



HEALTH REFORM ADVISORY PRACTICE

Weekly Legislative Update



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Repeal and Replace Enters the Final Countdown

Next week the Senate *might* vote on the Republicans' last-ditch effort to repeal and replace significant pieces of the Affordable Care Act (ACA). The proposal is known as the Graham-Cassidy-Heller-Johnson bill, named for the bill's four co-sponsors from the Senate's GOP caucus, or "Graham-Cassidy" for short. If it passes it will mark, for GOP repeal and replace advocates, about as improbable a comeback as any we've seen in recent memory.

Graham-Cassidy's Central Controversy

The controversy swirling around Graham-Cassidy centers almost entirely on the level of federal healthcare funding to the states and on the degree of flexibility the states would gain to roll back some insurance market rules imposed by the ACA.

Beginning in 2020, the bill would take federal monies otherwise earmarked for individual health insurance subsidies and Medicaid expansion under the ACA, and convert those dollars to block grants to states. Each state will then have significant leeway in how to use that money to support healthcare and the insurance markets in that state.

What Graham-Cassidy Means for Employers

Momentarily lost in the noise are significant provisions of interest to employers. The ACA's individual and employer mandate penalties would be effectively repealed retroactively to January 1, 2016, although employer reporting obligations would continue to linger at least through 2019. Health savings accounts will also get a boost. The current version of the bill does not, however, modify the ACA's 40 percent excise tax on the value of employer provided coverage exceeding certain limits, a tax known colloquially as the Cadillac tax.

Handicapping the Bill's Odds

Will the bill pass the Senate? This morning Senate GOP leadership believed it had 48 of the 50 votes it'll need.

Lockton comment: Graham-Cassidy would move to the Senate floor pursuant to “budget reconciliation” rules that allow it to pass with a mere majority vote. A 50-50 tie would be broken by Vice President Mike Pence, who would likely vote with the GOP bloc.

Sen. Rand Paul (R-KY) and Sen. John McCain (R-AZ) have announced they’ll vote “no,” meaning the GOP can afford no other defection from its 52-member caucus. Leadership is reportedly working hard to secure the endorsements of Sen. Lisa Murkowski (R-AK) and Sen. Susan Collins (R-ME), who are still undecided, but Collins is reportedly leaning towards “no.”

Lockton comment: In July, McCain cast the decisive “no” vote on the last repeal and replace bill to reach the Senate floor. Three factors suggested he might cast a “yes” vote this time: Arizona Gov. Doug Ducey has endorsed the bill, Sen. Lindsey Graham (R-SC) — one of the bill’s main authors — is a close friend of McCain, and the Senate has agreed to hold a hearing on the bill next week, apparently in response to McCain’s plea in July that the Senate not attempt repeal and replace without a public hearing. But early this afternoon McCain said he would not support the bill.

The week also saw Sen. Lamar Alexander (R-TN) formally pull the plug on what had been a bipartisan effort to stabilize the nation’s individual health insurance markets. Alexander, who chairs the Senate’s Health, Education, Labor and Pension (HELP) Committee, said he shut down his effort due to inability to reach consensus with Senate Democrats on specific measures to steady those markets.

Lockton comment: While Alexander had indeed struggled to find common ground with HELP Committee Democrats, the timing of his announcement makes sense as a political tactic. By shutting down his effort, Senate Republicans’ only ACA-related option now is Graham-Cassidy. If Graham-Cassidy fails, it is unclear whether Alexander will restart his effort, or how cooperative Democrats will be if he does.

What to Watch for Next Week

The Senate can’t act until the Congressional Budget Office (CBO) provides a “score” of the Graham-Cassidy bill’s budgetary impact. Capitol Hill insiders expect the CBO to release a cursory score early next week, likely with just enough analysis to assess whether the bill achieves adequate savings to satisfy budget reconciliation requirements. The score likely won’t include projections on coverage losses in the states.

Here’s what to watch for next: If Senate Majority Leader Mitch McConnell (R-KY) brings the measure to a vote, something that could happen as early as next Wednesday, the GOP almost certainly has the votes to pass it. It seems unlikely McConnell would force a vote on the bill without assurances that it will pass.

Why the rush? The Senate’s ability to utilize the budget reconciliation process to unilaterally push Graham-Cassidy through that chamber expires on September 30.

Lockton comment: Although Senate Democrats could potentially drag out the timing of a vote on Graham-Cassidy until sometime after September 30, as long as the Senate does not adjourn before voting, the vote will be deemed to have occurred in September.

If the bill clears the Senate, what then? It must return to the House for consideration there. While passage in the House is not guaranteed, it is — at least at the moment — expected.

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