



HEALTH REFORM ADVISORY PRACTICE

Weekly Legislative Update



April 7, 2017

House Republicans Remain Committed to the American Health Care Act, Prove They Can Pass Bipartisan Health Care Legislation

An amendment to the American Health Care Act (AHCA) the day before Congress left for a two week recess signals that House Republicans remain committed to passing the Republican-led Affordable Care Act (ACA) alternative. Members now return to their districts – likely to face a barrage of constituent complaints from both the right and the left – while staffers remain in Washington, D.C. where they will attempt to hash out the details of a compromise that can garner the 216 votes necessary to pass the House.

In what might be overly optimistic remarks, House Majority Leader Kevin McCarthy (R-CA) told GOP members before the recess that work on the AHCA will continue over the break, and prepared lawmakers for the possibility of recalling them to D.C. for a vote on the AHCA before the recess is scheduled to end.

Providing GOP lawmakers with a bit of momentum heading into the break was an amendment to the AHCA, which aims to reduce individual market premium costs by allocating an additional \$15B over nine years to an “invisible risk sharing program.” The program would help offset costs of those with certain, yet to be defined, high-cost conditions. Reports are mixed as to how helpful the program will be at controlling costs, but it is a sign House Republicans are finding some common ground.

Lockton comment: Adding more momentum are reports this week of additional insurers pulling out from exchanges. For example, announcements by Aetna and Wellmark Blue Cross and Blue Shield to pull out of the Iowa exchange in 2018 leaves Medica as the only insurer in 94 of Iowa’s 99 counties. Republicans have already latched on to these announcements to reinforce the narrative that the ACA exchanges are in a death spiral.

How close the House is to passing legislation remains unclear. Members of the Freedom Caucus, emboldened by their show of force in compelling House leadership to pull the AHCA before a vote on the House floor two weeks ago, continue to press for the bill to move further to the right. Championing principles of federalism and states’ rights, the Caucus is asking leadership to adopt amendments to the AHCA that will allow states more flexibility in how they regulate insurance.

The belief among many in the GOP, especially those to the far right of the party, is that ACA insurance mandates like essential health benefits (EHBs), guaranteed issue, and community rating are tying the hands of insurance carriers and forcing up premiums. Under discussion are proposals to give states the ability to modify, and potentially eliminate, these aspects of the ACA. More moderate Republicans have indicated a willingness to go along with these ideas, but only if they result in a reduction in premiums and fewer coverage losses.

Lockton comment: The ACA mandates 10 EHBs, which individual and small insured group plans must cover (e.g., benefits for maternity, and mental health and substance abuse). Guaranteed issue means carriers must offer policies to anyone regardless of the underwriting risks. Community rating means premiums for small group and individual policies are calculated by considering the risks of the community as a whole rather than the risks of the specific individual or small group. Pre-ACA, states varied in how they applied these concepts to carriers, and it is unclear how states will respond if the AHCA returns oversight of these rules to the states. It is also unclear whether changes to these ACA provisions can make it through the Senate's restrictive budget reconciliation rules.

Bipartisan Healthcare Bill Clears the House – Really!

The House was able to pass one healthcare related bill with overwhelming bipartisan support this week. The Self-Insurance Protection Act, which passed on a 400–16 vote, clarifies that stop-loss coverage, used by employers that self-insure their health plans to insure against large claims exposure, is not “health insurance.” If the proposal passes the Senate, it will make clear that stop-loss coverage is not subject to federal restrictions on health insurance like EHBs and medical loss ratio rules.

Lockton comment: Stop-loss coverage has been a battleground over the last several years, especially as an increasing number of smaller employers have begun to self-insure their health plans. While this legislation makes clear that stop-loss coverage is not subject to federal regulation applicable to health insurance, it does not appear to limit the ability of states to regulate stop-loss coverage. Some have argued that stop-loss coverage should be subject to more regulation, as it functions much like health insurance when it kicks in to cover relatively small claims.

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