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One Step Closer: The American Health Care Act Passes in the House; Moves onto the Senate

On May 4, 2017, the House of Representatives voted to pass the American Health Care Act (AHCA). This vote was strictly on party lines, with no Democrats voting in favor of the bill, and all but twenty Republicans voting yes.

The version of the AHCA that was passed this week was substantively the same as the version that failed to come to a vote last week. The AHCA continues to gut Medicaid funding, render the expansion meaningless, shrink subsidies to purchase insurance, and remove key consumer protections that keep coverage affordable and accessible to people living with chronic illnesses and disabilities. Republican amendments, particularly one sponsored by Representative [Tom MacArthur](#) (R-NJ) further attack consumer protections, allowing states to waive Essential Health Benefits and allow insurers to scale premiums based on health status. Although a further amendment by Representative [Fred Upton](#) (R-MI) provided some funding for programs to offset these changes to consumer protections, this funding is simply not enough to achieve these aims.

The next stop for the AHCA will be the Senate, which is expected to be somewhat less receptive. The Senate is expected to take up the bill quickly, with a vote possible before Memorial Day.

Advocates should:

1. Be prepared to act quickly to educate their Senators on the negative impact that the AHCA could have on access to care.
2. Urge their Senators to, at the least, heavily amend the AHCA to address the negative impact the bill could have on Medicaid, consumer protections, and the Marketplaces.
3. Empower their consumer networks to make their voices heard loudly as the Senate debates the AHCA.
4. Follow closely the rulings of the Senate Parliamentarian, because they may dramatically shape the final version of the AHCA.

Second Verse, Same as the First: A Brief Recap of the AHCA

Between last month, when the AHCA failed to come to a vote, and this week, the House did little to fix the serious access to care issues presented by the AHCA. If passed into law, this bill would result in a dramatic decrease in access to care, especially for those living with chronic illnesses and disabilities.¹ Overall, the AHCA is predicted to cause 24 million Americans to lose their health care coverage by 2026.

¹ For a more in depth discussion of the AHCA please see the following previous *Health Care in Motion* pieces [here](#) and [here](#).

Health Care in Motion

If enacted, the AHCA would have serious ramifications for Medicaid. The per capita cap funding proposed by the AHCA for the Medicaid program and the 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 being covered by Medicaid by 2026 than would be under current law. This drastic cut in funding for the program would result in a loss of coverage and services for the millions of people living with chronic conditions and disabilities who depend on the program both through traditional eligibility categories and the Medicaid expansion. The AHCA would also end Medicaid expansion, which was an important tool for delivering needed services to individuals living with chronic illnesses and disabilities.

On the private insurance side, the AHCA would also create new barriers to access to care in the private market by making health care 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.

Lastly, the AHCA would allow discrimination against individuals with pre-existing conditions through its continuous coverage requirement. Individuals with serious conditions or disabilities, such as HIV, cancer, and mental illness are more likely to experience gaps in health care coverage due to changes in employment status related to periods of illness or intensive treatment that may leave them unable to work. The AHCA would allow insurers to penalize enrollees with gaps of coverage two or more months long by charging up to 30% higher premiums for a year. This will shut the door on health care coverage when people need it the most.

The AHCA's Few Amendments Further Undermine Access to Care

The recent Republican amendments further undermine access to care for people living with chronic illnesses and disabilities. As the Congressional Budget Office (CBO) has not yet had a chance to evaluate the impact of these Amendments, we do not know their full ramifications on access to care. It is clear, however, that they will remove key consumer protections that vulnerable individuals rely upon to be able to access the private insurance markets.

The MacArthur Amendment² seeks to deliver cheaper insurance to healthy Americans by undercutting crucial Essential Health Benefits requirements and excluding the most vulnerable Americans from the private insurance market by allowing states to waive critical consumer protections, such as the community rating requirements. The MacArthur Amendment would allow states to permit insurers to impose health status underwriting on individuals who do not maintain continuous coverage for a penalty period of 12 months after they once again seek coverage. Health status underwriting was one of the [most significant barriers](#) to care for people living with chronic illnesses and disabilities in the private insurance markets before the Affordable Care Act (ACA). In order to obtain such a waiver, states would have to operate certain programs to minimize the impact of these waivers on high risk individuals. These programs could take the shape of reinsurance or high risk pools. High risk pools, in particular, are concerning because they have been proven in the past to be very expensive, without providing adequate benefits or enrollment to the communities they are meant to serve. The MacArthur Amendment is extremely concerning from an access to care perspective.

