

PUBLICATION

Fate of Last-Minute Affordable Care Act Initiatives Uncertain

Authors: Sheila P. Burke

September 20, 2017

This week, the debate over the Affordable Care Act (ACA) gained new momentum in two separate, but connected channels. As the fiscal year (FY) budget reconciliation window enabling expedited passage of an ACA repeal draws to a close on September 30, momentum increased to make one final push for a Republican "repeal and replace" package. Simultaneously, Senate Health, Education, Labor and Pensions (HELP) Committee Chair Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) had seemingly been making progress toward a bipartisan market stabilization measure before the September 27 federal insurance filing deadline for plan year 2018 before coming to an abrupt end on Tuesday afternoon. The uncertainty surrounding both measures may add pressure on lawmakers to act as the end-of-month deadlines approach.

Facing Narrow Timeline, Graham-Cassidy Gains Steam Among Senate GOP

Senators Lindsay Graham (R-SC) and Bill Cassidy's (R-LA) ACA reform plan gained significant traction this week, as President Donald Trump and key Senate Republicans promoted the plan as a last attempt to repeal portions of the ACA on a partisan vote before the FY17 Budget Reconciliation expires on September 30. On Wednesday, Senate Majority Leader Mitch McConnell (R-KY) announced that Senate leadership intends to consider their proposal on the Senate floor next week.

Starting in 2021, the "[Graham-Cassidy Plan](#)" would convert the ACA's premium subsidies and Medicaid expansion funding into a federal block grant to states, while maintaining many of the ACA's taxes. The lump-sum block grant is expected to grow at a slower rate over time than current funding under the ACA. In addition, the block grants would redistribute funding among the states using a complex formula in which states that expanded Medicaid are expected to receive less money than they would under the ACA, and vice-versa for states that did not expand Medicaid. All funding would expire in 2027.

The plan would give states significant new flexibility for spending this lump-sum block grant, with options including:

- Sending payments to insurers to stabilize premiums and promote health insurance market participation;
- Making payments directly to health care providers;
- Funding programs to reduce out-of-pocket costs of individuals enrolled in the individual market;
- Establishing or maintaining a program to help individuals purchase health care coverage; and
- Providing "wrap-around" coverage for those already enrolled in a state medical assistance program.

As part of the new flexibility afforded to the states, Graham-Cassidy would allow states to obtain waivers from the ACA's prohibitions on medical underwriting and its requirement to cover all Essential Health Benefits (EHBs). States would be able to permit health plans to charge higher premiums for sicker enrollees and/or cover a smaller set of benefits than under current law. Graham-Cassidy would also repeal the individual and employer mandate penalties retroactive to 2016 and would repeal the medical device tax as of 2018, but leave the other ACA taxes in place. Finally, similar to the framework under the Better Care Reconciliation Act (BCRA), Graham-Cassidy would impose per capita caps on the traditional Medicaid program and offer states

the opportunity to receive a block grant from the federal government in lieu of traditional Medicaid matching funds.

Current prospects for Graham-Cassidy are uncertain. Observers estimate that the bill may currently have support from as many as 48 or 49 Republican senators. Given that all Democrats are expected to oppose Graham-Cassidy, if three Republican senators vote in opposition, the bill would fail. Key Republican senators to watch include:

- **Senator John McCain (R-AZ):** Senator McCain was the surprise deciding vote in opposition to the "skinny repeal bill" in late July, calling for the Senate to return to regular order and pursue a bipartisan health care reform effort. However, efforts to persuade Senator McCain received a boost on Monday when Governor Doug Ducey (R-AZ), who Senator McCain seeks counsel from on health care, [released a statement](#) supporting the Graham-Cassidy plan. In addition, the Senate Finance Committee has scheduled a hearing on Graham-Cassidy next Monday, likely aimed at providing reassurances to Senator McCain on the process. On Monday, Senator McCain stated that he was "not supportive of the bill yet."
- **Senator Susan Collins (R-ME):** Senator Collins opposed all three versions of ACA repeal that were brought to a vote in July and is expected to vote against the Graham-Cassidy plan, as well. Senator Collins has not yet released a definitive stance on Graham-Cassidy.
- **Senator Lisa Murkowski (R-AK):** Senator Murkowski was also a key vote in opposing the previous ACA repeal bills in July. As of Monday, Senator Murkowski announced that she is undecided on Graham-Cassidy and continues to evaluate its impact on Maine. On Tuesday, Governor Bill Walker (I-AK) expressed opposition to the bill, which may affect Senator Murkowski's position.
- **Senator Rand Paul (R-KY):** Over the past week, Senator Paul has publicly and repeatedly [stated opposition](#) to Graham-Cassidy for not being conservative enough. On Monday, Senator Paul stated that he "doesn't see any possibility" in which he could sign up for this bill, because "it keeps 90 percent of Obamacare and redistributes the proceeds."

