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Key Legislative Developments Affecting Your Human Resources US

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Bipartisan Focus on Health Care Reform

With the August recess behind them, lawmakers returned to the Hill and examined strategies to stabilize the health insurance marketplace.

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Ready, (Re)Set, Go

During the summer months, efforts to pass legislation to significantly alter the health care landscape failed to advance. Although the House passed the American Health Care Act (AHCA) in May, the Senate was unable to secure enough votes to pass any of three iterations of a bill that would have repealed, replaced or reformed the Affordable Care Act (ACA). (For background on the House-passed AHCA as well as the Senate bills, please see our [July 31](#), [July 24](#), [July 17](#), [June 26](#) and [May 8](#) issues of *Legislate*.)

Last week, lawmakers returned to the Hill with recalibrated expectations about what can and, perhaps, ought to be done about health care reform. Importantly, the GOP recognizes that they will not be able to address this issue alone. A Senate parliamentary decision requires that 60 votes (rather than the lower minimum of 51 permitted by the reconciliation process) is needed to advance a post-September health care reform bill. Democrats also see the need for shoring up and reforming the current system.

Comment. The Senate could continue to pursue a major overhaul of the ACA; however, in the near term their focus will be on other critical, time-sensitive matters including the need to stabilize the health care insurance market and provide ongoing funding for government operations. (Funding is currently provided under a continuing resolution, or CR, through September 30. Another CR to provide funding through December 8 is expected to be signed later this month.) Thereafter, Congress is likely to concentrate on comprehensive tax reform that could impact welfare benefit and retirement plans. For example, the GOP may relaunch efforts to cap the tax exclusion for employer-sponsored health care or lower the maximum pretax contribution limit to an employer-sponsored defined contribution plan – such as a 401(k) plan.



Prioritizing and Right-Sizing

Lawmakers, faced with the upcoming midterm elections, must consider their legislative “to-do list.” Clearly, the Republicans would like to maintain the current balance of power, while Democrats would like to shift it. That said, both parties acknowledge the importance of bipartisan support for certain priorities like stabilizing the individual health care marketplaces and introducing narrower bills that are more likely to garner the necessary support. Likewise, they’re buying time to determine their short-, medium- and long-term priorities, as well as trying to right-size them to ensure they can be managed and receive broad backing.

Senate Hearings

Last week, the Senate Health, Education, Labor and Pensions (HELP) Committee held two hearings, and the Senate Homeland Security and Governmental Affairs Committee held one.

At the HELP committee hearings, testimony by state insurance commissioners and governors focused on stabilizing the individual insurance market for 2018 and beyond, as well as potential opportunities to make health care insurance more affordable. At the Homeland Security hearing, witnesses were asked to focus on data and facts to aid the committee in parsing out myth from reality and to objectively identify flaws in the current health care system in order to best improve it.

Cost-Sharing Reduction Payments

During the HELP committee hearings, testimony and questions centered on cost-sharing reduction (CSR) payments. Notably, all the state insurance commissioners agreed that it is critical for payments to continue under the current ACA framework, which they do not view as a “bailout.” Furthermore, these commissioners agreed that a commitment to future funding (for at least the next two years) will be key in stabilizing the markets.

Comment. Regardless of what health care insurance model Congress lands on, a continuation and commitment to CSR payments could be vital across the spectrum, not just for the individual marketplaces. A robust individual marketplace is in the interest of large employers. Indeed, if CSR payments were to cease, there is a real probability that the individual market will collapse and costs could shift to large employers. A healthy individual marketplace provides an avenue for employees to purchase (affordable) health insurance coverage, which ultimately could bolster productivity and/or reduce the burden of health care costs for employers. (For additional background on, and the fate of, CSR payments, please see our [August 7](#) and [July 31](#) issues of *Legislate*.)

Multifaceted Big Picture

As noted by Sen. Lamar Alexander, R-Tenn., chairman of the HELP committee, finding short-term, interim bipartisan, bicameral solutions is just the tip of the iceberg in terms of the work that lies ahead. For the immediate and near-term future, the witnesses and lawmakers discussed at great length (1) the need for continuity and predictability of the CSR payments, and (2) whether to re-implement a reinsurance program. With regard to the latter, they noted that such a program would be beneficial for many states – to serve as a stop-loss, or backstop – so insurers generally could set a more favorable rate without regard to high-risk individuals. Likewise, a reinsurance program would entice and encourage insurance companies to join and/or stay in the market.

Comment. A reinsurance program could serve as a pillar for a robust, viable non-employer option and thereby be of value for employers with employees ineligible for a workplace plan.

For the longer-term future, witnesses and Senators identified topics that they believe ought to be addressed to drive down health care claims, and in turn, health care insurance costs. Those topics included:

- Wellness, smoking cessation, disease management and other innovative programs
- Cost transparency to empower consumers
- Funding for (and outreach to) increase enrollment in the individual marketplace
- Maintenance of continuous coverage via enforcement of the individual mandate or, perhaps, a waiting period or penalty for breaks in continuous coverage (no consensus among witnesses which path to support)
- Controlling pharmaceutical drug costs

Finally, witnesses advocated for greater opportunities for control of their own state health care insurance markets. Although witnesses noted that ACA Section 1332 permits states to apply for a waiver of certain ACA requirements to pursue innovative strategies, they also noted that the process is cumbersome and time consuming, and that states would be served better if the process was more predictable and streamlined. (For more information on the waiver process, please see the [Conduent website](#).)

Comment. Expanding or liberalizing the state waiver process could create issues for employers, particularly if states try to regulate employer plans or shift costs to private employers. Any efforts to chip away or undermine the scope of ERISA is always cause for employer concern.

Additional information related to the hearings can be found as noted below:

[September 6 HELP committee hearing](#)

[September 7 HELP committee hearing](#)

[September 6 Homeland Security committee hearing](#)

Looking Ahead

This week, the HELP committee will hold two more hearings; each will explore ways to increase state flexibility in the individual health insurance market and stabilize premiums in the individual marketplace.

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