



Health Policy Briefing

October 23, 2017

Alexander-Murray Stabilization Package Introduced

On Tuesday, October 17, Senate Health, Education, Labor, and Pensions (HELP) Committee Chairman Lamar Alexander (R-Tenn.) and Ranking Member Patty Murray (D-Wash.) announced that they had reached an initial agreement on a bipartisan package of legislation to stabilize the individual health insurance market. The deal would resume cost-sharing reduction (CSR) payments to insurers for two years and provide states with more flexibility to change Obamacare’s insurance regulations.

The Alexander-Murray health care plan is the culmination of three months of negotiations to provide a short-term fix for the rising premiums facing the individual market. Sen. Alexander hopes that the bill will stabilize premiums and provide Congress with more time to debate longer-term changes to the 2010 health care law. While the talks between Sens. Alexander and Murray stalled during last-ditch efforts to repeal and replace the Affordable Care Act (ACA) in September, the President’s recent announcement that he would immediately end CSR payments – which he characterized as a bailout of the insurance industry – provided the added pressure needed to complete negotiations.

Under the bill, States would be allowed to use existing section 1332 waivers to alter some of the ACA’s insurance parameters for policies offered on the Exchange. The agreement does not alter the current law coverage guardrails related to pre-existing conditions and essential health benefits (EHB). Current law requires “coverage that is at least as comprehensive” as ACA coverage offered through Exchange and requires “coverage to at least a comparable number of its residents.” Waivers could be used to approve insurance plans outside of Obamacare’s insurance regulations as long as they maintain the ACA’s coverage requirements and are of “comparable affordability” to plans in the current exchanges. Proposals are currently judged against a standard of “at least as affordable” as ACA coverage. The legislation would streamline and expedite the 1332 waiver application, shortening the federal waiver review period from 180 days to 90 days while also creating a 45-day emergency approval pathway. The maximum waiver period would be extended from five to six years, and state proposals would be scored over the life of the waiver, rather than during each individual year.

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States seeking a waiver that matches another state's previously approved waiver would be automatically granted. The deal would also restore \$106 million in Obamacare outreach and advertising funding to publicize the open enrollment period. President Trump had rescinded these funds earlier this year. The Alexander-Murray agreement would loosen the ACA's limitations on catastrophic health insurance plans, also known as "copper plans." These high-deductible plans are currently only available to people under the age of 30 or those who can demonstrate that purchasing a plan with more robust benefits would pose an economic hardship. This legislation would allow anyone to buy a copper plan, regardless of age or income level. Finally, the plan would require the U.S. Department of Health and Human Services (HHS) to issue regulations regarding health care choice compacts that would allow individuals to purchase coverage across state lines.

Democrats have appeared widely enthusiastic about the plan, which addresses their most immediate concerns about the affects of cutting off CSR payments. The deal also takes steps to reverse some recent actions from the Administration that Democrats believe were meant to undermine and "sabotage" the ACA. Republicans have been far more tentative in committing their support.

Despite his recent cancellation of CSR payments, in addition to the recent signing of an executive order to dismantle other parts of the ACA, President Trump initially appeared to take credit for encouraging the bipartisan negotiations in the Senate, adding that his Administration had been involved in drafting the proposal. He later walked back his initial statements, saying that he would consider the bipartisan proposal, but never be able to support a "bail out" of insurance companies. Director of the Office of Management and Budget (OMB) Mick Mulvaney has offered an alternative take from the Administration on the agreement, saying that the President supports "some type" of short-term deal to stabilize the individual market that goes beyond simple extension of CSR payments and that could be packaged as some sort of larger deal. Other staff within the Administration have suggested that elimination of the individual and employer mandates is the only acceptable starting point for restoring the CSR payments and passing a bipartisan deal. The President has also demanded that language be added to ensure that CSRs work to the benefit of consumers, not insurance companies.

