
Health Law Daily Wrap Up

Click to open document in a browser

By Kathryn S. Beard, J.D.

Six weeks after pulling the American Health Care Act (AHCA) (H.R. 1628) from consideration, the House of Representatives passed the bill on May 4, 2017, by a vote of 217 to 213. The revised bill, which alters certain provisions of the Patient Protection and Affordable Care Act (ACA) (P.L. 111-148), includes three amendments, which the Congressional Budget Office (CBO) has not yet scored. The first amendment is from Rep. Tom MacArthur (R- NJ), allowing states to waive essential health benefits (EHBs), age rating, and community rating. The second, from Reps. Gary Palmer (R- Ala) and David Schweikert (R- Ariz), would create a risk-sharing program for states. The third amendment, credited with bringing the bill back to the floor after its initial withdrawal, came from Reps. Fred Upton (R- Mich) and Billy Long (R- Mo), increasing the Patient and State Stability Fund by $8 billion over five years for states that use the MacArthur amendment’s waivers. The House also passed H.R. 2192, which would eliminate provisions that exempt members of Congress and congressional staff from state waiver provisions, in response to criticisms that the AHCA would affect all Americans except those voting on the bill.

Although the AHCA is often referred to as a bill to repeal and replace the ACA, it would not do either; rather, the bill would eliminate many of the ACA’s tax provisions, including a tax on tanning salons and the medical device excise tax, and terminate states’ ability to expand Medicaid eligibility to nonelderly low-income adults who are not otherwise eligible for coverage. When the CBO previously scored the bill—not updated to account for the latest amendments—it found that federal deficits would be reduced but 24 million individuals would lose health insurance coverage (see CBO: Republican plan saves billions as 24M lose coverage, March 14, 2017; Revised AHCA costlier with same number of uninsured, March 24, 2017). The MacArthur amendment would allow states to waive the ACA’s prohibitions on charging individuals with pre-existing conditions more for health insurance coverage, while the Upton–Long amendment would provide some funding to help individuals in those states to pay for likely increases in premiums and out-of-pocket costs. However, doubts were raised about whether $8 billion would be sufficient; in 2013, Upton signed a letter to President Barack Obama saying that the $5 billion the ACA designated for the Pre-Existing Condition Insurance Plan (PCIP) was insufficient, and suggesting that $25 billion would have been a more appropriate figure. When asked, Upton said, “Is it enough money? I don’t know. That’s the question that I asked and was led to believe that $5 billion would be enough, which is why it’s $8 billion.”

The AHCA was announced by Speaker Paul Ryan (R- Wis) on March 6, 2017 (see Republicans present health reform that is neither repeal nor replacement, March 7, 2017); the House Committees on Ways & Means and Energy & Commerce approved the bill in markup three days later (see American Health Care Act earns first stamp of approval, March 9, 2017). One week after that, the House Budget Committee also approved the AHCA (see Trump budget slashes HHS funding; AHCA ready for floor vote after passing Budget Committee, March 16, 2017). The GOP provided two types of Manager’s Amendments—Technical Changes and Policy Changes to address some criticism (see AHCA modified to bolster conservative support, March 21, 2017). The effort died, however, without a vote on March 24, 2017, one day after the seventh anniversary of the ACA’s passage (see Short-lived AHCA yanked by GOP without a vote, March 24, 2017). At the time, Ryan announced that there would be no vote due to insufficient support. After Congress’ Easter recess, negotiations brought the AHCA back to life, culminating in today’s House vote.
Cheers erupted in the House as the vote ended, while a number of Democrats taunted their opposition by singing the chorus of "Na Na Hey Hey Kiss Him Goodbye," based on their belief that a vote in favor of the AHCA will harm Republicans in the 2018 election. Following the vote, House Republicans joined President Donald Trump at the White House for a Rose Garden press conference. Vice President Mike Pence congratulated the representatives on what he called "a historic first step to repeal and replace Obamacare," while Trump expressed his confidence that the bill will succeed and promised, "premiums will be coming down; deductibles will be coming down." The bill now moves to the Senate, where only a bare majority is needed to pass the bill through the reconciliation process.