

House Considers Amended ACA Repeal-and-Replace Bill

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Health Care

Last week, Representative Thomas MacArthur (R-N.J.) proposed an amendment (the “MacArthur Amendment”) to the American Health Care Act (AHCA) in an effort to resuscitate the Republican bill that Speaker Paul Ryan pulled from the House floor last month. The MacArthur Amendment makes several changes to the AHCA, which we summarized in Advisories 17-9 and 17-10.

While House Republican leadership has described the MacArthur Amendment as a compromise between moderate House Republicans and the conservative Freedom Caucus, it remains unclear whether the Republicans have enough votes to pass the amended legislation. Below, we analyze the changes the MacArthur Amendment makes to the AHCA.

State Waivers of Key Affordable Care Act Mandates

The key feature of the MacArthur Amendment is that it allow States to request waivers of three different Affordable Care Act (ACA) mandates: (1) the essential health benefits requirements; (2) age-rating requirements; and (3) the prohibition on medical underwriting based on health status or condition:

1. Essential Health Benefits. For plan years starting on or after January 1, 2020, the State would be able to apply for a waiver from the ACA’s essential health benefit requirement for insurance plans in individual and small group markets, and it could set its own standards for the categories of benefits insurers must provide, as well as the benefits required in each category.
2. Age Rating. For plan years starting on or after January 1, 2018, the MacArthur Amendment would allow States to apply for waivers from the ACA 5:1 limit on variation in health insurance premiums among different age groups. (The ACA limits has a 3:1 age rating limit, which the AHCA would increase to 5:1.)
3. Health Status Underwriting and Preexisting Conditions. The MacArthur Amendment would allow a State to apply for a waiver to allow insurers to employ health status underwriting practices. States could only allow for such underwriting for individuals who fail to maintain continuous health care coverage (defined as a gap in coverage of 63 days or more), and a State would only be eligible for the waiver if it uses the AHCA’s Patient and State Stability Fund to establish a program to assist high-risk individual purchase coverage, such as a reinsurance program or a high-risk pool. But it is not clear whether the AHCA’s Patient and State Stability Fund has sufficient funding to allow

States to establish programs that would ensure individuals with preexisting conditions have access to affordable insurance.

Although the amendment allows States to obtain a waiver of the prohibition on medical underwriting, it also includes a provision that reads: “Nothing in this Act shall be construed as permitting health insurance issuers to limit access to health coverage for individuals with preexisting conditions.” It is not clear how the drafters believe this provision squares with the state waiver of medical underwriting.

State waiver applications would be submitted to the Department of Health and Human Services (HHS). They would have to include a description of how the waiver would (1) reduce average premium costs for health insurance coverage in the state; (2) increase the insurance enrollment population; (3) stabilize the market for insurance coverage; (4) stabilize premiums for people with preexisting coverage; or (5) increase the choice of health plans in the state. Aside from specifying these requirements for a waiver application, the Amendment does not articulate a standard HHS should apply in deciding whether to grant a waiver, and it provides for automatic approval of all waivers unless affirmatively disapproved within 60 days.

Legislative Hurdles

House Republican leadership had hoped that the chamber would vote on the bill last week, by President Trump’s one hundredth day in office. However, leader McCarthy [revealed](#) last Thursday that the Republican conference did not have enough votes to pass the measure. With many Republican Members’ votes still uncommitted, it is unclear whether the amended AHCA will pass the House.

If the amended bill does successfully pass in the House, it is unlikely to pass the Senate in its current form, even if the legislation only requires a simple majority in the Senate under [budget reconciliation rules](#). The Republicans only hold a two-vote majority in the Senate, and several Republican Senators have already indicated that they cannot support the AHCA as written and amended by the MacArthur Amendment.

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