Despite concerns from some lawmakers that the proposal had stalled out only days after its announcement, the bill was introduced on Thursday with the backing of 24 senators with equal support from both parties. Republican cosponsors include Sens. Mike Rounds (R-S.D.), Lindsey Graham (R-S.C.), John McCain (R-Ariz.), Bill Cassidy (R-La.), Susan Collins (R-Maine), Joni Ernst (R-Iowa), Lisa Murkowski (R-Alaska), Charles Grassley (R-Iowa), Johnny Isakson (R-Ga.), Richard Burr (R-N.C.) and Bob Corker (R-Tenn.). Democratic cosponsors include Sens. Al Franken (D-Minn.), Jeanne Shaheen (D-N.H.), Joe Donnelly (D-Ind.), Amy Klobuchar (D-Minn.), Maggie Hassan (D-N.H.), Claire McCaskill (D-Mo.), Heidi Heitkamp (D-N.D.), Joe Manchin (D-W.V.), Tom Carper (D-Del.), Tammy Baldwin (D-Wis.) and Angus King (Maine), an independent who caucuses with the Democrats. Sen. Schumer (D-NY) has stated that all of the members of the Democratic Caucus would vote for the legislation (total of 48 members). Coupled with the twelve GOP cosponsors at introduction, the bill has 60 votes for passage.

Senate Finance Committee Chairman Orrin Hatch has unequivocally opposed the deal, while Majority Leader Mitch McConnell (R-Ky.) has been tight-lipped, saying that the path forward for the legislation is unclear. On Sunday, Senate Majority Leader Mitch McConnell says he's willing to bring bipartisan health care legislation to the floor if President Donald Trump makes clear he supports it. McConnell tells CNN's "State of the Union" he's "waiting" to hear from Trump "what kind of health care bill he might sign. . . I think he hasn't made a final decision. When he does, and I know we're not just debating it, but actually passing something to be signed, I'd be happy to bring it up." While there is still no guarantee that the plan will be considered on the Senate floor, it is even less likely that the House will vote on the agreement. Speaker of the House Paul Ryan (R-Wis.) has rejected the deal, urging the Senate to keep its focus on repealing and replacing Obamacare. Chairman of the conservative Republican Study Committee Mark Walker (R-N.C.) is also opposed to the plan, arguing that it props up a law that Republicans promised to dismantle. Freedom Caucus Chairman Mark Meadows (R-N.C.) did not dismiss the plan outright, calling it a "good start," but noting that much more work would need to be done to consider the proposal.

A number of Republican senators have acknowledged that the stabilization package requires some changes in order to address concerns of the House GOP. Sens. Graham, Cassidy, and Ron Johnson (R-Wis.) are working to include additional flexibility provisions like those contained in their ACA repeal legislation in order to "lay the groundwork" for

longer-term reform. Sen. Alexander has said that he is open to such changes, but Senate Democrats are likely to reject any congressional or administrative efforts to amend the bill.

The Senate already has a full legislative calendar, with a defense authorization bill, the GOP budget resolution, reauthorization of the Children's Health Insurance Program (CHIP), and tax reform high on the agenda. The agreement's greatest chance of passage appears to be if it is included as a part of a larger package of must-pass legislation, such as the omnibus spending bill or disaster relief efforts, which might not be considered until the end of the year. Regardless, the deal will require 60 votes in the Senate for passage.

America's Health Insurance Plans (AHIP) and the American Medical Association (AMA) have both endorsed the bipartisan plan to shore up the individual insurance market – arguing that it will lead to more choice and more affordable care. Open enrollment for Americans to begin signing up for 2018 coverage begins on November 1 and ends on December 15.

Marino Withdraws from ONDCP Nomination

Rep. Tom Marino (R-Pa.) withdrew his name as the White House nominee to head the Office of National Drug Control Policy (ONDCP), a position commonly referred to as the Drug Czar. The announcement follows a Washington Post/60 Minutes investigation into the "Ensuring Patient Access and Effective Drug Enforcement Act," passed in 2016, which critics claim will weaken the Drug Enforcement Administration's ability to intercept suspicious shipments of opioid painkillers. Several Democratic lawmakers, including Minority Leader Chuck Schumer (D-N.Y.) and Sen. Joe Manchin (D-W.V.), had requested that the President withdraw the nomination, due to Marino's sponsorship and role in passage of the legislation that supposedly hinders the DEA's ability to enforce anti-drug diversion laws. Without offering additional details, the President also stated that he plans to declare the opioid epidemic a public health emergency next week.

Azar Under Consideration for HHS Secretary

Politico has reported that Alex Azar, former Eli Lilly executive, is the frontrunner for the nomination of U.S. Department of Health and Human Services (HHS) Secretary. Azar served as general counsel and deputy secretary at HHS during the second Bush administration, before joining Eli Lilly in June 2007 as Senior Vice President of Corporate Affairs. He left the company as head of U.S. operations in January.

