

Health Care Legislation Status

CBO Analysis of The American Health Care Act (AHCA)

May 26, 2017

On May 24, 2017, the nonpartisan Congressional Budget Office (CBO) released the American Health Care Act (AHCA) appraisal. The report addresses the two most controversial points of ongoing discussions: 1) state waivers and 2) coverage options for those with chronic or preexisting conditions.

The CBO report is similar to the CBO's analysis of an earlier version of the House bill. The report concludes that under the AHCA, 23 million individuals will be uninsured over ten years and the bill will reduce the federal deficit by \$119 billion. This report is expected to fuel the debate between the competing conservative-to-moderate positions within the GOP.

As a recap, on March 24th, the House Freedom Caucus, a group of approximately 30 members from the conservative wing, insisted on greater state flexibility in defining Essential Health Benefits (EHBs). This contentious debate resulted in Speaker of the House, Paul Ryan, pulling the vote from the House floor. Approximately six weeks later, the revised AHCA includes a compromise to appease the Freedom Caucus. The AHCA allows insurers in states that receive waivers to define EHBs, potentially limiting coverages and creating greater state-by-state disparity. Across the GOP spectrum, more centrist Republicans continue to voice concern regarding access and potential for additional charges for those with pre-existing conditions if coverage lapses. In this ongoing back-and-forth, a last compromise adds \$8 B over five years to a \$130 B high risk pool fund to protect those with pre-existing and chronic conditions.

Essential Health Benefits (EHBs) are the 10 broad categories of health care services as outlined under the ACA. This proposed modification is the most controversial because it's debatable whether this falls within the limited permissible provisions within a reconciliation bill in lowering federal spending. Alternatively, if viewed differently in the Senate, this change may face challenges on procedural grounds, potentially placing the reconciliation bill in jeopardy and ultimately shifting EHB requirements to Phase Three (of the larger ACA repeal and replace platform) requiring bi-partisan support.

CBO Score

The CBO score also addresses the inevitable question of health insurance premiums. Health insurance premiums are anticipated to increase by 20 percent in 2018 and 5% in 2019. Under the AHCA, in 2020, average premiums will differ if states obtain waivers. Potentially, certain individuals will see average premium reductions of up to 30 percent through 2026, yet noting variances by region. The report further notes that lower premiums may be offset by higher out-of-pocket medical costs.

Speaker Paul Ryan commented, "This CBO report again confirms that the American Health Care Act achieves our mission: lowering premiums and lowering the deficit."

The AHCA includes \$662 billion in tax cuts, the Joint Committee on Taxation reported on May 24th Wednesday. The largest tax cut repeals a 3.8% tax on investment income of individuals with income over \$200,000 and married couples with incomes over \$250,000.

Both the ACA and the AHCA include refundable tax credits; yet, the structure differs in significant ways. Specifically, ACA credits are based on income, accounting for geographic and regional differences in costs. The AHCA bases tax credits on an individual's age and family size. This difference remains a key aspect in framing a new structure and this debate will remain at the forefront of upcoming Senate negotiations. As of now, credits provided to younger Americans are, on average, more generous than those provided under the ACA. The opposite is true for older Americans.

What Happens Next?

The AHCA moves to the Senate where additional modifications are anticipated. If modified, a joint committee of House and Senate members will rework the legislation to seek a compromise. Importantly, it is very likely that the Senate will draft a separate bill, which will lead to additional negotiations and compromises within the spectrum from moderate-to-conservative positions. Senate Majority Leader Mitch McConnell (R., Ky.) cannot lose more than two of the 52 Senate Republicans if there is no bipartisan support. On May 24th, he said, "I don't know how we get to 50 [votes] at the moment. But that's the goal."

Overall, the GOP leadership has stated consistently the process to repeal and replace the ACA will occur in three phases.

Phase One is the AHCA, which is a budget reconciliation bill limited to budget-specific provisions. Importantly, a reconciliation bill requires a simple majority vote in the Senate, rather than the typical 60-vote requirement to avoid a filibuster.

Phase Two focuses on regulatory directives, as instructed by President Trump's Executive Order and by the AHCA. Similarly to the ACA, the language "*HHS Shall...*" appears in the AHCA, thereby instructing the Department of HHS to execute the law's intent. Of note, when the ACA first passed in March 2010, the ACA language authorized HHS to issue regulatory directives over 900 times.

Phase Three occurs outside of the initial reconciliation budget-focused legislative efforts and requires 60 votes in the Senate, rather than a simple 51 majority. In the Senate, legislation needs at least eight Democrats to support any changes.

Takeaways

Discussion and debate are anticipated in the coming months as current uncertainty influences both insurance underwriters in setting rates as well as business decisions. As the legislative process continues in the Senate, Oswald will provide ongoing guidance and strategic direction for employers based on the most current information available. We will remain vigilant in monitoring all regulatory actions, and through our relationships with **industry experts in Washington, DC**, we will continue our proactive communication efforts to anticipate change. Importantly, until the AHCA is signed by the President, the Affordable Care Act (ACA) remains the law today; therefore, all current compliance requirements remain in place today.

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