

Gray & Oscar LLC

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RE: CONGRESSIONAL UPDATE

This Week in Congress: The House and Senate are in session. The House is scheduled to be in the August recess from Thursday, July 26th and will return on September 4th. The Senate will be in session next week and is expected to be in session most of August, no official schedule has been released at this time. Before the August recess, Congress will be primarily occupied with preparing for hearings on the new Supreme Court nominee, annual appropriations bills, and the Federal Aviation Administration (FAA) reauthorization bill. More specifically, this week, the House voted on healthcare legislation regarding health savings accounts, increasing access to lower premium plans, and permanently repealing the medical device tax.

HEALTHCARE TAX BILLS (House): This week the House considered three bills affecting health care taxes and the use of health savings accounts. HR 6311 would expand the use of health savings accounts and allow for the purchase of lower-premium "copper" insurance plans, at a cost of \$10.9 billion over 10 years, per the Joint Committee on Taxation; HR 6199 would offer tax breaks for gym memberships and fitness classes, along with certain over-the-counter medications and other provisions, at a cost of \$6.7 billion over 10 years; and HR 184 would repeal the 2.3 percent excise tax to be paid by manufacturers and importers of medical devices.

MULTIEMPLOYER PENSION REFORM (Loan Proposal): On Monday, the Congressional Budget Office stated "a proposed federal loan program for struggling multiemployer pension plans could cost less than an initial estimate of \$100 billion over a decade, in part because few plans would be eligible. In a letter to Sen. Hatch (R-UT), chairman of the Joint Select Committee on Solvency of Multiemployer Pension Plans, CBO Director Keith Hall said estimating the costs of legislation creating a loan and financial assistance program "are highly uncertain," in part because final provisions of the bill have not been decided, and other specifics, such as loan interest rates and repayment provisions, are not specified. Per Hall, "under some interpretations of the wording of the bill, few plans would qualify for loans and assistance, and federal costs would be substantially less than \$100 billion."

JANUS SCOTUS DECISION (House Responses): On Wednesday, July 11, the day the Janus SCOTUS decision was announced, Rep. Cartwright (D-PA) introduced a response bill to the decision with 25 Democrats only as co-sponsors. The bill, the Public Service Freedom to Negotiate Act of 2018 (H.R. 6238), essentially makes collective bargaining for wages, benefits and working conditions legal in all 50 states for state and municipal public employees. Alternatively, last Thursday before the House recessed, Reps. Fitzpatrick (R-PA) (the lead on the bill), Donovan, Joyce, McKinley and Smith introduced H.R. 6445, the bill is identical to the Democratic version minus the 5 pages of the Whereas Findings section of rhetorical messaging. They left the purpose section and the real meat of the bill the same since it was drafted by labor union lawyers.

APPRENTICESHIP HEARING: On Thursday, July 26th, the Senate Health, Education, Labor, and Pension (HELP) Committee held a hearing entitled, “Modernizing Apprenticeships to Expand Opportunities.” The purpose of the hearing is not to influence the Senate, but also the agenda for the “President’s National Council for the American Worker,” created by the Executive Order President Trump signed last week. The Council is an effort to wrest control of “modernizing” apprenticeship from DOL insofar as it will be co-chaired jointly by the Secretary of Commerce, the Secretary of Labor, the Assistant to the President for Domestic Policy, and the Advisor to the President overseeing the Office of Economic Initiatives. The Council, which is initially established for a two-year period subject to extension by the President, will meet at least quarterly to focus generally on: (1) cooperation, coordination, and information exchange among the federal government, private employers, educational institutions, labor unions, other non-profit organizations, and state, territorial, tribal, and local governments regarding the creation and promotion of workforce development strategies that provide evidence-based, affordable education and skills-based training for youth and adults; (2) inter-agency consistency in implementing these workforce development strategies and policies. Of particular interest, and within 180 days of the EO being signed last Thursday, the Council is specifically directed to examine how Congress and the Executive Branch can work with stakeholders to support the implementation of recommendations from the Task Force on Apprenticeship Expansion that DOL rolled out earlier this summer.

PANDEMIC and ALL-HAZARDS PREPAREDNESS and ADVANCING INNOVATION ACT of 2018:

Last week, the House Energy and Commerce Committee approved a bill that would renew federal programs designed to prepare for infectious disease outbreaks and other health emergencies. The bill would renew and increase funding authorizations for Biomedical Advanced Research and Development Authority, which invests in promising vaccines, antibiotics and other treatments that could be needed during emergencies but do not have much of a market otherwise. It also would authorize higher funding for the nation’s stockpile of medical supplies and formalize a committee of federal officials who oversee what is purchased for the stockpile. The stockpile is currently overseen by the CDC, but the administration is currently transferring its management to the assistant secretary for preparedness and response at the Health and Human Services Department. The bill would require the assistant secretary and the CDC director to coordinate management of the stockpile. The manager’s amendment included a new grant program to study infections acquired in hospitals or other facilities. The GAO would have to issue a report on coordination between BARDA and the FDA for drugs approved after testing products on animals when research on humans isn’t feasible. HHS would also have to convene a meeting to discuss potential advancements in technologies such as gene editing and its implication on national security. The bill did not address concerns by Rep. Shimkus who was pushing for language to encourage the private sector to develop new antibiotics that could thwart the rise of bacteria that have become resistant to existing drugs. The Shimkus proposal would grant an extra year of exclusivity to companies that develop qualifying new drugs. But the exclusivity wouldn’t just be for the antibiotics. As an added incentive, it would be transferable to other approved products. Some Democrats and outside groups had concerns with the language, fearing that it could keep drugs unaffordable if they have longer monopoly periods. The Campaign for Sustainable Rx Pricing — a nonprofit funded in part by pharmacy benefit managers, insurers and medical providers — said in a letter that incentives in the bill would “inappropriately delay patient access to the more affordable generic and biosimilar medications they need to get well and stay healthy.” Shimkus suggested that he would continue pushing for incentives for antibiotic development and would seek to make his language more palatable for those with objections.

PRESIDENT TRUMP'S MILITARY PARADE: President Trump's military parade is tentatively scheduled for November 10, 2018, one day before the anniversary of the end of World War I. NBC reported that the parade is expected to begin at the Capitol, continue past the White House and end at the National Mall. The Pentagon confirmed in February that President Trump had directed defense officials to begin planning a military parade. President Trump is said to have been inspired by the Bastille Day parade he saw when he visited France last year. The cost of the parade has been estimated to roughly \$12 million.

NORTH AMERICAN SHALE GAS EXPLORATION:

- ***Baltimore Files Lawsuit against 26 Oil and Gas Companies:*** Baltimore is aiming to hold 26 oil and gas companies responsible for catastrophic consequences to the environment from climate change. The city filed a lawsuit against the companies alleging they knowingly contributed to the effects of climate change, a key concern for a city vulnerable to rising sea levels.
- ***New York City's Climate Change Lawsuit Dismissed:*** U.S. District Judge John Keenan dismissed a lawsuit brought by New York City seeking to require companies in the fossil-fuel industry to pay some of the costs of dealing with climate change. He wrote that, while climate change "is a fact of life," it is a problem that should be dealt with by the executive branch and Congress rather than the courts.