



HEALTH REFORM ADVISORY PRACTICE

Weekly Legislative Update



April 21, 2017

Group of Moderate House Republicans Working with Freedom Caucus on Health Reform Deal

The back half of the two-week Congressional recess started quietly, but news began leaking on Wednesday that moderate House Republicans were nearing a deal with the more conservative leaning Freedom Caucus. The fact a deal is being discussed reinforces claims the American Health Care Act (AHCA), House Republicans' Affordable Care Act (ACA) repeal and replace vehicle, is not dead, but it remains to be seen just how alive it is.

Lockton comment: Last week Republican leadership in the House and Freedom Caucus members were discussing the possibility of a deal, but it wasn't until this week that we received confirmation from Tom MacArthur (R-NJ) that the negotiations involved the Tuesday Group, which Rep. MacArthur co-chairs. The Tuesday Group is a more centrist version of the Freedom Caucus, and includes around 50 Republican members. Interestingly, Charlie Dent (R-PA), the other co-chair of the Group has publically distanced himself from the proposed compromise.

A summary of the compromise, a final version which had not been released at the time of this update, leaves much of the AHCA intact. The summarized amendment to the AHCA keeps some of the more popular parts of the ACA, including coverage of preexisting conditions. However, the proposal allows states to obtain limited waivers from two important ACA provisions.

First, carriers in states obtaining a waiver are not required to provide all 10 essential health benefits in individual policies and insured small group plans. Second, states are able to opt out of some of the community rating requirements. This will allow carriers to charge more based on the health status of the insured (or insureds for a small group plan) provided the state participates in a federal high risk pool or has established its own state-based high risk pool.

The proposal is likely to please some in the GOP's right flank by creating an opportunity to eliminate some of the ACA's market reforms. In an attempt to attract moderate Republicans, the proposal requires states requesting a waiver to certify the purpose of the waiver is to reduce premiums, increase the number of people with coverage, or further another important public interest.

Reports indicate some moderate Republicans remain concerned about the AHCA and are not convinced the compromise under discussion is enough. It remains unclear whether the proposed changes, which merely require an attestation by the state and not empirical evidence, will have a significant enough impact on the cost and coverage numbers that have been particularly troubling to moderates.

As one would expect, those on the left began criticizing the proposal as soon as it was made available. The opposition contends if the proposal is finalized, any cost reductions for healthy individuals in states receiving waivers will simply be transferred to the sick, especially those with preexisting conditions.

Lockton comment: Even if the AHCA passes the House, it still faces significant hurdles in the Senate. Numerous Senate Republicans have expressed their own concerns about the AHCA, including its rollback of Medicaid expansion, which the latest changes do not modify. Additionally, the newly proposed changes to the ACA's market reform rules might have to be taken out of any Senate legislation, because they may not fit squarely within the special budget reconciliation rules being used to allow the Senate to pass the bill with only 51 votes.

Despite these potential issues, Rep. MacArthur suggested a vote on the amended AHCA might happen as early as next week, and President Donald Trump called on Congress to do just that. House leaders will likely only let a vote happen if they're certain they have the votes for it to pass, but first things first – they still need actual legislative text.

Lockton comment: Holding a vote next week might be an overly aggressive goal, as Congress must pass a bill to continue funding the government by the end of the week to avoid a government shutdown. As [reported](#) last week, that funding bill might be harder to pass than originally expected.

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