Affordable Care Act Repeal and Replacement Legislation

Timeline/ Actions to Date

- In February 2017, draft legislation aimed at repealing and replacing the Affordable Care Act (ACA), or "Obamacare," was informally released.
- New draft legislation was released at the beginning of March.
- The "American Health Care Act" (AHCA), legislation seeking to repeal and replace the ACA, was passed out of the House Committee on Ways and Means and the Committee on Energy and Commerce on March 9, 2017.
- On March 13, the Congressional Budget Office (CBO) released a report, finding a loss of insurance coverage under the AHCA. Specifically, it would leave 24 million Americans uninsured while reducing the federal deficit by $337 billion over ten years.
- The House Budget Committee voted 19-17 to advance the AHCA, on March 16.
- Although the AHCA was expected to be voted on by the House in late March, the bill was withdrawn from House floor consideration after the Republican leadership and the White House determined there were not sufficient votes to pass the legislation.
- In late April, Republicans released an amendment to the AHCA.
- The House voted to pass an amended AHCA, H.R. 1628. The 217 to 213 vote was largely along party lines, with twenty Republicans voting "no".
- Senate Majority Leader Mitch McConnell appointed a health care working group drawn largely from leadership and includes some conservative members of the Senate.
- In late May, CBO released a new analysis of HR 1628. CBO found that the bill, as amended, would leave 23 million Americans uninsured by 2026. Their report also indicated that the AHCA would reduce the federal deficit by $119 billion over the next decade.
- Leader McConnell announces the Senate will take an up or down vote on a substitute proposal for the AHCA before the July 4 recess.
- On June 22, the Senate released their own health care overhaul proposal, the Better Care Reconciliation Act of 2017.
- The Senate released an updated draft bill on June 26, to better align the purposes of stability funding to the underlying CHIP statute and to institute a six-month waiting period before coverage begins again for individuals who had a break in continuous insurance coverage (consumers will not have to pay premiums during the six-month period).

Key Elements of the Senate bill – The Better Care Reconciliation Act 2017

- The Better Care Reconciliation Act is crafted within the context of a special legislative process called reconciliation. Reconciliation allows for expedited consideration of legislation, while limiting what can be included in the bill to provisions related to taxes and spending. In the Senate, reconciliation bills are not subject to a filibuster and the scope of any amendment must be limited. Only a simple majority is needed to pass reconciliation legislation, rather than the three-fifths majority.
- Repeals penalty for individual and employer mandate and includes no continuity of coverage incentive provisions.
- Maintains ACA income-based (vs. House's age-based) premium tax credit subsidy with modifications effective in 2020. Provides tax-credit eligibility to individuals from 0% to 350% of Federal Poverty Line (FPL). Enhances tax-credits for younger individuals.
- Expands ACA's section 1332 waiver program to allow states significant flexibility in setting essential health benefits, cost-sharing and other health plan requirements.
- Establishes State Stability and Innovation Program with $112 billion to fund state innovation activities.

- Phases out Medicaid enhanced expansion funding match between 2021 and 2024.
- Changes Medicaid to a per capita cap system effective in 2020.
- Provides cost-sharing reduction (CSR) subsidies for 2018 and 2019 and then ends program.

Detailed Legislative Summary

Insurance Reforms

Individual and Employer Mandates

- The ACA requires everyone to have health insurance coverage and those without it are assessed a tax penalty. The law also requires employers with 50 or more full-time employees to offer coverage that meets standards for affordability and minimum value or face a penalty.
- The AHCA would retroactively repeal the individual and employer mandates, but impose a penalty on individuals who experience a 61-day gap in coverage in any 12-month period.
- The initial Senate bill would retroactively repeal both the employer and individual mandates but did not include any requirement for continuous coverage for individuals. The new draft imposes a penalty on those who do not maintain continuous insurance coverage; individuals who let their coverage lapse for at least 63 days in one year would be locked out of the insurance market for six months the following year.

