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THE SENATE ACA REPEAL & REPLACE PROCESS: THIRD TIME'S A CHARM?

The Republican's Affordable Care Act repeal and replace saga continues. After several tries, the U.S. House of Representatives passed a bill to repeal and replace the Affordable Care Act in April 2017, and passed the baton on to the U.S. Senate. The Senate released its own draft bill in late June with hopes of a vote by July 4, only to have Senator McConnell (the majority leader in the Senate) pull the bill because he did not have enough votes for passage.

On July 13, 2017, Republican senators released an updated version of their proposed legislation to repeal and replace the Affordable Care Act. Like the original Senate bill, the revised Better Care Reconciliation Act ("BCRA") would have repealed the individual and employer penalty, maintained some form of premium tax credit for those without access to employer health care, substantially increased the HSA contribution limit, allowed states to seek waivers for the ACA's essential health benefit requirements and repealed some of the new taxes imposed by the ACA (albeit less than the original version). In addition, the revised BCRA added provisions that (i) allowed insurers to offer "skinny plans" that did not comply with ACA requirements (including the rule prohibiting consideration of health status) so long as the insurer made available at least one ACA compliant plan, (ii) provided additional dollars to stabilize state individual insurance marketplaces and fight the opioid epidemic, and (iii) amended HSA regulations to allow HSA funds to be used to pay for health care premiums.

The changes to BCRA were intended to draw enough support for passage, and a vote was expected later this week. However, after several senators announced on Monday night that they would not support the bill, Senator McConnell again pulled the revised bill and announced he would pursue a blanket repeal of the Affordable Care Act. McConnell apparently intends to seek a straight repeal, but delay the effective date for two years so that Congress could work on a replacement after the ACA is repealed.

It is unclear whether Senate Republicans will have the votes to pass a straight repeal of the ACA. Such a bill will appeal to conservatives, but moderates will likely be concerned about repealing the ACA without any replacement plan. Repealing the ACA without a replacement is also likely to create uncertainty and chaos in the insurance and health care industries. Stay tuned for further information.

Please visit www.moreton.com/category/compliance-updates/ for more information and to view other client alerts. This Client Alert was written by Carolyn Cox, Moreton & Company's in-house corporate counsel who provides our clients with compliance services. For additional questions, please contact Carolyn at 801-715-7110 or ccox@moreton.com.

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