No Progress on CHIP Negotiations

Renewed bipartisan negotiations to fund legislation that would extend the Children's Health Insurance Program (CHIP), Community Health Centers, and other public health priorities have stalled. According to House Energy and Commerce Committee Chairman Greg Walden (R-Ore.), Democrats have yet to provide Republicans with a counter-offer to offset the bill, which would currently be funded through cuts to the Public Health and Prevention Fund and increased premiums for high-income Medicare beneficiaries. Ranking Member Frank Pallone (D-N.J.) has said that Republicans have refused to consider any pay-fors that wouldn't offset the bill at the expense of other patients in the health care system.

White House Considering Rx Cost Taskforce

Recent reports indicate that President Trump is considering creating a bipartisan task force to investigate the rising cost of prescription drugs. While discussions are still in the early stages, an announcement about the task force could come as early as this week. The President reiterated last week that prescription drug costs are one of his priorities, saying again that drug companies "are getting away with murder."

States Seek Emergency Injunction

California Attorney General (and former Member of Congress) Xavier Becerra has filed a motion seeking an emergency injunction that would require the federal government to pay cost-sharing reduction (CSR) subsidies. The motion was signed by 18 states and Washington, D.C. President Trump recently announced that he would not continue making the payments, which are required under the Affordable Care Act (ACA) but have yet to be appropriated by Congress.

Lawmakers Inquire on Nursing Home Safety

Senate Finance Committee Chairman Orrin Hatch (R-Utah) and Ranking Member Ron Wyden (D-Ore.) have **written** to the Centers for Medicare and Medicaid Services (CMS) requesting details on the agency's new nursing home preparedness requirements following recent hurricanes in Florida and Texas. Bipartisan leadership on the House Energy and Commerce Committee has also taken steps to investigate recent nursing home resident deaths. The Oversight Subcommittee will hold a hearing on Tuesday to exam the Department of Health and Human Services' public health response and preparedness efforts in the wake of Hurricanes Harvey, Irma, and Maria on Tuesday. Energy and Commerce Committee Chairman Greg Walden (R-Ore.), Ranking Member Frank Pallone, Jr. (D-N.J.), Health Subcommittee Chairman Michael Burgess, M.D. (R-Texas), Ranking Member Gene Green (D-Texas), Oversight and Investigations Subcommittee Ranking Member Diana DeGette (D-Colo.), Rep. Gus Bilirakis (R-Fla.), and Rep. Kathy Castor (D-Fla.) have contacted the owner of the Rehabilitation Center at Hollywood Hills, LLC, a Florida nursing home that lost 14 residents following Hurricane Irma after their air conditioning failed. In the **letter**, committee leadership notes they will hear from CMS about the Florida incident and whether the Hollywood Hills facility was in compliance with federal regulations.

Senate Passes FY18 Budget Resolution

The Senate passed a fiscal year (FY) 2018 budget resolution that sets up consideration of tax reform under the fast-track process known as reconciliation. Under the resolution's reconciliation instructions, Republicans would need just fifty votes to pass \$1.5 trillion in tax cuts over the next decade. The legislation calls for the Senate Finance Committee to report a tax bill by November 13. It also outlines the GOP's budgetary priorities, initially maintaining spending at 2017 levels, followed by cuts to nondefense spending totaling \$106 billion by 2027. It proposes a \$473 billion reduction to Medicare's baseline spending and a \$1 trillion cut to the Medicaid program over the next decade. Out of five health amendments offered, only one passed. The amendment, offered by Senator Hatch, seeks to protect Medicaid and Medicare and was passed 89-9. The budget passed by a vote of 51-49 after hours of amendment debate. Sen. Rand Paul (R-Ky.) joined Democrats in opposing the bill. He was opposed to the budget exceeding federal spending caps. The President will join Senate Republicans at their weekly policy lunch on Tuesday to discuss plans going forward for overhaul of the tax code.

Tiberi Announces Resignation from Congress

Rep. Pat Tiberi (R-Ohio) has announced his resignation from Congress. He has not yet decided upon an exact departure date, but he will be leaving his position as an elected official before January 31, 2018. He has been chosen to serve as the president of the Ohio Business Roundtable. Rep. Tiberi chairs the House Ways and Means Health Subcommittee. He is the latest in a series of resignations by mainstream Republicans, signaling their dissatisfaction with the GOP's failure to achieve any major legislative victory.

