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MEMORANDUM

To: **ACRM**

From: **Peter Thomas, Peggy Tighe, Leif Brierley, Steve Postal, Jill O'Brien, and Anna Caruso**

Date: **October 2, 2017**

Re: **Senate Health Care Reform Effort Update & Possible Next Steps**

Summary

On Tuesday, September 26, Senate Republicans decided not to vote on the Graham-Cassidy health care reform legislation to repeal and replace the Affordable Care Act (ACA). Senators Lindsey Graham (R-SC), Bill Cassidy (R-LA), Dean Heller (R-NV), and Ron Johnson (R-WI) released the bill in mid-September, and hoped to advance their legislation prior to the September 30 deadline for the Senate to pass health care reform legislation using the Fiscal Year 2017 budget reconciliation procedure, which would allow Republicans to pass the bill with a simple majority of 51 votes. Unable to secure enough votes to guarantee the bill's passage, Senate Republicans ultimately opted not to bring the bill to the Senate floor for a vote, ending their efforts to pass health care reform legislation for the time being. However, several additional legislative options remain, and despite the demise of the current effort, Republicans may still try to act later this year to deliver on a long-standing campaign promise to repeal and replace the ACA.

Separately, and unrelated to current health care reform efforts, President Trump's administration experienced a significant change in leadership at the Department of Health and Human Services (HHS). On Friday, September 29, Tom Price resigned from his position as Secretary of HHS following revelations of his use of private charter aircraft for travel. President Trump named Deputy Assistant Health Secretary Don Wright as Acting Secretary in Dr. Price's place until a new Secretary can be appointed.

This memorandum provides a summary of the legislative and political activity that occurred in the lead up to the decision to not vote on the Graham-Cassidy bill. Additionally, the memorandum provides an overview of what possible paths forward Congress may pursue.

Summary of Final Version of Graham-Cassidy Legislation

On Monday, September 25, Senator Cassidy released an updated revision of the bill. The original Graham-Cassidy bill was revised several times to reflect both technical and substantive changes to the legislation. Those changes, which are listed along with the original provisions in an *Appendix* found at the end of this memorandum, included significant changes to insurance rules and patient protections, among others. Broadly, the original legislation would replace current ACA funding with block grants to states that they, in turn, could use to provide health coverage in myriad ways to their residents.

The original bill changed Medicaid to a per-capita-cap program, phased out Medicaid expansion, repealed individual and employer mandates to purchase coverage, established work requirements for some Medicaid beneficiaries, and allowed states flexibility to waive essential health benefits (EHBs) and pre-existing condition protections. The revised bill added provisions which effectively revise Alaska's Medicaid program, provide additional funds for states to cover low-income individuals, further loosen the ACA's regulations on insurance, and allow states to change the ACA's consumer financial protections, including adjusting caps on out-of-pocket expenses.

Senate Finance Committee Hearing
On Monday, September 25, the Senate Finance Committee held a hearing on the Graham-Cassidy legislation. Prior to the hearing, some Senators, including Senator John McCain (R-AZ), had called for the Senate to follow regular order and hold hearings on the health care reform legislation. Senate Finance Committee Chairman Orrin Hatch (R-UT) called the hearing a chance to "respectfully discuss ideas and become better informed on particular issues," saying that members of the Republican conference had asked for the hearing to better understand the bill.

At the hearing, Democrats largely panned the Graham-Cassidy legislation. Ranking Member Ron Wyden (D-OR) called the legislation a "nightmare for millions of Americans." Senator Mazie Hirono (D-HI), testifying as a witness against the bill, highlighted her recent battle with Stage IV kidney cancer, and the impact that the bill would have on cancer patients like her. She and other Democrats called for the Senate to return to the bipartisan legislation that the Senate Health, Education, Labor, and Pensions (HELP) Committee had been considering.

Republicans focused their comments on the importance of lowering premiums for consumers, and how increased state flexibility from the legislation would help address those concerns. Senators Graham and Cassidy testified in support of the bill as well. Demonstrators against the bill disrupted the first several minutes of the hearing, and a number of individuals, including wheelchair users, were removed from the hearing chamber and arrested by Capitol Police officers. Approximately 180 individuals were arrested during these protests, many in wheelchairs and other mobility devices.

Congressional Budget Office Score of Graham-Cassidy Legislation
The Congressional Budget Office (CBO) released a partial score of the Graham-Cassidy health care bill on Monday, September 25. The report estimated that the bill would reduce the deficit by $133 billion over the 2017-2026 period. Citing time constraints, the agency did not provide estimates of the bill's effects on rates of health insurance coverage or premiums. However, the report included a qualitative assessment of the bill's impact on the number of Americans enrolled in "comprehensive health insurance," projecting, over the next ten years, that millions fewer Americans would be enrolled in health coverage compared to projections under current law. The report attributed rising numbers of uninsured Americans under the Graham-Cassidy bill to three provisions: (1) fewer people would be enrolled in Medicaid because federal funding for the program would be substantially reduced; (2) enrollment in non-group coverage would be lower

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because of the elimination of federal subsidies; and (3) rates of enrollment in all types of insurance would fall because of the elimination of the individual and employer mandates.

