On September 26th, the Republican leadership failed to bring a vote to the Senate floor on their most recent proposed legislation to repeal portions of the Affordable Care Act (ACA). The Graham-Cassidy bill failed to gain the support from Republican Senators John McCain (R., AZ.), Susan Collins (R., ME.), Lisa Murkowski (R., AK.) and Rand Paul (R., KY). Following the defeat of the Health Care Freedom Act (HCFA), i.e., the “skinny repeal" bill in July, in which a vote did occur on the Senate floor (49-51), a formal GOP repeal and replace effort will not occur in 2017.

The Graham-Cassidy bill was an 11th hour push to dismantle significant portions of the ACA through the budget reconciliation process. As of mid-September, Senator Cassidy (R., La.) and Senator Graham (R., S.C.) claimed 48 or 49 GOP Senators and as many as 20 Governors supported the bill. The budget reconciliation option expires annually on September 30th. Under this narrow time window, McConnell asked the Congressional Budget Office (CBO) to fast-track its analysis of the federal budget impact.

The Graham Cassidy Bill:

- Funneled money currently used for the ACA's Medicaid expansion and premium subsidies into block grants to states, which states could use to shape the health care system within their borders
- Allowed states to waive rules prohibiting insurers from charging higher premiums to people with pre-existing conditions
- Capped federal Medicaid funding for the first time (similar to the Senate's previous repeal legislation)
- Prevented states from using funding to subsidize health plans that offer abortion coverage

The GOP leadership hoped to overcome the objections that derailed earlier proposals by giving states significant flexibility rather than imposing a broad national approach. Ultimately, the bill faced the same challenges as the Republicans' earlier repeal effort in winning support from centrist Republicans who oppose large rollbacks to the ACA and cuts to Medicaid.

**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) in May. 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 vote 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.” As has been the case, 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

As 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. 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 will be essential 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.