

WS&Co. Briefing

May 5, 2017

House Republicans Pass the American Health Care Act (AHCA)

On May 4, 2017, the House of Representatives passed the American Health Care Act (AHCA), the bill that is intended to “repeal and replace” certain provisions of the Affordable Care Act (ACA). The bill was originally introduced in the House nearly two months ago (on March 6, 2017) but was pulled from the scheduled vote on March 24, 2017 when it became apparent that there would not be enough votes to get the legislation passed.

In the meantime, House Republicans negotiated two key amendments to the AHCA in order to muster enough votes within the House GOP to get the legislation passed, and it worked. The revised AHCA passed by a narrow partisan vote of 217-213 without needing a single “yes” vote from House Democrats.

Summary of AHCA Key Provisions

Below is a quick summary of the key provisions contained within the AHCA, but also see our [March 2017¹](#) alert for a more thorough review:

- Reduce Employer and Individual Mandate penalties to zero
- Reduce ACA reporting penalties to zero (it’s unclear whether reporting would still be required but it should be irrelevant if there is no Individual Mandate)
- Repeal almost all of the ACA taxes and fees
- Delay Cadillac Tax to 2026

- Require continuous coverage for pre-existing conditions to avoid 30% surcharge
- Increase contribution limits to HSAs
- Replace individual marketplace subsidies with advance refundable tax credits
- Adjust age band ratio from 3:1 to 5:1 for older individuals
- Phase out the funding for Medicaid expansion

Amendment #1: The MacArthur Amendment Permitting State Waivers

Representative MacArthur from New Jersey proposed an amendment that would grant states three types of ACA waivers relating to:

1. **Essential health benefits:** The ACA currently requires that all health plans/policies in the individual and small group market provide a list of 10 essential health benefits (EHBs), such as emergency services, hospitalization, maternity care, mental health, prescription drugs, etc. This waiver would allow states to define their own list of EHBs rather than using the ACA’s list.

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¹<https://wsandco.com/benefits-updates/house-republican-aca-repeal-replacement-proposal/>

2. **Pre-existing conditions:** The ACA currently restricts an insurer from factoring in a person's health status when issuing an individual medical policy. Under this waiver, states may waive the ACA's prohibition against varying medical premiums based on an individual's health status during the underwriting process (i.e., factoring in pre-existing conditions). The waiver will generally be granted by default and will be valid for 10 years.
3. **Age rating band:** The ACA currently permits an insurer to charge a maximum of three times more in medical premiums for an older individual versus a younger individual (i.e., a 3:1 age band ratio). The AHCA would increase the ratio from 3:1 to 5:1; however, states may waive this maximum ratio and permit insurers in the state to charge more than five times based on age rating.

Amendment #2: The Upton Amendment Adding More Funding for State High-Risk Pools

Representative Upton from Michigan negotiated a second compromise/amendment which increases the funding that the federal government would set aside to help states create high-risk pools where people with pre-existing conditions plus a gap in coverage of 63 days would most likely end up. The Upton Amendment provides an additional \$8 billion over the next 5 years from 2018 through 2023 to help states that waive the pre-existing condition clause.

This amendment was the final addition that pushed the AHCA over the 216 vote hurdle needed to pass the legislation through the House.

What Happens Next

The AHCA now must go to the Senate for review. The House passed the legislation without a report from the Congressional Budget Office (CBO) analyzing how much the bill would cost and what kind of impact it would have on the American people. The Senate is a more deliberative body than the House and cannot pass legislation without first reviewing the fiscal impact of a bill. To illustrate that point, Senate Majority Leader Mitch McConnell issued a statement that they would not take action until the CBO releases the budget score next week. If the Senate makes changes to the AHCA, the bill will need to go back to the House for approval before making its way to the President's desk.

Although only 51 votes are needed to pass the AHCA in the Senate (technically 50 votes plus the Vice President), most political pundits anticipate that the Senate will make a series of revisions to it or perhaps pass its own version of an ACA repeal and replacement budget reconciliation bill. In light of the hurdles the House faced and the compromises that were made in order to barely pass the AHCA, it could be an uphill battle for the House to muster enough votes to pass a Senate-modified AHCA.

In the meantime, employers should move forward with complying with the current ACA rules as they exist today, especially because many of the AHCA provisions have a delayed effective date. We will keep you posted as significant developments take shape.

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