



HEALTH REFORM ADVISORY PRACTICE

Weekly Legislative Update



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Health Reform Takes Strike Three, Next Up: Tax Reform

Amid great drama, concluding with a middle of the night vote early Friday morning, Senate Republicans swung and narrowly missed three times this week on the effort to repeal and replace portions of the Affordable Care Act (ACA). The week's events left the GOP with few options for fulfilling a seven-year promise to unwind the ACA.

Oh What a Week it Was!

In our last episode (see last week's [Legislative Update](#)), Senate Majority Leader Mitch McConnell (R-KY) conceded he could not get 50 votes to open debate on the Senate's Better Care Reconciliation Act (BCRA), the Senate's version of a comprehensive repeal and replace bill.

This week began with McConnell narrowly convincing Senate Republicans to at least open a general discussion on repeal and replace. The vote was 50-50, with Vice President Mike Pence casting the tie-breaker.

Lockton comment: Monday saw a surprise return to the Capitol of Sen. John McCain (R-AZ), to help move the health reform debate forward. Doctors recently diagnosed McCain with a brain tumor, and the senator was expected to miss activities in Washington for several weeks.

He voted in favor of opening debate on the repeal and replace topic, but then took the opportunity to sharply criticize the partisan nature of Congress. His comments specifically chastised fellow Republicans for attempting to pass health reform without seeking Democrat support.

Tuesday, McConnell attempted to get things moving by calling a vote to substitute the BCRA (with a couple tweaks) for the House-passed American Health Care Act (AHCA). The House had referred the AHCA to the Senate last month and it, procedurally, served as the Senate's starting point. The vote narrowly failed.

McConnell then forced a vote on the same “repeal only” bill the Senate passed in 2015, a bill that would unwind large portions of the ACA but offered no replacement. That vote failed as well.

Down in the count 0-2, McConnell searched for the lowest common denominator, a bill – dubbed “skinny repeal.” This bill would repeal or delay the ACA’s employer and individual mandates, repeal an ACA-imposed tax, defund Planned Parenthood for a year, and enhance health savings accounts.

Lockton comment: Few Republicans viewed skinny repeal as good policy. The expectation was that skinny repeal would simply be a vehicle to continue the momentum of health reform. The idea was the Senate would pass skinny repeal, and then together the Senate and House leaders would work out an agreeable compromise between the Senate’s skinny repeal and the House’s comprehensive AHCA.

But early Friday morning, Senate Republicans swung and missed at strike three by voting down skinny repeal 49-51. Republican “no” votes included Sens. Susan Collins (R-ME) and Lisa Murkowski (R-AK), who had long voiced objections to the process and defunding Planned Parenthood, and McCain, who dramatically flashed a Roman-esque “thumbs down” when called to vote yea or nay.

The Path Forward for Health Reform is Uncertain

It’s too early to tell what comes next for health reform, but there are several possibilities for Republican Congressional leadership:

- **Continue with a Republican-only solution.** After last night’s failed vote the Senate took a procedural step which will allow it to come back to deal with another iteration of reform later, possibly in September. What that proposal might be is unclear. It seems likely the Senate will want, at least informally, to conference with key members of the House to ensure they can agree upon a proposal that has an opportunity to pass both chambers.
- **Reach a bipartisan solution.** Many inside and outside the Beltway have called for bipartisan efforts, but the two parties appear to be far apart for now. Most Republicans want significant reforms that would reduce government’s role in healthcare while most Democrats are advocating for mere tweaks to the ACA, which would require additional spending.
- **Let the ACA run its course.** President Donald Trump offered an early morning tweet advocating this strategy, saying “Let ObamaCare implode, then deal.” Few members of Congress have been willing to back such a plan in the past, but the results from the current exercise might change that.

Lockton comment: Despite the setback this week, the game is not yet over for health reform. Each of these options will require continued discussion about healthcare, whether publically or behind the scenes. There are also numerous healthcare-related bills coming down the pipe – including reauthorization of the highly popular Children’s Health Insurance Program – which will likely serve as proxy wars for other health reform priorities.

Next Up: Tax Reform?

So ACA repeal and replace heads back to the dugout after a long at bat with little to show for it. Striding to the plate now is comprehensive tax reform, another major item on Congressional Republicans' "to-do" list.

Of the coming effort we know very little. Administration and Congressional leaders unveiled this week a [broad outline](#). While short on details, it notably excludes the notion of taxing imports (the "border adjustment tax" or "BAT"), presumably under mounting pressure from certain business interests (retailers, primarily) and a growing number of Republican officials.

Like all revenue-related legislation, tax reform will involve tradeoffs, and the collapse of the BAT will draw those tradeoffs into starker relief. Republicans want very much to lower income taxes, on individuals and particularly businesses. The extent of those cuts, however, is not clear from the broad outline released this week.

Here's the issue: The tax reform effort likely won't be allowed to add to the federal deficit over a 10-year horizon, so to cut tax rates without adding substantially to the deficit means Congress must find additional sources of revenue. Economic growth, spurred from the tax cuts, might replace some of that lost revenue.

The BAT was expected to raise \$1 trillion to help pay for income tax cuts. Repeal and replace was expected to provide additional savings. Without all that cash to play with, tax cuts will need to be shallower, some current tax deductions eliminated (there is talk of eliminating the deduction for state and local tax payments), and additional sources of revenue identified.

Lockton comment: The lowest hanging fruit for additional tax revenue might be the current non-taxability of employer-provided health insurance. We have feared Congress would move to begin taxing employees and employers on at least a portion of their health plan values. Early ACA repeal and replace plans included such a tax, and conservative think tanks have long argued for it. Our concern has intensified with the collapse of the BAT. In our conversations this week with members of the House committee overseeing tax policy it became clear that this new tax is again under active consideration.

The path ahead for tax reform appears no less rocky than the tumultuous path for ACA repeal and replace. Republicans hold a razor-thin majority in the Senate, but with McCain's medical challenges likely limiting his time in Washington, that margin may soon become thinner.

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