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Affordable Care Act – Repeal, Reform or Stabilize?

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September 05, 2017

Following the collapse of Senate Republican health care reform efforts in late July, Republicans in Congress have remained divided on how to proceed regarding the Affordable Care Act (ACA). After the failed vote, many conservatives have continued to insist that Republicans should hold another partisan vote to repeal the ACA. In contrast, some moderate Republicans have joined Democrats in calling for bipartisan efforts to stabilize the fragile individual market, while other Republicans have advocated moving on from health care entirely to address tax reform. President Trump has taken to attacking Senate Majority Leader Mitch McConnell (R-KY) for failing to pass repeal and replace of the ACA, and has continued to state that Republicans should hold another vote on health care or otherwise "let Obamacare implode." Adding further pressure, the Senate Parliamentarian Elizabeth MacDonough ruled last week that the FY17 Budget Reconciliation – the fast-track budget measure that allows Republicans to repeal provisions of the ACA with 51 votes – expires on September 30 when FY17 ends. Any repeal effort beyond September 30 would need 60 Senate votes to overcome a Democratic filibuster. Majority Leader McConnell has not yet explicitly endorsed an approach, and it remains unclear how Congress will proceed this fall.

As premiums rise and insurer participation remains unsettled for 2018, the issue of stabilizing the individual marketplace remains a major concern. Contributing to this instability is the uncertainty around whether the Trump Administration will continue to make Cost-Sharing Reduction (CSR) payments to insurers. Insurers argue that the viability of the exchange market would be in jeopardy if CSR payments, which help subsidize health care coverage for low-income enrollees, were to be abruptly discontinued.

Given these market stability concerns, Senate Health, Education, Labor and Pensions (HELP) Committee Chair Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) have scheduled four hearings on individual market stabilization for September 6 – 7, 12 and 14. The hearings will include testimony from state insurance commissioners, governors and health care stakeholders. Among those testifying include Governor John Hickenlooper (D-CO), who proposed a bipartisan ACA stabilization plan last week with Governor John Kasich (R-OH). Six additional governors signed onto supporting their stabilization plan, including Governors Brian Sandoval (R-NV), Steve Bullock (D-MT), Terry McAuliffe (D-VA), John Bel Edwards (D-LA), Tom Wolf (D-PA) and Bill Walker (I-AK).

Taking into account their input, Senators Alexander and Murray are working together to craft a bipartisan stabilization measure by the end of September before the next open enrollment period begins later this fall. Observers expect any bill would likely be narrowly focused, given the time constraints and political divides that exist, and would include funding for the ACA's CSRs that subsidize health care coverage for low-income enrollees. It is also unclear how much flexibility Democrats are willing to concede on insurance regulations, which is likely key for attracting Republican support. One complicating factor is that the fiscal offsets for stabilization policies would likely fall under the Senate Finance Committee's jurisdiction, where Senate Finance Committee Chair Orrin Hatch (R-UT) has indicated little interest in returning to the ACA.

Takeaway: Congress faces substantial, competing pressures to act on the ACA, but has little time to negotiate given the packed legislative calendar for September and the pending expiration of the FY17 Budget

Reconciliation measure. With deep partisan divisions and the lack of consensus even within the Republican Party, the substance, timing and process for a potential bipartisan market stabilization package remain highly uncertain. Stakeholders will be watching closely as the final deadline for insurers to sign contracts for 2018 participation in the insurance exchanges is September 27, and Open Enrollment for 2018 begins on November 1.