Upcoming Congressional Hearings and Meetings

House Energy and Commerce Oversight and Investigation Subcommittee hearing “Examining HHS’s Public Health Preparedness for and Response to the 2017 Hurricane Season;” 10:00 a.m., 2123 Rayburn Bldg.; October 24

House Veterans’ Affairs Committee hearing on draft legislation to establish a permanent Veterans Choice Program; draft legislation to modify VA’s authority to enter into agreements with State homes to provide nursing home care to veterans, to direct the Secretary to carry out a program to increase the number of graduate medical education residency positions, and for other purposes; the Department of Veterans Affairs’ (VA’s) legislative proposal, the Veteran Coordinated Access and Rewarding Experiences (CARE) Act; H.R. 1133; H.R. 2123; H.R. 2601; and, H.R. 3642; 10:00 a.m., 334 Cannon Bldg.; October 24

House Appropriations Labor, Health and Human Services, Education, and Related Agencies Subcommittee hearing “The Role of Facilities and Administrative Costs in Supporting NIH-Funded Research;” 10:00 a.m., 2358-C Rayburn Bldg.; October 24

House Oversight and Government Reform Subcommittee on Government Operations and Subcommittee on Health Care, Benefits, and Administrative Rules joint hearing titled “Regulatory Reform Task Forces Check-In;” 10:00 a.m., 2154 Rayburn Bldg.; October 24

House Appropriations Labor, Health and Human Services, Education, and Related Agencies Subcommittee hearing “Down Syndrome: Update on the State of the Science and Potential for Discoveries Across Other Major Diseases;” 10:00 a.m., 2358-C Rayburn Bldg.; October 25

House Energy and Commerce Oversight and Investigations Subcommittee hearing “Federal Efforts to Combat the Opioid Crisis: A Status Update on CARA and Other Initiatives;” 10:00 a.m., 2123 Rayburn Bldg.; October 25

Recently Introduced Health Legislation

S.Con.Res.25: (introduced by Sen. Michael B. Enzi): An original concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2018 and setting forth the appropriate budgetary levels for fiscal years 2019 through 2027; Budget

H.R.4073 (introduced by Rep. Gerald E. Connolly): To amend the Controlled Substances Act to strike the definition of “imminent danger to the public health or safety” that was added by Public Law 114-145 for purposes of suspending a registration; Energy and Commerce, Judiciary

H.R.4075 (introduced by Rep. Donald Norcross): To amend the Controlled Substances Act to require certain training as a condition of registration to prescribe or dispense opioids for the treatment of pain or pain management, and for other purposes; Energy and Commerce, Judiciary

S.1960 (introduced by Sen. Claire McCaskill): A bill to repeal the amendments made to the Controlled Substances Act by the Ensuring Patient Access and Effective Drug Enforcement Act of 2016; Judiciary

S.Con.Res.27 (introduced by Sen. Rand Paul): A concurrent resolution setting forth the congressional budget for the United States Government for fiscal year 2018 and setting forth the appropriate budgetary levels for fiscal years 2019 through 2027; Budget

S.1967 (introduced by Sen. Tom Cotton): A bill to amend the Internal Revenue Code of 1986 to provide additional exemptions to the individual mandate, and for other purposes; Finance

S.1970 (introduced by Sen. Michael F. Bennet): A bill to establish a public health plan; Finance

S.1976 (introduced by Sen. Tim Scott): A bill to allow all individuals purchasing health insurance in the individual market the option to purchase a lower premium copper plan; Finance

S.1977 (introduced by Sen. Sherrod Brown): A bill to amend the Internal Revenue Code of 1986 to extend the 7.5 percent threshold for the medical expense deduction for individuals age 65 or older; Finance

S.1978 (introduced by Sen. Heidi Heitkamp): A bill to delay the annual fee on health insurance providers until 2020 and to make such fee tax-deductible; Finance

H.R.4079 (introduced by Rep. Brian Fitzpatrick): RESTORE Act of 2017; Energy and Commerce, Judiciary

H.R.4080 (introduced by Rep. William R. Keating): Effective Opioid Enforcement Act of 2017; Energy and Commerce, Judiciary

H.R.4084 (introduced by Rep. Ann M. Kuster): To repeal the amendments made to the Controlled Substances Act by the Ensuring Patient Access and Effective Drug Enforcement Act of 2016; Energy and Commerce, Judiciary

S.1985 (introduced by Sen. Patty Murray): A bill to repeal the rules issued by the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services entitled “Religious Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act” and “Moral Exemptions and Accommodations for Coverage of Certain Preventive Services Under the Affordable Care Act”; Health, Education, Labor, and Pensions