

## Publications

### *Health Care Alert: Republicans Release Plan to Replace Affordable Care Act: A Deeper Look into the Proposal*

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**CLIENT ALERT** | 3.15.2017

On March 6, 2017, House Republicans released the American Health Care Act (AHCA), their plan to repeal and replace the Patient Protection and Affordable Care Act (ACA). If enacted as proposed, the plan would implement the following changes:

#### Insurance, Mandates, Penalties and Tax Credits

- The proposal would eliminate both the individual mandate requiring most Americans to maintain health insurance and also remove the tax penalty imposed on those who are uninsured, retroactive to January 1, 2016.
- Large employers (50 or more full-time employees) would no longer be subject to pay or play penalties for failing to offer healthcare coverage to full-time employees.
- The proposal would repeal subsidies that the federal government currently provides to low-income individuals to assist in the payment of deductibles and other out-of-pocket costs for insurance purchased through the public exchange marketplaces. Instead, the proposal creates a system of tax credits to incentivize people to purchase either unsubsidized COBRA insurance or insurance offered in the individual health insurance market within a state. The income-based tax credits provided under the ACA would be replaced with credits that would rise with age as people's need for medical care generally increases as they age.
  - \$2,000 < 30 years
  - \$2,500 between 30 and 40 years
  - \$3,000 between 40 and 50 years
  - \$3,500 between 50 and 60 years
  - \$4,000 > 60 years

A family could receive up to \$14,000 in credits. The credits would be available in full to individuals making \$75,000 annually, or joint filers making \$150,000 or less annually. For those incomes higher than these

thresholds, the credit would phase out by \$100 for every additional \$1,000.

- The proposal would allow insurers to impose a surcharge of 30 percent on people who have a gap in health coverage of at least 63 continuous days in the last 12 months and re-enroll in coverage.

## Medicaid, Expansion and Per Capita Caps

- Under the new plan, states can continue to enroll individuals under the Medicaid expansion through January 1, 2020 and maintain current enrollees, as long as there is no break in coverage of more than one month. At that point, enrollment would “freeze,” and states could no longer add to the rolls. Additionally, the proposed plan states that any discontinuity in Medicaid coverage of greater than one month would cause the individual to be ineligible under this provision.
- The proposal would transition Medicaid funding to a per-capita allotment, whereby each state would receive a fixed allotment of federal funding for each person on Medicaid, rather than the current open ended financing structure with shared federal/state funding. The federal government would pay distinct amounts for four different beneficiary categories, including older Americans, adults, children, and people with disabilities. Under the proposal, these Medicaid per-capita payments would significantly decrease the federal funding component of Medicaid programs.
- The proposal would repeal the ACA’s reduction in Medicaid Disproportionate Share Hospital (DSH) payments, in 2018 for non-expansion states and 2020 for expansion states.
- The proposal eliminates the states’ expanded authority to make presumptive eligibility determinations.
- Medicaid eligibility for children six to 18 years of age would be rolled back from 138% to 100% of the federal poverty level, restoring the pre-ACA mandatory Medicaid eligibility level.
- States that did not expand Medicaid would receive \$10 billion over five years from CY2018 through 2022 to provide additional safety net funding.

## Risk Pools, Health Savings Accounts

- The ACA provided for funding for temporary high risk pools between 2010 and 2014, before the insurance marketplaces had shared risk pooling, with high cost claims offset by new taxes. Under the AHCA, the federal government would make \$100 billion over 10 years available for funding state efforts for “patient and state stability,” including the establishment of high risk pools and stabilizing the individual and small group insurance markets.
- The proposal would remove the ACA Flexible Spending Account (FSA) \$2,500 cap on contributions.
- For Health Savings Accounts (HSA), the ACHA would:
  - (1) reduce the excise tax on non-medical withdrawals from 20% back to 10%;
  - (2) permit deposit of age-based tax credits into an HSA;
  - (3) significantly increase HSA contribution limits to the inflation-adjusted deductible/out-of-pocket maximum limits for high-deductible health plans (HDHPs);

(4) permit reimbursement of expenses incurred pre-HSA establishment, if HSA is established within 60 days of the date qualifying HDHP coverage commences; and

(5) permit both spouses to make catch-up contributions to an HSA.

- The proposal would remove the ACA prohibition on the reimbursement for tax-free over the counter drugs (e.g., though HSAs, FSAs, etc.).

## Other Provisions

- The proposal would cut all federal funding to Planned Parenthood clinics through Medicaid and other government programs for one year.
- The AHCA would appropriate an additional \$422 million (on top of existing appropriations) for community health centers for fiscal year 2017.
- The AHCA would eliminate the Essential Health Benefit (EHB) requirements that apply to Medicaid benchmark coverage after December 31, 2019 for expansion states. However, as currently drafted the EHB provisions related to qualified health plans were not addressed.

## No Change to Several Popular Aspects

The proposal does not change the most popular aspects of the ACA, including: the prohibition on insurers denying coverage to those individuals with pre-existing conditions; the provision allowing children to remain on their parent's health insurance plans until age 26; the ban on lifetime coverage caps; and, the establishment of the ACA's essential health benefit package. As these provisions of the ACA do not directly affect government revenue, they cannot be modified through the budget reconciliation process.

## Current Status of Proposal

The proposal was adopted by both the House Ways and Means and Energy and Commerce Committees. The analysis of the bill by the Congressional Budget Office was released on March 13. Supporters of the proposal have expressed their hope that the full House will be able to vote on the proposal prior to a Congressional break scheduled to begin on April 7, 2017.

Certain industry groups have stated concern that the proposed plan will harm low-income Americans. The American Medical Association sent an open letter to the two committees withholding their support of the AHCA due to the "expected decline in health insurance coverage and the potential harm it would cause to vulnerable patient populations." Major hospital organizations, including the American Hospital Association and the Federation of American Hospitals, and AARP, have also come out against the AHCA. However, a number of other medical, and health industry lobby groups have expressed support for the proposal.

The future of the proposal in the Senate is uncertain, as four Republican Senators from states that have expanded Medicaid under the ACA (Rob Portman, OH; Shelley Moore Capito, WV; Cory Gardner, CO; and Lisa Murkowski, AK) have already published a letter opposing the proposal, expressing, among other things, concern that it fails to adequately protect people in their states.

Vorys will continue to provide updates on the AHCA and other health care proposals as they evolve.

