



Fall Health Care Preview

After the health care rollercoaster we have been on this year, the last month was a welcome breather for the health care world. However, as we look ahead for the balance of the calendar year, we go into the fall with a number of issues that *should* move through Congress along with a set of policies that *could*.

The questions on top of everyone's mind remain: 1) how will the health care minibus provisions move, 2) will a market stabilization package come together, 3) will cost-sharing reductions (CSR) payments continue to be made or formally authorized, and 4) will ACA "repeal and replace," be resurrected yet again? In the below we analyze these questions, the implications of other non-health care related priorities, and forecast what to expect for the rest of 2017.

Competing Priorities

Upon returning from recess, the House has scheduled 12 legislative days next month, five fewer than the Senate. Complicating next month's schedule is the need to extend the government's borrowing authority by raising the debt ceiling by September 29th to avoid defaulting on its obligations. Additionally, September 30th is the last day of the fiscal year and Congress needs to pass a spending bill for fiscal year 2018. With debt limit and budget negotiations underway it could be difficult for other policy proposals to get necessary attention.

On August 21st House Republicans outlined their priorities for September, which included the FY 2018 budget, a bill to reauthorize the Federal Aviation Administration, a debt limit increase, CHIP reauthorization, and a flood insurance reauthorization. That is a long list and in that list there is only one health care related priority – CHIP reauthorization.

Minibus

Theoretically, Congress needs to pass a set of health policy extenders called [the minibus](#) by September 30th. The "minibus" refers to a handful of policy provisions tied together in one piece of legislation. The health care minibus includes programs that were left over from MACRA that continue to need reauthorization and funding. Will the provisions stick together or will some be considered separately

(e.g., CHIP)? This will have to be addressed, but will likely drag into the fall given the sensitive timing of competing priorities, making short term extensions likely (see 2007).

Here are some of the policy riders that could be on the minibus:

- [Children’s Health Insurance Program \(CHIP\)](#)
- [The Maternal, Infant, and Early Childhood Home Visiting \(MIECHV\) Program](#)
- [Community Health Center Fund](#)
- [Outpatient Therapy Cap Exception Process](#)
- Disproportionate Share Hospital (DSH) payment reductions

Legislation to reauthorize these programs will need 60 votes to pass – meaning Republicans and Democrats will need to work together. CHIP is likely the frontrunner in the health care minibus, of which other extenders could be attached. It’s unclear, however, if Republicans and Democrats are ready to set aside the differences that have dominated the first half of 2017 to address any of these extenders.

What is clear, though, is that the ACA repeal and replace “process” that unfolded in the first half of 2017 normalized the conversations around Medicaid structural and financing reforms (e.g., per capita caps and block grants). After losing in ACA repeal, Republicans might feel that they need to get something out of extending one of these programs. Meaning, we could see some of the same policies that appeared in the Better Care Reconciliation Act (BCRA) or the American Health Care Act (AHCA) in minibus discussions. This likelihood increases as we get into discussions on paying for the minibus. However, unlike the reconciliation process that ACA repeal was under, the minibus will require Democratic votes. This will make it challenging for any steep Medicaid changes to be included within the minibus package.

Marketplace Stabilization and Cost-Sharing Reductions

We will also be watching to see if the marketplace stabilization package gathers steam. Senator Alexander and Senator Murray will hold four HELP Committee hearings in early September (two the week of September 5th and two the week of September 11th).

The focus of the first two hearings will be on “Stabilizing Premiums and Helping Individuals in the Individual Insurance Market for 2018”. The first hearing will

take place on September 6th and feature testimony from State Insurance Commissioners and the second hearing will be September 7th and feature testimony from various Governors.

Insurance commissioners expected to testify include Mike Kreidler from Washington, Julie Mix McPeak from Tennessee, Teresa Miller from Pennsylvania, Lori Wing-Heier from Alaska, and John Doak from Oklahoma. Governors expected to testify include John Hickenlooper (D-CO), John Kasich (R-OH), Charlie Baker (R-MA), Steve Bullock (D-MT), Bill Haslem (R-TN), and Gary Herbert (R-UT). (Details on the topics and witnesses for the third and fourth hearings are forthcoming.)

