

House Votes to Repeal & Replace Obamacare

On May 4, 2017, the *U.S. House of Representatives* (House) voted 217 to 213 (largely along party lines) to pass a bill entitled the *American Health Care Act* (AHCA) to repeal and replace the *Patient Protection and Affordable Care Act* (ACA), a/k/a Obamacare.¹ The May 4, 2017 version of the AHCA, which alters many of the core features of the landmark healthcare legislation passed under the Obama Administration in 2010, served as a revision to an earlier draft of the bill that was introduced, then withdrawn, in the House in March 2017.² The AHCA now moves to the *U.S. Senate* (Senate) for consideration, where both the timing of consideration, as well as the ultimate text of the bill, remain uncertain.³

In order to understand the significance of the House vote on May 4, 2017, it is important to explain how the AHCA failed previously. Upon AHCA's original introduction in the House in March 2017, both conservative and moderate Republicans were hostile to the bill, albeit for different reasons.⁴ Conservatives (including, notably, the House Freedom Caucus⁵) disliked many of AHCA's provisions, holding sentiments similar to those of Senator Rand Paul (R-KY), who called the proposed legislation "*Obamacare Lite*."⁶ To win over House conservatives, Republican leaders made changes to the bill, including the elimination of *essential health benefits*⁷ as mandated by the ACA.⁸ On March 13, 2017, the nonpartisan *Congressional Budget Office* (CBO) released its scoring of the AHCA, which estimated that 24 million people would lose health insurance coverage if the bill were enacted into law.⁹

The CBO report contributed to widespread public outcry against the bill.¹⁰ The fallout from AHCA's CBO scoring, along with approximately \$880 million in cuts to the Medicaid program (see below for further discussion), resulted in many moderate Republicans refusing to support the bill.¹¹ Ultimately, Republican leadership in the House could not garner the requisite number of votes to pass the AHCA, and chose to withdraw the bill on March 24th, shortly before the scheduled vote.¹² Rep. Jim McGovern (D-MA) summarized the Republicans' quandary for future healthcare reform succinctly: "*The bill went down because it was too bad for Republican moderates and not bad enough for the conservatives. I don't know how they reconcile the divides within their own conference, never mind find any Democratic votes.*"¹³

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After what some viewed as an embarrassing turn of events, House Republicans regrouped and revised their bill. This time around, the AHCA was amended to: (1) allow states to apply for waivers to: (a) allow them to charge older individuals more than younger individuals and (b) determine which health benefits must be included in an insurance plan; and, (2) add \$8 billion in funding for state high risk pools to cover individuals with pre-existing medical conditions.¹⁴ These changes to the AHCA resulted in the revised bill receiving the backing of the House Freedom Caucus, as well as a sufficient number of moderate Republicans, to pass the revised bill. The CBO's scoring of the revised AHCA noted that it would leave approximately 23 million more individuals without insurance compared to current figures¹⁵ – slightly less than the original bill, which was estimated to increase the number of uninsured individuals by approximately 24 million.¹⁶

Some notable provisions of the latest version of the AHCA include the following:

- (1) ACA's penalties under the *Individual Mandate*¹⁷ and *Employer Mandate*¹⁸ would be immediately eliminated, and individuals who are without insurance for 63 days must pay a 30% one-time "*late-enrollment surcharge*" of the monthly premium rate, in addition to the base premium;¹⁹
- (2) ACA's *Medicaid expansion* program would be eliminated in 2020, and Medicaid would be converted to a block grant program.²⁰ While the CBO estimated that approximately 23 million individuals would become uninsured, (as noted above), the office noted that federal spending on Medicaid would be reduced by \$119 billion;²¹
- (3) Although individuals would have an opportunity to maintain guaranteed issue coverage, states could seek waivers to opt out of certain of ACA's health insurance mandates, allowing health insurers to: (a) offer coverage that does not meet the essential health benefits requirements; and, (b) discriminate (with respect to pricing and coverage decisions and denials) against individuals with pre-existing medical conditions;²²
- (4) The additional \$8 billion (over a five-year period) added to this version by an amendment to the AHCA offered by Rep. Fred Upton (R-

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MI) would supplement more substantial funding for high-risk pools in states that have opted out of ACA's protections for individuals with pre-existing conditions (i.e., a total of \$138 billion is available over ten years that could be used by states for several purposes, including subsidizing insurance premiums and high-risk pools, among others);²³

