

ML Strategies Health Care Preview

WEEK OF JULY 15, 2019

This week, the House is scheduled to vote on a repeal of the Cadillac tax, which is a forty percent tax on high-cost health plans. The Congressional Budget Office (CBO) estimates that repealing the tax would cost an estimated \$193 billion over the next ten years. That said, the bill has broad bipartisan support in both chambers and moving it through the House potentially ratchets up some pressure on the Senate to consider it. While the focus may shift to the Senate, it is not a sure thing that the legislation is considered, even if the bill has 42 cosponsors. When the House passed the medical device tax repeal in 2018, another bill with bipartisan support, the Senate never took up the legislation.

We also wait for signals of what comes next following the Administration's decision last week [to withdraw](#) the proposed rebate rule. CBO [estimated](#) that implementing the proposed rule would have increased federal spending by about \$177 billion over the next decade. There has been a lot of noise in the drug pricing space from the Administration, which has signaled that additional executive action is likely, and that is only expected to increase as Congress ramps up its push to address lowering drug costs this summer.

ACA CASE HEARD BEFORE FIFTH CIRCUIT

Last Tuesday, oral arguments were heard before the Fifth U.S. Circuit Court of Appeals on whether to uphold a lower court ruling striking down the Affordable Care Act. The central question in the case is whether the requirement that people have health insurance, known as the individual mandate, is constitutional. In other words, if the individual mandate is unconstitutional, would that render the entire law unconstitutional? The three-judge panel, comprised of two Republican-appointed and one Democratic-appointed judge, are not expected to rule on the case for several months and the ruling could take many forms. In one scenario, the Court could decide that eliminating the mandate means only certain aspects of the law are unconstitutional. Alternatively, the Court could affirm a lower court ruling striking down the Affordable Care Act. Future action before the Supreme Court seems increasingly likely.

The uncertainty by this situation will only grow as we head into the 2020 election cycle. It is a potentially galvanizing moment for Democrats who warded off efforts to repeal the law in 2017 and reclaimed the House majority in the 2018 elections. For Republicans, it sets up another opportunity to craft a replacement proposal should aspects of the law be deemed unconstitutional, which has proved challenging and could create an unwanted crisis just months before the 2020 election.

THIS WEEK IN THE HOUSE

Oversight and Investigations – Oversight of Federal Efforts to Combat the Spread of Illicit Fentanyl”
([Tues @ 10am](#))

THIS WEEK IN THE SENATE

No hearings this week.

SIGN UP

MLSDCHealth@mintz.com

TEAM

Alex Hecht

Connie Garner

Frank Quinta

Aaron Josephson

Kate Josephson

Eli Greenspan