

OVERVIEW: THE BIPARTISAN HEALTH CARE STABILIZATION ACT OF 2017

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NOVEMBER 1, 2017

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What the bill contains (the bill itself amends the Patient Protection and Affordable Care Act of 2010 (ACA)):

- Grants more flexibility to 1332 waivers, allowing for state innovation in implementing the ACA, which is a nod to conservative demands for increased federalism. While the “guardrails” of protections for those with preexisting conditions and requirements for plan inclusion of essential health benefits would remain intact (major sticking points for Democrats), other guardrails would be loosened, allowing for more flexible plan designs and cost-sharing structures.¹ Reinsurance or the creation of “invisible high-risk pools” would be allowed under this process, in a move to stabilize premiums and encourage insurer participation. Significantly, 1332 waivers could be granted for states whose proposals are “of comparable affordability” to the ACA, as opposed to the current requirement of any state proposal being “at least as affordable as” the ACA.² There is no definition for what would be considered “of comparable affordability.”
- Funding for cost-sharing reductions (CSRs) would be appropriated through 2019. This is the most discussed component of this proposed legislation. It would effectively undo President Trump’s October 12, 2017 announcement that he would de-fund CSRs, which he has deemed “bailouts” to insurance companies, though insurers were following the law by passing out-of-pocket savings onto their consumers under the assumption that they would be reimbursed by the federal government, as indicated in section 1402 of the ACA. If passed, this would likely stabilize individual markets and bring down premiums, but this would need to happen very quickly. Open enrollment began November 1, 2017, and it will be difficult, if not impossible, for insurers to adjust their premium rates (which in California reflect the lack of CSR funding by way of a 12 percent increase on silver tier plan premiums) now that enrollment has begun. The bill contains a provision to ensure that insurers cannot “double dip,” meaning they cannot charge consumers higher premiums because of the expectation that CSRs would not be funded and then collect CSR dollars from the federal government should this bill be passed. States would be tasked with monitoring insurers to verify that CSR savings are passed on to consumers, as required by law.³ This is a source of concern for many conservatives, though there is no evidence this would actually happen, and has not happened up to this point.
- Creates a “copper” level option, aka: catastrophic or high-deductible insurance, that would be open to everyone, as opposed to the ACA’s mandate that only people under 30 or with certain hardships could purchase such a plan. The deductible limit would remain the same for these plans under the ACA. Notably, these plans would be part of the same risk pool as all other metal tiers. This is significant because the hope is that copper plans would pull more young, healthy people into the insurance market, who would then help balance the risk pool against older, less healthy participants.⁴

- Reinstates funding for consumer outreach and enrollment assistance that President Trump slashed (he cut outreach funding by 90 percent and enrollment assistance funding by upwards of 40 percent) for 2018 and 2019 to the tune of approximately \$106 million.⁵
- Mandates regulatory enforcement of the ACA's section 1333, "Health Care Choice Compacts."⁶ This would allow plans to be sold across state lines, which Republicans see as a way to increase competition and lower costs. However, this proposal seems contrary to Republicans' desire to give states more regulatory autonomy; it could enable just a few states to control the markets should insurance companies decide to headquarter in states with favorable regulations.⁷ While the concept of increased competition among providers and access to health insurance through the sale of insurance policies across state lines makes sense from a free market perspective, the actual practice has proven difficult for insurance companies, frustrating to state regulators, and confusing to and unpopular with consumers.⁸

Congressional Budget Office Report: On October 25, 2017, the Congressional Budget Office (CBO) released its analysis of the Alexander-Murray legislation, which predicted that if passed, the bill would cause minimal coverage disruptions and would decrease the deficit, saving the federal government \$3.8 billion from 2018–2027. By contrast, the discontinuation of CSR payments announced by President Trump is predicted to increase the deficit by \$194 billion in the same timeframe.⁹

Who supports it: 24 co-sponsors (12 Republicans, 12 Democrats)¹⁰; potentially Rep. Mark Meadows of the extremely conservative Freedom Caucus in the House. If the 12 Senate Republicans who co-sponsored the legislation continue to support it, assuming all Senate Democrats would vote in favor of it, the bill would pass with the required 60 votes.¹¹ Major hurdles remain in the House of Representatives and the White House, however.

Several noteworthy organizations have also come out in support of the bill, most significantly America's Health Insurance Plans (AHIP) and the American Medical Association (AMA).¹²

Who opposes it: Conservative factions of the Senate and the House, including Speaker of the House Paul Ryan.¹³ Days after the Alexander-Murray bill was revealed, conservative Senate Republicans discussed plans for a different proposal that would maintain CSR subsidy payments but, among other things, would eliminate the individual and employer mandates, ensuring Democratic opposition.¹⁴

What signals the White House has given: Trump has said he will not allow "bailouts," as he refers to CSRs, to continue, but also has indicated that he is open to the legislation as a "short term" fix.¹⁵ On October 23, 2017, the White House released a half-page memo called "Short-Term Obamacare Relief Principles," that lays out what the White House expects any legislation to possess, including the repeal of the individual and employer mandates, increased usage of health savings accounts, expanded access to short-term insurance and association health plans, as well as increased 1332 waiver flexibility. It is unclear whether these provisions are mandatory conditions that the President would require to sign any legislation, but several of them, in particular the repeal of the mandates, would be nonstarters for the Democrats.¹⁶ Senate Majority Leader Mitch McConnell has said he would like to wait to vote on the Alexander-Murray bill until he has a clear indication from the White House about whether the President would sign it.¹⁷

