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Senate Republicans come up empty-handed in PPACA repeal effort

After a dramatic procedural vote that passed by a razor-thin margin on July 25, Senate Republicans successfully teed up debate on dismantling the Patient Protection and Affordable Care Act of 2010 (PPACA); but after subsequently voting down a handful of alternatives to the repeal-and-replace plan passed by the House of Representatives in May, and a last-ditch “skinny” proposal designed only to get to a House-Senate conference committee, GOP senators ultimately came up empty-handed.

‘Yea’ on the motion to proceed…

The Senate health care debate officially kicked off on the afternoon of July 25, when Majority Leader Mitch McConnell, R-Ky., scheduled a vote on the motion to proceed to the House-passed American Health Care Act of 2017 (AHCA). (As a procedural matter, that first vote was on the question of whether or not to begin formally debating the House-passed bill, though it was broadly understood that the plan could not pass the Senate in its current form.)

That motion was approved by the thinnest of margins, 51-50, and required the tie-breaking vote of Vice President Mike Pence – the president of the Senate under the Constitution – who was present and presiding over the chamber during the vote. Republican Sens. Susan Collins of Maine and Lisa Murkowski of Alaska voted against the motion to proceed along with all 48 Democrats (including two Independents who caucus with the Democrats).

That vote kicked off 20 hours of debate under the rules of budget reconciliation – the process under which Republicans have been moving their health care legislation – which, provided certain strict budgetary and procedural rules are met, allows legislation to pass both chambers with simple majority votes. (A three-fifths majority, or 60 votes, is normally needed to advance legislation in the Senate under regular order.)

…But 'Nay' on everything else

But further success proved elusive for the GOP, with senators voting down every alternative plan brought before them. (The only exception was a small-bore "Cadillac" tax amendment, which was adopted; but as a legislative matter amounted only to a meaningless gesture. More on that below.)

Repeal and replace: Among the rejected alternatives was a repeal-and-replace plan (written as a substitute amendment to the House bill) offered by Sen. McConnell that reflected the latest iteration of the Senate GOP proposal (known as the Better Care Reconciliation Act) that evolved over recent weeks – including changes that would retain the 3.8 percent net investment income tax (NIIT) and the additional 0.9 percent Medicare hospital insurance tax, both of which generally apply to households with income over $250,000 – as leaders strove to unify moderate and conservative Republicans around a single and more comprehensive plan. McConnell's proposal was voted down 43-57, however, signaling that unity on such a plan is still not close at hand.
URL: https://www.budget.senate.gov/imo/media/doc/LYN17523.pdf

Repeal-only: Another substitute amendment offered by Sen. Rand Paul, R-Ky., which would have repealed most aspects of the PPACA – as well as nearly all of its revenue-raisers, including the NIIT and extra Medicare taxes – without putting in place an immediate replacement plan, failed 45-55.
URL: https://www.budget.senate.gov/imo/media/doc/271.pdf

Single payer: The chamber also voted down a proposal from Sen. Steve Daines, R-Mont., dubbed the Expanded & Improved Medicare For All Act, intended mainly to put moderate Democrats on record as to whether or not they supported a "single-payer" US health care system, an idea that has gained traction recently among more liberal members of Congress.
URL: https://www.budget.senate.gov/imo/media/doc/340.pdf

'Cadillac' tax amendment approved: The only amendment approved during the entire Senate consideration of health reform was a proposal from Sen. Dean Heller, R-Nev., to make permanent the repeal of the so-called "Cadillac" tax on high-cost employer-provided health plans, which under current law is scheduled to become effective in 2020. However, Heller's amendment was really only a messaging tool, as he offered it as a change to the underlying House-passed bill – a measure that Senate Republicans knew stood no chance of passage. (The House-passed bill would extend the current-law moratorium on the Cadillac tax through 2025.)

'Skinny' bill withers away: Action came to a close during the early hours of July 28 when Sen. McConnell brought up for a vote what had come to be known as the "skinny" bill, which was a stripped-down proposal framed solely as a legislative tactic for getting to a formal conference committee with House Republicans.
URL: https://www.budget.senate.gov/imo/media/doc/667.pdf

But even that amendment – which would have, among a handful of other things, repealed the financial penalties associated with the violating the individual mandate, suspended the employer mandate penalties for eight years (through 2024), and extended the current-law moratorium on the medical device excise tax for three years (through 2020) – could not garner 50 votes on the floor, with Sen. John McCain, R-Ariz., joining Sens. Collins and Murkowski, as well as all Democrats, in opposition.

What's next?

It remains unclear where the health care debate will go next. McConnell could, in theory, return to the issue under reconciliation later and again try to pass a proposal with only Republican support. That approach seems unlikely, however, particularly given John McCain's calls for renewed bipartisanship.

"We can't make the same mistake we made in 2009," McCain said on July 27, referring to the Democratic effort to pass the PPACA on a partisan basis. "We've got to have Republicans and Democrats together."

McCain also drove that point home during a prominent floor speech on July 25.

"Let's trust each other. Let's return to regular order. We've been spinning our wheels on too many important issues because we keep trying to find a way to win without help from across the aisle. That's an approach that's been employed by both sides, mandating legislation from the top down, without any support from the other side, with all the parliamentary maneuvers that requires," McCain said.

Ramifications for tax reform?

