

PUBLICATION

Congress Returns to Washington with a Packed Health Care Calendar

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September is traditionally one of the busiest months in Washington, and this year is no exception. While much of the attention is focused on the debt ceiling debate, appropriations and the federal response to Hurricane Harvey, the health care policy community is being confronted with its own set of challenges. Congress faces a number of key health care deadlines this month that are likely to influence policy, including a September 27 deadline for insurers to submit final 2018 insurance plans for the Affordable Care Act's (ACA) marketplaces, a September 30 deadline for reauthorization of the Children's Health Insurance Program (CHIP) and a September 30 deadline to extend a host of other Medicare programs expiring at the end of the fiscal year.

How Congress elects to address these issues stands to have a significant impact on health care providers, insurers and consumers. Below we examine recent developments in the debate over the future of the ACA and CHIP. For more information on the expiring Medicare programs, please see our September 5 publication: [Don't Forget Medicare and Other Extenders](#).

Senate Finance Committee Begins CHIP Reauthorization Debate

Federal funding for CHIP, which provides insurance for approximately nine million children nationwide, expires September 30. The future of the program was the subject of a Senate Finance Committee hearing on Thursday, September 7. At the hearing, both Chairman Orrin Hatch (R-UT) and Ranking Member Senator Ron Wyden (D-OR) underlined the importance of the program, repeatedly making the case for CHIP and its importance to America's children. However, in his opening statement, Chairman Hatch asked Committee members to consider whether CHIP should be reauthorized with policy changes or instead extended under its existing rules. Chairman Hatch also asked members to consider the length of a CHIP reauthorization and whether the ACA's 23 percent increase in the federal matching rate for CHIP should be continued.

Ranking Member Wyden and his Democratic colleagues utilized their time to focus attention on the importance of extending the program as soon as possible to limit disruption to the states and on extending it for at least five years to provide stability. Committee Republicans were largely in agreement with their Democratic colleagues, generally supporting an extension of the program. However, Chairman Hatch and Senator Chuck Grassley (R-IA) both indicated they look forward to the opportunity to improve the program, noting they each had proposed modifications to CHIP that should be considered in the future.

Takeaway: Thursday's hearing displayed a growing bipartisan consensus within the Senate Finance Committee regarding a need to extend the CHIP program as soon as possible, but provided little clarity regarding the policy specifics and timing of a reauthorization package. Committee members did not indicate any significant appetite for changes in the program in the short-term, but did display an interest in eventually considering a number of CHIP reform proposals (Upton-Hatch, the Advancing Care for Exceptional Kids Act and the Quality Care for Moms and Babies Act). Members of the Senate Finance Committee are clearly committed to reauthorizing CHIP, but the duration of the extension (the Medicaid and CHIP Payment and Access Commission recommended five years), the future of the 23 percent matching rate increase and the timing of a reauthorization bill under consideration by the Committee or the full Senate remain uncertain.

Insurance Commissioners and Governors Lend Support to Senate HELP Committee's Bipartisan Market Stabilization Efforts

As there is a projection of increases in premiums and insurer participation remains unsettled for 2018, the issue of stabilizing the individual marketplace has become a major concern in Congress. Senate Health, Education, Labor and Pensions (HELP) Committee Chairman Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) are working to pass a bipartisan stabilization measure before the September 27 federal insurance filing deadline for plan year 2018. This comes as the Committee has scheduled four full committee hearings on individual market stabilization for September 6, 7, 12 and 14.

The first two Senate HELP hearings this week, featuring bipartisan testimony from [state insurance commissioners](#) and [governors](#), indicated a potential consensus emerging on the broad strokes of a market stabilization plan:

- 1. Funding for Cost-Sharing Reduction (CSR) Payments:** Senators and witnesses all agreed on the importance of funding CSR payments to provide certainty for the individual market. CSRs help subsidize health care coverage for some low-income enrollees who purchase coverage on the insurance exchange. Debate occurred over timing, with Chairman Alexander calling for funding CSR payments through 2018 and Ranking Member Murray, insurance commissioners and governors emphasizing that a multi-year funding solution (e.g., through 2019) would be more effective for reducing premiums and incentivizing insurer participation.
- 2. State Flexibility Under Section 1332 Waivers:** Chairman Alexander, insurance commissioners and governors also called for greater state flexibility 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. To obtain Republican support, 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. 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.
- 3. Stability Funding for Reinsurance Programs:** Insurance commissioners and governors repeatedly highlighted temporary reinsurance programs, in which the government pays insurers to offset the costs of the most expensive patients, as a key policy to promote market stability and reduce premiums. Democratic Senators offered support for a federal reinsurance program, whereas Republicans indicated little appetite for new federal spending—questioning whether states could repurpose existing funds under Section 1332 waivers to establish their own reinsurance pools (e.g., following Alaska's recently approved model). Insurance commissioners expressed concerns regarding whether all states have the funding or administrative capacity to act quickly enough to establish their own reinsurance pools for plan year 2018. Governors from both parties stated that the states could ultimately take over both the financing and administration of such programs if the federal government initially established and funded them. Note that earlier today, Senate Finance Committee Chairman Orrin Hatch (R-UT) indicated strong opposition to a federal reinsurance program, which could create challenges for reaching an agreement.

The Senate HELP Committee has two more hearings scheduled for September 12 and 14, featuring testimony from policy experts and health care stakeholders. Chairman Alexander highlighted the significant interest in these proceedings from Senators who serve on the HELP Committee and those who do not.

Takeaway: The Senate HELP Committee's hearings represent a significant new bipartisan effort aimed at stabilizing the individual markets after seven years of highly partisan rancor over the future of the ACA. While

the hearings suggested that there are potentially broad areas of agreement, key issues must be resolved regarding the duration of funding for CSR payments, the extent of state flexibility under Section 1332 waivers, and the federal or state structure and requirements of any reinsurance program. However, while Congress faces substantial, competing pressures to act on the ACA, it has little time to negotiate given the packed legislative calendar for September. Therefore, the substance, timing, and prospects for a potential bipartisan market stabilization package remain uncertain.

Graham-Cassidy Represents Latest Attempt at GOP Health Care Reform

While ACA efforts on Capitol Hill this week focused primarily on the Senate HELP Committee's bipartisan market stabilization hearings, there has also been some growing traction behind Senators Lindsay Graham (R-SC) and Bill Cassidy's (R-LA) ACA reform plan.

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 the expected rise in costs under the ACA. In addition, the plan would give states several options for spending this lump-sum block grant, including: funding high-risk pools; 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.

President Trump and some Senate Republicans have been promoting the plan as a last-attempt to enact partisan reform of the ACA. The proposal received an additional boost when Senator John McCain (R-AZ) announced this week that he supports the concept of the Graham-Cassidy proposal, but stressed that "any effort to replace Obamacare must be done through the regular order of committee hearings, open debate and amendments from both sides of the aisle."

The GOP only has until the end of the month to pass ACA reform on a party line vote after Senate Parliamentarian Elizabeth MacDonough ruled last week that the FY17 Budget Reconciliation – the fast-track budget measure that allows repeal of some provisions of the ACA with 51 votes – expires on September 30 when FY17 ends. Any partisan ACA reform effort beyond September 30 would need 60 Senate votes to overcome a likely Democratic filibuster.

Takeaway: It is highly uncertain whether Senate Republicans would be able to garner the minimum 50 votes to pass the Graham-Cassidy Plan by September 30. There is not yet a final bill, and there is no cost estimate from the Congressional Budget Office. In addition, Senate GOP leadership may be reluctant to reopen the partisan debate over the ACA with the current packed calendar and growing pressure to move on to tax reform.