State governors have also provided mixed reactions to the Graham-Cassidy proposal, which may influence how senators decide to vote. On Tuesday, a bipartisan group of ten governors [wrote a letter](#) opposing the Graham-Cassidy proposal and urging Congress to focus instead on bipartisan market stabilization efforts. In addition, 15 Republican governors wrote in support of repealing the ACA and replacing it with flexible block grants to the states.

As Senators Graham and Cassidy, Republican Senate leadership and the Trump Administration work toward securing votes, they face an extremely narrow timeline to pass a bill before September 30. The Congressional Budget Office (CBO) announced that it aims to provide a "preliminary assessment" of the Graham-Cassidy bill early next week, which will include whether the legislation meets the FY17 Budget Reconciliation requirements for reducing on-budget deficits. However, CBO stated that it would not be able to provide "point estimates of the effects on the deficit, health insurance coverage, or premiums for at least several weeks." The Senate Parliamentarian must also review the Graham-Cassidy bill to ensure that it satisfies the requirements of the reconciliation process, which remains unclear.

Takeaway: Developments this week have raised the profile and increased momentum behind the Graham-Cassidy ACA reform plan, setting up a potential vote next week. It remains uncertain whether Senate Republicans will be able to garner the minimum 50 votes for passage. If Senate Republicans do manage to pass Graham-Cassidy by September 30, the House would likely have to pass Graham-Cassidy without any modifications for the proposal to become law, given the Senate's narrow timeline. Thus far, Speaker Paul Ryan (R-WI) and President Trump have pledged their support for the proposal.

Senate HELP Committee Abandons Market Stabilization Efforts for September

The return to Senate Republicans' focus on ACA reform seems to have scuttled the Senate HELP Committee's efforts to advance a bipartisan individual market stabilization plan. The Senate HELP Committee held four full committee hearings on individual market stabilization on September 6, 7, 12 and 14, featuring testimony from governors, health insurance commissioners, health policy experts and insurers. Senate HELP Chairman Alexander and Ranking Member Murray had been expected to release a draft bipartisan market stabilization plan this week, with the goal of passing it before the September 27 insurance filing deadline for plan year 2018. However, on Tuesday afternoon, Chairman Alexander released a statement saying that he and Ranking Member Murray had "not found the necessary consensus among Republicans and Democrats to put a bill in the Senate Leader's hands that could be enacted." Ranking Member Murray indicated that she is willing to continue to negotiate and said "I am confident that we can reach a deal if we keep working together."

A deal looked like it had been coming together as two key themes emerged in the hearings for a potential bipartisan agreement. First, in the four hearings, both Republicans and Democrats generally agreed on the importance of funding Cost-Sharing Reduction (CSR) payments to insurers to provide certainty for the individual market. CSRs help subsidize health care coverage for enrollees below 250 percent of the Federal Poverty Level who purchase coverage on the insurance exchanges. However, debate occurred over timing, with Chairman Alexander calling for funding CSR payments through 2018 and Ranking Member Murray, insurance commissioners and governors arguing for a multi-year funding solution (e.g., through 2019).

Second, the hearings emphasized the need to allow more flexibility in the approval of coverage, choices and premiums for health plans under the ACA's Section 1332 waivers, which allow states to test health care reforms as long as they meet the ACA's coverage standards and remain budget neutral. Chairman Alexander stressed that a compromise measure must include changes to make it administratively easier for states to obtain waivers and to give states more flexibility to customize their markets. He suggested ideas to streamline the application process for Section 1332 waivers, including reducing the six-month application review period, allowing "copycat" applications for states to duplicate already-approved waivers, extending the waiver length and allowing a fast-track process for emergency waivers. Chairman Alexander also proposed allowing some significant changes to the program design of the waivers, such as: 1) defining budget neutrality over the entire term of the waiver rather than each single year, 2) eliminating the firewall between Section 1332 waivers and Medicaid Section 1115 waivers, and 3) allowing greater flexibility of the ACA's EHBs, such as by allowing insurers to offer plans that have "actuarial equivalency" with ACA-compliant coverage, even if those plans vary in terms of specific benefits.

Democrats expressed openness to reforms that streamline the Section 1332 waiver application process, but insisted on maintaining the program's core coverage and affordability guarantees. Ranking Member Murray highlighted concerns that the push for more flexibility could be a move towards ending key ACA consumer protections and EHBs.

Takeaway: With Chairman Alexander's announcement, it seems that bipartisan market stabilization efforts are dead for the time being. It is possible that a deal might still be reached, but with Speaker Ryan, Majority Leader McConnell and the White House lined up against the proposal, it is exceedingly unlikely that it will be accomplished before the September 27 insurance filing deadline for plan year 2018.