Uncertainty abounds as Senate eyes procedural vote on PPACA repeal legislation

Senate Republican leaders indicated this week that the chamber could hold a procedural vote early in the week of July 24 on whether to begin debate on legislation to repeal the Patient Protection and Affordable Care Act of 2010 (PPACA). But at press time it was unclear whether lawmakers would be voting to take up the retooled repeal-and-replacement package that Majority Leader Mitch McConnell, R-Ky., unveiled just days ago or an alternative repeal-only bill with a two-year delayed effective date. Also unclear was whether Republican leaders would be able to scrape together a majority within their own caucus to begin debate on either measure.

Grim outlook for Better Care 2.0

McConnell had hoped to hold a procedural vote this week on the updated version of his Better Care Reconciliation Act (BCRA) which he unveiled on July 13 after an earlier iteration drew criticism from conservative Republicans, who believed that the measure left too much of the PPACA intact, and from moderate Republicans, who argued that it would cut taxes on high-income households at the same time that it proposed major reductions in federal Medicaid spending. (For details on McConnell’s initial version of the BCRA, see Tax News & Views, Vol. 18, No. 22, June 23, 2017.)

But in a sign of just how tough it would be to line up enough supporters to guarantee success, McConnell had to scuttle any action on the revised bill after learning that Arizona Republican Sen. John McCain had been sidelined by emergency surgery and would not be available to cast a vote. (McCain’s subsequent diagnosis of brain cancer means that he could be away from Capitol Hill for the foreseeable future. It also means that in the near term the GOP, for all practical purposes, will control only 51 Senate seats to the Democrats’ 48, and that McConnell can afford only 1 Republican defection and still ensure a majority on any difficult vote.)

In drafting his revised bill, McConnell attempted to win over moderates by retaining certain PPACA taxes on high-income households – notably, the 3.8 percent net investment income tax and the additional 0.9 percent Medicare hospital insurance tax – and funneling the savings into other priorities such as shoring up the so-called “state stabilization funds” and providing additional money to treat opioid abuse. To appeal to conservatives, McConnell included language pushed by conservative Sen. Ted Cruz, R-Texas, that would permit insurers to sell low-cost, unregulated health plans provided they also make available at least one plan that complies with PPACA requirements. (For details on the revised version of the BCRA, see Tax News & Views, Vol. 18, No. 25, July 14, 2017.)

Those changes appeared insufficient to satisfy holdouts, however. By the start of the week, two Republican senators – Rand Paul of Kentucky and Susan Collins of Maine – had already announced that they would not support a motion to proceed on the bill and a number of others were expressing reservations. Things got worse for McConnell late on July 17 when conservative Republican Sens. Mike Lee of Utah and Jerry Moran of Kansas announced that they would not support the measure, bringing the number of official “no” votes to four – enough to defeat a motion to begin debate.

Equally grim prognosis for repeal-only alternative

The dismal outlook for the BCRA led McConnell to announce that the Senate would instead vote on a repeal-only measure similar to one the chamber approved in 2015 that would strike the major provisions of the PPACA but would not take effect for two years, giving lawmakers time to develop a separate replacement plan from scratch in the interim. (Republicans would have to work with Democrats to develop and pass the replacement measure since it presumably would not move under budget reconciliation protections.)

The alternative measure – the Obamacare Repeal Reconciliation Act of 2017 – would neuter the PPACA’s individual and employer mandates by reducing the current-law penalties to zero retroactive to December 31, 2015, repeal many of the PPACA’s taxes on businesses and individuals retroactive to the end of 2016, and eliminate most others beginning in 2018.

Like the revamped BCRA, the repeal-only measure would retain the PPACA’s excise tax on certain high-cost, employer-provided “Cadillac” health insurance plans but delay implantation of the tax until 2026 (from 2020 under current law). It also would retain the PPACA’s “economic substance” doctrine, which generally requires taxpayers to show that a transaction changed their economic position in a meaningful way apart from the federal income tax effects and that they had a substantial nontax business purpose for entering into a transaction.

But McConnell’s fallback plan quickly fell apart when 3 Republicans – Susan Collins, Shelley Moore Capito of West Virginia, and Lisa Murkowski of Alaska – announced on July 18 that they would not support a repeal-only bill, once again raising the prospect of a failed vote. Press reports citing unnamed Republican sources indicated that several other GOP lawmakers were likely “no” votes but had not announced their positions publicly.

**White House weighs in**

Amid talk that the Senate would simply abandon efforts to move either bill, President Trump initially suggested that he would be willing to follow suit and allow the PPACA to collapse under its own weight.

"I think we’re probably in that position where we’ll let Obamacare fail,” he told reporters on July 18. "We’re not going to own it. I’m not going to own it. I can tell you the Republicans are not going to own it. We’ll let Obamacare fail and then the Democrats are going to come to us.”

By the next day, however, the president changed course and invited the entire Senate Republican Caucus to a White House lunch during which he urged them to vote on a repeal-and-replacement package – or at the very least, vote to repeal the current law.

"We can repeal, but we should repeal and replace,” he said. He also called on Senate leaders to cancel their August recess and stay in Washington until the issue was resolved. (McConnell announced last week that he would delay the start of the recess until the week of August 14 to give lawmakers more time to work on health care and other legislative priorities, and to process more of Trump’s nominees for administration posts.)

Also at Trump’s urging, a group of moderate and conservative holdouts held a late-evening meeting on July 19 to see if they could negotiate concessions on a repeal-and-replace package that they thought could clinch a majority on the Senate floor. But those talks do not appear to have resulted in a deal – or even the framework for a deal.

**CBO releases revenue scores**

The nonpartisan Congressional Budget Office (CBO), meanwhile, weighed in this week with revenue estimates for the revised BCRA and the repeal-only alternative – and the results, particularly as they relate to insurance coverage levels, appear unlikely to drive any fence-sitting moderates into the “yes” camp for either bill.

According to the CBO’s estimates, the revised version of the BCRA would reduce federal deficits by $420 billion from 2017-2026, with the largest savings coming from a reduction in total federal spending for Medicaid. The number of individuals without health insurance would increase by 15 million in 2018 and by 22 million in 2026, relative to current law, the CBO said. (The estimate does not include the Cruz amendment to allow insurance companies to offer bare-bones insurance plans.)

URL: [https://www.cbo.gov/publication/52941](https://www.cbo.gov/publication/52941)

The repeal-only package would decrease deficits by $473 billion from 2017-2026 and increase the number of uninsured individuals by 17 million in 2018 relative to current law and 32 million by 2026.

URL: [https://www.cbo.gov/publication/52939](https://www.cbo.gov/publication/52939)

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