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Utah November Legislative Update

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Medicaid Expansion Mostly Dead...

The hopes for Medicaid expansion in Utah appear very dim after both the House and Senate Republican caucuses failed to advance the new compromise plan drafted by the “Gang of 6” dubbed UtahAccess+. A Special Session long planned for October was scratched. This new effort was born after months of meetings by the “Gang of 6” following a stalemate on Medicaid expansion at the conclusion of the 2015 General Session. The UtahAccess+ plan closely resembled the Healthy Utah plan proposed by Governor Herbert during the session, with an emphasis on placing as many of the expansion population as possible on private employer plans through premium subsidies. The UtahAccess+ plan was expected to expand coverage to 126,500 Utahns currently without health insurance at a cost of about \$78 million after federal matching funds were applied.

In contrast to Healthy Utah, UtahAccess+ would have required a wide variety of health care providers and insurers to shoulder the majority of the uncapped cost burden while the State would cover only \$23 million of costs attributed to individuals that would join the plan as part of the “woodwork” effect. With the exception of the Utah Nurses Association (Nurses would only have seen a \$1.50/biannual licensing increase under the proposed funding model), every provider group, industry trade association, and insurance company ultimately testified against the expansion proposal due to the uncapped assessments and funding concerns at its only public hearing before the Health Reform Task Force in October.

Previously circulated limited expansion plans like a “medically frail only” and expansion of the Primary Care Network plan have been talked about in recent days as a possible fallback position. However, neither plan meets the federal standards for 90/10 funding matches and would require additional State funds while also covering a smaller population of Utahns than Healthy Utah or UtahAccess+. Governor Herbert has made it clear that he has worked on two expansion proposals which were ultimately scuttled by the Legislature and now the ball is in the legislative court to propose a workable plan.

Given the wide-spread “Medicaid” fatigue among the health care and insurance leaders in the legislature and it is unlikely that any new proposal in the 2016 General Session will gain traction in the House and Senate Republican caucuses. Democrats are likely to introduce Medicaid expansion legislation, but with their relatively small numbers in the Utah

Legislature, it is unlikely to advance beyond a Rules or an initial committee hearing. Some legislators want to wait until 2017 to see if a change in the White House will grant additional Medicaid waiver flexibility to states. It seems Medicaid expansion in Utah is on life support at best as the 2016 General Session approaches.

Severance Tax Fix in the Works

A recent interpretation by the auditing division of the Utah State Tax Commission on the formula for oil and gas severance tax calculations resulted in deficiency notices in the \$500,000 range being sent to multiple companies. Steve Young, Amanda Smith and Kate Bradshaw are leading a Holland & Hart coalition of oil and gas companies in a legislative effort to clarify that transportation, production, and royalty payments can be deducted before the severance tax rate is applied. The team was successful in having a committee bill opened at the October Revenue & Taxation Interim Committee meetings that would return the formula to the expected and usual industry practice. Committee bill status means that the bill is eligible to proceed straight to the floor for a vote during Week 1 of the 2016 Legislative Session. Stay tuned for additional updates on this important issue for oil and gas clients doing business in Utah.

Medical Marijuana, Don't Expect to Smoke Out in Utah Anytime Soon...

Sen. Mark Madsen's SB 259 medical marijuana bill came within one vote of passing the State Senate during the 2015 General Session of the Legislature. This close vote was a scare to many who oppose medical marijuana as Sen. Madsen has stated his intention to bring the bill back for the 2016 General Session. The bill was modeled on California's prescribing and dispensary system. The Health & Human Services Interim Committee has devoted an unprecedented three full back-to-back-to-back interim committee hearings on the topic. While Sen. Madsen's 2016 bill is still largely similar to California's system, a second option has been suggested by Sen. Evan Vickers and Rep. Brad Daw.

Sen. Vickers is the only pharmacist serving in the Legislature and is widely respected on drug and health care issues. The Vickers/Daw bill would be a limited cannabidiol (CBD) oil-only option that would allow 2,000-3,000 Utahns with specific, limited illnesses to receive prescriptions for shipments of CBD oil from out of state suppliers. These restrictions are in sharp contrast to the Madsen bill as a large portion of the debate is about whether users can/should get "high". In simple chemistry terms, the major compounds in marijuana are CBD and Tetrahydrocannabinol (THC). CBD oil lacks the psychoactive components that THC has and doesn't produce a "high" for the user. Most recreational marijuana has higher THC than CBD concentrations. Utah already has a very limited CBD oil law for individual suffering from uncontrollable seizures. The Vickers/Daw bill would expand that law slightly and would also provide for enhanced study of the CBD oil by the University of Utah and Utah State University through a federal waiver.

Given the conservative climate of Utah and the make-up of the Legislature,

the Vickers/Daw bill is seen as having a better chance of passing given the controls and limited distribution elements while still addressing medical needs of Utahns.

Final Interim Hearing of 2016 Approaching

November marks the final time that interim committees will meet before the 2016 General Session begins. There is also a chance for a short, limited issue Special Session during the November meetings. The special session will address candidate filing deadlines for the 2016 elections (usually in mid-March). The new signature gathering option for candidates to use to appear on Primary Election ballots has complicated the usual filing deadlines and a rumored legislative fix is in the works. In December, the four legislative caucuses will hold all day retreats to review revenue estimates and establish legislative priorities for the session. Traditionally, the November interim agendas are packed with issues vying for last minute fast-track approval. If there are issues of particular concern to clients or to join the Utah Legislative Alert list, contact Kate Bradshaw (kabrashaw@hollandhart.com or 801-799-5711).

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