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FIRST STEP TO REPEALING THE ACA AND WHAT IT MEANS

On Thursday, May 4, 2017, the Republican-controlled House of Representatives passed H.R. 1628, the American Health Care Act (“AHCA”), by a narrow margin vote of 217 to 213.

Because H.R. 1628 is a reconciliation measure, it may be subject to limited debate in the Senate, and passage by a simple Senate majority, rather than the typical 60 votes necessary to end debate. The rules limit the types of legislative programs that can be contained in budget reconciliation bills.

As a result, the AHCA is not simply a full repeal of the Patient Protection and Affordable Care Act (the “ACA”). The AHCA does, however, significantly change existing law under the ACA.

Individual Mandate

The ACA individual mandate tax penalty would be replaced by a surcharge on insurance plans. The ACA’s individual mandate would be repealed under the AHCA, effective retroactively to 2016. The taxes and subsidies associated with the individual mandate would also be replaced. The AHCA would repeal the tax penalty for individuals who do not have coverage, and replace it with a surcharge. Insurance companies would be permitted to impose a 30% surcharge on health plans where persons enroll after a lapse in coverage of at least 63 days. The surcharge could be imposed for one year.

The ACA’s subsidies would be replaced by a new tax credit. The ACA’s subsidies for nongroup coverage—including both the refundable premium tax credits and the cost-sharing payment subsidies—would be eliminated by 2020, and would be replaced by new refundable tax credits for coverage purchased through the nongroup market. The new tax credit would be available for the purchase of state-approved, major medical and unsubsidized COBRA. It would not be available for persons who have an offer of insurance from their employer.

The new refundable tax credit would range from \$2,000 to \$4,000. Unlike the ACA subsidies, which are pegged to income, the amount of the AHCA tax credit varies by age. It is available in full for individuals with income up to \$75,000, and is phased out by \$100 for every additional \$1,000 of income. The credits would be capped at \$14,000 per family.

Employer Mandate

Like the individual mandate, the AHCA would eliminate the ACA's mandate that certain employers provide health coverage to employees, effective retroactively to 2016. The Small Business Tax Credit would also be repealed.

State Waivers

States could apply for waivers from ACA coverage requirements. While the ACA's health insurance exchanges would remain under the AHCA, States could apply for waivers from the ACA's essential benefit requirements and from community rating age ratios. Guaranteed issue remains under the AHCA. However, states could apply for a waiver of the ACA's essential health benefit requirements in favor of state-approved plan benefits. States could also apply for a waiver of age rating ratio requirements. Even without a waiver, the AHCA raises the ACA's age rating ratio requirement from 3:1 to 5:1.

For a state to receive a waiver, it must have in place a risk sharing program to assist persons with pre-existing conditions or other high actuarial risk persons. A federal risk sharing program would be established to provide payments to insurers for claims made by persons qualified by Centers for Medicare & Medicaid Services.

Patient and State Stability Fund. The AHCA would establish a Patient and State Stability Fund, which would provide federal matching funds to states to assist with the cost of care for persons with pre-existing conditions and high actuarial risk. Some of the funding would be devoted to maternity and newborn care, as well as mental health and substance abuse.

Medicaid

The ACA Medicaid expansion would be repealed. The AHCA includes provisions that would repeal the ACA's Medicaid expansion and substantially overhaul Medicaid financing.

The AHCA would repeal the option for states to expand Medicaid under the ACA (which allowed the expansion of Medicaid to childless adults up to 133% of the Federal Poverty Level). The enhanced federal match rate for newly-eligible Medicaid beneficiaries under the ACA expansion would be phased out beginning in 2020, as well. A state's traditional Federal Medicaid Assistance Percentage would apply to any newly-eligible expansion beneficiaries enrolled after 2020. For Medicaid beneficiaries who were enrolled under the ACA's Medicaid expansion prior to 2020, the enhanced match rate would still be applicable but would be phased out if there is a break in eligibility for more than one month.

Essential Benefits for Medicaid. The AHCA would repeal the requirement that state Medicaid plans must provide the ACA's essential health benefits, beginning in 2020.

Block Granting Medicaid. The AHCA would allow the states to receive block grants for Medicaid, and would cap the growth of per-enrollee Medicaid payments for most beneficiaries by the medical care component of the Consumer Price Index beginning in 2020.

Repeal of Disproportionate Share Hospital Cuts. The ACA included provisions reducing Medicaid's Disproportionate Share Hospital payments, which help compensate hospitals for care provided to Medicaid beneficiaries. The cuts, which under the ACA are supposed to be distributed according to rates of uncompensated care among states, have been delayed until 2018. The AHCA would repeal the ACA's Disproportionate Share Hospital cuts for non-Medicaid-expansion states in 2018, and for Medicaid-expansion states in 2020.

Eligibility Determinations. The AHCA would repeal the expanded authority of states to make presumptive Medicaid eligibility determinations. States would still be allowed to make presumptive eligibility determinations for children, pregnant women, and certain cancer patients. States that have expanded Medicaid under the ACA would be required to make redetermination decisions every six months. Documentation of citizenship or lawful presence in the United States would be required prior to obtaining Medicaid coverage. Under the AHCA, states could also impose work requirements on Medicaid participants that are not disabled, elderly, or pregnant.

Eliminate Funding for Abortion Coverage

The AHCA would impose a one-year freeze on funding from Medicaid, Children's Health Insurance Program, Maternal and Child Health Services Block Grants, and Social Services Block Grants to community health providers that provide abortions. The AHCA would also preclude ACA subsidies and small business tax credits for plans that cover elective abortions for the period of time the ACA subsidies and tax credits are being phased out.

Health Savings Accounts

The AHCA contains a number of provisions related to health savings accounts ("HSAs"). The basic limit on annual HSA contributions would be increased to a level based on the sum of the plan deductible and out-of-pocket costs limit. (The basic limits would be at least \$6,550 for individuals and \$13,100 for families beginning in 2018.) Spouses would be allowed to make catch-up contributions to one single HSA, beginning in 2018. HSAs would be deemed as having been established on the date coverage begins in order to cover qualified expenses that would have otherwise been incurred prior to establishment of the HSA.

Over-the-counter medications would be included in the definition of qualified medical expenses for HSAs, effective 2018. In addition, the AHCA would reduce the 20% tax rate imposed by the ACA on non-qualified medical expenses to pre-ACA levels. It would also eliminate the ACA limitation on Flexible Spending Account contributions.

Repeal of ACA Taxes and Provisions

The AHCA would repeal a number of taxes enacted as part of the ACA to finance nongroup subsidies and other costs, and would repeal several other ACA provisions. They include:

- Repeal of the 40% excise tax on high cost "Cadillac" employer-sponsored health plans.

- Repeal of the 2.3% excise tax on certain medical devices.
- Repeal of the 0.9% increase in Medicare Hospital Insurance payroll tax for high income earners.
- Repeal of the 10% tax on indoor tanning services.
- Repeal of the 3.8% net investment income tax imposed by the ACA on income above certain amounts.
- Repeal of health insurance tax imposed on certain health insurers.
- Reinstating the business deduction for retiree prescription drug costs.
- Repeals the ACA's Prevention and Public Health Fund and accompanying mandatory spending. The AHCA would increase funding for community health centers.
- Reduction of income threshold for itemized medical expense deduction to pre-ACA level of 7.5%.
- Repeal the limit on deduction of employee remuneration as business expense taken by insurance providers
- Repeals the annual fee imposed on certain brand pharmaceuticals.

For additional information on how the American Health Care Act may impact your organization, please contact a member of Cline Williams' Health Care Section:

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