



HEALTH REFORM ADVISORY PRACTICE

Weekly Legislative Update



July 14, 2017

Senate Republicans Move Closer — and Yet Farther Apart — on Latest Health Reform Draft

On Thursday, Senate Majority Leader Mitch McConnell (R-KY) released an updated version of The Better Care Reconciliation Act (BCRA), the Senate Republicans' bill to partially repeal and replace the Affordable Care Act (ACA). The updated language attempts to strike a balance between moderate and conservative Republicans who balked at the prior draft. But the updated version is already in jeopardy. At least two Republican senators have already signaled they would not vote to allow the legislation to move forward.

The Updated Version of the Senate's Repeal-and-Replace Bill

Much of the original draft version of BCRA remains (see our June 23 [Update](#)), but the newest version:

- Allows health savings account (HSA) funds to be withdrawn tax free, to pay for individual insurance premiums, and medical expenses for non-dependent children, up to age 26
- Prohibits individuals from making HSA contributions if their high deductible health plan provides coverage for abortions
- Retains the ACA's additional Medicare and net investment taxes for high income individuals, and the tax on health insurance executive compensation
- Makes limited modifications to the BCRA's proposed rules for small business health plans, allowing certain small businesses to participate in the same insured health plan subject to the less restrictive large group market rules
- Incorporates the Cruz amendment (see our July 7 [Update](#)), allowing an insurer to issue ACA noncompliant policies if it issues at least one ACA compliant policy
- Provides an additional \$45 billion toward opioid treatment and recovery

- Allows individual tax credits, similar to ACA tax credits, to subsidize catastrophic health coverage
- Keeps most of the BCRA's Medicaid changes, but provides \$70 billion in new funding for high risk individuals in the individual market.

Shortly after the updated language was released both Susan Collins (R-ME), a consistent moderate, and Rand Paul (R-KY), a hardline conservative, expressed an unwillingness to vote for the bill. The loss of Collins and Paul, and assuming (safely, we think) that no Democrat will support the bill, means the bill will fail if it is opposed by any other Senate Republican. Holding together the other 50 Republican senators will be a tall task, especially in light of critical rhetoric expressed by many of those lawmakers.

McConnell Targets a Vote for Next Week

Nevertheless, McConnell hopes to have a vote on the bill next week, although his pledge to extend the current legislative session into the traditional August recess suggests a vote may come later. Several procedural steps must happen for a vote next week, each of which contains its own perils:

- A motion to proceed. This is a procedural vote to allow debate to begin. The vote must pass by a simple majority. If the bill is to be voted on next week, then this motion will likely need to happen by Wednesday. Both Collins and Paul have indicated an unwillingness to vote in favor of the motion. If all other Senate Republicans approve the motion Vice President Mike Pence will need to break the tie.
- Twenty hours of debate, equally divided between Republicans and Democrats.
- A final Congressional Budget Office (CBO) score describing the financial and coverage implications of the version of the bill to be voted on. We expect a new CBO score for the latest version of BCRA to be released on Monday or Tuesday of next week. Any additional modifications to the bill will require a new score.
- Points of order, whereby Democrats can challenge the entire bill or merely pieces of it (e.g., provisions related to ACA market reforms and limits on abortion funding) based on specific procedural rules.
- A "vote-a-rama" during which unlimited amendments to the bill can be offered by either party. If it reaches this point, it is likely that Democrats will attempt to extend the process for as long as possible, and force votes on amendments Republicans are unlikely to favor, but which can be used later in senatorial re-election campaigns.
- A vote to have the Senate version of repeal-and-replace (i.e., the BCRA) replace the House version of the bill.
- Final vote on the passage of BCRA. If we get to this, it seems likely that either the bill succeeds with Pence breaking the tie or the bill goes down with many more than two Republicans voting against it.

Lockton comment: We have talked to numerous Washington D.C. insiders and their prognostications, about the likelihood of a bill passing next week, let alone in the near future, have varied wildly. What everyone seems to agree on is that health reform topics will remain front and center for at least the next several months, regardless of how next week shapes up.

Scott Behrens, JD
Lockton Compliance Services

Lockton Benefit Group | 444 West 47th Street | Suite 900 | Kansas City | MO | 64112

Not Legal Advice: Nothing in this Alert should be construed as legal advice. Lockton may not be considered your legal counsel and communications with Lockton's Compliance Services group are not privileged under the attorney-client privilege.

© 2017 Lockton Companies