THE COUNCIL

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On September 13, 2017, Republican Senators Lindsey Graham (SC) and Bill Cassidy (LA) released what is widely believed to be the Senate's last effort to repeal and replace the Affordable Care Act (ACA) under the reconciliation process (requiring only a simple majority vote to get legislation through the Senate). According to a recent ruling by the Senate Parliamentarian, the deadline for any such reconciliation effort is September 30, 2017, after which the FY2017 budget instructions on repealing and replacing the ACA will expire.

With respect to The Council's core issues, the latest bill includes the following:

- ***No mention of the employer-sponsored coverage tax benefit;***
- ***No mention of the Cadillac tax;***
- Elimination of the individual and employer mandates by zeroing out the penalties; and
- Various HSA reforms discussed in more detail below.

On HSA reforms, the Graham-Cassidy proposal largely mirrors the last Senate bill from July. Specifically, the bill would:

- eliminate the prohibition on over-the-counter drugs as qualified medical expenses;
- raise the contribution limit to the out-of-pocket cost for high deductible health plans;
- allow spouses to make catch-up contributions to the same HSA;
- reverse the ACA's tax penalty increase on HSAs for non-qualified expenditures, taking it down from 20% to 10%;
- allow payments for qualified medical expenses of dependents through age 26; and
- allow payment of HDHP premiums up to certain amounts and only if the HDHP does not cover abortions.

The bill does include one new provision on HSAs, which stipulates that "direct premium care arrangements" (coverage restricted to primary care in exchange for a fixed fee) do not constitute "health plans" or "insurance" for purposes of HSA/HDHP rules and restrictions.

With respect to ACA fees and taxes, this bill does not go as far as previous House and Senate proposals. Again, there is no mention of the Cadillac tax. Graham-Cassidy would only:

- Repeal the medical device tax starting in 2018; and
- Repeal elimination of the deduction for Medicare Part D subsidy expenses.

The legislation contains various other notable reforms for the individual and small group markets:

- Elimination of the ACA's individual subsidies by 2020 (and no subsidies for plans that cover abortion in the meantime);
- Phasing out of the small business tax credit by 2020 (and no credits for abortion coverage in the meantime);
- Allowing anyone to buy a lower-cost catastrophic plan beginning in 2019; and

- Repealing the cost-sharing subsidy program after 2019.

Rather than replacing the ACA subsidy structure with a new federal tax credit regime (as prior proposals have done), federal funds saved by elimination of the ACA's subsidies (and various other programs) will be transferred to states in a new block grant program. To qualify, states must apply (only once) and agree to adopt measures to help high-risk individuals, stabilize premiums and choice in the individual market, and/or reduce out-of-pocket costs in the individual market. The grant award formula is very complex, but does account for unique population characteristics within states.

The grant program also attempts to address continuous coverage incentives by tying states' grant funding, beginning in 2024, to the number of individuals enrolled in creditable coverage (defined as satisfying the minimum AV allowed for CHIP in the state). There also are abortion and citizenship restrictions tied to the federal grant monies.

Notably, states participating in the grant program may apply for waivers that will allow them to:

- Permit variation in rates, except based on sex and Constitutionally protected classes;
- Allow carriers to charge different premiums for the same plan based on health status;
- Eliminate essential health benefit requirements; and
- Not require insurer rebates based on premium dollars received versus premium dollars expended on care.

These waivers are applicable only to coverage for individuals receiving a direct benefit from the grant program (i.e., through lower premiums or decreased out-of-pocket expenses) provided by insurers that agree to take certain actions to help stabilize and improve the individual and high-risk markets.

The bill also includes the following Medicaid reform provisions: shifting to a per capita capped allotment to the states; an optional block grant model for states; optional work requirements for non-disabled, non-elderly, non-pregnant individuals; and opportunities for Medicaid and CHIP "quality improvement" bonus payments.

Topics that appeared in a section-by-section released on Monday but were left out of the bill text released today include:

- Small Business Health Plans;
- Increasing the age rating band to 5-to-1; and
- Reform of state section 1332 waivers.