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Senate to Vote on ACA Repeal and Replace Bill

In another effort to repeal and replace the Affordable Care Act (ACA), the Senate is expected to vote later next week on the Graham-Cassidy-Heller-Johnson (GCHJ) bill, which would replace many of the ACA's provisions with block grants given annually to States to help individuals pay for healthcare. Democratic Senators continue to be united in their opposition to repealing the ACA and the timeframe for passing the bill without any bipartisan support is extremely limited. Republicans will use the reconciliation process (which expires September 30th) to attempt to move the bill through the Senate on a simple majority. A Congressional Budget Office score of the bill is expected soon.

- The bill would eliminate the employer and individual mandate penalties, but like prior repeal and replace measures, the ACA's employer reporting requirements would remain since they are not expressly repealed in the bill. The bill also does not include an alternative incentive for people to obtain coverage, which raises concerns for further destabilization of the individual health insurance market.
- Under the bill, States would be offered the ability to waive federal law requiring limitations on rating in individual and small group market, health status underwriting, coverage of specific benefits, and medical loss ratio requirements. In turn, the federal government would provide funding through a block grant program that allows States to devise their own health insurance rules and standards. The waiver of laws is not specific to ACA Section 1332, so it is not clear that a State could seek a waiver that would effectively permit it to impose an employer shared responsibility tax on employers in the State.
- The bill repeals the ACA tax on medical devices, but does not repeal or further delay the 40 percent "Cadillac Tax" and it does not repeal or further delay the health insurer tax. The bill also repeals the ACA provision that eliminates the deduction for expenses allocable to a Medicare Part D subsidy – effective for taxable years beginning after December 31, 2016.
- The bill includes greater flexibility for both Flexible Savings Accounts (FSAs) and Health Savings Accounts (HSAs), and repeals the tax on over-the-counter medications.
- The bill specifically repeals cost-sharing reductions established by the ACA as of December 31, 2019.
- The bill provides for per capita Medicaid funding, 6-month eligibility redetermination and state-based work requirements. The federal money currently provided to States for Medicaid would be replaced by block grants. A significant reduction in Medicaid coverage is likely to increase the overall number of uninsured individuals, which could ultimately result in cost-shifting to employer payers.

It remains unclear whether Republicans can get the needed votes on the bill. If the Senate does manage to pass the bill, it will still also need approval from the House and the President's signature before it can become law.

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