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## Statement of Ropes & Gray D.C. Health Group Partner Tom Bulleit on the House's Passage of the American Health Care Act: AHCA Redivivus, or A Last Gasp?

On Thursday, May 4, 2017 The House voted 217-213 on legislation to 'repeal and replace' ObamaCare

Thanks to some late-breaking amendments, and some good, old-fashioned arm-twisting by President Trump and House Republican leadership, the House yesterday passed its 'repeal and replace' of Obamacare.

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The American Health Care Act managed to thread the needle between the House conservatives, represented by the House Freedom Caucus, and moderates, represented by the Tuesday Group. The conservatives were persuaded by the [MacArthur Amendment](#), which states that it preserves protection for Obamacare's ten essential health benefits and persons with pre-existing conditions, but allows the states to get waivers that would let them define their own (presumably lesser) essential health benefits, and that would permit higher premiums based on pre-existing conditions. Conservatives seem convinced that the waivers will bring down premiums, but the waivers aroused considerable concern among the moderates, that essential benefits would be eroded and that the revival of status underwriting for pre-existing conditions could make policies unaffordable for many.

What got the AHCA over the finish line with the moderates was an additional \$8 billion over 10 years earmarked for state high-risk pools. Other than those changes, the bill looks a lot like it did when there were insufficient Republican votes at the end of March: it still sunsets Obamacare's expansion of Medicaid in 2020, replaces the federal Medicaid entitlement with a fixed amount (either per capita or block grant), repeals the individual and employer mandates, redistributes current subsidies (renamed advanceable, refundable tax credits) from recipients based on financial need to fixed amounts that are age-adjusted. And it repeals all of the Obamacare taxes.

If getting the bill through the House was like pushing a freight car uphill, getting it through the Senate in its current form would be like moving a mountain. Among other reasons, there are a number of moderate Republican senators from states that took the Obamacare Medicaid expansion who do not want the enhanced Medicaid benefits to go away. And since several provisions of the AHCA likely will require 60 Senate votes (such as the waivers for EHBs), it has little hope without substantial revision. Furthermore, anything that could pass the Senate almost certainly couldn't gain the votes of the Freedom Caucus back in the House. For those reasons, ironically, it appears that the best hope for a bill that does anything substantial to Obamacare would be a bipartisan 'revitalize and reaffirm' that could attract some Democratic votes. At present, the only Senate bill that attempts that is the [Collins-Cassidy Patient Freedom Act](#). It will be interesting to observe whether the Senate goes in that direction or remains divided along party lines.