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End of the Road? Senate Pulls Plug on the BCRA, Straight ACA Repeal Vote Also Dead

Senate Republicans' efforts to repeal and replace the Affordable Care Act (ACA) derailed last night as more GOP senators said they wouldn't vote to let the Senate bill, the Better Care Reconciliation Act (BCRA), proceed. Senate Majority Leader Mitch McConnell (R-KY) then said the Senate would quickly vote on a straight ACA repeal, with no replacement. But within hours three moderate Republican senators said they wouldn't vote for that either, casting grave doubts over whether Republicans will ever be able to repeal key components of the ACA.

For employers sponsoring group health plans, the latest developments mean the ACA's employer mandate and its complex reporting scheme appear here to stay.

Lockton comment: Please don't shoot the messenger, but the survival of the ACA's employer mandate might not be a bad thing. Were the GOP to repeal the employer mandate and other large chunks of the ACA, with no replacement plan, at least some states would likely move to install employer mandates of their own, subjecting multistate businesses to patchwork employer mandates across the country. While the ACA's employer mandate poses unique challenges, at least it's a single set of rules employers have already implemented and become largely adept at dealing with.

What Just Happened?

The week started with an announcement that a vote on an updated version of the BCRA, a vote tentatively set for this week, would be delayed for at least a week because Sen. John McCain (R-AZ) would not be available for the vote, due to a surgery he underwent last Friday. McConnell needed McCain's vote to have any hope of moving the BCRA along. He could afford to lose only two votes, and Sen. Susan Collins (R-ME) and Sen. Rand Paul (R-KY) had already said they'd vote "no." No Senate Democrats were expected to approve the bill.

Then late Monday Sen. Mike Lee (R-UT) and Sen. Jerry Moran (R-KS) publicly said they'd oppose the bill, dooming any chance that McConnell could advance the measure.

On to Plan B...

In response, McConnell quickly announced that if 50 senators agreed, he'd proceed with a vote to simply repeal the ACA, with a two-year delayed effective date. The delayed effective date would give Congress time to gain consensus on a replacement package.

But almost immediately Collins and Sen. Shelley Moore Capito (R-WV) announced they would not support a straight repeal bill. Hours later Sen. Lisa Murkowski (R-AK) also said she'd vote "no." And just like that, Plan B was dead in the water.

Lockton comment: Senate Republicans voted in 2015 to repeal the ACA, knowing then-President Barack Obama would veto the bill. McConnell would have resurrected that bill if he could have obtained a commitment from 50 senators to let the measure proceed. Collins was one of two "no" votes in 2015, so her immediate opposition to McConnell's fallback plan is no surprise. But with Capito and Murkowski pledging to oppose the effort, and other Senate moderates sure to follow, Plan B collapsed with surprising swiftness.

...Or Plan C

Over the past few weeks some Republicans, including McConnell, have said that if the BCRA fails, the Senate may seek to advance smaller, bipartisan legislation aimed at simply stabilizing the individual health insurance market.

Initial legislation could focus on funding the ACA's cost sharing reductions, payments to insurance companies to compensate them for reducing out-of-pocket costs (like deductibles) for low-income policyholders. A stabilization bill would also likely include additional funding to the states, to further shore up their individual marketplaces. Time will tell how quickly the Senate takes up such a measure.

Where Does All This Leave Us?

For employer group health plans, it's "business as usual." The ACA, its employer mandate, the year-end reporting, and all the rules regarding the benefits a healthcare plan must offer and who they must offer them to, remain in full force and effect.

It all has a bit of a surreal feel to it, like being buffeted by waxing and waning winds of change nearly every day since last November 9, only to find ourselves today standing in the very same place we were then.

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