

Health Care Legislation Status

Senate Abandons ACA Replacement Bill

July 18, 2017

On the evening of July 17th, Senate Majority Leader Mitch McConnell abandoned the effort to simultaneously repeal and replace the Affordable Care Act (ACA) when two additional Republican Senators announced they will not support the legislation. The Senators, Mike Lee (R-UT) and Jerry Moran (R-KS), joined Rand Paul (R-KY) and Susan Collins (R-ME) as publicly stated no-votes to advance the **Better Care Reconciliation Act of 2017 (BCRA)** to the Senate floor, leaving McConnell short of the necessary tally.

In a statement, McConnell said, “regretfully, it is now apparent the Republican effort to repeal and replace Obamacare will not be successful.” Adding to the breaking news, McConnell announced the Senate will move towards a vote to simply repeal the ACA, and include a **two-three year sunset window** to draft the replacement legislation. In 2015, the Senate passed such an ACA repeal bill by a 52-47 vote, but as anticipated, the bill was vetoed by President Obama in January 2016.

Specifically, McConnell explained, “in the coming days, the Senate will vote to take up the House bill with the first amendment being what the majority of the Senate has already supported in 2015: repeal of Obamacare with a two-year delay to provide for a stable transition period to a patient-centered health care system.”

If this strategy advances, GOP senators will face political pressure to repeat the 2015 vote or explain the inconsistency to their constituents. President Trump, along with many on the more conservative wing of the GOP, have previously lent support to this approach.

McConnell can only lose two Republican Senators to pass any legislation during the **budgetary reconciliation** process. If legislation is deemed beyond the limited scope of a budget-specific reconciliation bill, Republicans will need at least eight Democrats to move forward with additional legislation during the 2-3 year sunset window.

What to Expect Next

Wrangling to consolidate enough votes from the various GOP caucuses has dominated the political landscape since day-one of the 115th congress. The failure of the BCRA to reach the Senate floor is yet another example of the fragile balancing act within the moderate-to-conservative GOP spectrum in reaching any consensus. Appeasing more conservative Republicans focused on long-term funding while maintaining enough patient protections to retain the support of centrist Republicans is proving to be extremely challenging, if not impossible.

Regardless of whether a simple repeal bill or an amendment to the American Health Care Act (AHCA), which passed in the House on May 6th gains traction, regulatory action is anticipated to assist in stabilizing the individual health insurance marketplace. Similar to the ACA, the language “*HHS Shall...*” appears in the

AHCA, thereby instructing the Department of HHS to execute the law's intent with broad **regulatory options** under the new HHS Secretary, Dr. Tom Price.

Of note, as of June 22nd, Anthem Inc. announced that it would exit the health insurance Exchange in Ohio, Indiana and Wisconsin next year. Similar to the decisions of several carriers across varying regions of the country, Anthem cited the volatile market and ongoing uncertainty regarding future cost-sharing payments to offset rising costs. Notably, Humana Inc. and Aetna Inc. have previously announced that they will exit all of their current health insurance Exchanges in 2018.

These decisions directly impact the individual health insurance marketplace, as well as the marketplace for small group health insurance. Collectively, consolidation drives up costs for employer-sponsored health insurance, as well, and adds pressure to take bipartisan action.

Takeaways

As additional information is released, Oswald will provide ongoing guidance and strategic direction for employers. We will remain vigilant in monitoring all regulatory actions, and through our relationships with **industry experts in Washington, DC**, we will continue our proactive communication efforts to anticipate change. Importantly, until the AHCA, or any legislation, is signed by the President, the Affordable Care Act (ACA) remains the law; therefore, all current compliance requirements remain in place.

Oswald Companies | Health Care Reform Implementation

Andrea Esselstein, J.D. | aesselstein@oswaldcompanies.com; 216.658.5012

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