

Health Care Legislation Status

The American Health Care Act (AHCA) Passes in the House

May 4, 2017

The **American Health Care Act (AHCA)** passed in a 217-213 House floor vote this afternoon. This is the initial step to repeal and replace the Affordable Care Act (ACA) following months of contentious negotiations among Republicans, including pulling the initial vote from the House floor on March 24, 2017. Wrangling to consolidate votes from the various GOP House caucuses dominated the political landscape over the prior months, yet this revised version has achieved a balance appealing conservatives focused on long-term funding while maintaining enough patient protections to retain the support of centrist Republicans.

AHCA Components

- **Eliminates** the employer and employee coverage mandates, as well as the majority of ACA tax
- **Replaces** the ACA's income-based subsidies with tiered tax credits which gradually increase for older Americans
- **Retains** certain popular ACA provisions, including the dependent child coverage expansion to age 26 and the ban on annual and lifetime limits
- **Allows** states to apply for waivers to define Essential Health Benefit requirements
- **Delays** implementation of the Cadillac Tax from 2020 to 2025
- **Expands** Health Savings Accounts (HSAs) by allowing individuals to contribute more to accounts and by permitting spouses to make additional contributions
- **Alters** the approach to tax credits to purchase coverage. Tax credits will be available in full to individuals earning less than \$75,000 and households earning less than \$150,000. Tax credits are unavailable for individuals earning more than \$215,000 with a \$290,000 cap for joint filers
- **Phases out** the ACA's Medicaid expansion and returns many decisions to the states

Tax Credits & CBO Scoring

- 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.
- The Congressional Budget Office (CBO), which scores all proposed legislation by issuing a projected cost assessment, has yet to release a score for the revised AHCA.

Negotiating the AHCA -- News 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). As a compromise to appease the Freedom Caucus, the revised AHCA allows insurers in states that receive waivers to define EHBs, potentially limiting coverages and creating greater state-by-state disparity. As a result, more centrist Republicans voiced 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 in the House was reached on May 3rd. The May 3rd 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.

What Happens Next?

The AHCA will move to the Senate where additional modifications are anticipated. If modified, a joint committee of House and Senate members will rework this proposed legislation to seek compromises within the spectrum from moderate-to-conservative positions.

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.

Lastly, President Trump reiterated the priority to address health care legislation prior to tax policy. The two are interrelated as the AHCA eliminates certain ACA-specific taxes, smoothing the process to tax reform by offsetting the budget deficit impact.

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 details and the CBO scoring assessment are released, and 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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