

U.S. — Health Care Reform Bulletin

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House Votes to Repeal Health Care Reform Law; Senate Action Unlikely, but Continued Attempts to Dismantle Law Expected

When the 112th Congress convened on January 5, newly installed Speaker of the House John Boehner (R-OH) and his leadership team made repealing the health care reform law a first order of business.

On January 19, the House approved the Repealing the Job-Killing Health Care Law Act (H.R.2), which would repeal the Patient Protection and Affordable Care Act and the accompanying provisions of the Health Care and Education Reconciliation Act, the two-bill package that comprised the landmark legislation. In a related vote on January 20, the House approved a resolution (H.Res.9) that directs the House committees with jurisdiction over health care reform to develop replacement legislation.

The vote fulfills a campaign promise, but is otherwise largely symbolic. With the Senate and White House under Democratic control, further action on the legislation is unlikely. Senate Majority Leader Harry Reid (D-NV) does not intend to bring the legislation to the Senate floor, and President Obama issued a veto threat. The House approved H.R.2 by a vote of 245 to 189 – short of the two-thirds majority House leaders would need to override a veto.

Continued attacks on, and defense of, health care reform law

Republican lawmakers in both legislative chambers say they will work to dismantle the health care reform law piece by piece. For example, key lawmakers have said they will increase oversight of the regulatory and implementation process, and will attempt to deny funding for implementation and enforcement. In addition, they may attempt to repeal targeted provisions of the law such as the individual or employer mandates.

Such strategies face obstacles. With a divided Congress, the House Republican majority will have trouble moving any legislation that Senate Democrats and President Obama see as a threat to the health care reform law. For example, House appropriators may try to deny the funds and authority federal agencies need to implement and enforce the law, but such legislation must also gain Senate approval. Likewise, attempts to repeal key provisions must gain the approval of both the House and Senate before they could be presented to President Obama. President Obama would veto any legislation that would dismantle or undermine the law, and it is unlikely that both chambers could muster the votes needed to override a veto.

Senate Democrats will do their best to preserve the funding and other tools needed to continue implementing the law, and will take other actions aimed at boosting public support. As Republicans focus on the law's weaknesses, Democrats continue their efforts to draw support. For example, Senate Health, Education, Labor and Pensions Committee chair Tom Harkin (D-IA) has announced his plans to hold a series of hearings aimed at drawing support for the law by highlighting its consumer protections.

Key health care reform provisions would remain

Even if Republicans succeeded in undoing the health care reform law, key provisions would likely remain. For example, the Pledge to America – a governing agenda unveiled by House Republicans during the 2010 campaign – suggests keeping some elements of the current law, such as elimination of preexisting condition exclusions, elimination of annual and lifetime dollar limits, and the prohibition against rescissions. As noted, the House has approved a resolution directing the key health care committees to develop legislation to replace the Patient Protection and Affordable Care Act. It instructs the committees to develop legislation that would, in part:

- Lower health care premiums through increased competition and choice
- Preserve a patient's ability to keep his or her plan
- Provide those with preexisting conditions access to affordable coverage
- Reform the medical liability system
- Increase the ranks of the insured
- Expand incentives to encourage personal responsibility for health coverage and costs

Will other legislative priorities affect the reform debate?

The Congressional Budget Office estimated that repealing the health care reform law would add \$230 billion to the budget deficit over 10 years. House Republicans, for whom deficit reduction was an important issue during the 2010 elections and a top priority for the 2011–2012 legislative session, question the accuracy of this estimate. They maintain that the law itself will add more than \$700 billion to the deficit during its first 10 years and that repealing the law is a step toward fiscal balance.

The focus on deficit reduction was part of the debate over the repeal legislation, but it will also influence legislative discussions throughout the legislative term. Republican lawmakers want to put pressure on the health care reform law but do not want to focus exclusively on its repeal. Each debate and vote will consume time on the legislative calendar. Speaker Boehner and his members will want to accomplish other priorities, such as deficit reduction, economic recovery and job creation.

Environment of uncertainty

The health care reform law is likely to remain the focus of intense political debate, but the chances for repeal or significant change remain slim. Rather, the activity in Washington is likely to be aimed at driving public opinion about the law in preparation for the 2012 elections, when Republicans hope to win the Senate and White House.

The charged political atmosphere, the deliberative judicial process and the time horizon for health care reform implementation create an environment of uncertainty for employers as they develop short-term and long-term health care strategy. Key elements of the law will not take effect until after the 2012 elections, but preparation and implementation are already under way. In addition, constitutional challenges are working their way through the court system, and the issue is expected to ultimately be decided by the U.S. Supreme Court.

So employers must continue to take health care reform into consideration as they plan their benefit and communication strategy during 2011 and 2012 amid the political and legal uncertainty. Health care reform remains a business risk that must be considered in both benefit planning and longer-term business strategies since it affects total compensation, labor costs, workforce planning and finances.