

Compliance Alert



American Health Care Act Fails

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In a dramatic turn of events, Speaker Ryan and President Trump made the decision to pull consideration of [the American Health Care Act](#) from the House floor upon reaching the scheduled 12:30PST vote. The House was put into recess and did not reconvene for reconsideration. There was no vote after the four hours of floor debate.

Not Enough Votes

President Trump and GOP leadership made the decision to pull the AHCA after it became clear it would not have sufficient votes to pass. It was clear that all Democrats in the House would vote against the bill. That left a 22-vote margin among House Republicans for the requisite majority. Reports were that roughly [36 Republicans had committed to vote against the bill](#), dooming it to fail.

Freedom Caucus Demands

The conservative wing of the Republican House that forms the Freedom Caucus is largely responsible for the AHCA's failure. They (along with their ideologically aligned counterparts in the Senate) led a successful campaign against the bill by dubbing it "Obamacare Lite," "Obamacare 2.0," "RINOCare (repeal in name only)," and other similar tags aimed at the AHCA's preservation of certain ACA provisions. With 30+ members, the Freedom Caucus could block the bill by themselves.

Concessions Cause Problems

President Trump made several concessions to this group—including the controversial elimination of the ACA's essential health benefits provisions—but they were not sufficient to sway enough members of the Freedom Caucus. Moderate Republicans in the House also had started to begin voicing concerns this morning as the bill swayed too far to the right for their approval.

No Available Compromise

In the end, there was no compromise available that could coalesce the moderates and Freedom Caucus. Any change to meet the demands of one side resulted in losses from the other. It simply proved untenable.

What Went Wrong

Ultimately, Speaker Ryan's three-phase plan seems to be the root of the problem. The three-phase vision was:

- 1) **The American Health Care Act:** Passed by tricky reconciliation process to avoid filibuster in the Senate.
- 2) **Administrative Action:** Regulatory relief spearheaded by HHS Secretary Price.
- 3) **Additional Legislation:** Subsequent bills to address sale of insurance across state lines, the ACA market reform provisions, and others.

Speaker Ryan was not able to convince the party of its ability to further repeal the ACA or improve upon the AHCA in so-called Phase 3. Everyone's discontent with the AHCA, driven primarily by the "Byrd Rule" limitations on reconciliation in the Senate, was a tough pill to swallow. It created an impossible balancing act that ultimately collapsed.

What's Next

This may spell the end of health care reform legislation for the rest of the year. It appears that President Trump and the Republican leadership will instead turn their attention toward tax reform and other measures at the top of the new administration's agenda.

What's to Come of the ACA

In the near-term, there will be intense focus on HHS Secretary Price to provide regulatory relief to the maximum extent permitted under the ACA. This is consistent with [the executive order signed by President Trump](#) immediately after his inauguration.

One major concern from an employer-side perspective is whether that regulatory effort will be sufficiently focused on issues facing employer-sponsored group health plans. HHS and Secretary Price are typically more focused on issues facing the individual market, providers, and insurance carriers. Traditionally, the Departments of Labor and the Treasury (IRS) are the primary regulatory agencies with respect to employer-sponsored plans. It will be interesting to see what guidance they release in the coming months.

In the long-term, there are far more comprehensive repeal/replace alternatives that may form the basis of the next attempt at GOP health care reform down the road. Senator Rand Paul (R-KY) introduced the "Obamacare Replacement Act" in the Senate that represents the demands of the Freedom Caucus. See [our webinar addressing these options](#) for more details.

Regardless, it is safe to assume that no legislative action to repeal/replace the ACA will be imminent after today's AHCA failure.

Compliance Priorities

Employers now will need to maintain the same ACA compliance priorities until further notice. The employer mandate pay or play rules will still require ALEs to offer minimum essential coverage that is affordable and provides minimum value to full-time employees to avoid potential penalties under §4980H. Furthermore, the associated ACA reporting requirements will likely remain in place for at least another year.

Stay tuned for further updates.

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