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Congressional Republicans Revive the American Health Care Act, But Fail to Gain Enough Support for a Vote This Week

The American Health Care Act (AHCA), which failed to come to a vote last month, was revived this week by House Republicans, who had hoped to bring the amended AHCA to a floor vote by Friday in an effort to produce a legislative victory ahead of President Trump's 100th day in office. Ultimately, Republican leaders failed to garner sufficient support, and the current vote count has ended any chance that the bill will be brought to a vote this week. It is unclear at this point what the timeline may be for a potential vote, and further revisions to the legislative language are possible.

While the bulk of the AHCA remains largely the same as the version considered last month, especially when it comes to Medicaid, some modifications have been made that would impact the Affordable Care Act's (ACA) consumer protections. These changes, introduced in an amendment supported by Representative [Tom MacArthur](#) (R. NJ) ([the MacArthur Amendment](#)), represent a compromise between some House Republican moderates and the more conservative members of the Freedom Caucus. Unfortunately, these changes would allow states to waive crucial consumer protections, like Essential Health Benefits (EHBs) and community rating requirements, and that could have a negative impact on access to care for individuals living with chronic illnesses and disabilities.

Advocates should:

1. Understand the impact that the MacArthur Amendment could have on key consumer protections and educate their Representatives on the ramifications of this proposal.
2. Reach out to their Representatives to remind them of their concerns with the American Health Care Act, including its impact on the Marketplace subsidies and Medicaid financing.
3. Remain vigilant for additional maneuvering and further efforts to bring the AHCA up for a House vote.

The MacArthur Amendment Allows States to Waive Critical Consumer Protections

The MacArthur Amendment allows states to apply for three different types of waivers from some key ACA requirements. First, it allows states to apply for waivers to set an age ratio higher than the 5:1 ratio included in the AHCA. Second, it allows states to determine EHBs for the plans available on their Marketplaces. Third, the Amendment allows states to permit insurers to engage in health status underwriting, provided they operate certain programs to mitigate the impact on high-risk individuals. All of these waivers could have a negative impact on access to care, especially for vulnerable individuals who depend on the ACA's consumer protections to avoid unaffordable high premiums.

Health Care in Motion

Increasing Costs for Older Americans

The first type of waiver allowed by the MacArthur Amendment would create a dramatic increase in premiums for older Americans. Under the ACA, insurers can only charge older Americans three times the cost of premiums for their younger enrollees. The AHCA had already proposed increasing the age ratio from 3 to 1 to 5 to 1, which would cause premiums to skyrocket for older Americans seeking coverage in the Marketplaces. States with MacArthur Amendment waivers would be allowed to set an even higher ratio, increasing the discrepancy in costs paid by younger enrollees and older ones.

These waivers would raise serious concerns about access to care for older Americans, who tend to have higher health care needs and are more likely to live with chronic illnesses and disabilities. Although the AHCA scales subsidies to purchase insurance based on age, the age scale used would not be steep enough to offset the jump in premiums. Therefore, many older Americans would find themselves struggling to afford health care coverage.

Undermining Essential Health Benefits

In its previous version, the AHCA would have repealed EHBs, which are the mandated core set of medical services all insurers must cover, such as hospital stays, pharmaceuticals, maternity care, and mental health services. Many moderates cited this proposed elimination as a reason they would not support the bill. Thus in an effort to compromise and win moderate support, the MacArthur Amendment preserves EHBs on the federal level, but allows states to waive those requirements. Under these waivers states could not only decide which categories of benefits insurers must provide their enrollees, but the benefits within each category that must be covered. For example, a state would be able to submit a waiver that would allow it to pick and choose which medications insurers must include on their formularies, potentially allowing insurers to avoid covering all Hepatitis C drugs.

The creation of waivers that would allow states to chip away at EHBs is concerning. Individuals living with chronic conditions and disabilities need a minimum benefits package that includes the range of services and treatments necessary to manage their conditions, including prescription drug benefits, substance use and mental health treatments, and preventive services. Without a minimum standard of benefits, people living with chronic conditions and disabilities could find themselves with access only to insurance that does very little to provide meaningful access to care and treatment. Moreover, if insurers can offer less generous benefit packages, this will segment the market—reducing the number of plans that are adequate for those with higher health needs and driving up the cost of those plans.

Allowing waivers to EHBs would also undermine some other ACA consumer protections. As written, the ACA's prohibition on lifetime and annual limits as well as the cap on out of pocket costs only apply to EHBs. Therefore, states seeking EHB MacArthur Amendment waivers would likely be able to define these protections as well. These protections are very important to people living with chronic illnesses and disabilities. Before the ACA, individuals living with high cost conditions would often “run out” of coverage as they hit upon lifetime or annual caps, which would prevent them from continuing with the care they needed. Additionally, those with high health care spending, such as those managing a chronic illness or disability, rely on the maximum out of pocket spending requirements to control their annual medical spending, especially in the face of high co-insurance and co-payment requirements.

Permitting Health Status Underwriting

The last type of waiver permitted by the MacArthur Amendment would allow states to permit their insurers to engage in health status underwriting by waiving parts of the ACA's community rating requirement. States with these waivers would be allowed to permit insurers to impose health status underwriting on individuals who did not maintain continuous coverage for the first 12 months of enrollment following that gap. Although states seeking a community rating MacArthur Amendment

Health Care in Motion

waiver would have to engage in certain programs to mitigate the impact of health status underwriting on their citizens, it is unclear if these proposals will actually offset the increase in premiums to those living with chronic illnesses and disabilities.

