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Affordable Care Act Initially Fades from Spotlight; Reemerges in Senate Republicans' Latest Tax Proposal

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After dominating the agenda for most of 2017, the Affordable Care Act (ACA) seemed to take a backseat at first as Republicans shifted their focus to enacting tax legislation. The initial momentum behind the bipartisan Alexander-Murray market stabilization package quickly stalled, following mixed messages from President Trump and reluctance among congressional Republican leadership to reopen the health care debate. Furthermore, Senate Finance Committee Chairman Orrin Hatch (R-UT) and House Ways and Means Committee Chairman Kevin Brady (R-TX) introduced a more conservative short-term ACA relief package, which has increasingly muddled the prospects for a bipartisan bill. If any market stabilization package were to advance, it would most likely need to be tacked on to another must-pass legislative vehicle, such as the year-end federal spending bills or the debt ceiling measure expected in early December. Finally, the ACA has reemerged on stage this week as President Trump and Senate Republicans have pushed for including repeal of the individual mandate as part of the Senate Republican tax proposal.

Against this legislative background, and with diminished marketing and outreach efforts from the Trump Administration, the 2018 Open Enrollment Period began on November 1 without much fanfare as compared to previous years. The Centers for Medicare and Medicaid Services reports that over the first two weeks (November 1 – 11), approximately 1.5 million individuals signed up for health plans through HealthCare.gov, the online portal used by the federally-facilitated exchanges in 39 states. During last year's Open Enrollment, slightly more than 1 million individuals had selected coverage through HealthCare.gov within the first two weeks. While this initial rate seems to outpace last year's enrollment, direct comparisons are difficult because this year's six-week Open Enrollment Period (running until December 15) is half as long as last year. In previous years, sicker enrollees have been more likely to sign up first, whereas younger and healthier enrollees tend to wait until closer to the final deadline, so it will be important to watch how enrollment continues to trend over the next several weeks to gauge the viability of the individual market risk pools for 2018.

Background and Analysis: In October, Senate Health, Education, Labor and Pensions Committee Chair Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) introduced the Bipartisan Health Care Stabilization Act of 2017, a bipartisan short-term individual market stabilization package. The proposal, commonly referred to as the Alexander-Murray plan, would provide funding for the ACA's Cost-Sharing Reductions (CSRs) through 2019 and allow states broader flexibility under the ACA's existing Section 1332 waivers to approve plan designs with "comparable affordability" to current ACA health plans. Click here to read our in-depth review of the proposal.

On October 25, the Congressional Budget Office (CBO) and Joint Committee on Taxation (JCT) released their report on the Bipartisan Health Care Stabilization Act of 2017, estimating that it would reduce the federal deficit by $3.8 billion between 2018 – 2027. Of note, CBO assumed that the legislation would not be enacted until after 2018 Open Enrollment began on November 1, which means that premiums for 2018 plans would already have been finalized and enacting the legislation would not affect premiums for this year. The agencies estimate that premiums in 2019 would be lower with funding for CSRs than without it.

On November 1, Chairman Hatch and Chairman Brady introduced the Healthcare Market Certainty and Mandate Relief Act (H.R. 4200/S. 2052). The Hatch-Brady legislation would provide funding for CSRs through 2019 (with certain pro-life protections), exempt individuals from the individual mandate penalty from 2017 – 2021, exempt employers from the employer mandate penalty from 2015 – 2017, and increase the maximum contribution limits for Health Savings Accounts (HSAs). The introduction of a competing, more conservative alternative to the Alexander-Murray package has added further complications to the prospects of enacting a short-term market stabilization fix this year.

Senate Majority Leader Mitch McConnell (R-KY) has stated that he would bring the Alexander-Murray bipartisan market stabilization bill to the floor if President Trump indicates that he will sign it. However, President Trump has continued to offer mixed messages, first encouraging Senators Alexander and Murray's efforts to reach a bipartisan agreement and then stating that he cannot support "providing bailouts to insurance companies."

Most recently, President Trump has pushed for using Republicans' tax proposal to repeal the ACA's individual mandate, which was included in the latest Senate tax proposal released on November 15. CBO and JCT estimate that repealing the mandate would reduce federal deficits by $338 billion between 2018 – 2027 and increase the number of uninsured individuals by 4 million in 2019 and 13 million in 2027. Some Senate Republicans have stated that they may support passing the Alexander-Murray package as a separate bill to help compensate for the negative effects on coverage caused by repealing the ACA's individual mandate. Senate Democrats quickly responded that if the individual mandate were repealed as part of the Senate Republican tax proposal, they would not support the Alexander-Murray package.

If Alexander-Murray were to advance, the most likely pathway for adoption remains the year-end spending bills in December, as Democrats are expected to push for the inclusion of funding for CSR payments in that package. However, given the political uncertainty caused by including repeal of the ACA's individual mandate in the Senate Republican tax proposal and with 2018 Open Enrollment already underway and premiums locked in place for next year, it remains unclear how Congress will ultimately approach continuing debate over the ACA.