Reaction to Graham-Cassidy Legislation

Overall, the Graham-Cassidy legislation was opposed by much of the health care industry and patient groups, and ultimately lacked the support of several key Republican Senators. Senator Susan Collins (R-ME) opposed the bill due to the "compressed time frame" in which it was being deliberated, as well as its cuts to Medicaid and its implications for people with pre-existing conditions. She also argued that the bill would reduce the total number of people covered by insurance, and that Maine would ultimately lose money if the Senate passed the bill. Senator John McCain (R-AZ) also publically opposed the bill citing issues with the legislative process being used, in addition to the bill's lack of bipartisan support, and because of a lack of a full CBO score.

Senator Rand Paul (R-KY), a fiscally conservative Republican, opposed the Graham-Cassidy bill, calling it "ObamaCare Lite." Senator Paul also suggested that President Trump would use executive action to "legalize…the ability of individuals to join a group or a health association across state lines and buy insurance," an action which Senator Paul supports.

Senator Ted Cruz (R-TX) stated that, "Right now they don't have my vote. And I don't think they have [Senator] Mike Lee's [R-UT] vote, either." Senator Lisa Murkowski (R-AK) criticized the bill's "hard deadline and…lousy process," while praising Senators Graham and Cassidy for now having "a much deeper understanding of Alaska's unique challenges, needs and opportunities," according to her press release.

Most major health care and disability organizations publically opposed the bill, including America's Health Insurance Plans (AHIP), American Hospital Association (AHA), American Medical Association (AMA), Blue Cross Blue Shield Association, the Consortium for Citizens with Disabilities, and the National Association of Medicaid Directors. During the Senate Finance Committee hearing on the legislation, Ranking Member Wyden pointed to the more than 25,000 letters that the Committee had received in opposition to the legislation from members of the public.

Possible Next Steps for Health Care Reform

Lacking the votes to pursue full repeal and replace of the ACA at the moment, Senate Republicans have several options on how to proceed. The chamber will need to pass another budget resolution for either FY 2018 or FY2019 that includes instructions allowing for health reform to occur. The budget reconciliation tactic would allow Senate Republicans to pass ACA repeal and replace legislation with a simple majority of 51 votes, an important factor given their slim 52-48 margin in the Senate. However, Republicans have some competing priorities that they also want to accomplish, including tax reform, that make the use of a budget resolution for health care reform complicated. Should they opt not to include health care reform instructions in the next budget resolution, Republicans could instead look to make more targeted reforms, ranging from repealing provisions of the ACA to working with Democrats to make bipartisan fixes to the existing law. Below, we provide more detail on these various pathways forward.

Budget Reconciliation

Republicans may still be able to repeal and replace the ACA using budget reconciliation, but their options are limited. According to Senate rules, the Senate can only pass one reconciliation bill related to revenue, one related to spending, and one related to the federal debt limit per budget resolution. All of these issues can be addressed separately or in one single bill, but not more than once per budget resolution. Health care reform legislation on the magnitude of ACA repeal and replace directly addresses provisions related to both revenue (taxes) and spending (e.g. premium subsidies). Similarly, federal tax reform, a current Republican priority, addresses revenue as well. While it may be possible to fold both health care reform and tax reform into one reconciliation bill, because of the overlap of "revenue" provisions under Senate rules, such a combined bill is difficult to craft. Combining both healthcare reform efforts and tax reform efforts into the same legislation would make it nearly impossible to reach a compromise.

Essentially, Republicans would have to craft a budget reconciliation bill that instructs health care committees of jurisdiction to make changes that impact tax revenues, and thereby have the health care reform provisions serve as the basis for tax reform. Several analysts – and even Members of the Senate – find this approach highly unlikely, and have suggested that Republicans will instead pursue two separate budget reconciliation bills in subsequent years:

- The FY 2018 budget resolution and subsequent budget reconciliation bill would address tax reform only; and
- The FY 2019 budget resolution and subsequent budget reconciliation bill would address health care reform.

Theoretically, those two bills could appear within the next several months. Republicans could address tax reform expeditiously under a FY 2018 budget resolution, passing legislation within the next several months. Then, in the new year, they could release an FY 2019 budget resolution, allowing them to immediately begin work on health care reform under a new budget reconciliation bill in the late winter/early spring of 2018. Such a timeline would align with comments made by President Donald Trump on Wednesday, September 27, to White House reporters, where he remarked that he anticipated renewed action on health care in January or February. However, tax reform may not be easily accomplished, potentially slowing down this possible timeline.

