



**September 1, 2017**

### **Senate Turns Bipartisan Attention to Individual Market, Broad Repeal and Replace Effort Likely Dead for Now**

The Senate's leading health policy committee has scheduled four hearings over the next two weeks in an effort to craft bipartisan legislation to stabilize the nation's individual health insurance markets. But a new attempt at a broad Affordable Care Act (ACA) repeal and replace effort seems impossible in the short term, as time to make such an effort is now all but exhausted.

The Senate's Health, Education, Labor and Pension (HELP) committee, under leadership of Sen. Lamar Alexander (R-TN), will hold hearings on September 6, 7, 12 and 14 to take testimony from governors, insurance experts and others regarding how best to shore up the nation's individual health insurance markets.

**Lockton comment:** While on the surface the hearings seem to hold little direct relevance for employer sponsors of group health plans, the HELP committee will explore giving states greater latitude to waive certain ACA requirements, including the employer mandate. Lockton and other stakeholders are working to warn members of Congress that subjecting multistate employers to a potential patchwork system of state-based employer health coverage mandates would only add cost and complexity to group health plans already shouldering significant cost and regulatory burdens.

The Senate will consider a variety of approaches, including:

- Retaining the ACA's individual mandate (at least in the short term).
- Funding of federal payments to insurers to reimburse them for reducing deductibles and other out-of-pocket expenses for low-income individual market policyholders.
- Creation of a multi-billion dollar stability fund to protect insurers taking on disproportionate risk in the individual market.
- Giving states flexibility to design their own solutions by granting them waivers from certain ACA-imposed requirements.

### **Time Has All but Run Out on Repeal and Replace for 2017**

The broader ACA repeal and replace effort that has consumed Congress since January is on life support, sustained only by a last-ditch effort by Sen. Lindsey Graham (R-SC) and Sen. Bill Cassidy (R-LA) to move the initiative forward. Their Graham-Cassidy bill would, most

prominently, convert federal payments to the ACA's state health insurance marketplaces, and federal Medicaid payments, into block grants that states would use to craft their own approaches to health insurance coverage issues.

The Graham-Cassidy plan is receiving some support in the Senate and by Administration officials, but it still faces obvious political obstacles, and maybe more significantly, time constraints. The Senate has only until September 30 to utilize the filibuster-proof "reconciliation" process to pass a health reform bill, and there are only 12 legislative days on the Senate's calendar between now and September's end, with plenty of other priorities competing for the Senate's attention. As one Beltway insider put it to us, "For Graham-Cassidy to pass the Senate floor is about as likely as drawing to an inside royal flush at the poker table...the odds are very, very long."

**Lockton comment:** Lockton continues to oppose any federal effort that would encourage or facilitate the ability of states to craft their own ACA-like employer mandates. Such a patchwork approach to coverage mandates and reporting would subject multistate employers to an intolerable administrative burden, and run contrary to ERISA's fundamental tenet that employers should be required to satisfy only a single, *federal* standard, with regard to employee benefit administration.

### **Lockton Meets with Senior Administration Official**

Lockton vice president Scott Behrens, as part of an employer-centric stakeholder group, met this week with Brian Blase, Special Assistant to the President for Healthcare Policy, to discuss economic aspects of employer-sponsored group health insurance.

The meeting was coordinated by the Alliance to Fight the 40, an employer-based coalition opposed to both the ACA's Cadillac tax and proposals to tax employees on the value of their employer-provided health insurance. Lockton is a member of the Alliance's steering committee.

The meeting focused on the adverse impact of either tax on employees, and the disproportionate impact the taxes would have on lower wage earners, employees covering large families, and on employer groups composed substantially of retirees, aged active employees, or women.

**Lockton comment:** Lockton has become increasingly active inside the Beltway in advancing the interests of its employer clients by educating members of Congress and the Administration on the efforts employers make to provide effective and cost-efficient healthcare coverage to their employees, and urging a loosening of the inordinate regulatory burden employers face with respect to their group health plans.

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