

Senate Moves to Proceed on Affordable Care Act Repeal Legislation

Insights

07.26.17

PROFESSIONAL

In the words of the great Yogi Berra, “It ain’t over till it’s over.” Unable to reach agreement on how to amend the House bill to repeal and replace the Affordable Care Act (ACA), the Senate voted on Tuesday on a “motion to proceed” which permits the Senate to take up some version of a Senate bill to repeal parts of the ACA under the Budget Act’s expedited reconciliation process. While there are some clear rules to the process, much of what lies ahead for the legislation is unknown. The narrow vote on even proceeding to debate the bill-50 Republicans voted for and two against, with the Vice President casting the deciding vote-suggests that reaching agreement on substance will remain a challenge. Yesterday evening, the Senate rejected the more comprehensive repeal-and-legislation previously floated in a discussion draft (the “Better Care Reconciliation Act”) by a vote of 43 to 57. A repeal-only amendment met a similar fate this afternoon. Ultimately, observers expect that if the Senate passes a bill, it will be a pared down “skinny” repeal bill and much of the final substance will need to be hammered out in a House-Senate conference.

PROCESS AND SCHEDULE

With passage of the motion to proceed, the formal process of considering legislation under the process known as reconciliation is triggered. The Senate now moves to consider the bill under a 20 hour time limit, with time equally divided between Republicans and Democrats. When all time on the bill is exhausted, probably after two or three days, a process colloquially known as “vote-a-rama” begins. Under this process a Senator may offer an amendment to the bill, but is allowed only 2 minutes to explain it, followed by an up or down vote. This process goes on essentially until everyone gives up in exhaustion, often into the wee hours of the morning. At some point in this process, Senate Majority Leader McConnell will likely offer a “leadership amendment” representing the legislation he think has the best chance of gaining the support of 50 of his 52 Republican colleagues. This may be only a “skinny repeal”-a slimmed down bill that only serves to move the bill to a House-Senate conference. However, many of the amendments that will be offered during this process will be used to force votes on matters that can later be used against individual senators in political campaigns. And some proposals will be found to violate the Senate’s “Byrd rule,” requiring 60 votes and thereby assuring their demise.

The schedule to move this bill is both tight and also more uncertain. The Senate has announced it will stay here through the second week of August, however the House is scheduled to be out for August recess at the end of this week. For weeks the expectation has been that after the Senate acted, the House would take up the Senate-passed bill and, however grudgingly, quickly pass it. Now that a House-Senate conference may be necessary to re-write the legislation in hopes of finding a compromise that Republican can rally around, it is possible that the House (and the Senate) could be called back to Washington early. But if there is to be a House-Senate conference, it is likely action on a final bill would not occur before September sometime.



MARTIN A. CORRY
Co-Chair of Government
Relations & Public Policy
Department
Washington, D.C.



LLOYD A. BOOKMAN
Founding Partner
Los Angeles



KATRINA A. PAGONIS
Partner
San Francisco
Washington, D.C.



MARK E. REAGAN
Managing Shareholder
Boston
San Francisco

While the Senate is now moving through the 20 hours of debate, there is also a question of whether and how the Senate moves to consideration of the National Defense Authorization Act. Senator McCain, in a speech on the Senate floor after yesterday's vote, indicated he had come back to DC for three or four days to cast his vote and manage the floor process on the Defense bill. Floor action on the defense bill can easily take a week, and given Senator McCain's stature and recent diagnosis, the Senate could agree to move to the Defense bill, which would further delay final action on the health bill.

POLITICS AND POLICY

The strategy behind the Senate's action is simple: pass something and get it to conference. To get the votes needed on the motion to proceed, Senators were assured that they would have the opportunity to offer their proposals-even though they will likely fall-from full repeal, something like the House bill, as well as proposals by Senators Cruz, Portman, and Cassidy. If these measures are voted down, then the question is what minimal subset of items-the "skinny repeal" bill-can be agreed upon from the various bills and amendments and passed. Some likely candidates include the individual and employer mandates, and some tax items such as repeal of the device tax. But, if the bill is to be passed with only Republican votes, it must still achieve the budgetary savings required for reconciliation legislation. Then the bill would move to conference and face further hurdles in reconciling the divergent positions within each chamber and between the chambers. And-just as with initial consideration in the Senate-any conference report must also comply with the Senate's Byrd Rule to pass with just 50 votes.

The Congressional calendar for the remainder of the year is incredibly challenging. In addition to health care, the Congress must pass a debt ceiling increase by about the end of September or early October. This is a tough vote for many members, with some insisting on a "clean" bill and others seeing this must pass legislation as a vehicle for policy riders. An agreement must be reached on the budget to avoid a \$54 billion reduction in defense spending because of the sequester. And finally, appropriations bills or some form of continuing resolution will be needed to fund the government by October 1, to avoid a government shutdown. These three measures will require support from Senate Democrats to pass, a challenge made more difficult if repeal of the ACA is still under debate.

* * * *

This situation remains highly fluid, and it is difficult to predict the substantive content of any final legislation or the likelihood of passage. We will continue to monitor this process, and provide updates and analysis as appropriate.

For additional information, please contact [Lloyd Bookman](#) or [John Hellow](#) in Los Angeles at 310.551.8111; [Mark Reagan](#) or [Katrina Pagonis](#) in San Francisco at 415.875.8500; or [Keith Fontenot](#) or [Martin Corry](#) in Washington, D.C. at 202.580.7700.