What all of this means in light of what is happening in the federal courts: On October 13, 2017, California, the District of Columbia, and 17 other states filed a motion with the United States District Court for the Northern District of California for relief from the President's discontinuation of CSR funding, which they claim is in violation of the Administrative Procedure Act and the Constitution, and requesting the court to compel the federal government to make CSR payments. Additionally, on October 18, 2017, the same states filed another motion in the same court requesting a temporary restraining order (TRO) against President Trump and members of his Cabinet to enjoin them to make timely CSR payments; on October 25, 2017, the judge denied the states' motion for a TRO, however the larger

case for relief remains undecided.¹⁸ Lastly, the District of Columbia Circuit Court of Appeals has yet to hear arguments for, let alone issue a ruling in, House v. Hargan (formerly House v. Price and House v. Burwell), which could decide the fate of CSRs once and for all. On October 30, 2017, the Trump administration and the House requested another stay in the case, while the states that were granted leave to file a motion to intervene in July, requested that the court hear the case (the states even cited the ongoing case in California) after a year of being put on hold.¹⁹ Depending on how the courts rule in any/all of these cases, the CSR issue could become moot if the court rules that Congress must appropriate funds for them (overturning or nullifying the federal district court's decision in House v. Hargan). The other aspects of this legislation, however, would not be impacted, although the sense of urgency surrounding its passage may dissipate if CSR funding is restored via judicial action.

¹ Senators Lamar Alexander and Patty Murray, "Bipartisan Health Care Stabilization Act of 2017," P. 11.

² *Ibid.*, Pp. 4-5.

³ *Ibid.*, P. 15.

⁴ *Ibid.*, Pp. 18-19.

⁵ *Ibid.*, Pp. 20-25.

⁶ *Ibid.*, Pp. 25-26.

⁷ Andy Miller, "Interstate Health Care, Part of GOP's Replacement Plan, Has Failed to Attract Insurers' Interests," *Tribune News Service*, December 9, 2016, <http://www.governing.com/topics/health-human-services/khn-insterstate-health-insurance.html>.

⁸ Sabrina Corlette, Christine Monahan, Katie Keith, and Kevin Lucia, "Selling Health Insurance Across State Lines: An Assessment of State Laws and Implications for Improving Choice and Affordability of Coverage," *Georgetown University Health Policy Institute: The Center on Health Insurance Reforms*, October 2012, http://www.rwjf.org/content/dam/farm/reports/issue_briefs/2012/rwjf401409.

⁹ Timothy Jost, "ACA Round-Up: CBO Sees Small Savings, No Significant Coverage Effects from Alexander-Murray," *Health Affairs*, October 25, 2017, <http://www.healthaffairs.org/doi/10.1377/hblog20171025.352950/full>; Congressional Budget Office, "Bipartisan Health Care Stabilization Act of 2017: Cost Estimate," October 25, 2017, <https://cbo.gov/publication/53232>.

¹⁰ Jessie Hellmann, "24 Senators Co-Sponsor Bipartisan Obamacare Deal," *The Hill*, October 19, 2017, <http://thehill.com/policy/healthcare/356244-bipartisan-obamacare-deal-has-24-co-sponsors>.

¹¹ Rebecca Morin, "Schumer: Bipartisan Health Care Bill 'Has a Majority,'" *Politico*, October 22, 2017, <https://www.politico.com/story/2017/10/22/schumer-bipartisan-health-care-bill-has-a-majority-244040>.

¹² *America's Health Insurance Plans, the American Academy of Family Physicians, the American Benefits Council, the American Hospital Association, the American Medical Association, the Blue Cross Blue Shield Association, the Federation of American Hospitals, and U.S. Chamber of Commerce, "Joint Statement Regarding the Legislation Proposed by Sens. Lamar Alexander (R-TN) and Patty Murray (D-WA), October 20, 2017.*

¹³ Laura Litvan and Erik Wasson, "Deal to Prop Up Obamacare Stalls as Trump Signals Opposition," *Bloomberg BNA*, October 19, 2017.

¹⁴ Alex Ruoff, "Conservatives Look to Push Senate Obamacare Bill to the Right," *Bloomberg BNA*, October 25, 2017.

¹⁵ Nathaniel Weixel, "Trump: 'I'm open' to Obamacare Deal," *The Hill*, October 19, 2017, <http://thehill.com/policy/healthcare/356255-trump-im-open-to-obamacare-deal>.

¹⁶ Litvan, "Deal to Prop Up Obamacare Stalls as Trump Signals Opposition."

¹⁷ Morin, "Schumer: Bipartisan Health Care Bill 'Has a Majority.'"

¹⁸ Timothy Jost, "Judge Denies Request for Preliminary Order against CSR Payment Halt," *Health Affairs*, October 25, 2017, <http://www.healthaffairs.org/doi/10.1377/hblog20171025.83341/full>.

¹⁹ Timothy Jost, "Status Report in DC Cost-Sharing Reduction Case Highlight Stakes Going Forward," *Health Affairs*, October 31, 2017, <http://www.healthaffairs.org/doi/10.1377/hblog20171030.550661/full>.