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American Health Care Act Clears House, Immediately Hits Stone Wall in Senate

The Republicans' on-again off-again effort to partially repeal and replace the Affordable Care Act (ACA) took a significant step forward today when the US House of Representatives narrowly passed the GOP's American Health Care Act (AHCA). Republicans needed 216 votes to pass the bill. They received 217. There were 213 votes in opposition.

But it might be a question of one step forward and two steps back. Although just minutes after the House vote President Donald Trump said he was "so confident" the Senate would pass the House bill, Senate Republicans announced moments later they had no intention of even voting on the bill, but would write their own bill, which of course would have to go back to the House for approval.

So ends the high-drama first chapter in the life of the AHCA. It's not the end of the GOP's repeal-and-replace story, although the Senate's announcement means it might, ironically, be the end of the AHCA, at least as we know it today.

How the House Got it Done

The main points of contention in the House regarding the AHCA over the past six weeks have had little to do with issues of greatest interest to employer sponsors of group health coverage. Rather, the angst on the GOP side has largely been about individual and small group market issues.

Today's House vote came after GOP leadership agreed to amend the AHCA, which had been yanked from the House floor just six weeks ago due to insufficient support.

The amendments would give states, in order to protect insurers from unsustainable risks in their individual and small group health insurance markets, the right to request waivers from certain ACA market reforms, like community rating rules and the requirement that individual and small group policies cover all ACA-defined "essential health benefits."

The amendments would also create a \$15 billion, nine-year risk sharing fund to help states lower premiums for individuals with certain high-cost conditions, and an additional \$8 billion

(over five years) for states that obtain the cost-containment waivers described above, to help provide coverage to individuals with high-cost or preexisting conditions.

Hurdles in the Senate

Now all that effort on the House side might be a moot point, given the Senate's announcement.

The AHCA's fate in the Senate was never a sure thing anyway. At a minimum the Senate would have amended the AHCA's tax credit rules and awaited a Congressional Budget Office "score" of the AHCA before voting on the amended bill and sending it back to the House for a second vote, the results of which would have been anything but certain.

But the Senate's announcement that it was writing its own bill and wouldn't even tee up the AHCA was a surprise. It's likely GOP leadership in the Senate knew the AHCA was dead on arrival in that chamber, where the Republican majority is far thinner (the GOP can afford only two defections in the Senate). But if that's the case, it was the best kept secret in Washington.

The AHCA would have posed a pair of thorny problems in the Senate. The first is procedural. The AHCA is moving through Congress via a process known as "budget reconciliation," a tactic that allows it to pass out of the Senate with a mere majority vote, rather than the 60 votes that would normally be required to cut off debate on a bill and bring it to the Senate floor.

But to use budget reconciliation a bill can include only provisions affecting the federal budget, spending or debt limit. It's not clear whether aspects of the AHCA, particularly some of the provisions added in the recent amendments, could have remained with the bill as it moved through the Senate or, instead, would have been stripped away.

The second hurdle is ideological. Staunch Senate conservatives, like Sen. Rand Paul (R-KY), have long expressed disdain for the AHCA, believing it doesn't go far enough to repeal the ACA and provides too much federal spending. But some Senate moderates have expressed concerns that the AHCA doesn't spend enough, particularly on tax credits for older individuals or those with lower incomes.

Next Steps ... and Some Ominous Rumbblings about Taxing Employees

The Senate's announcement that it's writing its own bill concerns us for another reason. We're hearing from the Senate ominous rumbblings about the potential resurrection of a change in tax rules, highly disturbing to employees and employers.

There are whispers that one or more moderate Senate Republicans would like to begin taxing employees on at least a portion of the value of their health insurance coverage (employers would also owe payroll taxes on the premium values treated as taxable income to employees). The additional tax revenue would help pay for tax credits that some Senate Republicans think need to be heftier than those authorized by the AHCA. Eligible individuals would use the tax credits to defray their premium costs in the individual market, just as many individuals do now under the ACA.

We will continue to track the progress of the AHCA as it moves through Congress, and stay vigilant regarding any unhappy changes in the tax treatment of employer-provided medical coverage. Rest assured we'll keep you posted.

Bonus Alert on the Way: Executive Order on Religious Freedom Affects Contraception Mandate

President Trump today signed an executive order designed to expand religious freedoms. Among other things, the order specifically directs three federal agencies with jurisdiction over the ACA to “consider” amending their regulations under which certain group health plan sponsors can opt-out, for religious reasons, of the ACA’s mandate to supply cost-free contraceptives for female employees and dependents. The Trump administration would like to make the opt-out process easier. We’ll have more on the executive order shortly, in a second Alert.

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