial provision offered by Sen. Ted Cruz (R., TX) that would have allowed insurers to sell non-ACA compliant plans. It failed by a vote of 43-57. Highlights of changes under the proposed amendment included but were not limited to:

- Reduce the Employer and Individual Mandate penalties to zero as of January 1, 2016.
- Restructure eligibility for and calculation of premium tax credits.
- Remove contribution limits to health flexible spending accounts and change certain rules for health savings accounts, including raising the contribution limits and allowing for reimbursement of over-the-counter medications without a prescription.
- Repeal many ACA taxes and fees, including the health insurance provider's fee and the medical device tax.
- Roll back Medicaid expansion, restructure overall financing of the Medicaid program but provide \$100 billion over seven years in additional Medicaid funding.

REPEAL & DELAY

The next major amendment – the Obamacare Repeal Reconciliation Act – would have repealed major parts of the ACA with a two-year delay to allow for drafting and passing replacement legislation. It was essentially the same legislation passed by Congress in 2015 and vetoed by President Obama with some additional language to fund the cost-sharing subsidy payments for 2018-2019. It would have reduced the Employer and Individual Mandate penalties to zero as of January 1, 2016; repealed the premium tax credits and cost-sharing subsidies

effective January 1, 2020; repealed most of the ACA's taxes and fees; and repealed Medicaid expansion. The amendment failed by a vote of 45-55.

“SKINNY” REPEAL

In a last ditch effort to pass some form of ACA repeal, Majority Leader McConnell introduced a “skinny” repeal amendment called the “Health Care Freedom Act.” His goal was to pass the “skinny” version of repeal so that they could move on to conference with members of the House in the hope they all would be able to reach an agreement on repealing the ACA. The amendment would have done the following:

- Reduce the Individual Mandate penalty to zero as of January 1, 2016.
- Delay the Employer Mandate until January 1, 2025.
- Extend the moratorium on the medical device tax until January 1, 2021.
- Increase contribution limits to health savings accounts for three years.
- Prohibit federal payments to Planned Parenthood for one year.
- Repeal the Prevention and Public Health Fund after 2018 but increase Community Health Center Funding by \$422 million for 2017.
- Amend certain provisions relating to Section 1332 state innovation waivers.

In a late night and climactic vote, Sen. John McCain (R., AZ) joined Sens. Susan Collins (R., ME) and Lisa Murkowski (R., AK) plus all 48 Democratic Senators in defeating the amendment 49-51.

OTHER AMENDMENTS: CADILLAC TAX AND SINGLE PAYER

There were several other amendments proposed but there are two worth noting. Sen. Dean Heller (R., NV) introduced an amendment to repeal the Cadillac Tax and it passed by a vote of 52-48. With the underlying repeal effort failing, the Cadillac Tax remains in place but there are at least some signs of support for repealing the tax. The most surprising amendment was a single-payer “Medicare-for-All” plan introduced by Sen. Steve Daines (R., MT). However, rather than being offered as a plan for actual consideration, it was widely viewed as a political move to get the position of Democrats on the record ahead of the 2018 election. No one voted for the amendment, which failed by a 0-57 vote with 43 votes of “Present.”

WHAT'S NEXT?

It is not entirely clear where things will go from here. Republicans and Democrats remain concerned about the stability of the individual insurance market so it is likely they will hold committee hearings and propose legislation to address those concerns. However, it remains to be seen what steps, if any, the Trump administration will take to shore up the individual market and the Exchanges. Will the administration continue to fund the cost-sharing subsidies, enforce the Individual Mandate, and actively promote enrollment in the Exchanges; or, will it take a hands-off approach and wait to see what happens?

For employers, the ACA remains the law of the land. All statutory and regulatory provisions of the ACA remain in full force, including the Employer Mandate and the associated reporting requirements. Employers should continue to administer their plans in full compliance with existing law.

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