Senate to chart its own course on PPACA repeal-and-replacement legislation

Work on legislation to repeal and replace the Patient Protection and Affordable Care Act (PPACA) officially got under way in the Senate this week, and while many questions around substance and process remain unanswered, indications are that Republican leaders are intent on developing their own proposal rather than simply modifying the repeal-and-replacement bill recently approved in the House.

The American Health Care Act of 2017 (AHCA, H.R. 1628), which cleared the House on May 4, would repeal major pieces of the PPACA – including most of its tax provisions – and replace it with a system aimed at facilitating the purchase of health insurance on the individual market through refundable tax credits and liberalized rules for tax-favored health savings accounts. The measure was approved by only a two-vote margin after House GOP leaders worked over the course of several weeks to accommodate slew of objections from conservative Republicans – namely members of the Freedom Caucus – who contended that the AHCA left in place too many elements of the law they wanted to dismantle, and moderates, who were concerned about the impact of the new bill on older and less affluent individuals. (For prior coverage, see Tax News & Views, Vol. 18, No. 16, May 5, 2017.)

As the AHCA worked its way through the House, it began to attract a number of Republican critics in the Senate, where a similar conservative-versus-moderate dynamic is playing out and the margin for error for passing a bill along party lines is only two votes. (Senate Democrats, like their House counterparts, are expected to oppose the legislation and Republicans only hold 52 seats in the chamber.) The dissatisfaction with the House-passed bill has prompted Senate Republican leaders to indicate they will scrap that measure and draft an entirely new one in its place.

Finance Committee member Charles Grassley, R-Iowa, told reporters this week that GOP leaders “specifically decided to write a Senate bill, so we don’t have to worry about the House bill at all until we get to conference.”

Revenue concerns

Although work on the Senate bill is still in the very early stages, Finance Committee Chairman Orrin Hatch, R-Utah, questioned whether lawmakers will be able to repeal a broad swath of the PPACA’s revenue raisers and still adhere to rules providing that legislation moved under budget reconciliation protections cannot increase the deficit outside of the 10-year budget window.

The House-passed bill would repeal most of the PPACA tax provisions – in some cases retroactive to the beginning of this year – as well as the individual and employer mandates. (An overview of the tax provisions in the House bill is available from Deloitte Tax LLP.) But a number of Senate lawmakers are envisioning a replacement health care system that covers a greater number of low-income individuals, the elderly, and people with pre-existing health conditions than what has been proposed in the House. Hatch told Tax Analysts on May 9 that he was “not so sure where [the Senate drafters] would get the money” to pay for those benefits without retaining some of the PPACA offsets.

Senate Republican taxwriter Bill Cassidy of Louisiana, who drafted his own PPACA replacement plan with Maine Republican Sen. Susan Collins earlier this year, likewise told reporters May 9 that “if you eliminate pay-fors, you eliminate your ability to fulfill President Trump’s pledge, his contract with the voter: keep coverage, caring for those with pre-existing conditions without mandate, and lowering your premiums.”

Drafting by working group; no committee vetting

Hatch also told reporters this week that the Senate legislation, which is being drafted by a working group of 14 Republicans, is unlikely to be vetted through the committee process – “at least from what I know about it,” he added.

In addition to Hatch, taxwriters in the working group include Sens. Mike Enzi of Wyoming (who also chairs the Senate Budget Committee), John Cornyn of Texas, John Thune of South Dakota, Rob Portman of Ohio, and Pat Toomey of Pennsylvania.

Rounding out the working group roster are Majority Leader Mitch McConnell of Kentucky and Sens. Lamar Alexander of Tennessee (who chairs the Senate Health, Education, Labor, and Pensions Committee), Cory Gardner of Colorado,
John Barrasso of Wyoming, Mike Lee of Utah, Ted Cruz of Texas, Tom Cotton of Arkansas, and Shelley Moore Capito of West Virginia.

**Timeline unclear**

Just how long the drafting process will take is unclear. In a May 9 interview on *Fox and Friends*, House Speaker Paul Ryan, R-Wis., said that “the legislation should not take that long. Hopefully it takes a month or two to get it through the Senate.”

Senate Majority Leader McConnell, however, predicted on May 8 that the “process will not be simple, quick, or easy.”

— Michael DeHoff
Tax Policy Group
Deloitte Tax LLP