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WORK? THIS WEEK?

The Senate was supposed to have this week off. Instead, they took the Columbus Day day only. Something about a health care bill they have to finish - only they are really not going to finish it this week.

The Senate Finance Committee postponed its final vote on its version until today (Tuesday). The reason for the delay was the desire of some committee members to know roughly how much this legislation was going to cost. The Congressional Budget Office has been crunching the numbers and I guess they and we will know. The reality is the bill has a shelf life of one day. Everybody knows it will change. Senate Majority Leader Harry Reid (D-NV), at a minimum, must meld it with the Senate Health, Education, Labor and Pension Committee version. In reality, even that version has a short life span. Everybody has been thinking "We will fix this thing when it comes to the Senate floor." The "everybody" includes Senators from liberal and conservative view points, but also a whole lot of the major interest players such as hospitals, doctors, insurers, pharmaceutical companies, and medical device makers.

The Finance Committee will approve the bill, mostly because the unhappy Dems will go along - with the above-noted caveat, "We will fix it on the floor."

Personally, I believe we are beyond the point one can hazard a rational guess as to what the current version means for small business.

While we in the small business community have called for flexibility in our health care decision making, we have also called for

cost containment. The two concepts do not go hand in hand. You cannot have cost containment if you do not have a closed-loop system. The more folks you allow to opt out or not cover in the first place, the more likely you will have inefficient emergency room health care and the more likely you will have insurance rate increases (While I am no friend of the insurance industry, I would agree that one needs some healthy bodies in the insurance pool. It cannot be just us baby-boomers.)

One cool development is that the CBO has actually acknowledged that medical malpractice reforms COULD reduce the cost of health care. The CBO found that by adopting tort reform measures, federal spending would be reduced by \$41 billion over ten years and the federal deficit would decline by \$54 billion.

The CBO said, "Tort reform could affect costs for health care both directly and indirectly: directly, by lowering premiums for medical liability insurance; and indirectly, by reducing the use of diagnostic tests and other health care services when providers recommend those services principally to reduce their potential exposure to lawsuits."

Unfortunately, the provisions in the current Senate Finance Committee version do not even remotely include the provisions necessary to achieve the reductions that the CBO believes are achievable. What would be necessary? According to the CBO:

The two most common ways of imposing limits on liability are to shorten the statute of limitations on malpractice claims and to change the rules regarding joint-and-several liability. The principle of joint-and-several liability allows a claimant to

recover the entire amount of a damage award from any one of the parties found to be responsible for an injury, regardless of the party's degree of responsibility for that injury. Replacing joint and-several liability with a "fair-share" rule would limit each defendant's financial liability to his or her percentage share of responsibility for the injury.

Several times over the past decade, CBO has estimated the effects of tort reform proposals including:

- A cap of \$250,000 on awards for noneconomic damages;
- A cap on awards for punitive damages of \$500,000 or two times the award for economic damages, whichever is greater;
- Modification of the "collateral source" rule to allow evidence of income from such sources as health and life insurance, workers' compensation, and automobile insurance to be introduced at trials or to require that such income be subtracted from awards decided by juries;
- A statute of limitations—one year for adults and three years for children—from the date of discovery of an injury; and
- Replacement of joint-and-several liability with a fair-share rule, under which a defendant in a lawsuit would be liable only for the percentage of the final award that was equal to his or her share of responsibility for the injury.

Said Senator Orrin Hatch (R-UT), "I think that this is an important step in the right direction and these numbers show that this problem deserves more than lip service from policy-makers."

Call me the eternal optimist, but if we can prove tort reform works in the health care sector, maybe we can convince Congress to enact across-the-board tort reforms.