

Health Care Reform Management Alert Series



House Pulls AHCA Minutes After Expected Vote - Future of Repeal Efforts Uncertain

Issue 107

By Benjamin Conley and Joy Sellstrom

This is the one hundred and seventh issue in our series of alerts for employers on selected topics on health care reform. (Click [here](#) to access our general Summary of Health Care Reform and other issues in this series.) This series of Health Care Reform Management Alerts is designed to provide an in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.

As noted in [Issue 106](#), earlier this month Congressional Republicans introduced the American Health Care Act (“AHCA”), which was intended to “repeal” the Affordable Care Act (“ACA”). The AHCA faced challenges from the outset, including:

- Congressional Democrats are completely united in opposition to the AHCA.
- Moderate Republicans are concerned about the potential coverage losses resulting from the AHCA.
- Conservative Republicans believe the AHCA does not go far enough, does not truly repeal the ACA, and will not do enough to drive down the cost of health coverage.
- Congressional Budget Office scores showed the AHCA resulting in 24 million fewer insureds over the next decade, as compared to the ACA.
- Senate reconciliation rules significantly limit the scope of what provisions of the AHCA may be passed through “reconciliation” (the legislative process available in the Senate for passing a budget bill, requiring 51 rather than 60 votes).
- The ACA’s popularity has risen (although it still remains underwater) since President Trump’s inauguration.

Notwithstanding the challenges, the AHCA enjoyed the full backing of President Trump and most establishment Republicans (as represented by Speaker Paul Ryan). Over the last week, Paul Ryan, as well as President Trump, have made a number of concessions (mostly at the request of the Freedom Caucus, representing the more conservative wing of the Republican party) to shore up votes. Even though these efforts resulted in a few Republicans moving away from “no,” many Freedom Caucus members remained staunchly opposed, and certain moderate Republicans started wavering.

The vote on the AHCA was originally scheduled for Thursday, but it was delayed when it became apparent the votes were not there. Late Thursday night (following additional concessions to the Freedom Caucus), President Trump issued an ultimatum, demanding a vote on Friday and threatening that this would be the last opportunity to address the ACA if Republicans did not line up in support.

Late Friday afternoon, Paul Ryan announced the vote would not be held (at the request of President Trump). This means the ACA remains in full effect and, the future of any repeal efforts are uncertain. During a press conference held soon after the announcement, Paul Ryan indicated that Congress is going to have to figure out the next steps. There are a few possible “next steps” (this list is by no means comprehensive):

- *Retain the ACA.* President Trump could hold firm on his ultimatum and advise Congress that he will support no further efforts to repeal the ACA. To a certain extent, this would allow President Trump to test his theory that the best way to address the ACA is to let it collapse.
- *Further Negotiations.* The timeframe for repealing the law was largely symbolic (House Republicans wanted to hold their vote on the anniversary of the ACA). Nothing would stop Congress from further negotiations to attempt to drum up more votes. But, the more time devoted to the repeal of the ACA, the less time available for votes on other Republican pet projects (e.g., tax reform).
- *Piecemeal Efforts.* President Trump has expressed regret both that he attempted to address the ACA first and that he attempted to address repeal in one comprehensive effort. Republicans might attempt to add piecemeal repeal efforts into future legislation, or to address those components on a stand-alone basis. Assuming Congress takes this approach, it is unlikely there will be any further significant efforts to repeal the ACA in the short term.
- *Administrative Action.* Even in the absence of a comprehensive repeal or reconciliation effort, the Administration retains great flexibility, through regulatory action, to water down various provisions of the ACA. But, this remains more difficult with the law on the books.

Seyfarth Shaw will continue to monitor Congressional and regulatory efforts and will alert clients as new developments occur.

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