Health Care Reform Bill Clears the House, but Could Hit a Wall in the Senate

5 May 2017

The American Health Care Act (AHCA), a bill that would repeal and replace key portions of the Affordable Care Act (ACA), narrowly passed the House of Representatives on 4 May 2017. The bill's passage marks a reversal of fortune for AHCA; in March of 2017, the initial push to have a House vote on the bill failed in light of opposition from conservative and moderate segments within House Republicans' own ranks. After the bill's initial failure, a number of amendments to AHCA were introduced to win over skeptical or undecided House Republicans. The effort succeeded, and AHCA passed in a 217 to 213 vote, in which 20 House Republicans joined House Democrats in voting against the bill. AHCA faces an uncertain future as it goes on to the Senate, due to political and procedural roadblocks that could derail the bill's passage into law.

Politically, the House bill has received a tepid initial reaction from a number of Republicans in the Senate. Senator Lamar Alexander (R-TN) recently stated that "we're writing a Senate bill and not passing the House bill" and "we'll take whatever good ideas we find there that meet our goals."[1] Other Senate Republicans (as well as Democrats) have raised concerns about the projected decrease in coverage under the bill.

Procedurally, because the bill is proceeding under the special budget reconciliation process, which allows Senate Republicans to pass the bill with only a bare majority of Senators, additional challenges may arise. Under the so-called Byrd rule, any provision of the bill that is found by the Senate parliamentarian to not directly affect spending or revenue could be subject to exclusion as extraneous. Among other things, this could put some of the recent amendments to the House bill at risk.

In addition, to be passed under the reconciliation process, the bill must not be projected to increase the deficit after 10 years. The Congressional Budget Office (CBO) has not yet scored the version of the bill that passed the House. CBO did score an earlier version of the bill, concluding that it would reduce covered lives by 24 million people over 10 years—but also reduce the deficit by $150 billion over the same period. At this point, it is uncertain how the recent amendments to the House bill will impact CBO's covered lives and cost savings estimates.

---

[1] Burgess Everett and Jennifer Haberkorn, Senate GOP Rejects House Obamacare Bill (5 May 2017), http://www.politico.com/story/2017/05/04/house-health-care-bill-senate-doa-238000.

Recent Amendments to the House Bill

For a detailed summary of the bill as initially introduced, please refer to our [previous client alert on the bill]. Since its introduction, the bill has changed in significant ways, as amendments have been adopted to win over skeptical or undecided House Republicans. Two recent amendments were particularly crucial in securing the votes needed to pass the bill in the House.

MacArthur-Meadows Amendment

The first amendment, which helped gain support from conservative members of the Republican caucus, was offered by Congressmen Tom MacArthur (R-NJ) and Mark Meadows (R-NC) and would allow states to apply to the Secretary of Health and Human Services for three types of waivers of requirements created by either AHCA or the ACA. If granted, a waiver would last for up to 10 years and could be further extended by the Secretary upon request by the state.

The first type of waiver would allow states, beginning in 2018, to permit insurers to charge older individuals more than five times the rate that they charge younger individuals. The baseline 5:1 ratio would be established under the AHCA bill, modifying the current 3:1 ratio established under the ACA. The second type of waiver would allow a state, beginning in 2020, to define the essential health benefits required to be covered by insurers in that state. Notably, the prohibition on lifetime and annual limits on coverage and the limitation on out-of-pocket expenses applicable to both insurers and employers–both of which are applicable only to essential health benefits–could be affected by any such definitional change. The third type of waiver would allow states, under certain specified conditions, to permit insurers to charge consumers higher premiums based on their health status, if the states operate a program under the AHCA's patient and state stability fund.

Upton Amendment

The second amendment, which helped gain support from moderate members of the Republican caucus, was introduced by Congressman Fred Upton (R-MI) and six other Republican House Representatives. The amendment would allocate $8 billion over a period of 5 years to states that seek waivers under the MacArthur-Meadows amendment "for the purpose of providing assistance to reduce premiums or other out-of-pocket costs of individuals who are subject to an increase in the monthly premium rate for health insurance coverage as a result of such waiver." Although funds under the amendment have been described as being targeted at those with pre-existing conditions, the amendment does not restrict the funds to be used only for such purpose.

Other Amendments

Some of the other notable amendments to the House bill since its introduction would:

- Allow states to choose to receive federal Medicaid funding via block grants rather than per capita funding. States that select block grants would be given significant flexibility to determine who is eligible for and what benefits are covered under Medicaid.
- Permit states to establish work requirements for non-disabled, non-elderly, and/or non-pregnant adults as a condition of receiving coverage under Medicaid.

- Prohibit states that have not already expanded Medicaid from receiving the enhanced federal matching funds provided under the ACA's Medicaid expansion program. States that have not expanded Medicaid would still have the ability to expand coverage up to 133 percent of the federal poverty level, but would only receive federal matching funds at their regular rate.
- Accelerate the repeal of most of the ACA's taxes compared to the timetable under the initial version of the bill—from 2018 to 2017.
- Extend the moratorium of the so-called "Cadillac tax" on high-cost employer health benefit plans until 2026. The moratorium would have lasted until 2025 under the initial version of the bill.
- Further reduce the medical expense deduction threshold to 5.8 percent of adjusted gross income. The current threshold under the ACA is 10 percent, and the initial version of the bill would have reduced the threshold to the pre-ACA threshold of 7.5 percent.
- Add $15 billion from 2018 to 2026 to the $100 billion stability fund that was included in the initial version of the bill.

Contacts

Sheree Kanner
Partner, Washington, D.C.
Tel +1 202 637 2898
sheree.kanner@hoganlovells.com

Melissa K. Bianchi
Partner, Washington, D.C.
Tel +1 202 637 3653
melissa.bianchi@hoganlovells.com

Ken Choe
Partner, Washington, D.C.
Tel +1 202 637 5675
ken.choe@hoganlovells.com

Elizabeth Halpern
Partner, Washington, D.C.
Tel +1 202 637 8609
elizabeth.halpern@hoganlovells.com

Therese Goldsmith
Partner, Baltimore
Tel +1 410 659 5071
therese.goldsmith@hoganlovells.com

Stuart M. Langbein
Partner, Washington, D.C.
Tel +1 202 637 5744
stuart.langbein@hoganlovells.com

Beth L. Roberts
Partner, Washington, D.C.
Tel +1 202 637 8626
beth.roberts@hoganlovells.com

Craig H. Smith
Partner, Miami
Tel +1 850 309 0009
craig.smith@hoganlovells.com

Helen R. Trilling
Partner, Washington, D.C.
Tel +1 202 637 8653
helen.trilling@hoganlovells.com

James Huang
Associate, Washington, D.C.
Tel +1 202 637 3696
james.huang@hoganlovells.com

Isaac L. Swaiman
Associate, Washington, D.C.
Tel +1 202 637 6403
isaac.swaiman@hoganlovells.com