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House Makes Good on Promise to Repeal and Replace Affordable Care Act

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On May 4, 2017, the House of Representatives succeeded in passing legislation to repeal and replace the Affordable Care Act (ACA). The American Health Care Act (AHCA) now moves to the Senate where its passage is far from assured and will likely result in significant changes to the House-passed legislation.

The AHCA, which narrowly passed 217 to 213 with all House Democrats and 20 House Republicans in opposition, closely reflects the version that was pulled from consideration only minutes before a vote on March 24. As a recap, key elements of the AHCA include:

TAXES

- Repeals ACA tax credit in 2020
- Creates new tax credit adjusted by age ranging from $2,000 – $4,000 available to those under $75,000/$150,000 in income
- Repeals Small Business tax credit in 2020
- Delays "Cadillac Tax" until 2026
- Repeals tax on OTC medications
- Repeals tax increase on HSA non-qualified expenses
- Repeals limit on FSA contributions
- Reinstates employer deduction for Part D subsidy
- Reinstates medical expense deduction to 5.8% threshold
- Repeals Medicare wage surtax increase in 2023
- Increases HSA limits, allows spousal catch-up payments and allows HSA payments for over-the-counter medications and certain expenses incurred prior to establishment of HSA
- Repeals tanning tax
- Repeals net investment tax
- Reinstates deduction for insurance executives
- Repeals prescription drug tax
- Repeals health insurance tax
- Repeals medical device tax
- Gives states the option to establish a Basic Health Program using premium tax credit funds that would otherwise flow through the

MEDICAID

- Codifies that expansion is optional
- Repeals enhanced match rate for expansion population after 2019 for states that expanded before March 1, 2017
- Implements per capita cap or block grant model in 2020 based on FY16 spending and indexed by medical CPI
- Allows state option to require work as a condition of eligibility
- Repeals Medicaid DSH cuts for non-expansion states in 2018
- Repeals Medicaid DSH cuts for expansion states in 2020
- No Medicaid for lottery winners
- Requires individuals to provide documentation of citizenship or lawful presence before obtaining Medicaid coverage
- $10 billion to non-expansion states over five years for safety-net funding
- Increases frequency of eligibility redeterminations
- Repeals ACA presumptive eligibility for some
- Reverts mandatory income eligibility level for poverty-related children back to 100%
- Repeals 6%-point bonus in match rate for community-based attendant services and supports
- Family planning no longer a mandatory covered service

exchange or to apply for Section 1332 waivers using those same funds

MARKET REFORMS & STABILIZATION	MISCELLANEOUS
• Provides $138 billion through 2026 for "Patient and State Stability Fund" and for other purposes • Provides $85 billion for Americans age 50 to 64 to access insurance marketplaces • Creates a continuous health insurance coverage incentive beginning in 2019 by allowing plans to increase premiums by 30% for anyone with a 63-day or more lapse in coverage • Repeals insurance actuarial value standards • Loosens age-rating requirements to a 5:1 federal standard and state flexibility to set different ratio • Permits tax credits for "catastrophic" and some off-exchange products	• Repeals cost-sharing subsidies in 2020 • Recaptures excess subsidy payments in 2018 – 2019 • Eliminates individual and employer mandate penalties • Repeals prevention fund • Increases funding for community health centers • Repeals Planned Parenthood funding • Allows states to apply for waivers to certain ACA requirements, including essential health benefits, community ratings and the age band, among others.

Since pulling the bill in March, House members negotiated significant changes to garner support from both House conservatives and moderates.

Palmer-Schweikert Amendment

Reps. Gary Palmer (R-AL) and David Schweikert (R-AZ) introduced an amendment to restart the AHCA negotiations. Their amendment created a federal invisible risk sharing program to supplement the AHCA's Patient Stability Fund to help insurers cover enrollees with high-cost conditions. The amendment added $15 billion over nine years.

MacArthur Amendment

In an effort to appease House conservatives, Rep. Tom MacArthur (R-NJ) offered an amendment to grant additional flexibility under the ACA. Namely, the amendment permits states to seek a number of waivers.

