

K&L GATES

**TRIAGE: RAPID LEGAL LESSONS FOR BUSY
HEALTH CARE PROFESSIONALS**



Segment 3

Revising, Repealing, or
Replacing the ACA:
Legislative Update (May 2017)
Ryan J. Severson

OVERVIEW

- The House of Representatives passed H.R. 1628, the American Health Care Act of 2017 (AHCA), on May 4, 2017
- The bill now moves to the Senate, where its fate remains uncertain
- Purpose of this session:
 - Provide a quick overview of the major provisions of the AHCA
 - Review the main Medicare and Medicaid changes in the AHCA
 - Discuss current status of health care reform in the Senate
 - Look at what's next

AHCA SUMMARY

- Eliminates individual and employer mandate penalties
- Creates tax credits to buy insurance, adjusted for age, that phase out at incomes between \$75,000 and \$115,000 (for individuals)
- Extends delay of Cadillac Tax to 2026
- Eliminates Medical Device Excise Tax
- Repeals ACA's income-based premium tax credits and cost-sharing subsidies effective in 2020
- Provides funding for federal and state high-risk pools and reinsurance programs
- Increases annual limits and makes other changes to encourage the use of Health Savings Accounts

EFFECT ON ACA INSURANCE REFORMS

- Relaxes some requirements:
 - Pre-existing conditions: 30% enrollment penalty on individuals who do not maintain continuous coverage
 - Essential Health Benefits (EHB): states may seek a waiver to establish their own requirements
 - Health status underwriting: states may apply for waiver in lieu of imposing enrollment penalty for applicants without continuous coverage
 - Age rating: federal default age rating ratio increased from 3:1 to 5:1 starting in 2018; states may modify or apply for waiver to increase
- Maintains others completely:
 - ✓ Preventive benefits without cost sharing
 - ✓ In-network cost sharing for emergency services
 - ✓ Medical Loss Ratio requirements for health plans
 - ✓ Dependent coverage up to age 26

MEDICARE & MEDICAID CHANGES

Medicaid

- Ends option for states to expand Medicaid to adults above 133% FPL
- Creates per-capita funding system beginning in 2020
- Gives states a block grant option for non-expansion adults and children, or just non-expansion adults
- Allows states to set work eligibility requirements
- Blocks direct spending to certain abortion providers

Medicare

- Delays ACA payroll tax to 2023 and repeals 3.8% investment income tax for high-income earners
- Maintains ACA Medicare coverage enhancements
- Does not change ACA's quality payment programs
- Does not restore all ACA hospital payment cuts
- Keeps Independent Payment Advisory Board

SENATE CONSIDERATION

- Using the AHCA vs. starting from scratch
- Working group dynamics
- Congressional Budget Office (CBO) scoring
 - CBO score on AHCA: 23 million more individuals potentially without coverage; \$119 billion in deficit reduction over 10 years
 - Influential, but some lawmakers question CBO's assumptions
- Reconciliation/Byrd Rule considerations
- Major Senate issues currently:
 - Tax credit structure – do the AHCA credits look too much like the ACA?
 - Purchasing plans covering abortion with federal subsidies
 - Medicaid changes – how to phase in certain changes, control rate of growth, give states flexibility

TIMING AND PROSPECTS

- Senate leadership has set aggressive internal benchmarks for moving the legislation
- Wild cards:
 - Trump Administration – e.g., whether to continue paying cost-sharing subsidies
 - Insurer participation for 2018 and the impact on final rates
 - Many others
- Vote margins are likely to remain very close
- Potential for back-and-forth with the House
- Bottom line: specific path forward in the Senate is unclear; Republicans aiming for party-line vote this summer, but could spill into later this year or beyond

Today's Presenter



Ryan J. Severson

Chicago

+1.312.807.4380

ryan.severson@klgates.com

For more information on our Health Care Practice Group please visit our [website](#).

For additional insights into Health Care Law please visit [K&L Gates HUB](#).



K&L GATES