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Just six weeks after the House leaders failed to muster the votes to pass an earlier version of the American Health Care Act (AHCA), the House Republicans narrowly passed their health care bill to repeal and replace Obamacare with a 217 to 213 vote on Thursday. All but 20 Republicans voted for the bill, and the Democrats were unanimous in opposition.

## What changed in the Bill?

The earlier version of the AHCA did not satisfy the conservative Freedom Caucus bloc of the Republican party and Speaker Ryan pulled the bill from the floor immediately before the scheduled vote on March 24 when it became clear that there were not 216 votes in the House. Several tweaks were made to the bill to win over support from the Freedom Caucus members who balked and refused to support that version of the bill. These modifications include a state waiver provision and additional protections for pre-existing conditions.

## State Waivers

An amendment was made to the bill that allows states to waive certain ACA requirements that are likely to cause increased premium costs. Under the current House bill, states could apply for waivers, which are effective for 10 years, from some of the ACA's consumer protections. There are three types of waivers available:

- **Age Rating Ratio**  
allows states to increase the permitted age rating to a ratio greater than 5:1.
- **Essential Health Benefits**  
allows states to define their own lists of essential health benefits without regard to the ACA list.
- **Health Status Underwriting**  
allows states to permit insurers to include health status as a legal factor when underwriting for individuals who did not maintain continuous coverage, subject to a number of limitations and safeguards.

State waiver requests will be granted by default unless the Secretary of HHS notifies the state within 60 days that the request failed to meet requirements.

## Pre-existing Condition Protections

In addition to the state waivers, a further amendment was made to the House bill to help it pass. This amendment provides an additional \$8 billion in high-risk pool funding over five years for waiver states for individuals with pre-existing conditions who fail to maintain continuous coverage and may be subject to health status underwriting.

Under this amendment, states could also allow insurers to charge higher premiums to people with pre-existing conditions if they've had a gap in coverage as long as the state provides people priced out of commercial insurance with assistance, like a high-risk pool.

## Provisions of the AHCA Affecting Employers

Below is a brief summary of the provisions of the House bill affecting employers:

- **Elimination of the Employer Mandate penalties.** The penalties are reduced to zero, essentially, repealing the mandate to offer minimum essential coverage to full-time employees that is affordable and provides minimum value.
- **Elimination of the Individual Mandate penalties.** Penalties are reduced to zero, essentially repealing the requirement for individuals to maintain minimum essential coverage to avoid a tax penalty.
- **Further delay of the Cadillac Plan Tax.** The effective date of the Cadillac Tax is delayed until 2026.
- **ACA Reporting.** The ACA reporting rules have not been removed, so it is still not clear whether 2017 ACA reporting would be required.
- **Cost-sharing Subsidies.** The AHCA repeals the cost-sharing subsidy program under the ACA and replaces it with a new refundable tax credit which would be effective in 2020. The credit would vary from \$2,000/year to \$4,000/year depending on age, with a family overall cap at \$14,000.



- **Pre-Existing Conditions.** The bill removes the ACA's blanket prohibition on pre-existing condition exclusions. The AHCA imposes a premium surcharge of 30% for 12 months for an individual enrolling **after a break in coverage** of 63 or more days in the prior year. The revised bill allows states to permit additional premium costs and health status underwriting. There will also be high-risk pool funding over five years for waiver states for individuals with pre-existing conditions who fail to maintain continuous coverage.
- **Metal Tiers and Age Banding.** The AHCA repeals the actuarial value standards, essentially eliminating the bronze, silver, gold and platinum tiers and allows more plan options, presumably at below bronze levels. It also changes small group medical insurance age-rating from 3:1 to 5:1 (which can be increased under a state waiver).
- **HSAs.** Alignment of the annual HSA maximum contribution to the maximum out-of-pocket limits on qualified HDHPs.
- **OTC and FSA.** The AHCA repeals the ACA tax on OTC drugs and medicines and again permits tax favored accounts. Also, it removes the annual cap of \$2,500 on employee health FSA contributions.
- **Medicaid Expansion.** The AHCA gradually rolls back Medicaid expansion by cutting federal reimbursement to states if they leave the expansion in place.

senators also expressed concerns with the rushed process in the House, which voted on the revised bill less than 24 hours after posting it. Members also voted on the bill before receiving a new Congressional Budget Office estimate of its cost and effects.

The Republicans' slight majority (just 52 votes) means they can only lose two senators and still push a repeal through. Since the House passed the bill under budget reconciliation rules, the Senate can pass this bill by a simple majority (50 votes with Vice President Pence as the tiebreaker rather than the usual 60-vote threshold), without the threat of filibuster through the reconciliation process. Keep in mind that any legislation that gets through the Senate will again have to clear the House and its conservative majority.

What should employers do? Continue to comply with the ACA. Remember, despite the passage of the bill in the House, the ACA remains the law of the land for now.

We will continue to keep you apprised of new developments as they occur.

## What's next?

The focus will now shift to the Senate, where the House bill has little chance of being passed in its current form. We may very well see the Senate propose its own version of the bill. In any event, it is likely the Senate will consider the bill at a much slower pace, with a vote not happening until July at the earliest.

A number of Republicans in the Senate have expressed significant concern over the House plan for a number of reasons, including concern over steep spending cuts and the effect on states that expanded Medicaid. In addition, there is also concern that some of the provisions of the bill will not comply with special budget rules that Republicans must follow in order to skirt a Senate filibuster. Several GOP