Republicans and Democrats generally agree on bringing down premiums and creating stability in the marketplace for issuers to participate. However, Republicans and Democrats have different policy positions in how you get there. Additionally, the HELP Committee has a set of opinionated members (Enzi, Paul, Cassidy, Sanders, Warren, Murphy) on both sides of the aisle that will make it difficult for consensus building around any proposals. A key question will be whether these members can put aside their differences to address short-term vulnerabilities in the individual insurance market. Compounding this hurdle, the HELP Committee does not have control over the ability to pay for provisions the way the Senate Finance Committee does, which is also scheduled to have a hearing in September.

Recently, Governors John Kasich (R-OH) and John Hickenlooper (D-CO) announced that they are working on a bipartisan proposal to stabilize the marketplace. They intend on presenting their plan to the HELP Committee during one of the upcoming hearings. Previously, Kasich has called for funding of CSR payments, while Hickenlooper has discussed reinsurance as policies to improve the Marketplace. It is likely these issues will be addressed in their package and could also potentially include changes to the employer mandate. In an op-ed published in the [Washington Post](#) in June listed four principles: (1) improve affordability, (2) restore stability to insurance markets, (3) provide state flexibility and encourage innovation, and (4) improve the regulatory environment. We will be watching on the details of this proposal, how it unfolds, and gathers momentum.

On cost-sharing reduction (CSR) payments, we expect that they will continue to be used as a political football until Congress takes decisive action on their future. The Administration continues to threaten not to make the payments. However, payments continue to be made and plans received the payments for August. Will

Congress take this issue off the table by formally authorizing their payment? We will be watching and listening how they are addressed in any stabilization package.

Plans must sign contracts with the federal government to participate on the Marketplace for 2018 by September 27th. While every county will likely have a participating insurer, nearly half of all counties will have just one participating insurer. If bipartisan action is taken to stabilize the Marketplace and fund CSR payments issuers could get the boost of confidence they need. States [continue](#) to work with their state's carriers to submit additional rate filings in order to brace for the potential effect of eliminating CSR payments. At the same time, however, rates have already been set in some states and decisions to participate have been made. As a result, swift congressional action in September on Marketplace stabilization may not have a dramatic effect on decreasing premiums – unless plans are able to modify their rates.

CHRONIC Care Act

Amidst all the ACA repeal and replace action, the Senate Finance Committee unanimously approved the CHRONIC Care Act in May. The CHRONIC Care Act would extend the Independence at Home demonstration, modify and permanently authorize special needs plans (SNPs), expand the use of telehealth services, and allow for a demonstration program to test the effectiveness of permitting MA plans to vary cost-sharing and benefits for Medicare beneficiaries with certain conditions in order to encourage the use of certain services and providers. At this point, the bill is moving along regular process and passed through Committee during a very contentious time in health care. However, it is not clear if the timing politically will work in its favor.

Bottom Line

Congress has a lot on its plate for the fall. With the competing priorities, it is possible Congress passes a clean short-term extension of certain minibuss provisions which would buy policymakers a couple months so they can pass a spending bill for fiscal year 2018 and address the debt limit.

There are signs of a bipartisan support of marketplace stabilization but the policies in how you get there will likely move the effort beyond September and could even tank the effort. If leadership signals that it is willing to see bill text, we could be looking at an end of year package that includes a number of minibuss provisions. However, even if something was passed, the President has to sign it, which is not a guarantee.

Finally, let's not forget that Republicans may take another run at a partisan repeal of the Affordable Care Act. We will continue to listen for any hints of productive conversations. However, we remain skeptical of any additional action. It is not clear that Republicans have been put under significant pressure from constituents to rectify their failure while they have been home this August.

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