

Health Care Legislation Status

Senate Fails to Pass ACA Replacement Legislation

July 31, 2017

On July 28th, at 1:23 am, Republican Senator John McCain (R., AZ.) joined two other GOP Senators, Susan Collins (R., ME.) and Lisa Murkowski (R., AK.), to stop progress on a narrowed “skinny” version of an Affordable Care Act (ACA) replacement bill. Months of efforts by the Republican leadership to pass several versions of replacement legislation collapsed with these three GOP votes (49-51). Following the defeat of the most recent repeal attempt in the Senate, the Health Care Freedom Act (HCFA), i.e., the skinny repeal bill, it is not immediately clear how the GOP will proceed.

The “skinny” bill would have eliminated the individual mandate penalty and temporarily repealed the employer mandate and its’ penalty exposure until 2025. The tax on medical devices would have been delayed through 2020, among tax changes.

News Recap: Both House and Senate leadership have proposed multiple draft bills during the prior months with the House passing the **American Health Care Act (AHCA)** on May 6, 2017. On July 25th, 50 of 52 Senate Republicans voted to pass a motion to advance the health care debate. The 50-50 tie was decided by Vice President Pence. This procedural motion simply brought the debate to the Senate floor.

Following the motion to proceed, the Senate considered amendments to the AHCA in an **open amendment process**, known as “vote-a-rama,” in which an unknowable number of amendments had the potential to reshape the legislation. Two separate votes occurred: 1) A vote on the Better Care Reconciliation Act (BCRA) and 2) a vote on the Obamacare Repeal Reconciliation Act (ORRA). Both failed.

The Republican National Committee Chairman said, “We’re not done.” Nevertheless, Senate Majority leader, Mitch McConnell (R., KY.) remains unable to find a compromise between conservatives focusing on a complete ACA repeal and more moderate Republicans focusing on patient protections. “I regret that our efforts were simply not enough, this time,” Senate Majority Leader Mitch McConnell said on the Senate floor after the vote. “This is clearly a disappointing moment and it’s time to move on.”

Looking Back

Efforts to consolidate enough votes from the various Republican caucuses to advance ACA replacement legislation has dominated the political landscape since day-one of the 115th congress.

On July 17th, progress in the Senate appeared to halt when two additional Republican Senators announced they would not support BCRA. 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 on the BCRA, leaving Senate Majority Leader Mitch McConnell short of the necessary tally. Following political backlash for failing to achieve the procedural vote to simultaneously repeal and replace the ACA with the BCRA, McConnell released the

“Obamacare Repeal Reconciliation Act of 2017” (ORRA). ORRA is similar to the bill passed in congress in 2015, which was vetoed by President Obama. ORRA repeals various provisions of the ACA, but delays the effective date of repeal for two years, allowing time to draft the replacement legislation.

What to Expect Next

Mr. McConnell can only lose two Republican Senators to pass any legislation during the **budgetary reconciliation** process. If future legislative efforts are deemed beyond the limited scope of a budget-specific reconciliation bill, Republicans will need at least eight Democrats to move forward. It remains unclear whether the Republican Senators will switch their agenda items to tax reform or attempt further ACA replacement efforts. Both Republicans and Democrats have expressed an idealistic goal to work together to stabilize the health insurance marketplace. Time will tell.

Regardless of whether ACA replacement legislation gains traction during this term, or following the 2018 midterm elections with a potentially different Senate vote count, **regulatory action is anticipated**.

Republican leadership may pursue other ways to dismantle or modify the ACA, including regulatory action, regulatory non-enforcement or executive action. Regulatory action and executive orders will be critical to assist in stabilizing the individual health insurance marketplace. Within the ACA, the language “*HHS Shall...*” instructs the Department of HHS to execute the law’s intent with broad regulatory options. The instructions may vary significantly under the new HHS Secretary, Dr. Tom Price, than those issued by the HHS Secretaries under the direction of under President Obama.

Until any replacement legislation is signed by the President, the ACA remains the law today and all current compliance requirements remain in place.

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.

Oswald Companies | Health Care Reform Implementation

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

Disclaimer: Materials are solely for informational purposes as an educational resource. Please contact counsel to obtain advice with respect to any specific issue.