The failure of the Republican PPACA repeal effort could have impacts – both good and bad – on the concurrent GOP tax reform push, an effort that gained renewed focus after the "Big 6" negotiators from Congress and the White House released a joint statement July 27 outlining their consensus view of tax reform principles. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 27, July 27, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170727_1.html

On the positive side, it could allow members of the Ways and Means and Finance Committees to finally focus their attention on tax policy, rather than health policy. It also, at least in theory, opens the door to the possibility that congressional Republicans could repurpose the reconciliation instructions included in the fiscal year 2017 budget resolution and use them for tax reform legislation, rather than a health care bill (For more on this possibility, as well as House Republicans' efforts to move a fiscal year 2018 budget resolution with reconciliation instructions on both tax and entitlement reform, see *Tax News & Views*, Vol. 18, No. 26, July 21, 2017. For details on recent House budget developments, see separate coverage in this issue.) Further, as Republicans look ahead to the 2018 midterm elections, they may feel a renewed sense of urgency to show voters a large legislative accomplishment on a key issue like taxes.
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170721_1.html

On the other hand, the failure to repeal the PPACA in advance of tax reform will make navigating the revenue baseline more challenging in any future tax bill. This concept is perhaps best exemplified by the PPACA's 3.8 percent net investment income tax, which many congressional Republicans had hoped to repeal as part of health reform so that any subsequent effort to reduce capital gains rates in tax reform would appear less costly.

It is also possible, if not likely, that health policy discussions will continue into the fall – a possibility alluded to by House Majority Leader Kevin McCarthy, R-Calif., on July 28 – which could serve as a continuing distraction to lawmakers and their staffs.

"We're not going to give up on health care," McCarthy said. "We're going to have to take a different route based upon the Senate, unless the Senate is able to wake up and realize what they did and come to their senses."

Lawmakers will also confront a jam-packed schedule when they return to the Capitol in September after their respective August recesses – with September 30 deadlines looming for fiscal year 2018 appropriations as well as reauthorizations of the Federal Aviation Administration, flood insurance, the Children's Health Insurance Program, and user fees that help fund the Food and Drug Administration. The statutory debt limit will also have to be increased in the fall.

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Timing, prospects for floor vote on House budget resolution unclear

As the House prepared to adjourn for its five-week summer recess July 28, timing for a floor vote on its version of a fiscal year 2018 budget resolution – a necessary step in moving tax reform legislation under fast-track reconciliation protections – was unclear; moreover, intra-party disagreements on the direction of the resolution leave the outcome of that eventual vote uncertain.

House Republican Study Committee Chairman Mark Walker, R-N.C., told reporters earlier this week that Speaker Paul Ryan, R-Wis., agreed to bring the resolution to the floor the first week of September in exchange for Walker dropping his demands for a vote on an omnibus package of 12 appropriations bills before the recess. But a spokesman for Ryan told *Politico* on July 28 that "no commitment from the speaker was made on timing" and that Ryan promised only that "[w]e will vote on this as soon as we have the votes to pass it."

According to *Politico*, aides for Walker have stated that they are standing by their understanding of the agreement.

Difficult road to 'yes'

The House Budget Committee on July 19 approved a fiscal year 2018 budget resolution that includes a broad set of reconciliation instructions aimed at expediting both revenue-neutral tax reform and significant cuts to entitlement programs. (For prior coverage, see *Tax News & Views*, Vol. 18, No. 26, July 21, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170721_1.html

Although House Ways and Means Committee Chairman Kevin Brady, R-Texas, recently has adopted the mantra "no budget, no tax reform" (alluding to the fact that the budget resolution is the intended vehicle for reconciliation instructions that would enable Republicans to pass tax reform legislation in the Senate with only 51 votes), the budget resolution took a tortured path through the Budget Committee, and initial indications are that House Republican leaders could experience similar difficulties corralling enough of their members to win approval for the measure on the chamber floor.

Spending concerns: Some moderate Republicans, for example, object to the inclusion of $203 billion in mandatory spending cuts that also would be moved under reconciliation protections while many conservatives believe the $203 billion in reconciled spending cuts does not go far enough, and that the budget should seek to expedite passage of a greater portion of the plan's overall savings.

Tax concerns: On the tax side, some conservative Republicans have suggested they would be reluctant to support a budget resolution until they have more details about what a tax code overhaul will look like.

Several have called for language in the budget resolution that would definitively rule out the inclusion of a controversial border-adjustment tax proposal (a priority of Ways and Means Chairman Brady and Speaker Ryan) in an eventual tax reform bill. Budget writer and House Freedom Caucus member Mark Sanford, R-S.C., attempted to offer an amendment to that effect at the Budget Committee mark-up. The border-adjustability issue appeared to be laid to rest in a statement of tax reform principles released July 27 by Ryan, Brady, Senate Majority Leader Mitch McConnell, R-Ky., Senate Finance Committee Chairman Orrin Hatch, R-Utah, Treasury Secretary Steven Mnuchin, and National Economic Council Director Gary Cohn, that outlines a consensus Republican view of the key principles that should animate tax reform. In it, the so-called "Big Six" negotiators state that they "debated the pro-growth benefits of border adjustability…but decided to set this policy aside in order to advance tax reform." (For prior coverage, see *Tax News & Views*, Vol. 18, No. 27, July 27, 2017.)
URL: http://newsletters.usdbriefs.com/2017/Tax/TNV/170727_1.html

But according to Freedom Caucus Chairman Mark Meadows, R-S.C., issues around other elements of tax reform still could siphon off support for the budget resolution. Meadows told reporters on July 27 that the decision by the Big Six to abandon the border-adjustment tax adds "a little clarity" to the budget debate; but he cautioned that "we still need a whole lot of clarity on tax reform. What're we going to do with expensing, what're we going to do with interest deductions, with interest expensing, what's the rate going to be."

Limited margin for error: Republicans can only afford to lose 22 votes on the proposal to ensure its passage, which means party leaders will need to pay attention to coalitions like the moderate Tuesday Group, which includes an estimated 50 members, and the conservative Freedom Caucus, which is said to number more than 30 members. House Democrats are expected to vote as a bloc against the measure.

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