Tax Credits

- Under current law, refundable premium tax credits are available to individuals or families (based on their **income**) to purchase health insurance. The AHCA makes several modifications to these premium tax credits (based on **age**).
- In 2020, the AHCA would replace the ACA income-based tax credits with an age-adjusted annual credit:
    - $2,000 per individual up to age 29;
    - $2,500 per individual age 30-39;
    - $3,000 per individual age 40-49;
    - $3,500 per individual age 50-59;
    - $4,000 per individual age 60 and older; and
    - Up to $14,000 per family combined
- The Senate bill retains the ACA subsidy structure and proposes tax credits based on income level, age and geography:
    - Starting in 2020, subsidies would be capped for those earning up to 350 percent of the poverty level and anyone below that line could get subsidies if they are not eligible for Medicaid.
    - Subsidies would be pegged to a benchmark insurance plan each year, ensuring that the assistance grows enough to keep coverage affordable for customers.
    - Eliminates the ability of individuals to receive a tax credit if they have an offer of employer coverage and the premium is over 9.5 percent of their income.

Actuarial Value of Health Coverage-Metal Tier Requirements

- Under the ACA, exchange plans must be offered at four cost-sharing levels based on actuarial value (AV) categories (how much of the cost of coverage is the responsibility of the health plan). These metal tiers include: Bronze (60% AV); Silver (70% AV), Gold (80% AV) and Platinum (90% AV).
- Under the AHCA, the metal tiers would be repealed (effective 2020).
- The Senate bill also repeals the metal tiers and sets the benchmark for the tax credits at 58 percent actuarial value of qualified health plans with essential health benefits.

Essential Health Benefits (EHBs)

- The ACA requires individual and small group plans to cover ten categories of essential health benefits (EHBs), ambulatory care, hospitalization, maternity, mental health, prescription drugs, preventive care, and chronic disease management, to name some.
- The AHCA enables states to opt out of the ACA's regulations on EHBs and the Senate bill does the same.
- Both the House and the Senate have waiver provisions that allow states the flexibility to change or set what qualifies as an EHB.

Cost-Sharing Subsidies

- The ACA makes subsidies available to eligible low-income individuals to assist with expenses related to cost-sharing (out of pocket costs like deductibles and copays).
- The cost-sharing subsidy is offered to anyone earning less than 250 percent of the poverty level.
- These subsidies are the subject of a pending lawsuit between the House of Representatives and the Obama Administration, which is currently on hold.
- The AHCA repeals these cost sharing subsidies (effective in 2020).
- The Senate bill funds the cost-sharing subsidies, appropriating $500 million to insurers through 2019 but repeals them thereafter.

State Waivers/Pre-existing Conditions

- Under the ACA, insurers are banned from charging people more or denying coverage based on an existing medical condition.
- The AHCA would let states opt out of the requirement that insurers must charge everyone the same, regardless of pre-existing conditions.
- The waiver provision of the AHCA was incorporated through an amendment proposed by Rep. Mark Meadows (R-NC-11) and Rep. Tom MacArthur (R-NJ-03).
- This provision also allows states to opt out of the community rating requirements of the ACA, enabling health plans to charge people based on their age and health status and permit states to reject the continuous coverage provision initially proposed by Republicans in the AHCA.
- For states to opt out of these regulations, states would need to propose one of the following to receive a waiver from the Department of Health and Human Services (HHS):
    - Reduce average premiums for health insurance coverage
    - Increase enrollment in health insurance coverage
    - Stabilize the market in the State
    - Stabilize premiums for individuals with pre-existing conditions
    - Increase the choice of health plans in the State
- The Senate does not give states the ability to lift the regulations that protect patients with preexisting conditions; however, through changes to the ACA's section 1332, states can waive other insurance rules that could weaken protections for medical conditions, such as the basic benefit package. States can also eliminate or revise out-of-pocket limits. The Senate bill maintains the community rating requirements.

<u>Changes in Medicaid Structure</u>

Per Capita Cap

- The AHCA replaces the Medicaid entitlement program with a per capita cap structure (effective Oct. 1, 2018/ FY 2019).
- Based on each state's spending in FY 2016, CMS would establish targeted spending for five enrollee categories (elderly, blind and disabled, children, non-expansion adults, and expansion

adults). This will cap spending per enrollee but the total amount of federal dollars to states would vary with enrollment changes.

