



HEALTH REFORM ADVISORY PRACTICE

Weekly Legislative Update



March 10, 2017

GOP Repeal-and-Replace Bill Moving Quickly, but Many Obstacles Remain

And we're off! After being introduced late Monday night, the American Health Care Act (AHCA), which we summarize in a Lockton Health Reform Advisory Practice [Alert](#), has already cleared two important House committees. While the progress has been quick, the bill is already under fire from members of Congress on both sides of the aisle.

Wednesday the House Ways and Means and Energy and Commerce Committees held markup sessions on different portions of the AHCA. Debate about the legislation lasted through the night, and both committees advanced their portions on Thursday without significant changes. The various pieces now move to the House Budget Committee, which will combine the pieces and begin its own debate on the bill next week. If it clears the Budget Committee it moves, likely the week after next, to the House Rules Committee. The last step would be to the floor of the House, for a yea or nay vote.

That vote is still expected to happen in late March. The most significant changes to the AHCA, if changes are made at all, are likely to pertain to the AHCA's provisions modifying Medicaid and the creation of new refundable tax credits available to buy health insurance on the individual market.

Lockton comment: At this point, we are not hearing proposals to change any of the AHCA provisions related to *employers* and group health plans. In particular, we have not heard any member of Congress calling for taxing employees and retirees on some portion of their health insurance costs, something that was included in earlier drafts of the bill.

But the Congressional Budget Office has yet to release its "score" of the AHCA, and that score – expected on Monday – might reflect a revenue hole that Congress would need to fill. If it moves to fill it by re-inserting a tax on employees and retirees, based on their health plan premium costs, Lockton will oppose that move.

Challenges to how the AHCA rolls back the Affordable Care Act's (ACA) Medicaid expansion and the creation of new refundable tax credits have been lodged by both the moderate and the right wings of the GOP, but for very different reasons.

Moderates, especially those who come from states that expanded Medicaid, fear the proposed rollback of Medicaid expansion will cause too many people to lose coverage and result in too much disruption to the state's insurance market. Others are concerned the proposed tax credits, widely reported as being less generous than those under the ACA, particularly at lower income levels, do not provide enough of an incentive to maintain sufficient coverage numbers in the individual health insurance market.

The right wing of the GOP, especially members of the House, take a strong stance against Medicaid expansion as a matter of principle. Not only do they want to hasten the rollback; they want to require able-bodied adults to be employed in order to receive Medicaid. Further, they see tax credits as creating another government entitlement program.

In these ways, the AHCA is between a GOP rock and hard place. Changes that might be necessary to move the legislation through the House could make it impossible to garner enough support in the more moderate Senate.

A key missing piece that may help solve this dilemma is the final score from the non-partisan Congressional Budget Office (CBO), which is tasked with estimating the financial and coverage impacts of the AHCA. The better the score – that is, the lower the cost and the fewer the number of people expected to lose coverage – the smaller the controversy and the less impetus for amendments.

Lockton comment: Moderate Republicans may have the upper hand regardless of the CBO score. It will be politically risky for members of the GOP's right wing to vote against repealing and replacing the ACA. In fact, President Donald Trump, who supports the AHCA, has threatened to hold rallies in the districts of members who oppose the legislation.

Positive Developments for Wellness Program and Other Health Plan Legislation

Three other health plan-related bills cleared a House committee this week, and reports indicate they will be considered on the House floor along with the AHCA. The most welcome of these would effectively excuse a workplace wellness program from having to comply with the EEOC's widely-reviled wellness program regulations if the program satisfies the HIPAA/ACA wellness rules. The other bills would allow bona fide associations to provide *self-insured* medical coverage to their members, and would shield stop-loss insurance – purchased by self-insured plan sponsors to protect against catastrophic claims – from being treated as health insurance.

Lockton comment: Associations have difficulty providing self-insured medical coverage because under current law the program would be subject to state regulation, and states tend to view such programs as unlicensed insurers. The bill relating to stop-loss is important because it would prevent stop-loss policies from having to comply with mandates and other rules applicable to health plans.

These bills, at least the wellness program-related bill, will require 60 votes in the Senate to pass (unlike the AHCA, which will require only 51). That means Senate Republicans will need to convince 8 Democrats to vote with them on these measures. That might have been possible, even likely, a few months ago. But the bills may arrive at the Senate at or about the time the AHCA arrives, and if that's true, might be collateral damage from the hardened party line votes we're likely to see on the AHCA.

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Congress and a Tax on Health Insurance

Congress has seriously considered taxing employees (income and payroll tax) and employers (payroll tax) on a portion of their group health plan values. If you are opposed to such action, click here for **model text** you might consider sending to your representative and senators.

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