PUBLICATION

Alexander, Murray Announce Bipartisan Proposal on Market Stabilization

Authors: Sheila P. Burke, Nicole Diane Carelli, Tiffani Vivienne Williams
October 19, 2017

On October 17, the Senate Health, Education, Labor and Pensions Committee Chair Lamar Alexander (R-TN) and Ranking Member Patty Murray (D-WA) announced they had agreed on a proposal for a narrow, short-term individual market stabilization package. Pressure to reach a bipartisan agreement took on new urgency following last week's decision by the Trump Administration to immediately terminate payments for Cost-Sharing Reductions (CSRs), which subsidize health coverage for low-income enrollees in the Affordable Care Act's (ACA) insurance exchanges.

In short, the proposal would provide funding for 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. It would not allow states to waive the ACA's guaranteed issue for preexisting conditions or Essential Health Benefit (EHB) coverage requirements. While the announcement of the bipartisan proposal is an encouraging sign for the individual market, it remains highly uncertain whether the market stabilization package will be enacted into law this year.

What's in The Proposal?

The Alexander-Murray draft plan includes the following major provisions:

CSR Payments: Provides mandatory funding for CSRs for the rest of plan year 2017 and through plan years 2018 and 2019. For 2018, states where insurance regulators directed insurers to decline CSR payments would not receive this funding, and state regulators in all other states would be required to certify that the CSR payments will provide direct financial benefit to consumers and the federal government through some type of rebate structure (e.g., the Medical-Loss Ratio).

Enrollment Funding: Restores $105.8 million of the outreach and enrollment funding for 2018 and 2019 to states with a federally-facilitated exchange, funded through existing user fees on participating health insurers. In addition, for plan years 2018 and 2019, the Department of Health and Human Services (HHS) would be required to issue biweekly enrollment reports during open enrollment and an after action performance report three months after open enrollment. HHS would also have to provide a report on advertising and consumer outreach three months after the 2018 open enrollment.

Catastrophic Plans: Eliminates the 30-year old age limit on the purchase of catastrophic plans on the insurance exchange starting for plan year 2019. These plans must continue to be part of an insurer's single risk pool for the individual market, including individuals enrolled off-exchange, and will remain subject to the ACA's requirements for out-of-pocket cost limits and preventive and primary care coverage.

Section 1332 Waivers: Streamlines the application process and creates design flexibility for states under the ACA's Section 1332 innovation waivers.

Process Changes:

-

  - Allows waivers to be certified by the governor only in states where the governor has that authority under state law (current waivers must be approved by state legislatures).
  - Extends waivers to six years (from five years) and allows for an unlimited number of renewals (renewals must still follow the approval process).
  - Shortens the renewal application period to 90 days (from 180 days).
  - Allows an expedited application process for waiver approvals in 45 days instead of 90 days in two cases:
    - "Me too" waivers for states applying for the same or substantially similar waiver to an already-approved waiver for another state; and
    - "Urgent" waivers for states facing bare counties or high premium increases. For urgent situations, states may apply for provisional waivers for a maximum of three years and a full-term waiver for a total of six years after meeting the normal waiver requirements.

Design Changes:

-
  - Changes the affordability guardrail from "at least as affordable" to "comparable affordability" to allow states to experiment with more innovative plan designs. Provides specific affordability protections for low-income individuals, individuals with serious health conditions, and other vulnerable populations.
  - Allows the budget neutrality guardrail to be met over the entire window of the waiver, instead of requiring it in each year of the waiver, requires there be no increase to the federal deficit over the 10-year budget plan.
  - Precludes HHA from suspending or terminating a waiver unless the state fails to comply with the terms and conditions of the waiver.

Health Plan Compacts: Requires HHS, in consultation with the National Association of Insurance Commissioners, to issue regulations within one year of enactment to implement interstate health plan compacts pursuant to the ACA, allowing health plans to be offered across state lines.

What Comes Next?

The immediate outlook for the bipartisan Alexander-Murray market stabilization package seems murky, at best. Democrats and health care stakeholders have praised the bipartisan agreement, and conservative groups have criticized it. President Trump, whose support is essential for winning over skeptical Republicans in Congress, has offered mixed messages this week – first encouraging Senator Alexander and Murray's efforts to reach a bipartisan agreement and then stating he could never support "providing bailouts to insurance companies."

Meanwhile, several Republican senators who were previously swing votes on health care have offered statements of support for the Alexander-Murray proposal, including Senators Susan Collins (R-ME), John McCain (R-AZ), and Lisa Murkowski (R-AK). Nonetheless, reports indicate that, thus far, Senate Majority Leader Mitch McConnell (R-KY) has been reluctant to move quickly on the proposal or offer a vehicle without greater support from the Republican caucus.

The greatest possible hurdle, however, will be on the other side of the capitol, where House Speaker Paul Ryan (R-WI) released a statement urging the Senate to stay focused on "repeal and replace of Obamacare" rather than the Alexander-Murray stabilization package. Opposition to any measure to improve the ACA runs deep among House conservatives, where many members view the proposal as simply shoring up the ACA.

Despite early opposition, Senator Alexander remains optimistic, stating that the bill will pass "in some form" by the end of the year. Senators Alexander and Murray formally introduced their bill today with 24 cosponsors, including 12 Republican and 12 Democratic senators. If the Alexander-Murray proposal were to advance, it would likely be tacked on to another must-pass legislative vehicle, rather than advancing as a stand-alone bill. However, exactly what that vehicle might be and any timeline for consideration is unclear. The most likely time for any consideration is early December when a number of must-pass bills face key deadlines for passage. Passage of the bill would likely require strong, if not unanimous, support from Democrats and at least a handful of Republicans.