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Memorandum

Date: June 23, 2017

To: Healthcare Clients

From: Holland & Knight

Re: Highlights of Better Care Reconciliation Act

U.S. Senate Republicans on June 22, 2017, unveiled a "discussion draft" of their healthcare plan, the Better Care Reconciliation Act. This memorandum provides highlights of key provisions.

Repeal of Affordable Care Act (ACA) Taxes:

- Repeals ACA taxes other than the so-called "Cadillac tax."

Tax Treatment of Insurance/Tax Credit:

- In 2020, replaces the ACA tax credits – 100 percent to 400 percent of Federal Poverty Level (FPL) – with a new tax credit that is adjusted for income and age and ranges from zero to 350 percent of FPL.
    - Adults eligible to be covered under Medicaid would be eligible for this tax credit if they weren't covered by Medicaid.
    - The tax credit is pegged to the benchmark bronze plan (58 percent actuarial value). At zero to 100 percent of poverty, premium could not exceed 2 percent of income up to a maximum of 16.2 percent of income for someone over the age of 59 at 350 percent of poverty.
        - Example: individual at $12,000 per year income would have $240 out-of-pocket premium; individual age 60 at $42,000 per year would have $6,800 out-of-pocket premium.
    - A Qualified Health Plan cannot cover abortion other than life of the mother (or rape/incest).
    - Legal immigrants must satisfy residency requirement (as under welfare reform).
    - Definition of "affordable" employer coverage (which makes an individual ineligible for the tax credit) is eliminated.
- Individual mandate penalty for no insurance: $0.
- Employer mandate for not providing insurance: $0.
- Small business cannot expense an insurance plan covering abortion (other than life/rape/incest).
- Makes several changes favorable to Health Savings Accounts (HSAs).
- Amends Employee Retirement Income Security Act (ERISA) to create a small business "association health plan" option.

Market Stability/Insurance Regulation:

- The bill provides a short-term ($50 billion until 2021) and long-term stabilization fund ($62 billion over 8 years) intended to stabilize the markets.
    - Short-term funds go directly from federal government to insurers.
    - Long-term funds are apportioned to the states (reapportioned if not used).
- Appropriates funds for cost-sharing reductions for plan years 2018-2019 until new tax credit and rules kick in, and then repeals cost-sharing reductions.
- Retains fund for Safety-Net Providers in non-expansion states in the House legislation.
- Amends ACA Section 1332 waivers to make them more flexible in terms of coverage scope and "budget neutrality"; provides $2 billion to fund state efforts to develop waivers.
- Changes age rating bands to 5-to-1 (or higher as determined by states). No changes to ACA rules such as no preexisting condition exclusions, no health underwriting and allowing children to stay on a parent's plan through age 26.
- Repeals Public Health/Prevention Fund.

Medicaid:

- Expansion:
    - Allows Medicaid expansion states to keep enhanced match (90 percent) for 3 years (2018-2020), and then it phases down the enhanced match over another 3 years (85 percent in 2021; 80 percent in 2022; 75 percent in 2023).
    - Sunsets the essential health benefits requirement for Medicaid.
- Per Capita Caps/Block Grants:
    - Restructures Medicaid financing to create a per capita cap system similar to House bill but with significant changes.
        - Children's Health Insurance Program (CHIP) and blind/disabled children are excluded from caps; also requires states to begin reporting on children with complex medical conditions.
        - Cap categories: elderly, blind/disabled, children, non-expansion adults, expansion adults.
        - Baseline for cap is established by state selecting spending data from any eight consecutive quarters between 2014-2017 (the House bill used 2016).
        - The caps are updated annually by Consumer Price Index (CPI) Urban Medical up until 2025 (blind and disabled individuals get medical plus one); thereafter, everybody just gets CPI-urban.
        - "Equalization" mechanism would reduce caps by up to 2 percent for states with per capita spending 25 percent above average, and corresponding increase for those 25 percent or more below average.
        - Doesn't relax Early and Periodic Screening, Diagnostic and Treatment (EPSDT) requirement.
    - Creates a state option for a "Medicaid Flexibility Program" block grant option, but only non-elderly, non-blind/disabled, non-expansion adults could be included.
- Disproportionate Share Hospital (DSH):
    - Non-expansion states are permanently exempted from the ACA's Medicaid DSH cuts.
    - Expansion states are subject to their proportional share of ACA DSH cuts starting October 1, 2017.
    - Non-expansion states receive an additional DSH amount if they are a low-DSH state relative to the national average.

- Introduces Medicaid and CHIP quality performance bonus payments of $8 billion over FYs 2023-2026 by increasing the federal share for states that perform on quality measures statewide for Medicaid and CHIP.
- Grandfathers certain existing managed-care waivers and home- and community-based services waivers. That means states can make a managed-care waiver in place on January 1, 2017, permanent.
- Reduces provider tax maximum incrementally over five years from 6 percent to 5 percent.
- Allows work requirement for non-disabled, non-elderly and non-pregnant individuals; doesn't apply to children under age 19 or if an individual is the only parent or caretaker of a child under age 6 or a child with disabilities.
- Allows greater frequency of eligibility redeterminations.
- Cuts off funding to Planned Parenthood for one year.

Context and Process:

- The Congressional Budget Office (CBO) will release score as soon as Monday, June 26.
- Senate intends to vote on Thursday, June 29.
- It's unclear whether the votes exist for passage; maximum of two GOP Senate no votes allowed (assuming no Democrats support).
- Bill is a "discussion draft" and additional changes are possible.