



HEALTH REFORM ADVISORY PRACTICE

Weekly Legislative Update



Jan. 13, 2017

ACA Repeal Effort Edges Forward, Still Little Clarity on Timeline for Replacement

This week, Congressional Republicans cleared important procedural hurdles on the path to *repealing* several components of the Affordable Care Act, including the individual and employer mandate penalties. GOP infighting, however, continued to prevent any consensus on the timing of *replacement* legislation.

Clearing the Way for Budget Reconciliation, the Gateway to Repeal

Both the House and Senate passed a non-binding budget resolution that paves the way for the Senate to pass an ACA repeal bill through the filibuster-proof reconciliation process.

Lockton comment: The budget resolution doesn't contain actual repeal language. Instead, it directs specific committees in Congress to prepare language reconciling the resolution's budget objectives with current law. The language these committees will prepare, to implement that reconciliation, will provide for the repeal of the ACA, at least in part. The committees are asked to prepare that language by Jan. 27.

Repeal is Easy; Repeal and Replace is Complicated

As we noted above, the official timetable for having *repeal* language offered by relevant Congressional committees, as set forth in the budget resolution, is Jan. 27. Vice President-elect Pence says the incoming Trump administration expects a repeal bill by Feb. 20.

Lockton comment: Republican leaders in the Congress set an aggressive timeline in response to a perceived mandate from voters to accomplish quick repeal.

While it would be easy enough to have *repeal* language ready by late January and an actual repeal bill on President Trump's desk by late February, this timeline might be too aggressive in light of growing pressure on Republican leadership in Congress to include at least some *replacement* language in the repeal bill.

Replacement is complicated. Settling upon just *what* to replace the ACA with and *how* to replace it – without disrupting coverage for the 200 million Americans who either gained coverage under the ACA or enjoy employer-sponsored coverage – is challenging. The political stakes are enormous.

Lockton comment: The dilemma faced by Republicans is immediately apparent. The party promised a quick ACA repeal. A quick repeal *without* replacement is easy but threatens uncertainty and chaos in the insurance markets, particularly the individual market. Replacement is complicated and challenging and, therefore, difficult to do quickly. And so we find growing tension between quick repeal and a hasty replacement on the one hand and delayed repeal and a more deliberate replacement on the other.

The pressure to put at least some replacement language in the repeal bill has been growing. So significant was that pressure by week's end that Rep. Kevin Brady (R-TX), Chairman of the crucial House Ways and Means Committee, indicated late Thursday that repeal legislation is unlikely to meet the Jan. 27 and Feb. 20 target dates.

Where's the pressure coming from? Squeezing Republican leadership from above is President-elect Trump, who at a press conference this week advocated that Congress pass replacement legislation within the same week it passes repeal legislation.

Lockton comment: During the press conference, Mr. Trump suggested that he wants that legislation to come shortly after Rep. Tom Price (R-GA) is confirmed as Health and Human Services Secretary. Price's confirmation hearing is projected to start Jan. 18, and a confirmation vote will likely occur by mid-February. While that timeline would meet the target date Mr. Pence advanced, it might not be practical in light of pressures to develop replacement language. Republicans may need more time.

Pressing Republican leadership from below are rank-and-file Republicans in Congress who want to be sure there will be a smooth and fiscally disciplined transition from the ACA to full replacement, so as not to antagonize their constituents.

By week's end only one thing was certain: If repeal and replace (rather than repeal and delay) is the way forward, it likely won't happen as quickly as some conservatives would like.

A New Option: Repeal-Plus

With pressure mounting to avoid *repeal and delay*, and with Republicans struggling to coalesce around *repeal and replace* (repeal with immediate and *comprehensive* replacement legislation), the GOP is drifting toward a middle ground: repeal-plus.

Repeal-plus is a quick repeal of key ACA components, plus *some* replacement language, leaving for a later date the passage of additional replacement legislation, perhaps in piecemeal fashion.

While repeal-plus reflects a compromise between those pushing for quick repeal and those demanding no repeal without replacement, repeal-plus carries its own political risks. Republicans will have to agree on the topics and the substance of replacement language.

Expansion of health savings accounts (HSAs) and federal funds for state-based high risk pools are among the more likely provisions. While Republican replacement proposals have generally all called for HSA expansion and funding of high risk pools, there is no indication that the details of those broad, and potentially costly, policy ideas have been fleshed out.

Lockton comment: Although repeal-plus is the phrase of the day, the situation in Washington is extremely fluid. In this space next week, it is entirely possible that we'll report that simultaneous repeal and replace has reemerged as the most viable path forward.

Separate Cadillac Tax Replacement Bill Introduced

Without specifics on ACA repeal and its timeline, a bipartisan group of Senators (Dean Heller (R-NV) and Martin Heinrich (D-NM) – and Representatives (Mike Kelly (R-PA) and Joe Courtney (D-CT)) have introduced stand-alone legislation to immediately repeal the ACA's Cadillac tax.

Lockton comment: The Cadillac tax places a 40 percent excise tax on health plans with premium values exceeding specified thresholds. The tax was initially devised as a mechanism to control healthcare spending as well as raise revenue. Originally set to take effect in 2018, the tax was delayed to 2020 by legislation approved in 2015.

Since its inception, the Cadillac tax has garnered sharp criticism from both sides of the aisle, as well as employers, unions and trade groups. Opponents of the tax, including Lockton, have pointed out that it would result in a significant burden on employers indirectly upon employees, by increasing plan costs or forcing greater shifts in costs to employees.

ACA repeal legislation vetoed by President Obama in 2016 (many believe the text of that bill will be the chassis for upcoming repeal legislation) would have repealed the Cadillac tax. While Cadillac tax repeal might again be included in broader ACA repeal legislation, the stand-alone Cadillac tax repeal bill introduced this week provides a vehicle for repealing the tax even if politics or other issues get in the way of a broader ACA repeal bill.

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