

**THE TWENTY-FIFTH AMENDMENT
TO THE UNITED STATES CONSTITUTION: A READER'S GUIDE**

ADDENDUM: LIST OF POSSIBLE CONGRESSIONAL ACTIONS

This Addendum to the Reader's Guide lists advance steps that Congress may wish to consider to implement or clarify the operation of Section Four of the Twenty-Fifth Amendment. Doing so could strengthen the effectiveness and legitimacy of the constitutional process, while helping to avoid the delay, complications and possible abdication of constitutional responsibility that might follow were Congress only to turn to these questions once the constitutional clocks in the Amendment have already been set into motion.

1. Clarify committees of jurisdiction for Section Four of the Twenty-Fifth Amendment.

Congress could clarify in advance which committees would enjoy jurisdiction over the various aspects of the Section Four process, and in the event that more than one committee has jurisdiction, resolve their respective roles. *See generally pages 51 to 58 of the Reader's Guide.*

2. Adopt formal standing rules and procedures for Congress' deliberations under section four of the Twenty-Fifth Amendment.

If Section Four of the Twenty-Fifth Amendment were set into motion, there would be no standing rules or procedures in place for how Congress would exercise its constitutional duty under the Amendment, and no historical precedent to which to turn. Therefore, it might be advisable for Congress to consider these questions in advance. Areas that Congress may want to address include: (1) the composition of the committee that conducts the investigatory phase of the Section 4 process, (2) the powers of that body to subpoena or obtain evidence, (3) whether the proceedings of this body should be open or in secret, (4) the role of the President and his agents in such proceedings, and (5) whether the filibuster or other rules of the House and Senate should be in effect for the congressional vote at the end of the 21-day period of deliberation under Section 4. *See generally pages 57 to 58 of the Reader's Guide.*

3. Clarify that the Health Insurance Portability and Accountability Act (HIPAA) does not apply to any records Congress may request to determine presidential inability.

Should the houses of Congress need to exercise its role to adjudicate the ability of the President to serve, it might need to access the President's medical records, and the President could try to block that request on a number of grounds, including invoking the patient's medical privacy statute HIPAA. Congress could act in advance to clarify that HIPAA does not extend to adjudications under the Twenty-Fifth Amendment. *See generally pages 59 to 60 of the Reader's Guide.*

4. Create a standing Twenty-Fifth Amendment advisory committee.

Congress may want to convene an advisory committee consisting of outside experts, including medical experts, to guide its decision-making under Section Four. Questions Congress may want to consider regarding the design of this advisory board include: (1) the composition of this committee, (2) who can seek an opinion or evidence from the advisory committee, and (3) whether the committee would be the exclusive source of medical opinion or expertise on the questions in the Twenty-Fifth Amendment. *See generally page 20 of the Reader's Guide.*