- Beginning in 2020, states would be able to apply for a waiver from the ACA's essential health benefits, allowing states to determine their own essential health benefit requirements;
- Beginning in 2018, states would be able to apply for a waiver from the AHCA's 1:5 age rating requirements (the existing ACA ratio is 1:3), allowing states to set a higher ratio; and
- Beginning in 2019, states would be able to apply for a waiver from the 30 percent premium penalty for individuals that do not maintain continuous coverage and allow insurers to set rates based on health status in states that have established a high-risk pool or reinsurance program or are participating in the federal invisible risk sharing program (see above).

As part of the waiver application process, a state would need to demonstrate one or more of the following:

- Reduced average premiums for health insurance coverage in the state,
- Increased enrollment in health insurance coverage in the state,

- Market stability for health insurance coverage in the state,
- Stabilized premiums for individuals with pre-existing conditions, or
- Increased choice of health plans in the state.

All applications would be automatically approved within 60 days unless the Secretary of the Department of Health and Human Services (HHS) denied the waiver within that timeframe.

Upton-Long Amendment

To address the concerns of House moderates, Reps. Fred Upton (R-MI) and Billy Long (R-MO) introduced an amendment to help reduce premiums and out-of-pocket costs for individuals with pre-existing conditions. The Upton-Long amendment provides an additional $8 billion over five years to the Patient and State Stability Fund to states that would allow insurers to increase premiums based on health status under the MacArthur amendment. With this amendment, the AHCA allocates $138 billion to help states cover individuals with high-cost conditions and other specified purposes. Analysts have suggested that this funding may still not be enough to protect individuals with pre-existing conditions from high out-of-pocket costs.

What's Next?

Looking forward, the AHCA now moves to the Senate, where Senate Republicans must decide how to advance a bill that most analysts agree cannot pass the Senate in its current form. Majority Leader Mitch McConnell (R-KY) has already said he will wait until the Congressional Budget Office releases its updated analysis of the bill's impact (expected in the next two weeks) before deciding on next steps. A number of moderate and more conservative Senate Republicans have expressed concerns with provisions of the legislation, including age-adjusted tax credits, funding cuts to the Medicaid program, the defunding of Planned Parenthood and the waiving of protections for individuals with pre-existing conditions. Furthermore, key Senate Republican leaders have indicated that the process will not be rushed. Senator Orrin Hatch (R-UT), Chair of the Senate Finance Committee, said Senators should "manage expectations" and "remain focused on the art of the doable." Meanwhile, Senator Alexander, Chair of the Senate Health, Education, Labor and Pensions Committee said "we will take the time to get it right."

Consequently, there are a number of possible substantive changes that may emerge as the Senate debates the legislation. These may include rolling back the House legislation's restrictions on funding for Planned Parenthood and abortion-related services, carve outs for certain populations from the Medicaid funding changes or pushing back altogether the transition to a Medicaid block grant or per capita system, an increase in funding dedicated to states for high-cost individuals, and further adjustments to the amount and structure of age-based tax credits. It is important to remember that Senate Republican leadership can only afford two defections from their ranks, meaning both Senate moderates and conservatives will have significant influence over the final shape of the bill. Expect the debate over the AHCA to continue well into the summer if not into the fall and possibly beyond.

The bill will also face procedural challenges in the Senate, where the Senate Parliamentarian will have to rule on whether the House-passed bill is eligible for consideration under the expedited reconciliation process, requiring only a simple majority in the Senate. In particular, the waivers to the ACA's requirements under the MacArthur amendment could prove challenging for the purposes of reconciliation.

Finally, the issue of whether and how to continue cost sharing reduction (CSR) payments to insurers still remains. While these payments are critical to subsidizing out-of-pocket costs for individuals up to 250 percent of the federal poverty level, the Trump Administration has offered mixed messages as to whether these

payments will be continued. For the duration of the stayed appeal, payments have continued, enabling insurers to keep premiums down. Without CSR payments, it is expected that insurers will continue to leave the individual marketplace and individuals could see double digit increases in their premiums. The AHCA would repeal CSRs and payments to insurers for CSRs beginning on January 1, 2020. Until then, the Administration and Congress will need to decide a path forward to ensure a stable marketplace, beginning with a status report due on May 22.

We will continue to monitor and report on proposed changes as the debate progresses.