



HEALTH REFORM ADVISORY PRACTICE

Weekly Legislative Update



Feb. 3, 2017

Policy Retreat Fallout and Hearings on the Hill

Late last week a secret recording surfaced from the Republican policy retreat in Philadelphia. The surreptitious recording (available from the [Washington Post](#)) confirmed the view that Republican leadership is ready to move at full throttle on repealing the Affordable Care Act (ACA), but rank-and-file Republicans expressed concerns about how and when that will happen.

Lockton comment: This week's immigration, foreign relations, and cabinet and Supreme Court nomination controversies provided ample distractions from what had been laser focus on the Republicans' efforts to repeal and replace the ACA. These distractions gave Republicans opportunity to work on their repeal and replacement plans with less scrutiny. However, President Donald Trump and fellow Republicans may find these other issues require more political capital than expected, resulting in less leverage when tackling changes to the ACA and the tax code.

Do No Harm to the Group Market

Employer-sponsored health insurance was not the focus of the Republicans' retreat, but it surfaced in noteworthy ways. At one point, Senator Lamar Alexander (R-TN), chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee, explained that Republican senators carry around a card showing that 61 percent of Americans have employment-based health insurance. The comment seemed a clear acknowledgement that the employment-based group market benefits a great many voters and their families, and any repeal-and-replace plan would have to protect that market.

Lockton comment: That's a prudent conclusion. A recent Employee Benefits Research Institute (EBRI) [survey](#) found that 88 percent of workers report that employment-based health insurance is extremely or very important. Another EBRI [survey](#) noted that 88 percent of workers also say they're satisfied to extremely satisfied with their employer-sponsored insurance.

Nevertheless, the clandestine recording shows Republicans continue to discuss the idea of taxing employees on at least a portion of the value of their employer-sponsored health insurance. This week, Senator Orin Hatch (R-UT), chairman of the Senate Finance Committee, indicated Congress will repeal *all* ACA taxes, including the employer mandate penalties and the Cadillac tax. Repealing all the ACA's taxes begs an important question: How will Congress raise the cash to pay for tax credits or other financial assistance to help supply health insurance to those who can't afford it?

Lockton comment: We are very much opposed to taxing employees on the value of their employer-provided health insurance. It's a tax increase on employees and families and may threaten the group market by forcing many employees to reassess whether to purchase health insurance at all.

Another theme of the Republican retreat was the desire to give states flexibility to independently design and regulate health insurance coverage. [Last week](#) we wrote about how the proposed Patient Freedom Act (PFA) accomplishes this goal but results in patchwork state-by-state compliance obligations for employers. Many Republicans are cool toward the PFA, and there has been increased talk of replacing the ACA incrementally through several smaller bills. Regardless of the bill or bills, we hope Republicans will be careful to avoid creating more compliance burdens for employers.

Lockton comment: Next week several Lockton officers will be in Washington, DC, to encourage Congress to "do no harm" to our clients' employees and the group health insurance market they enjoy.

Rep. Tom Price's Nomination Moves Forward

Amid protests from Democrats, Republicans on the Senate Finance Committee approved President Trump's nominee for Secretary of Health and Human Services (HHS), Congressman Tom Price (R-GA). Congressman Price's nomination must still be voted on by the full Senate. That vote is not yet scheduled but will likely occur within the next two weeks. Most expect Price to receive the 51 votes necessary to be confirmed.

The Individual Market Remains the Focus

The individual health insurance market and its problems under the ACA dominated discussions at both the retreat last week and in Congress this week. Committees in both the House and Senate held hearings this week to discuss individual market concerns and how to move forward with the Republicans' plans to repeal and replace the ACA, while also ensuring stability of the insurance markets.

In the House, the Energy and Commerce Health Subcommittee reviewed four bills that could provide a piecemeal approach to addressing several of the critical issues affecting the individual insurance market, including preexisting condition exclusions, current age-rating rules and adverse selection concerns.

The Senate HELP Committee hearing involved testimony from several industry experts. Marilyn Tavenner, president of America's Health Insurance Plans (AHIP), the leading association for health insurers, urged Congress to quickly lay out a plan for subsidies and tax credits so that carriers can better understand potential risks and opportunities. Carriers are less likely to participate in markets when the rules and risks are unclear.

Chairman Alexander spoke of a desire to work with Democrats to come up with a short-term plan to stabilize the individual market. This would allow for more time to work on broader fixes for the ACA going forward.

Lockton comment: Alexander likened the process to fixing a failing highway bridge. The first step is to shore up the failing bridge (the individual market). Next, build a new bridge beside it (additional replacement provisions). Once the new bridge is ready, divert traffic and blow up the old bridge. Democrats have admitted that some ACA changes would have been necessary regardless of who won the presidency, so it's possible that Alexander will get his wish – at least when it comes to shoring up the old bridge.

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