

MEMORANDUM

To: ASTS

From: Peter Thomas, Peggy Tighe, Leif Brierley, Steve Postal, and Jill O'Brien

Date: September 19, 2017

Re: ACA Repeal and Replace and Other Healthcare Legislative Developments

Summary

Congress has returned from its summer recess and resumed work on a number of significant health policy proposals. Several Senate-led health care proposals have emerged, ranging from a new Affordable Care Act (ACA) repeal-and-replace option to a single-payer health care proposal. Meanwhile, the Senate Health, Education, Labor and Pensions (HELP) Committee has taken the lead in attempting to draft bipartisan legislation to strengthen the ACA marketplaces, and has held hearings to this effect. Finally, Congress faces impending deadlines on a number of health care priorities, including the reauthorization of the Children's Health Insurance Program (CHIP) and a number of Medicare policies commonly referred to as "Medicare extenders," which include consideration of the outpatient rehabilitation therapy caps. This memo provides a summary of current health policy proposals and the legislative dynamics surrounding them.

Graham-Cassidy Health Care Reform Proposal

On September 13, 2017, Senators Lindsey Graham (R-SC), Bill Cassidy (R-LA), Dean Heller (R-NV), and Ron Johnson (R-WI) [released](#) a bill to repeal and replace the Affordable Care Act (ACA). The Senators are hoping to advance their version of ACA repeal/replace prior to the deadline for them to use the Fiscal Year 2017 budget reconciliation procedure on September 30. With less than eleven days to pass legislation to repeal and replace the ACA with just a simple majority of 51 votes, Republican Senators are facing their last chance in this budget cycle to deliver on a long-standing campaign promise to repeal and replace the ACA.

Several news outlets are reporting that Senate Majority Leader Mitch McConnell will meet with Republican Senators this week to determine if he has the votes to advance the bill to the Senate floor. The Senate Finance Committee has scheduled a hearing for Monday, September 25 on the bill. Additionally, the Senate Homeland Security and Governmental Affairs Committee, which is chaired by Senator Johnson, one of the bill's sponsors, has scheduled a hearing for September 26 on health care block grants, a major component of the bill.

Below is a brief summary of the major provisions of the bill, which, broadly stated, would replace current ACA funding with block grants to states that they, in turn, could use to provide health coverage in myriad ways to their residents.

The bill, H.R. 1628, would:

- Establish block grants to states for the years 2020-2026 to help low-income individuals afford health insurance;
- Restructure the Medicaid program into a per-capita cap model beginning in 2020;
- Repeal the ACA's individual mandate and employer mandates, retroactive to calendar year 2016;
- Repeal Medicaid expansion as of December 31, 2019, with states not being able to expand Medicaid after September 1, 2017;
- Repeal the cost-sharing subsidy program as of December 31, 2019;
- Repeal the ACA tax credits and the small business health insurance tax credit as of January 1, 2020;
- Repeal the medical device tax on sales after December 31, 2017;
- Establish optional work requirements for non-disabled, non-elderly, non-pregnant Medicaid beneficiaries;
- Permit plans to charge older customers as much as five times (instead of current law which is 3:1) the amounts they charge younger customers, while giving states the option to overrule this;
- Allow young adults to remain on their parents' plans until they turn 26 years of age; and
- Add provisions supporting health savings accounts (HSAs).

The Congressional Budget Office (CBO) has yet to score the bill. However, Leader McConnell (R-KY) has asked the CBO to speed its review of the legislation. The Center for Budget and Policy Priorities (CBPP) has projected that the bill would provide \$239 billion less in spending on Medicaid expansion and federal Marketplace insurance subsidies. While a preliminary assessment of the bill is expected early next week, a more comprehensive analysis detailing the impact of the bill on coverage and premiums is expected to take several weeks to accomplish.

Senate HELP Committee Bipartisan Health Reform Work

Earlier this month, the Senate HELP Committee held four hearings on "Stabilizing Premiums and Helping Individuals in the Individual Market for 2018." Committee Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) hope to come to a bipartisan compromise to address one of the ACA's most pressing problems: the instability of the individual markets. Several proposals to stabilize the individual markets were discussed at the hearings including: (1) Funding cost sharing reduction (CSR) payments through, at a minimum, FY 2018; (2) giving states greater flexibility through the existing 1332 state innovation waiver provision already in the ACA; and (3) allowing the sale of copper plans, or catastrophic coverage, to persons over age 29 to encourage more people to enroll in the individual markets.

