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Health Care Regulatory and Legislative Update

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Five Things to Know as the American Health Care Act Moves Through the House

On Monday, House Republicans unveiled the first phase of their long-awaited replacement plan for the Affordable Care Act (“ACA”). The two budget reconciliation bills — collectively dubbed the American Health Care Act (“AHCA”) — were sent to the House Ways and Means Committee and Energy and Commerce Committee for consideration. After clearing the two committees on Thursday, the AHCA now heads to the House Budget Committee for approval. House leadership has indicated that it hopes to move the legislation through the House in three weeks and then send it directly to the Senate floor for a vote. As a budget reconciliation bill, the AHCA is filibuster proof, meaning that it will only require a majority of votes to pass the Senate and that floor debate on the bill is capped at 20 hours). The following sets forth five things to know about the AHCA:

- 1. CBO Score Not Yet Available.** The nonpartisan Congressional Budget Office (“CBO”) has not yet scored the AHCA. Accordingly, its estimates of cost and the effect of the legislation on the uninsured rate, is unknown. It is expected that the CBO will release its report next week.
- 2. Not a Wholesale Repeal of the ACA.** The AHCA does not repeal the ACA wholesale. Whether due to the popularity of several key elements of the ACA, or the limitations imposed on budget reconciliation bills, the AHCA leaves much of the ACA in place, including:

- Private health insurance reform efforts, including requirements that health plans cover pre-existing conditions, guarantee availability and renewability of coverage, cover adult children up to age 26; and cap annual and lifetime out-of-pocket expenditures.
 - Titles affecting quality of care and program integrity.
 - Medicare benefit enhancements.
3. **Medicaid Expansion Continues Until 2020.** The ACHA kicks the bucket down the road on Medicaid expansion. In a likely appeal to Republican governors who run states that have expanded Medicaid, rather than immediately ending Medicaid expansion, the ACHA allows expansion to continue through January 1, 2020.
 4. **Individual Mandate Penalty Reduced to \$0.** The bill reduces the ACA's individual mandate penalty– the yearly penalty for not maintaining health insurance coverage — to \$0. Instead, the AHCA penalizes individuals who do not maintain continuous health insurance coverage by allowing insurers to charge a 30% premium surcharge when they reenter the market.
 5. **Tax Credits Continue in New Form.** Like the ACA, the ACHA provides tax credits to help some people pay their health insurance premiums if they don't receive insurance through work or government programs. However, rather than tying the credits to a person's income as the current law does, the ACHA tax credit would be tied largely to age. Because the ACHA has largely stripped all taxes and fees from the ACA, it is unclear how these tax credit will be paid for.

Hospital Associations and American Medical Association Oppose ACA Replacement Bill

In a March 8, 2017 letter to Congress titled “America's Hospitals and Health Systems,” seven organizations representing nearly every hospital and health care system across the country indicated that they “cannot support the American Health Care Act as currently written.” The seven organizations signing the letter include (1) the America's Essential Hospitals, (2) the American Hospital Association, (3) the Association of American Medical Colleges, (4) the Catholic Health Association of the United States, (5) the Children's Hospital Association, (6) the Federation of American Hospitals, and (7) the National Association of Psychiatric Health Systems. The joint letter indicates that the organizations are very concerned that the bill would create “tremendous instability” for Americans seeking affordable coverage and would result in the loss of coverage for current enrollees as well as cuts to programs that provide coverage to their most vulnerable patients. The American Hospital Association submitted its separate letter of disapproval a day earlier, highlighting an expected loss of coverage for those who had gained coverage under the Affordable Care Act. In a March 8th letter to Congress, the American Medical Association called the AHCA “critically flawed” and indicated that it could not support the law as currently written due to the expected decline in health insurance coverage and the potential harm it would cause to vulnerable patient populations.