THE COUNCIL

Steptoe
STEPTOE & JOHNSON LLP

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Republican Senators Lindsey Graham (SC) and Bill Cassidy (LA) have released a revised version of their legislation to repeal and replace the Affordable Care Act (ACA) in hopes of winning over a few hold-out senators before the reconciliation clock runs out on Saturday. Changes to the bill are highlighted (bold, italicized) below, but with respect to The Council's priority issues, the new text—like the previous version—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 revised bill removes a provision on HSAs from the earlier version of Graham-Cassidy, which stipulated 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 beginning in 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); and
- Repealing the cost-sharing subsidy program after 2019.

The revised bill removed a provision from the previous version that would have allowed anyone to buy a lower-cost catastrophic plan beginning in 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 will be transferred to states under a new block grant program. The grant award formula is very complex, but does account for unique population characteristics within states. ***The new bill removes a provision that would have addressed continuous coverage and tied 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. ***The grant formula was revised under the new version—a change that is expected to benefit particular states like Alaska, Arizona, Kentucky, and Maine.***

To qualify for block grant money, a state must submit an application (once for years through 2026) that contains:

- A description of how the funds will be used to: help high-risk individuals; maintain programs or insurer arrangements that will help stabilize premiums and options in the individual market; provide payments for health care providers (parameters to be established by CMS); reduce OOP costs in the individual market; help individuals get coverage in the individual market when they do NOT have access to employer coverage; OR assist with certain managed care arrangements;
- A certification that funds will be used only for the activities listed above;
- A certification that funds will not be used to fund intergovernmental payments of non-Federal shares under any provision of law; and
- ***A certification that the State will ensure compliance with the following ACA provisions:***
  - ***Extension of dependent coverage until age 26;***
  - ***Standards relating to benefits for mothers and newborns;***
  - ***Parity in mental health and substance use disorder benefits;***
  - ***Required coverage for reconstructive surgery following mastectomies; and***
  - ***Prohibition of health discrimination on the basis of genetic information (individual market rule).***

The revised bill expands the potential scope of state waivers from ACA requirements. The text no longer requires states applying for the block grant program to describe the waivers they are seeking. Instead, the text provides that, for any calendar year from 2020 through 2026 for which a state receives funding through the block grant program, a state can write its own rules (i.e., override the ACA's/existing federal regulations) with respect to:

- ***Essential health benefits requirements;***
- ***Cost sharing requirements and annual limits rules;***

- ***Levels of coverage/actuarial value standards;***
- ***Establishment of rating areas for premium rate variation in the individual and small group markets;***
- ***Age rating band in the individual and small group markets;***
- ***Offering of child-only plans;***
- ***Coverage of preventive health services; and***
- ***Establishment of a single risk pool for the individual market (allowing for multiple risk pools within the market).***

The bill prohibits insurers from varying premium rates based on sex or genetic information, but otherwise allows states to set their own premium discrimination parameters.

For states that wish to write their own rules in these areas, their application for the state block grant program must describe the following:

- ***The criteria by which and the degree to which issuers may vary premium rates for coverage;***
- ***Whether and to what extent an issuer may require an individual to pay a higher premium/contribution than a premium/contribution for a similarly situated individual enrolled in the same coverage;***
- ***The benefits or levels of benefits insurers must include in their coverage; and***
- ***The number of risk pools into which an insurer may group individuals enrolled in coverage.***

Like the previous version of the bill, the ACA waivers/state-specific rules are limited in scope. Specifically, any states' rules described above will only apply with respect to –

- Coverage in the individual market;
- That is provided by an insurer receiving funding under a state program that is funded by a state block grant; and
- Covers an individual who is receiving a direct benefit (e.g., reduced premiums or reduced OOP costs) under a state program that is funded by a block grant.

The revised text allows for continued pass-through funding for states with Section 1332 waivers for years 2020 through 2022.

Separate from the state block grant program, the legislation appropriates $10 billion in 2019 and $15 billion in 2020 (administered by CMS) to fund arrangements with health insurers that agree to help—and use the funding for—high-risk individuals and stabilization efforts with respect to individual market premiums and choices.

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.