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PERSPECTIVE

Senate faces health care bill hurdles

By Michael C. Parme

Last month, the U.S. House of Representatives narrowly passed the American Health Care Act (AHCA) — legislation that would effectively repeal and replace key provisions of the Patient Protection and Affordable Care Act (ACA). Just two months ago it appeared Republican efforts to overhaul health care were undermined by ideological disagreements between the House Freedom Caucus and moderate Republican legislators. The current version of the AHCA materialized suddenly and the House quickly approved the bill on May 4. The Senate is now tasked with approving or revising the legislation. The Congressional Budget Office (CBO) scored the House bill at the end of May.

Key Compromises in the House Bill

The House version of the AHCA is based on a series of compromises made after the original bill was pulled from the House floor in March. Amendments introduced by Reps. Tom MacArthur (R-N.J.) and Fred Upton (R-Mi.) helped to bridge the ideological divide.

The MacArthur Amendment allows states to apply for waivers regarding the ACA's key provisions, including the 10 essential health benefits identified in the ACA. This includes coverage for preexisting conditions. The amendments create a relatively simple process for states to apply for and receive waivers, enabling them to create health care plans that do not offer the essential health benefits. States also can apply for a waiver of the ACA's community rating rules, enabling insurers to set premium based on health status for individuals who did not maintain continuous coverage. The MacArthur Amendment was critical to securing needed votes from the House Freedom Caucus.

The Upton Amendment creates a fund of \$8 billion over five years to states that allow insurers to charge higher premiums to individuals with preexisting conditions. Such allocated money would theoretically fund high-risk pools or similar programs enacted by the states to manage health care for high-risk individuals. This guaranteed federal assistance apparently was sufficient enough to satisfy moderates that high-risk individuals would maintain some of the protections they receive under the ACA.

While there were a number of other concessions



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Rep. Tom MacArthur (R-N.J.) answers questions during a town hall meeting in Willingboro, New Jersey, May 10.

by Republican factions leading to the vote on the AHCA, these were the key compromises that attracted the necessary votes to pass the bill.

Latest CBO Report Is Critical of AHCA

The CBO had concluded the first version health care bill would result in 14 million Americans becoming uninsured by 2018 and 24 million by 2026. The latest version of the AHCA was hastened to the House floor for vote likely because it had not yet received a CBO score.

House leaders' concerns were confirmed on May 24, when the CBO again found that some 14 million more people would be uninsured in 2018 under the proposed bill. The CBO attributed this to provisions of the AHCA that repeal the individual and employer mandate penalties contained in the ACA. The CBO projects the number of uninsured would increase to 19 million in 2020 and 23 million in 2026, and further predicts that the net deficit reduction under AHCA would be \$119 billion.

The CBO also analyzed the continued viability of the state insurance markets under the ACA and the AHCA. While it found the nongroup markets under ACA in most states would remain stable, it acknowledged the uncertainty regarding the individual mandate and the future of cost-sharing subsidies could lead to instability. While it found markets would remain stable under AHCA until 2020, nongroup markets could destabilize thereafter with regard to those persons living in states that obtain waivers proposed in the MacArthur Amendment. However, the report qualifies its projections by noting it is difficult to determine what states would exercise waivers and the extent of the essential health benefits waived in any particular case.

Challenges Ahead

All eyes are on the Senate. However, there is surprisingly little information to be gleaned regarding the extent of revision the Senate intends to undertake or how influential the CBO's most recent report will be in shaping a Senate bill. On the other hand, there is little doubt that there will at least be significant revision to the version of the AHCA passed by the House. Republicans hold only a narrow majority in the Senate, and they can only afford two defections. Likewise, there is no indication of support of legislation repealing the ACA by Senate democrats. This being the case, moderate Republicans in the Senate will be in a strong position to demand significant revisions, which most likely will focus on the compromises identified above. The challenge is crafting legislation that will be palatable to moderates in the Senate but leave in place the delicate compromises that attracted conservative votes in the House.

Senate Republicans should also expect the substantive amendments at the heart of the House AHCA bill — to the extent they survive — to be scrutinized as to whether they are related to the budget reconciliation process. That process is the less onerous standard (51 votes in the Senate) by which Senate Republicans presently seek to repeal and replace the ACA. Senate Democrats are likely to invoke Senate rules to challenge any Senate version of AHCA, particularly if the Senate adopts the significant amendments discussed above that are not clearly related to budget reconciliation.

While the CBO's report was likely disappointing for Republican lawmakers in Congress, it was predictably disappointing. It remains to be seen to what extent the CBO's projections will slow the recent momentum toward repeal of the ACA.

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