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Washington Overview

To say that there is a lot going on in Washington these days would clearly be a woeful understatement. Congress is coming out of its July 4th break which is followed by just a few weeks in Washington before the scheduled August recess that will precede the run up to the elections.

The biggest open question for most Hill watchers is whether both chambers will be able to pass another coronavirus response package before the August recess. Many of the provisions in the Heroes Act (H.R.6800), which the House passed in mid-May, are non-starters in the Republican controlled Senate. Accordingly, the Heroes Act in its present form has largely been set aside with an eye towards negotiating a new package, against concerns from fiscal conservatives about the deficit impact already caused by the prior response bills. With top public health officials testifying this week that infections will continue to rise as states reopen and enhanced unemployment benefits set to expire at the end of July, there will be pressure from many sides for Congress to take prompt steps to offer further support for businesses and individuals and shore up different segments of the economy. Look to see some relief provided for state and local governments and for health care providers. Also, there is a good chance that small 501(c)(6) organizations will be allowed to receive PPP loans. Some small business organizations will also ask Congress and/or the SBA/Treasury to come up with a simpler and faster forgiveness process for PPP loans so that more small businesses are able to easily satisfy the requirements.

In addition to coronavirus relief, Congress is also attempting to take on the not-so-small task of trying to pass an infrastructure funding bill in advance of September 30 when federal highway, rail and transit programs are set to expire. House Democrats have proposed a \$1.5 trillion infrastructure package to reauthorize surface transportation program and fund a number of infrastructure projects which proponents say will create jobs. While the House passed the package last week largely along party lines, the overall cost of the bill, as well as certain provisions related to the application of state wage rates to federal contractors and clean energy incentives, set the bill's chance of passage in the Senate to slim to none.

In short, the only thing that seems certain these days is that the four months remaining before the elections will be a busy and tumultuous time made no less complex by the increased partisanship that inevitably precedes the national elections. Having said that, it is becoming clear to even the most partisan members of the Congress that only bills with bipartisan support will make it to the President's desk.

Deadline for PPP Loan Applications Extended

Last week, both the House and Senate unanimously passed S. 4116, which the President signed into law over the weekend. The sole purpose of this short but important piece of legislation is to extend the deadline for eligible businesses to apply for a Paycheck Protection Program (PPP) loan. Despite the initially high demand for PPP loans, which prompted Congress to pass increased funding for the program just weeks after it was established, the SBA has reported that there is still approximately \$130 billion left in available PPP loan funds. The CARES Act, which established the PPP loan program, set June 30, 2020 as the end date for businesses to request a PPP loan. At the time Congress passed the CARES Act, the members certainly did not anticipate the continued level of impact that the coronavirus would have through the

summer. This legislation extends the PPP loan application deadline through August 3, 2020 giving businesses more time to access the PPP loan funds if they have not done so already.

Affordable Care Act Updates

Last Monday (June 29), the House passed the Patient Protection and Affordable Care Enhancement Act (HR 1225) largely on party lines. While the bill was dead on arrival in the Senate with President Trump promising to veto it if it were somehow to pass, it is still notable for the increased pressure it places on Republicans surrounding health care issues and the way in which it was intended to stake out the Democrat's message in advance of the November elections.

H.R. 1225 is largely a combination of different provisions from bills that have passed the House over the last two years but have not been taken up by the Senate. Among other things, it would provide additional incentives for states to expand Medicaid eligibility, cap the amount that individuals can be charged for their health insurance premiums, provide ACA coverage for young adults protected under the Deferred Action for Childhood Arrivals (DACA) and put an end to the Trump Administration's expansion of short term limited duration insurance policies (which are also currently under attack in a pending case before the U.S. District Court for the District of Columbia). Funding for the bill would come from a provision allowing the U.S. Department of Health and Human Services (HHS) to negotiate drug prices and set maximum prices. According to the Congressional Budget Office (CBO) the amount raised by this provision would more than cover the cost of the other provisions of the bill. However, Republicans have long opposed drug pricing provisions like the one in H.R. 1225 over concerns that such provisions will curb development and innovation. Interestingly, from a party platform perspective, H.R. 1225 embraces the more moderate calls among the Democratic Party to shore up and strengthen the ACA, bucking more liberal Medicare for all proposals.

The passage of this bill in the House comes (whether by intention or happenstance) at a particularly sensitive time for the Administration. Last week the Centers for Medicare & Medicaid Services (CMS) announced that, since the end of the last open enrollment period in December, nearly half a million people have signed up for ACA coverage after losing other health coverage (almost double the number of mid-year sign-ups for the same period last year). This announcement happened to come the exact same day as the briefs to the Supreme Court were due in the consolidated cases of *Texas et al v. United States of America et al* in which the Administration, together with more than a dozen Republican Attorneys General and two individual plaintiffs are challenging the constitutionality of the ACA. As we previously reported, the central argument that is being made by the parties challenging the ACA is that, when Congress (in the Tax Cuts and Jobs Act) reduced the penalty for failure to comply with the ACA individual mandate to zero, it rendered both the mandate and the entirety of the ACA unconstitutional. While the Administration has consistently hedged in its arguments in the case, suggesting that there might be room to cherry pick and retain certain popular parts of the ACA (like protections for preexisting conditions), the impact of the case playing out this close to the elections could be significant. Secretary of Health and Human Services Alex Azar has announced that the Administration will not propose an alternative to the ACA until the Supreme Court issues a ruling. This has left many on both sides nervous about what might ensue if the Court were to strike down the entirety of the ACA.

While oral arguments in the case are not yet set, they will likely occur sometime this fall (though not necessarily before the elections). Given the priority that health care issues played in the last mid-terms we can expect to see more bills like H.R.1225 and other such efforts as the parties try to delineate and draw attention to their positions on this issue.