799 9th Street NW
Suite 210
Washington, DC 20001

T (202) 354-2600
vizientinc.com

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Vizient Office of Public Policy and Government Relations
The Graham-Cassidy Bill – Legislative Summary

September 25, 2017

Overview:

Efforts to "repeal and replace" the Affordable Care Act (ACA) have been revived, albeit temporarily. The pressure to pass legislation has increased with the Senate's ability to use budget reconciliation as the method for passage expiring at the end of the month. Under the budget reconciliation rules, a bill can pass the Senate with 51 votes, with the potential tie-breaking vote cast by Vice President Mike Pence.

The latest legislation being considered in the Senate is the so-called Graham-Cassidy bill. Republican Senators Bill Cassidy (LA), Lindsey Graham (SC), Dean Heller (NV), and Ron Johnson (WI) have drafted legislation that largely mirrors earlier efforts, and replaces significant portions of existing funding for the ACA with block grants for states to establish their preferred health system. The pursuit of the Graham-Cassidy proposal has put the bipartisan market stabilization efforts that were being discussed in the Senate on hold, as Leader McConnell has indicated that he will bring this legislation for a vote in the coming days.

The Graham-Cassidy Bill Key Provisions:

Medicaid – The Graham-Cassidy bill fundamentally restructures the current financing of the Medicaid program, and ends the enhanced funding for the Medicaid expansion beginning in 2020.

Like previous repeal and replace proposals, the bill would give states the option to either utilize a per-capita allotment (PCA) or a Medicaid Flexibility Program, also known as a Medicaid block grant, beginning in 2020.

- **Per-Capita Caps**: Beginning in fiscal year (FY) 2020, the federal government would establish a single overall per capita funding allotment for each state. Under the PCA approach, the bill would place a per-person cap on traditional Medicaid funding which would grow at varying rates for different populations; certain categories of enrollees, such as disabled children, are excluded.
- **Block Grants**: Under the Medicaid Flexibility option, beginning in FY 2020, states would have the option to receive a block grant for certain populations. States must apply to participate in the program, and would have flexibility in the design of their Medicaid program – subject to certain federal requirements, but with some relaxation of existing statutory requirements. States can roll over funds from year to year, and the grants would run for a period of five years, after which states could continue the block grant option or convert to a per capita cap allotment.

The Graham-Cassidy bill also establishes a Medicaid and Children's Health Insurance Program (CHIP) "quality performance bonus payments" for FYs 2023 through 2026. The bonus payment allotments for states would be determined according to a formula to be established by the Secretary, and would be based on performance – including improvement – with respect to quality measures for Medicaid and CHIP.

Marketplace and Insurance Market Reforms – The legislation repeals both the tax subsidies to help low-income individuals purchase insurance as well as the cost-sharing reduction subsidies for lower income individuals. It does provide, however, $25 billion to insurers to help stabilize premiums – although this is far less than earlier proposals.

The bill creates a new Market-based Health Care Grant program, which is essentially a block grant program with funds that otherwise would have been spent on the Medicaid expansion, the Basic Health Program, and the tax subsidies. States would have to apply to participate in this program, which could include contracting with insurers to provide coverage, contracting with providers to deliver care, creating risk pools, and reducing consumer cost sharing, among other uses. However, the current legislation only funds this program for seven

years. Additionally, under this new program, states could seek waivers from current insurance market reforms including the essential health benefits and health status ratings; the full array of waiver options is not well defined under the bill.

DSH Payment Reductions – Unlike previous proposals, the Graham-Cassidy bill does not repeal the ACA's disproportionate share payments (DSH) cuts. The Medicaid DSH cuts would begin in 2018 and continue through 2020 at which point some states may be eligible for some limited DSH relief based on the amount of their block grant.

Notable Repealed Provisions – Graham-Cassidy eliminates the individual and employer mandate penalties, repeals the medical device tax and eliminates some of the restrictions on health savings accounts (HSAs). However, it would maintain most of the other ACA taxes.

Hospital Implications:

Without a detailed analysis from the nonpartisan Congressional Budget Office (CBO), it is not possible to provide a precise prediction. However, based on previous "repeal and replace" legislation scored by the CBO, Graham-Cassidy would likely have a negative impact on hospital finances across the country. According to previous CBO estimates, the various bills would have all resulted in a significant increase in the number of uninsured Americans as compared to the ACA. The transition to a Medicaid per-capita cap system would also have the impact of reducing overall funding for state Medicaid programs, particularly in the 31 ACA expansion states.

In particular, with the Graham-Cassidy bill, the CBO will have a limited ability in predicting how 50 different states will implement the block grants. In previous estimates with a block grant option, the CBO acknowledged the uncertainty around their estimates and that the ways in which affected parties, including federal agencies, states, employers, individuals, hospitals, and others may respond are difficult to predict. However, they have been confident in predictions that the bills would decrease Medicaid spending and increase the number uninsured – both of which would negatively impact providers.

Process:

The CBO has stated that they will only be able to provide a "preliminary" analysis of whether the bill meets reconciliation instructions and will not have time to provide estimates of how the bill would affect the federal deficit, the impact on the number of uninsured, or the cost of premiums. Senators will likely have to vote on the legislation without knowing the impact due to the September 30 deadline. Additionally, the Senate Parliamentarian has yet to review the bill – which takes additional time, and may require further changes to the legislative text if key pieces do not comply with the "Byrd Rule", which prohibits provisions unrelated to federal spending. The parliamentarian could also potentially rule that without a CBO score, the bill may not even be considered.

Even if the Senate manages to garner the 51 votes needed for passage – which they were unable to do multiple times in July – there could be more challenges in the House of Representatives. GOP lawmakers from the House would have to approve the Senate's bill. It is not yet clear if the House Republican caucus will be supportive of the legislation as currently structured. The earlier version of the bill narrowly-passed the House, and Graham-Cassidy has some significant changes from the bill that was originally approved. At the same time key leaders, such as the head of the conservative Freedom Caucus, have indicated support for the legislation. However, should the legislation pass both chambers of Congress, the President has indicated that he would sign the bill into law.

Finally, as of the publication of this document, the legislation was continuing to change in an effort to win the support of Republican Senators who have already indicated opposition. Some of these changes include additional funding for some non-expansion states and further relaxation of health insurance regulations. It is unclear if this is sufficient to win over enough members without losing others.