

Legislate[®]

Key Legislative Developments Affecting Your Human Resources US

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ACA Repeal and Replace Redux?

Reflecting intraparty discord, last week the GOP abandoned its pursuit of a bipartisan agreement to continue funding of cost-sharing reduction payments to shore up the individual insurance market. Today the Senate Finance Committee is holding a hearing to consider the fourth iteration of a sweeping bill that would repeal certain Affordable Care Act provisions and dramatically reform the health care landscape. Whether Senate Republican leadership can obtain the 50 votes needed to pass an ACA repeal bill is uncertain. And because of the budget reconciliation process being used to pass legislation, GOP leadership faces a September 30 deadline to pass an ACA repeal bill.

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Graham/Cassidy ACA Repeal and Replace Bill

As discussed in our [September 18](#) *Legislate*, Sen. Bill Cassidy, R-La., and Sen. Lindsey Graham, R-S.C., introduced legislation to upend the Affordable Care Act (ACA). Although it would not repeal the cost-sharing reduction (CSR) subsidy program until after 2019, the bill doesn't address how the program would be paid for.

Comment. To date, there is no clear congressional appropriation of, and no commitment by President Trump to continue, funding for the CSR program. For background, please see our [September 11](#) *Legislate*.

Many provisions in their bill mirror those seen in the American Health Care Act (AHCA), the House-passed bill, as well as the Better Reconciliation Care Act (BCRA) – an ACA repeal and replace bill, the Obamacare Reconciliation Repeal Act (ORRA) – an ACA repeal-only bill, and the Health Care Freedom Act (HCFA), often referred to as a “skinny bill” – all of which failed to garner enough support to pass the Senate.

More on Graham/Cassidy

For additional information on the Graham/Cassidy bill, please see the [summary](#) and [FAQs](#) released by Sen. Cassidy. And, our prior issues of *Legislate* include background on the following bills: [May 8](#) for the American Health Care Act; [July 17](#) and [June 26](#) for the BCRA; and [July 24](#) for the ORRA.

Taxes

The Graham/Cassidy bill would repeal some of the ACA's tax-related provisions including the penalties associated with individual and employer mandates, retroactive to January 1, 2016. But the bill does not repeal the employer shared responsibility reporting provisions. The bill also repeals the medical device tax, but leaves in place the health insurer tax and does not provide relief from the 40% excise tax on high-cost plans – known as the Cadillac tax – which is effective in 2020.

HSAs

The legislation would dramatically expand health savings accounts (HSAs). Among other things, it would:

- Raise maximum contribution limits to approximately twice the current levels
- Permit HSA funds to be used to pay for:
 - Over-the-counter medications without a prescription
 - Primary care services when coverage is restricted to those services in exchange for a fixed periodic fee or payment for such services
 - Qualified medical expenses incurred up to 60 days before an HSA was established
- Allow reimbursement of amounts paid for children who are under the age of 27
- Relax rules for spouses seeking to make catch-up contributions to the same HSA

Medicaid

The legislation would roll back the Medicaid expansion and instead provide states with block grants that would be used to develop state-based reforms. It would also provide increased flexibility for state waivers.

Comment. Like the previous ACA repeal and replace bills, it is expected that the Congressional Budget Office (CBO) will score the Graham/Cassidy bill as significantly increasing the number of uninsured. This in turn would result in cost shifting to employer plans and increased employer costs. Also, state-based reform efforts could result in a patchwork of state employer requirements that would be difficult for employers with employees in multiple states.

Week Ahead

The CBO is expected to release an initial limited analysis of the impact of the legislation as soon as today. But their efforts are hampered by the evolving state of the legislation. After the Senate [hearing](#) today, a vote could occur as soon as Wednesday. Revisions to the original proposed legislation are being considered, and an updated version of the bill was floated yesterday.

Comment: Passage of the legislation this week while only 50 Senate votes are needed is very iffy. Of the 52 GOP Senators, Senators Rand Paul, R-Ky. and John McCain, R- Ariz., have already stated they will not vote in favor of the bill and Senators Susan Collins, R-Maine, Lisa Murkowski, R-Alaska and Ted Cruz, R-Texas are on the fence. Moreover, without a complete CBO analysis of the impact on the number of insured and the budget, obtaining the necessary votes becomes more challenging.

If the bill passes the Senate it would then go to the House. If the House passes the bill it would then go to the President who is expected to sign the legislation.

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