Health status underwriting is the practice of charging high premiums to those with pre-existing conditions. Prior to the ACA's prohibition on health status underwriting, individuals living with chronic conditions were routinely required to pay premium surcharges that could be [over 100% of the premiums offered to individuals without pre-existing conditions](#) for even minor conditions such as hay fever. Health status underwriting often led to high rates of uninsurance among people living with chronic illnesses and disabilities. In 2010, prior to the full implementation of the ACA, [17,875,000 Americans living with pre-existing conditions were uninsured](#) in part because health status underwriting made health care coverage unaffordable for them.

Under the MacArthur Amendment, states seeking a community rating waiver to allow health status underwriting must operate a program under the AHCA's patient and state stability fund to 1) provide financial assistance to high-cost enrollees seeking coverage in the Marketplaces; 2) enter into a reinsurance program to provide incentives to insurers to keep premiums for sicker enrollees low; or 3) participate in the federal invisible high risk sharing program, which is essentially another reinsurance program. Unfortunately, it is unlikely that the money set aside for these programs in the patient and state stability fund and the invisible risk sharing program would be enough to offset the dramatic increase in costs to the [52 million Americans living with pre-existing conditions](#) if insurers were allowed once more to use health status underwriting. For example, the federal invisible high risk sharing program would be given \$15 billion over nine years, which would likely [lower annual premiums by 1-2% per year, or \\$100 per enrollee annually](#). By contrast, the AHCA, even without allowing for health status underwriting, will [increase average enrollee costs by \\$3,000 by 2020](#).

Also concerning is the heightened impact these waivers would have on individuals with pre-existing conditions through the continuous coverage requirement. Under the AHCA, all individuals who experienced a gap in coverage would have their premiums increased by 30%. Under these waivers, however, only individuals living with pre-existing conditions would face a penalty for a gap in coverage because insurers would be able to use health status underwriting. Individuals with serious conditions or disabilities, such as HIV, cancer, and mental illness are more likely to experience gaps in healthcare coverage due to changes in employment status related to periods of illness or intensive treatment that may leave them unable to work. This will shut the door on health care coverage exactly when individuals living with chronic illnesses and disabilities need it the most.

Furthermore, the MacArthur Amendment only allows for the Department of Health & Human Services (HHS) to make a cursory review of any consumer protection waiver proposed by a state. HHS would be required to automatically approve the waiver within 60 days unless the state fails to meet the requirements of the statute. States could choose to waive the health status underwriting prohibition without implementing a program that would directly address the jump in premiums that Americans living with chronic illnesses and disabilities would experience. For example, while reinsurance programs or high-risk sharing programs encourage insurers not to utilize health status underwriting and can have a positive effective on the Marketplaces, these programs do not directly alleviate the cost burden on individuals whose insurers do choose to take advantage of health status underwriting. Without a thorough review to ensure that states are mitigating the jump in cost experienced by consumers, allowing health status underwriting runs a large risk that people living with chronic illnesses and disabilities will once more get priced out of the private insurance markets.

Many of the Access to Care Concerns with the AHCA Remain

Despite the focus on the MacArthur Amendment, advocates should be aware that most of the AHCA remains largely unchanged.¹ This means that the AHCA itself remains a serious threat to access to care for the millions of Americans living

¹ For an in depth discussion of the American Health Care Act, please see our previous *Health Care in Motion* pieces [here](#) and [here](#).

Health Care in Motion

with chronic illnesses and disabilities. The per capita cap funding proposed by the AHCA for the Medicaid program and elimination of the Medicaid expansion are estimated to cut \$880 billion in federal funding from state Medicaid programs and result in 14 million fewer people covered by Medicaid by 2026 than would be under current law. The AHCA would also create barriers to access to care in the private market by making healthcare coverage and services unaffordable. Because the AHCA fails to take income and geography into account for premium tax credits, meaningful care will become unaffordable for individuals living with chronic illnesses and disabilities as well as older individuals. In addition, by eliminating the ACA's cost-sharing reductions and actuarial value requirements, people living with chronic conditions and disabilities will have access to less generous plans with high deductibles and high cost sharing.

Next Steps Uncertain for the AHCA – Advocates Should Continue Vocal Opposition

At this time, it remains unclear whether the AHCA has a viable chance of passage in the House. The amended AHCA gained an official [endorsement](#) from the House Freedom Caucus, winning over at least 30 votes from the group's members that previously said the AHCA did not go far enough to repeal the ACA. However, the MacArthur Amendment has threatened to alienate more moderate Republicans. Centrist members have voiced [concerns](#) over how the Amendment gives states the power to remove important safeguards that allow people living with pre-existing conditions, such as chronic illnesses or disabilities, to access affordable care without any viable alternatives for coverage. As no Democrats are expected to support the bill, Republicans can only afford to lose 22 yes votes.

Advocates should be sure to remind their Representatives of the concerns they have with respect to the AHCA, in addition to educating them about the impact that the MacArthur Amendment waivers could have on access to care. Advocates should also reiterate their opposition to the AHCA and urge their Representatives to oppose the bill.

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