Revise Rules of the Senate

Though unlikely, Republicans could employ the "nuclear option," a term used to describe actions by the Senate to overrule the Senate rules that require a 60 vote threshold for passage of legislation. In such a scenario, Republicans could lower that threshold to 50 votes, allowing them to pass bills with only 50 votes, plus the Vice President's tie-breaking vote. Republicans could also include a provision in the FY 2018 budget resolution that authorizes the Senate to continue its efforts to repeal the ACA, although this might not adhere to Senate rules.

Wait Until After 2018 Midterm Elections

Finally, if Republicans maintain control of the House and Senate in the 2018 elections, they could try yet again to pass the ACA repeal with 50 votes using a budget reconciliation process then as well. Such a strategy would allow them to pursue tax reform in earnest, but may delay their ability to act on campaign promises to repeal the ACA in time for the November 2018 midterm elections.

Executive Action on Health Reform
On Wednesday, September 27, President Trump indicated that he will be looking to negotiate with Democrats to secure a "deal" on health care reform. President Trump also indicated he would sign an Executive Order that would allow individuals to purchase insurance across state lines. No details have yet emerged on this possible Executive Order, but the President did indicate that it would be released in the next several weeks.

Bipartisan Health Care Reform
The Senate HELP Committee may continue bipartisan efforts to address rising premiums and stabilize the individual markets. Earlier this month, Senators Lamar Alexander (R-TN) and Patty Murray (D-WA) led bipartisan health care negotiations in the Senate HELP Committee to address one of the ACA's most pressing problems: the instability of the individual markets. Their efforts were derailed by the push to pass the Graham-Cassidy bill before the end of September, the end of FY 2017.

In a statement on the Senate floor earlier this week, Minority Leader Chuck Schumer told Senate Republicans that Democrats were willing to resume bipartisan efforts to reform the ACA once "repeal and replace" legislation was off the table. On Tuesday, Senator Lamar Alexander (R-TN) said he would work with Sen. Murray (D-WA) and other Democrats and Republicans to come up with a limited bipartisan plan to stabilize health insurance markets over the next two years. Senators Alexander and Murray have resumed discussions as of this week. We will be closely monitoring for legislation emerging from those discussions.

Appendix
Below is a brief summary of the major provisions of the Graham-Cassidy bill, which, broadly stated, would replace current ACA funding with block grants to states that they, in turn, could use to provide health coverage in myriad ways to their residents.

The Original Bill, H.R. 1628, as amended by the Senate

- Establishes block grants to states for the years 2020-2026 to help low-income individuals afford health insurance;
- Restructures the Medicaid program into a per-capita cap model beginning in 2020;
- Repeals Medicaid expansion as of December 31, 2019, with states not being able to expand Medicaid after September 1, 2017;
- Repeals the ACA's individual mandate and employer mandates, retroactive to calendar year 2016;
- Repeals the cost-sharing subsidy program as of December 31, 2019;
- Repeals the ACA tax credits and the small business health insurance tax credit as of January 1, 2020;
- Repeals the medical device tax on sales after December 31, 2017;

- Establishes optional work requirements for non-disabled, non-elderly, non-pregnant Medicaid beneficiaries;
- Permits plans to charge older customers as much as five times (instead of current law which is 3:1) the amounts they charge younger customers, while giving states the option to overrule this;
- Allows young adults to remain on their parents' plans until they turn 26 years of age; and
- Adds provisions supporting health savings accounts (HSAs).

Revisions to Original Bill

- Grandfathers Native Americans into the traditional Medicaid program so that they would not lose coverage once Medicaid expansion would have been repealed on December 31, 2019;
- Gives Alaska 25% more Medicaid federal matching funds as a result of its high poverty rate;
- Provides a fund of $750 million to be disbursed to states that expanded Medicaid after 2015, to be allocated between 2023 and 2026. These funds would be disbursed among eligible states based on the "percentage of low-income individuals in the state compared with the total number of low-income individuals for all qualifying states."
- Provides a fund of $500 million to be disbursed to states (i.e. Alaska and Hawaii only) that set up Section 1332 waiver pass-through funding;
- Allows states to modify some insurance rules, which would allow states to roll back the Affordable Care Act's protections on pre-existing conditions without needing to apply for waivers as long as they stated how they would provide "adequate and affordable coverage" for those with pre-existing conditions;
- Allows states to alter the Affordable Care Act's essential health benefits;
- Allows states to change the Affordable Care Act's financial protections, including limiting individual's out of pocket expenses; and
- Allows states to no longer require free preventative services, as is the case under the Affordable Care Act.