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Is a Bipartisan Health Reform Bill Possible?

Reports surfaced this week of a bipartisan group of senators holding regular meetings to iron out health reform legislation. The informal bipartisan caucus represents a *second* Senate working group grappling with health reform. The Senate's *main* working group, discussed in our [Update](#) last week, consists of 13 Republican senators tasked by Senate Majority Leader Mitch McConnell (R-KY) to iron out differences Senate Republicans have with the House's American Health Care Act (AHCA), passed by the House on May 4. The AHCA would partially repeal and replace the Affordable Care Act (ACA).

While the bipartisan working group is separate from Leader McConnell's group, it does not appear the two groups are antagonistic to one another. Instead, it seems more likely the bipartisan group is developing a "Plan B" in case the Senate Republicans' main effort to modify the AHCA fails.

Lockton comment: The Senate Republicans' main working group continues to meet. The bipartisan second working group was not formed by Senate leaders from either party, but was established informally by moderate Senate Republicans who then reached across the aisle. While Senate leaders did not form the group, they have not attempted to thwart the group's meetings either, leading to speculation that leaders from both parties see the group's efforts as working toward a potential bipartisan compromise bill to *repair*, rather than repeal, the ACA.

The bipartisan working group is led by Senators Bill Cassidy (R-LA) and Susan Collins (R-ME), who proposed their own ACA-alternative legislation in January: the Patient Freedom Act of 2017 (PFA) (see our prior [Update](#)). Other members of the group include moderate and politically vulnerable senators from both parties, including Democrats Joe Manchin (D-WV), Joe Donnelly (D-IN) and Heidi Heitkamp (D-ND), and Republicans Shelley Moore Capito (R-WV), Lindsey Graham (R-SC) and Dan Sullivan (R-AK).

The PFA is already a compromise of sorts. It defaults states into a structure that allows them to automatically enroll individuals in a basic level of coverage, subject to an opt-out right, and provides a yet-to-be fully defined federal subsidy to help cover basic costs. The PFA's default structure eliminates the ACA's employer and individual mandates and premium subsidies; however, it gives states the option to opt back in to the ACA or to develop a different health reform structure. In other words, if a state likes the ACA, then the PFA would allow the state to keep it.

Lockton comment: If the PFA is the starting point for the bipartisan working group, we hope the legislators iron out the cumbersome consequences for multistate employers that might be subject to the ACA mandate, including the reporting requirement. For example, a multistate employer might find itself obligated to satisfy the ACA's employer mandate (and its reporting obligations) for employees in some states, but satisfy an entirely different set of obligations for employees in a state that opted out of the ACA, in favor of the default option or its own mandate. We imagine such a consequence is unintended, and we will be certain to raise the concerns of multistate employees when we meet with legislators next week on Capitol Hill.

It appears these bipartisan discussions are in their infancy, and it remains unclear whether a strong enough coalition could combine to pass a bipartisan bill. For instance, would enough Democrats back a bill that eliminates the individual mandate? For that matter, would enough Republicans back a bill that keeps it? Would President Donald Trump sign legislation that merely modifies the ACA instead of gutting it? Time may tell.

Lockton comment: Republicans may have an incentive to work on a bipartisan fix instead of (or at least in conjunction with) a complete overhaul. Conservative columnists continue to warn that if Republicans ram through a partial repeal and replace of the ACA that causes too many individuals to lose health insurance they gained under that law, voter backlash might sweep Republicans out of power in Washington in 2020. In that event, Democrats may well move quickly to install a single-payer system of the sort advanced by Sen. Bernie Sanders (I-VT) during the last presidential campaign, an unacceptable outcome for conservative lawmakers.

States Continue to Push Single-Payer Initiatives

Even if Congress is unlikely to act (or at least act quickly) on single-payer legislation, states continue to be intrigued by single-payer designs. This week a single-payer initiative, which would prohibit private insurance, was approved by the New York State Assembly. That legislation, which was previously passed by the State Assembly on multiple occasions, is almost certain to again meet its demise in the Republican-controlled New York State Senate. Damaging to the legislation over and above ideological differences are third-party analysis concluding New York would need to at least double its tax revenue to pay for the single-payer legislation.

Lockton comment: Financial constraints have consistently crippled single-payer initiatives. As we've reported, single-payer initiatives have failed in California, Colorado, Vermont, and other states because of finances. It is common for significant legislative actions to fail many times before finally passing, so we wonder aloud – is it simply a matter of time before a state finds a way to pay for single-payer legislation?

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