- The consumer price index for medical care services (CPI-M) would be used to calculate year-by-year targeted spending amounts. To begin in FY 2020, any state with spending higher than its specified targeted aggregate amount would receive reductions in Medicaid funding for the following fiscal year. The federal government could recoup funds from states that exceeded their federal allotment.
- Certain expenditures would be exempted from the per capita cap including Disproportionate Share Hospital (DSH) payments and state administrative payments. Other exemptions include the following Medicaid beneficiaries:
    - Individuals covered under the Children's Health Insurance Program (CHIP)
    - Some partial-benefit enrollees, such as dual-eligible individuals eligible for coverage of Medicare cost sharing and individuals eligible for premium assistance.

Senate's Per Capita Cap

- Starting in 2020, the system would change to a per capita system. Between 2020 and 2024 the cap would be updated based upon Medical CPI. Starting in 2025, the Senate proposes using CPI-U, a slower growth rate for payments made to states.
- The Senate formula contains penalties for states with excessive per capita Medicaid spending, or for states that have relied on local funding for qualifying state expenditures.
- States have the option to set their baseline using 4 consecutive quarters between 2014 and Q2 2017.
- The update factor for the per capita caps would similar to the House bill until 2025, then be reduced.

Block Grants

- Under the AHCA, there is flexibility for states, with an option for a block grant, for their traditional adult and children populations in the per capita allotment. Under a block grant, federal spending would be limited to a pre-set amount.
- Funding for the block grant would be determined using the same base year calculation for the per capita allotment reforms.
- The amount of funding would be calculated by computing the per capita cost for the eligible population, multiplied by the number of enrollees in the year prior to adopting a block grant. The funding will increase by the growth in the consumer price index but will not adjust for changes in population. Unused funds rollover and remain available for expenditure so long as a State has a block grant.
- The Senate bill creates a Medicaid Flexibility Program beginning in 2020 to allow states to receive a lump-sum block grant for some beneficiaries. The bill excludes: medically-complex children, CHIP, IHS, partial- benefit enrollees, and breast and cervical cancer services eligible individuals.

<u>Changes in Medicaid Expansion</u>

Right of States to Choose Medicaid Expansion

- Under current law, Medicaid expansion is optional for states and those expansion states receive federal payments to cover more individuals.
- Expansion remains optional under the AHCA.
- The Senate draft bill includes a 3-year phase out of the Medicaid expansion, starting in 2021. Federal funding in the Senate bill is deeply reduced, with restrictions on how states can generate funds for the required state match.

Coverage

- The ACA permitted states to expand Medicaid eligibility for individuals under age 65 with incomes up to 138 percent of the Federal Poverty Level (FPL).
- The AHCA repeals the state option to extend coverage to individuals over 133 percent of the FPL by December 31, 2019. The AHCA also returns poverty-related income eligibility for children back to 100 percent of FPL.
- Senate bill eliminates option to cover adults, under enhanced match, above 133% of FPL effective December 31, 2017.

Disproportionate Share Hospital (DSH) Cuts

- Under the ACA, non-expansion states would have their Medicaid DSH payments eliminated, starting in FY 2018. The AHCA repeals Medicaid DSH cuts in non-expansion states in 2018 and repeals the cuts in expansion states in 2020. The Senate bill contains the same provision.

New Safety Net Funding for Non-Expansion States Under the AHCA

- The AHCA provides $10 billion over five years to non-expansion states for safety net funding.
- States that have not expanded Medicaid as of July 1, 2017 are able to participate and the states have discretion to determine eligible providers and payment amounts.
- States qualified for funds would receive an increased matching rate of 100% for CY2018 through CY2021 and 95% for CY2022.
- Distribution of the $10 billion would be determined by the number of individuals in the state with incomes below 138 percent FPL in 2015 relative to the total number of individuals with incomes below 138 percent FPL in all non-expansion states.
- The Senate bill includes the House safety-net funding for non-expansion; states that didn't expand Medicaid and do not hit the per-person national average for disproportionate share hospital payments will get a funding bump so that they hit the national average.

