

Employee Benefits Compliance Alert – March 27, 2017

House attempt to repeal and replace ACA fails



Summary

- House leadership withdrew the American Health Care Act on Friday, March 24, 2017, with the consent of the White House
- The bill ultimately failed for several reasons:
 - It lost support from most conservative public policy groups for not going far enough to repeal the ACA
 - It failed to gain support from physician, patient, and hospital groups, who felt it did not go far enough to sufficiently replace the ACA with something better
 - Public support for the bill was weak
- House Speaker Paul Ryan and President Trump have indicated a desire to move on to comprehensive income tax reform

After pledging to repeal and replace the Affordable Care Act (ACA) for seven years, the Republican-controlled U.S. House of Representatives, through its leadership and with the consent of President Trump, reluctantly withdrew its proposed legislation, the American Health Care Act (AHCA) on Friday, March 24, 2017. The AHCA proposed, among other things, to:

- Eliminate the penalties for the individual and employer mandates;
- Phase out and replace the current income-based subsidies to help lower income individuals purchase health insurance with lower value but more widely accessible age-based tax credits;
- Close down eligibility to the ACA's Medicaid expansion for low income adults without children, and shift Medicaid from an open-ended federal-state entitlement program to a set amount of funding for states that would give state lawmakers more flexibility over the program at the state level; and
- Repeal almost all of the ACA-related taxes, including several taxes imposed on high income individuals.

The bill had to be structured in a manner that would allow it to pass in the Senate under the budget reconciliation process with a simple majority vote in order to avoid a Democratic filibuster. This meant that it

was problematic whether the AHCA could modify certain ACA market reform changes that do not directly affect federal outlays or revenues (such as the definition of essential health benefits, modified community rating rules, and actuarial value requirements for individual and small group insurance products). As a result, the AHCA was unable to more fully repeal certain aspects of the ACA as more conservative elements within the Republican Party preferred, and as efforts were made to try to move the legislation in that direction, support by Republican moderates in the House weakened. Support for the legislation was also damaged by an unfavorable report from the Congressional Budget Office that predicted the AHCA would result in 24 million more uninsured individuals relative to the ACA by 2026, even though it would reduce federal deficits by \$337 billion over the next 10 years.

As a result, the AHCA lost support from most conservative public policy groups for not going far enough to repeal the ACA. At the same time, it also failed to gain support from physician, patient, and hospital groups for not going far enough to sufficiently replace the ACA with something better from their perspective. Public support for the bill also was weak, especially among individuals who are already benefiting from

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ACA's subsidized coverage system and Medicaid expansion.

In turn, after an extremely fast 17-day legislative process for such a complicated bill and intense negotiations by the House leadership and President Trump to strike a last-minute compromise, the bill was abruptly pulled from consideration when it became apparent it did not have enough votes to pass the House. Even if it had passed the House, it was unlikely the bill would have passed the Senate without further heavy modifications which would have alienated either the conservative or moderate factions within the Republican Party.

What is next?

House Speaker Paul Ryan and President Trump have indicated a desire to move on to comprehensive income tax reform, the next major Republican legislative priority. Note, however, the failure of the AHCA may affect their efforts in this area because it may be more difficult to offset reductions in individual and corporate income tax rates without being able to take into account the projected deficit reductions that the AHCA would have achieved. One possibility is for Congress to look again at capping the tax preferences that currently exist for employer-sponsored health coverage.

In addition, it remains to be seen the extent to which the Administration will utilize its regulatory and

administrative authority under the ACA to try to stabilize the individual health insurance market. For example, it is unclear whether the Administration will continue its recent efforts to tighten up the regulations concerning the Marketplace special enrollment rules and continue to delay the pending litigation that threatens the funding for cost-sharing reduction subsidies for certain lower-income Marketplace enrollees. It also could take a different tack and not strongly negotiate with carriers to remain in the individual insurance market, not aggressively pursue enforcement efforts for individual and employer mandate violations, and not aggressively promote Marketplace enrollment for 2018.

There are also a number of free-standing pieces of legislation that are starting to work their way through Congress. Republicans have proposed bills on stop-loss coverage, association health plans, malpractice, and wellness programs. Democrats are expected to introduce shortly a bill on offering a public option in markets where individual health insurance carriers have withdrawn.

So, while the political rhetoric concerning health care reform in the U.S. may recede slightly over the next several months, it is more likely that it will resurface again before too long.

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