



## HEALTH REFORM ADVISORY PRACTICE

### Weekly Legislative Update



September 29, 2017

## Repeal and Replace Dies, Again... GOP Focus Shifts to Tax Reform

Senate Republicans' Hail Mary pass to the legislative end zone fluttered to the ground on Tuesday when a third GOP senator, Susan Collins (R-ME), said she'd vote no on the Affordable Care Act (ACA) repeal and replace bill known as the Graham-Cassidy bill. Collins joined Republican senators John McCain (R-AZ) and Rand Paul (R-KY) in opposing the bill, depriving Senate Majority Leader Mitch McConnell (R-KY) of the 50 votes he'd need to move the bill along.

By Wednesday, Republicans' attention had shifted to tax reform, as the Trump administration unveiled its outline for a major overhaul of the federal tax code.

**Lockton comment:** So that's that for repeal and replace. Or is it? Hours after Graham-Cassidy stalled, Sen. Lindsey Graham (R-SC) said he wanted this week's new federal budget proposal to allow Republicans to use "budget reconciliation" – the maneuver that allows a bill to move through the Senate with a mere majority vote – to do both tax reform *and* health reform in the coming federal fiscal year. In other words, he wants Republicans to try to push *both* measures through the Congress via reconciliation in the next several months.

Other Washington insiders, however, think that's highly unlikely. Few Congressional Republicans want to create *any* new expectation that they'll be able to repeal and replace the ACA, having repeatedly tried and failed to do so this year.

### Tax Reform: The Coming Battle Royale

The administration's tax reform proposal would shrink federal income tax rates for businesses and most Americans, double the standard deduction (but eliminate the personal exemption), and retain widely-favored deductions for mortgage interest and charitable contributions. Beyond that, details become sketchy; the administration did not reveal how it hopes to pay for the tax revenue lost due to the shift in tax rates. There are rumors that the proposal would eliminate a great many other deductions, something that would trigger a lobbying effort of staggering proportions on Capitol Hill as stakeholders rush to protect their interests.

**Lockton comment:** We've been long concerned, not without justification, that Congress would eye the current tax-free nature of employer-provided health insurance as an easy way to raise revenue to pay for other tax cuts. The fact that employees don't pay income tax on their employer-provided insurance costs the federal government close to \$250 billion annually.

Lockton has worked closely the past year with Congressional members and staff to educate them about the virtues of employer-provided insurance, and the risks that taxation would pose to the group insurance market. Both Speaker of the House Paul Ryan (R-WI) and Senate Finance Committee Chairman Orrin Hatch (R-UT) have recently said, informally, that they are not in favor of taxing employment-based health insurance.

As we prepared this *Legislative Update*, the Senate's budget committee released the text of a fiscal year 2018 budget resolution that would allow Republicans to accomplish tax reform via the reconciliation process, i.e., without the assent of any Congressional Democrats.

### **The Lesser Health Reform Battles**

Sen. Lamar Alexander (R-TN), chairman of the Senate's Health, Education, Labor and Pensions Committee, re-started efforts to pull together legislation aimed at stabilizing the individual health insurance market. Alexander pulled the plug on the effort a few days ago, as the Graham-Cassidy bill appeared it might come up for a vote. Alexander's measure would likely provide for additional subsidies to insurers providing health insurance in the individual market and permit less generous but cheaper health plans to be sold in that individual market, in an effort to attract more of the uninsured.

**Lockton comment:** It seems unlikely that Senate Republicans would approve any such bill. To garner Democrat support, the bill would likely not include additional state flexibility to soften ACA mandates, flexibility that many Senate Republicans think is necessary to steady the individual market. Without that additional flexibility, many in the GOP will see the bill as little more than additional federal subsidies to insurers.

President Donald Trump announced he'd issue an executive order next week, designed to promote sale of individual health insurance policies across state lines, and perhaps foster the ability of associations to offer *self-insured* medical coverage to their members.

**Lockton comment:** The president's announcement was short on details, but the devil truly will be in those details. An executive order intended to accomplish largely unfettered interstate sales of insurance policies and self-insured multiple employer health plans would quickly ram headlong into federal law that currently does not easily allow for such things. We will keep you posted on details regarding the president's impending executive order.

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