Federal Medical Assistance Percentages (FMAP)

- Under the ACA, for Medicaid expansion states, the government subsidized all payments for newly eligible individuals for 2014-2016, to be gradually decreased to 90 percent by 2020.
- The AHCA eliminates the enhanced match for Medicaid expansion enrollees as of January 1, 2020 (except for Medicaid expansion enrollees as of December 31, 2019 who do not have a break in eligibility of more than one month).
- The Senate bill would roll back enhanced federal funding over three years. The enhanced match in current law continues for years 2018-2020. In 2021, the federal match for the expanded population would drop to 85 percent, in 2022 it would drop to 80 percent, in 2023 it would fall to 75 percent, and the enhanced match would be eliminated by 2024.

Eligibility Redeterminations

- The AHCA requires states with Medicaid expansion populations to re-determine expansion enrollees' eligibility every six months. The Senate bill requires the same.

<u>Repeal of the ACA Taxes and Other Funding Provisions</u>

Taxes

- The AHCA would repeal most taxes authorized by the ACA, including taxes on Health Savings Accounts and Flexible Spending Accounts, Medical Devices Excise Tax, Prescription Drug Tax, and Tanning Tax— to name a few. The repeal of the additional Medicare Tax Increase is delayed beginning in 2022 and the Cadillac Tax is delayed through 2024.

- The Senate proposes to repeal all the ACA taxes except for the Cadillac Tax which is delayed through 2025 but not repealed. These taxes are repealed prospectively, beginning in 2019, as opposed to retrospectively as in the House bill. The repeal of the Medicare Tax would begin in 2023.

Flexible Savings Account (FSA) Provisions

- The ACA limited the amount an employer or individual could contribute to Flexible Savings Accounts (FSAs) to $2,500. This limitation is removed under the AHCA and the contribution per year is increased to at least $6,500 (self) and $13,100 (family). The Senate bill also includes a provision for increased contribution amounts.

The Prevention and Public Health Fund

- The Prevention and Public Health Fund (PPHF) was established under the ACA as an appropriation for a public health initiative to be administered by the Department of Health and Human Services (HHS), and provides funding to support childhood vaccinations, services for individuals suffering from Alzheimer's disease, and prevention of healthcare associated infections, among other services.
- The AHCA repeals PPHF appropriations starting in FY 2019.
- The Senate proposes repeal of the PPHF in FY 2018 (beginning October 1, 2017), and provides $2 billion dollars in 2018 for opioid abuse treatment.

Patient and State Stability Fund

- New under the AHCA, this fund provides resources to states to implement programs that provide financial assistance to high-risk individuals that do not have coverage, establish premium stabilization programs, make payments to providers, and assist individuals with premiums and cost-sharing, among other things. The total funding is $115 billion over eight years.
- The Senate bill creates a State Stability and Innovation Program and provides $112 billion over nine years, with an accelerating required state match of 35% in the out years for some funds to help stabilize markets and assist high risk individuals without employer coverage to gain market access. Other funding includes $50 billion in short-term funding available from CMS between 2018-2021 for state reinsurance programs and $62 billion in long-term funding available between 2019-2026 for reinsurance, high-risk pools, cost sharing subsidies and payments to providers.

Community Health Center Program

- The AHCA would increase funding by $100 billion over eight years for the Community Health Center Fund, which awards grants to federally qualified health centers (FQHCs).
- The Senate bill mirrors this.

Federal Payments to States, i.e. "Planned Parenthood Provision"

- The AHCA imposes a one-year freeze on mandatory funding to certain designated providers or *prohibited entities*. This provision is also included in the Senate bill.

Senate's Medicaid and CHIP Quality Bonus Payments

- The Senate bill would create a quality bonus payment for states with lower than expected aggregate medical expenditures that improve performance under certain quality measures determined by the Secretary.