- (5) The variance in premiums that insurers are permitted to charge for individuals based on their age would increase from a ratio of 3:1, as mandated by the ACA,²⁴ to 5:1 (likely increasing the cost of coverage for older, non-Medicare adults);²⁵
- (6) Tax subsidies to individuals to help pay insurance premiums would be replaced with refundable tax credits that vary with age, as well as income²⁶ (likely benefitting younger adults and disadvantaging some low and moderate income families);²⁷ and,
- (7) Many of the ACA's taxes (e.g., payroll taxes, medical device taxes, and excise taxes on high-cost employer health insurance) would be eliminated.²⁸

The AHCA is either opposed or criticized by numerous provider constituencies, such as the *American Medical Association* (AMA),²⁹ the *American Hospital Association*, and *America's Essential Hospitals*;³⁰ by *America's Health Insurance Plans* (AHIP) and certain private insurers such as Blue Shield of California;³¹ as well as, by more consumer-oriented advocacy organizations such as the *American Association of*

Retired Persons (AARP)³² and the *American Heart Association*.³³

The House version of the AHCA, with the provisions noted above (which bill was opposed by 20 Republicans and every Democrat)³⁴ still must receive Senate approval. Many senators have indicated that they will develop an entirely new bill (which language the House would then have to approve),³⁵ while other senators predict that the AHCA will not have the requisite number of votes in the Senate to pass.³⁶ While the exact timeline of a vote in the Senate is currently unknown, it is likely that a vote will occur prior to the end of the federal government's 2017 fiscal year, i.e., by September 30, 2017.³⁷

Despite the mix of reactions from fellow lawmakers, healthcare organizations, and the general public³⁸ to the passage of the AHCA in the House, as well as its uncertain future in the Senate, President Trump has expressed his confidence that the Senate bill will have "some really, really great additions and changes" and that it will advance to his desk for signing into law.³⁹ The legislative progression of the AHCA reflects continued evolution in healthcare reform efforts, in conjunction with: (1) the release of the tax plan by the Trump administration that proposes to eliminate the deduction on health care costs for self-insured persons;⁴⁰ and, (2) the likely delay in the adjudication of *House v. Price*, which may influence insurer participation in the 2018 health insurance exchanges by jeopardizing subsidies paid to insurers to cover the costs associated with insuring "enrollees in marketplace silver plans with household incomes not exceeding 250 percent of the federal poverty level."⁴¹

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3 "Fate of AHCA" By Anne Phelps, The Wall Street Journal, May 11, 2017, <http://deloitte.wsj.com/cfo/2017/05/11/fate-of-ahca-yet-to-be-determined-as-bill-moves-to-senate/?mod=WSJBlog> (Accessed 5/12/17).

4 "Under GOP draft of Obamacare repeal plan, a lot of people could lose coverage" By Tami Luhby, CNN, February 25, 2017, <http://money.cnn.com/2017/02/25/news/economy/obamacare-repeal-gop/> (Accessed 5/12/2017).

5 The House Freedom Caucus, established in 2015, is a group comprised of approximately 30 of the most conservative Republican representatives. Membership in the caucus is secret and "invitation-only," so the exact number and identity of those representatives is unknown. "Freedom Caucus: Do these 29 white men run America?" By Katie Shepherd, BBC News, March 28, 2017, <http://www.bbc.com/news/world-us-canada-39410555> (Accessed 5/12/2017).

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7 *Essential Health Benefits* are 10 healthcare items required by all insurance coverages under PPACA, i.e., (1) ambulatory patient services; (2) emergency services; (3) hospitalization; (4) maternity and newborn care; (5) mental health and substance use disorder services including behavioral health treatment; (6) prescription drugs; (7) rehabilitative and habilitative services and devices; (8) laboratory services; (9) preventive and wellness

services and chronic disease management; and (10) pediatric services, including oral and vision care. "Information on Essential Health Benefits (EHB) Benchmark Plans", The Center for Consumer Information & Insurance Oversight, Centers for Medicare & Medicaid Services, <https://www.cms.gov/cciiio/resources/data-resources/ehb.html> (Accessed 5/12/2017).

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16 Congressional Budget Office, March 13, 2017, p. 2.

17 The *Individual Mandate* represents an ACA provision that required individuals, with certain exceptions, to maintain a baseline level of health insurance coverage, or face a financial penalty levied by the *Internal Revenue Service* (IRS). “Patient Protection and Affordable Care Act” Pub. L. No. 111-148, § 1501, 124 Stat. 119, 242 (March 23, 2010).

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