At all four hearings, witnesses testified that without a Congressional appropriation for CSRs, the individual markets will likely collapse. While there is bipartisan agreement on a Congressional commitment to fund CSR payments, such a provision may not be politically feasible if Democrats do not compromise on state flexibility. In his opening statement at one of the hearings, Senator Lamar Alexander stated: "I simply won't be able to persuade the Republican

majority in the Senate, the Republican majority in the House, and to the Republican president to extend the cost-sharing payments without giving states meaningful flexibility.”

While many Democrats expressed concern that amending the 1332 waiver provision in the ACA may undermine access to care, in an opening statement, Sen. Patty Murray expressed willingness to compromise if the patient protections created by the ACA remain intact. Assuming the patient protections outlined in the ACA remain in effect, Senators may be able to reach a bipartisan compromise to fund CSR payments. If this occurs, proposed legislation is expected to be released by the Committee. How the potential vote on the Graham-Cassidy bill impacts the HELP Committee deliberations on a bipartisan approach is unclear at this time.

Sanders’ Single-Payer Health Reform Proposal

On September 13, Senator Bernie Sanders (I-VT) and sixteen Democratic Senators released a single-payer health care proposal called the Medicare for All Act of 2017. The bill would expand Medicare over a number of years to eventually provide health insurance coverage for all Americans. Under the proposal, the current health insurance system would be replaced by a public one paid for by higher taxes. Private insurance options would remain available for elective treatments. Of the sixteen Democratic senators supporting the bill, a number of them are considered early possible candidates for the Democratic presidential nomination in 2020, including Senators Cory Booker (D-NJ), Kirsten Gillibrand (D-NY), Elizabeth Warren (D-MA), and Kamala Harris (D-CA).

However, the bill lacks the support of several key Democratic lawmakers, including Senate Minority Leader Chuck Schumer (D-NY) and House Minority Leader Nancy Pelosi (D-CA). Pelosi has indicated that she still believes the focus should be on preserving, protecting, and strengthening the ACA. Given that Congress and the White House are under Republican control and are seeking less government involvement in health care, it is highly unlikely that any action will take place on the bill. Rather, the bill is being viewed by most as a political rallying point for Democrats as they enter the 2018 Congressional election cycle.

CHIP Reauthorization Legislation Pending

Last week, leaders of the Senate Committee on Finance announced they had agreed to a bipartisan legislative proposal to reauthorize funding for the Children’s Health Insurance Program (CHIP). The Keep Kids’ Insurance Dependable and Secure (KIDS) Act, S. 1827, would maintain several current CHIP provisions that expand eligibility and provide enhanced federal matching funds for states to cover children, but would wind down those provisions in the next several years. The five-year extension agreement is expected to cost about \$8 billion with committee staff working behind the scenes to create ways to pay for the legislation. In the House, the Energy and Commerce Committee, which has jurisdiction over the program, has not announced an agreement of its own on CHIP.

However, Committee Chairman Greg Walden (R-OR) has indicated that his Committee recognizes the importance of passing CHIP legislation, especially with the program’s funding set to expire on September 30. While states are not expected to run out of CHIP funds and are expected to be able to keep their CHIP programs operational in the short term, several states may

need to dramatically scale back their CHIP programs should a reauthorization not materialize in the coming weeks. Because of such concerns and the broad support for CHIP, it is unlikely that Congress will fail to act on this significant priority.

Medicare “Extenders” & Other Health Care Policy Proposals

Medicare extenders are elements of Medicare policy that require periodic reauthorization, and have traditionally been extended for short multi-year periods. Most of these issues have been “patched” over the years because Congress believes that a permanent solution would be cost-prohibitive. They include policies such as the Medicare therapy caps exceptions process, Medicare add-on payments for home health services in rural areas, and funding for community outreach about the Medicare program to low-income beneficiaries. Many of these extenders expire in the coming weeks and months, and need reauthorization in order to continue. The CHIP reauthorization bill is seen as one potential legislative “vehicle” that Medicare extenders could join as policy “riders.”

However, we understand that committee staffers are attempting to keep the CHIP bill “clean,” free of additional issues that could threaten the advancement of the CHIP legislation. Committee staffers are working to create legislative packages of extender bills that may instead travel independently from CHIP out of the respective committees. Members and staff for the three major committees of jurisdiction for these bills—House Energy and Commerce, House Ways and Means, and Senate Finance—continue to negotiate the exact process to move any extenders package. We will continue monitoring any developments on this important set of Medicare policies.