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House Passes Bill to Repeal and Replace PPACA

The United States House of Representatives passed the American Health Care Act (“AHCA”) by a narrow margin (217 to 213) that was generally along party lines. As you will recall, the AHCA is the House Republicans’ health care overhaul legislation that seeks to repeal and replace the Patient Protection and Affordable Care Act (“PPACA”). Twenty House Republicans voted against the bill, along with all House Democrats.

The original AHCA released by the House Ways and Means and Energy and Commerce Committees – the primary committees with jurisdiction over health care – contained provisions that, among other objectives, would have:

- Effectively eliminated the Employer Mandate by reducing the penalty to zero for applicable large employers that fail to offer minimum essential coverage to their full-time employees.
- Effectively eliminated the Individual Mandate by reducing the penalty to zero for individuals who fail to maintain minimum essential coverage for themselves.
- Replaced the income-based tax credits provided under PPACA with age-based, income-capped, advanceable and refundable tax credits for the purchase of state-approved, major medical health insurance and unsubsidized COBRA coverage.
- Created an incentive for individuals to maintain coverage for themselves by imposing a flat 30 percent late-enrollment surcharge on top of the premiums for individuals participating in the individual or small group market who had a lapse in coverage for greater than 63 days.
- Repealed most of PPACA’s penalties in 2018, while delaying the so-called Cadillac Plan tax until 2025.
- Nearly doubled the basic limit on annual aggregate Health Savings Account contributions and liberalized how those contributions could be used.
- Gradually rolled back the PPACA expansion of Medicaid effective January 2020.
- Converted Medicaid to a per capita system, where states would get a lump sum from the federal government for each enrollee (rather than guaranteed federal funding based on eligible individuals), starting in 2020.

For additional details on the original provisions of the AHCA, please read our article *House Republicans Release Bill to Repeal PPACA*, which you can access by clicking [here](#).

In March, House Republicans released a number of amendments to the bill that were intended to respond to Republican critics and garner the additional votes needed to pass the House. Many of the amendments introduced additional changes to Medicaid, but left most of the AHCA’s provisions in place. In relevant part, the amendments to the AHCA:

- Moved forward the repeal of all other PPACA taxes from 2018 to 2017.

- Moved back the effective date of the Cadillac Plan tax on high cost employer-sponsored health coverage from 2025 to 2026.
- Clarified that the 30 percent late-enrollment surcharge for individuals with a gap in coverage applies only in the individual market, and not in the small group market.
- Provided the Senate flexibility to enhance the tax credits for health coverage for individuals between the ages of 50 to 64. (Under the original version of the AHCA, individuals between 50 and 59 could be eligible for an advanceable and refundable tax credit of \$3,500 for the purchase of state-approved major medical health insurance. Individuals over 60 could be eligible for a tax credit of \$4,000.)
- Immediately prevented additional states from opting into PPACA's Medicaid expansion.
- Allowed states that have expanded Medicaid to retain the enhanced match after 2019 (90 percent in 2020) for all expansion enrollees that were enrolled prior to the end of 2019. However, as these enrollees lose eligibility (e.g., they earn more income as defined under non-expanded Medicaid) they will be forced out of the program.
- Allowed states to impose a work requirement for nondisabled, nonelderly, non-pregnant adults as a condition to obtaining Medicaid coverage.
- Allowed states to choose to receive Medicaid funding as a block grant rather than a per capita allotment. Under a block grant, states would receive a fixed amount of federal funding each year, regardless of how many participants are in the program. Block grants would only be available to fund a state's traditional Medicaid populations. Block grants would not be available for a state's elderly and disabled populations. A state that chooses a block grant would have additional flexibility to determine which populations it will cover and what services it would provide those individuals.

However, these amendments were not sufficient to garner the votes needed to ensure passage of the bill and House leadership decided to hold the bill back from a vote on the House floor. In the subsequent weeks, additional amendments were added to the bill to obtain additional support.

In April, to win support of additional conservative members in the House Republican caucus, Rep. Tom MacArthur of New Jersey added an amendment to the bill that would:

- Allow states to waive PPACA's essential health benefits requirement. If a state decided to do so, it would have the ability to define its own essential health benefits, as long as the state was able to show that doing so would result in a decrease in the price of insurance coverage. While this provision would directly affect what services small group and individual market policies ultimately will be required to cover in a state that applies for this waiver, this provision may also affect plans offered by large employers. While a large employer sponsoring a group health plan is not required to cover the statutory list of essential health benefits, it may not impose lifetime or annual limits on the essential health benefits that it does cover and must choose a state "benchmark" plan as a reference plan for which specific services are included in the definition of essential health benefits. In 2011, the Obama administration issued guidance stating that large employers aren't bound by the essential health benefits package mandated by their state – rather, they can pick from another state's list of essential health benefits, which would allow large groups to choose benchmark plans in states that have narrowed their definition of essential health benefits through this waiver.

- Allow states to waive aspects of PPACA's community rating rules, which require insurers to charge the same price to consumers in certain areas regardless of a preexisting condition or other factors. The MacArthur amendment provides each state the power to waive this requirement, and instead, permit health status rating for individuals. A state waiver would only be permitted if the state provides some funding for people with preexisting conditions to obtain coverage, such as in high risk pools.
- Provide default approval to states requesting either of the above waivers unless the Department of Health and Human Services denied the request within 60 days of being notified. This passive approval mechanism would allow the administration to decide how rigorous (or not) they want to process to be.

The MacArthur amendment failed to gain all of the requisite support. As a result, to obtain the last few votes needed for passage, Rep. Fred Upton of Michigan introduced the last amendment to AHCA. The Upton amendment provided additional financial assistance - \$8 billion over five years (in addition to the \$130 billion of funding already in the AHCA) – to help people with preexisting conditions pay for medical costs.

Next steps

The AHCA now moves to the U.S. Senate where Republicans have a 52-48 majority. Because the legislation was introduced through reconciliation, a process that allows legislation to be passed with a simple majority in the Senate without a filibuster, the bill will need at least 50 Senators to vote in favor of it (in case of a tie, Vice President Pence will cast the deciding vote). In late March, New York magazine counted at least 10 Senate Republicans with major concerns about the AHCA. While this Senate opposition certainly adds suspense as to what may happen next, it does not mean that the activity surrounding healthcare reform will end. Rather, it is likely the process will slow down as the Senate considers the measure and makes additional changes to the AHCA.

Gallagher Benefit Services, through its compliance experts and consultants, will continue to monitor developments on healthcare reform legislation and regulation and will provide you with relevant updated information as it becomes available. In the interim, please contact your Gallagher Benefit Services representative with any questions that you may have.

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