



HEALTH REFORM ADVISORY PRACTICE

Weekly Legislative Update



September 8, 2017

Is ACA Repeal and Replace Back From the (Near) Dead?

Senators Lindsey Graham (R-SC) and Bill Cassidy (R-LA) are leading an eleventh-hour, last-ditch effort in the Senate to repeal and replace key portions of the Affordable Care Act (ACA) by month's end. The effort has the support of President Trump, who said he'd sign the measure if it clears the Congress, but political and procedural hurdles make passage of the measure unlikely.

The Graham-Cassidy initiative has been bantered around for several weeks but few insiders gave it much of a chance. For the measure to clear the Senate via the filibuster-proof reconciliation process, the Senate would need to pass it by September 30. That seemed unfathomable with so many other significant legislative agenda items ahead of it on the Senate's calendar. But this week's quick compromises on the federal debt limit, government funding and hurricane relief created just enough room on that calendar for Republicans to make another effort at comprehensive repeal and replace, if Senate leadership can line up adequate support in time.

While still under construction, the Graham-Cassidy proposal – like other repeal and replace efforts – would repeal employer and individual mandate penalties and boost health savings accounts. The proposal differs from earlier efforts in its approach to funding Medicaid and ACA-authorized subsidies for insurance purchases in the individual market.

Graham-Cassidy seeks to pool money the ACA allocates for premium subsidies, cost-sharing reduction subsidies, and Medicaid expansion and divvy those dollars up among the states in the form of block grants, with each state's share dependent on its number of lower-income residents. States would enjoy additional flexibility to spend those dollars in ways most beneficial to the respective states' individual insurance markets and to a lesser extent, Medicaid programs.

Lockton comment: While we expect Graham-Cassidy to eliminate the federal employer mandate penalty, we are concerned it may encourage states to establish

their own employer mandates. We have and will continue to work with Sen. Cassidy, his staff and others on Capitol Hill to explain how state-by-state employer mandates, and related reporting requirements, could impose intolerable administrative and cost burdens on group health plans maintained by multistate employers.

The hurdles facing Graham-Cassidy, however, are significant. Senate Republican leadership remains pessimistic about the proposal, with good reason. As of today there is no legislative text. Once text is provided, the proposal needs to be “scored” by the Congressional Budget Office to see how it affects the number of uninsured and how much money it will save. Then leadership needs to find at least 50 votes in favor of the proposal, and move it to the Senate floor for a vote. And all of this must happen in the next three weeks, among other critical September agenda items that remain unresolved.

Lockton comment: It’s premature to presume all Senate Republicans who voted for the repeal and replace bills that died in the Senate in July will be on board with Graham-Cassidy. Many of those senators were willing to vote for the earlier measures not because they wanted to see them become law as written, but because they believed their votes would simply lead to a later compromise with the House.

But for Graham-Cassidy to succeed it must clear the Senate by September 30, and the House’s only option after that date will be to pass the Senate’s bill without change. In short, a senator’s vote for Graham-Cassidy means he or she is willing to see that measure become law as written. That may be too tough a pill for some Senate Republicans to swallow.

In the Meantime, Senate Holds Hearings on Market Stabilization

The Senate’s Health, Education, Labor and Pension (HELP) committee held the first two of four hearings this week on how to stabilize the nation’s individual insurance markets. The committee heard from both Republican and Democrat governors as well as insurance commissioners. The committee hopes to forge a bipartisan solution to spiraling costs and dwindling competition in many of the states’ individual health insurance markets.

The hearings are unlikely to lead to a legislative solution prior to the late September deadline for health insurers in the individual market to confirm their 2018 rates. That means those rates will be locked in with the assumption that no legislative relief will be available for 2018 (i.e., the rates are almost certainly higher than they would otherwise be, were a market stabilization package already in place).

Lockton comment: For all the lofty talk of the Senate’s return to “regular order” and a bipartisan effort to stabilize the individual market, success of a market stabilization bill is far from certain. Republicans want to limit cost-sharing subsidies for insurers, while Democrats want the payments to continue for an extended period. Republicans want to give states additional flexibility to waive certain ACA-imposed market reforms, while Democrats appear unwilling to agree to any such additional flexibility.

The Left Readies Single-Payer Legislation

Sen. Bernie Sanders (I-VT) is expected to introduce legislation shortly calling for a Medicare-for-all, single-payer approach to healthcare in America. The proposal, which has no hope of passing as long as Republicans control the House or Senate, purports to provide all Americans with government-sponsored health coverage akin to Medicare. If the bill is as progressive as some suspect, it will completely eliminate private health insurance, including employer-provided coverage.

Some on the left see such a proposal as too extreme and are looking forward to a proposal under construction by freshman Sen. Chris Murphy (D-CT). Sen. Murphy's idea, which has been floated by others in the past, is to keep much of the existing ACA framework, but allow individuals and at least small employers to choose between purchasing private insurance or buying into a Medicare-like option.

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