The Upton Amendment seeks to mitigate the impact that the MacArthur Amendment could have on access to care for people with pre-existing conditions by providing \$8 billion over the next five years to support high risk pools and other similar programs. This would be in addition to the \$130 billion provided elsewhere in the AHCA for the Patient and State

² For a more in depth discussion of the MacArthur Amendment please see the previous *Health Care in Motion* piece [here](#).

Health Care in Motion

Stability Fund to support these programs. Unfortunately, \$8 billion over the course of five years is unlikely to be enough to support access to care for the [27% of Americans](#) living with pre-existing conditions. According to [estimates](#), \$8 billion over the course of five years would be enough to cover only 10% of those living with pre-existing conditions at best through high risk pools. The \$8 billion also does little to offset the major cuts to important health care programs, such as Medicaid, imposed elsewhere by the AHCA.

On to the Senate

Of course, in order to become the law of the land, the AHCA must pass in the Senate as well as the House. The Senate is expected to move quickly on this legislation, potentially voting on it before Memorial Day. The fate of the AHCA in the Senate, however, remains uncertain, as it faces more challenges in that chamber than it did in the House.

First, Senate Republicans can only afford to lose two votes, assuming that no Senate Democrats will vote for this bill. Senate Republicans are largely more moderate than their House brethren, and many Senators have already [voiced concerns](#) about this bill. In particular, many Senators are wary of stripping funding from Medicaid, with Senators Portman (R-OH), Gardner (R-CO), Murkowski (R-AK), and Moore Capito (R-WV) authoring a [letter](#) formally expressing their concerns with the AHCA's Medicaid provisions earlier this year.

Commentators expect that one of the more moderate Republican Senators will propose an amendment to the AHCA to address its treatment of Medicaid. This may be an opportunity for advocates to reach out to their Senators to educate them on the importance of Medicaid, the negative impact the AHCA would have on it, and the need for an amendment that would restore much of Medicaid's needed federal funding. Similarly, Senate moderates are concerned with the AHCA's treatment of people living with pre-existing conditions, which may allow advocates another opportunity to educate their elected officials on the importance of strong consumer protections.

The Senate's unique rules of procedure may also pose a significant challenge to the AHCA.³ Unlike the House, the Senate is limited by the Byrd Rule which only allows the Senate to consider provisions that directly affect spending, revenues, and the debt limit in a reconciliation bill such as the AHCA. The Senate Parliamentarian, who is appointed by the majority party in the Senate, advises the Senate's presiding officer regarding points of order, including the Byrd Rule. While the Senate's presiding officer technically may overrule the Parliamentarian, such a move would be a significant departure from the normal protocols of the Senate. Notably, in previous attempts to repeal the ACA during the Obama Administration, the Parliamentarian determined that some provisions similar to key elements of the AHCA did run afoul of the Byrd Rule. It is possible that the Parliamentarian will decide that some elements of the AHCA passed in the House do not satisfy the Senate's requirements, necessitating they be stripped from the bill if the Senate is to use reconciliation and thus be able to pass the bill with only 50 votes, rather than the 60 votes that would otherwise be required to halt a Democratic filibuster.

If the Senate passes an amended version of the AHCA, then the differences between the House and Senate versions must be resolved before the AHCA can be signed into law. With most complex legislation, Congress typically uses a conference as a means of developing an agreement in order for both chambers to pass an identical bill. In this instance, however, the need for agreement between the two chambers may present a significant hurdle for the AHCA. Shortly after yesterday's vote, some Senate Republicans [indicated](#) that they were not willing to pass the AHCA in its current form. If the bill does get through the Senate, it will likely be amended to reflect Senate Republicans' concerns over Medicaid funding and protections for patients with pre-existing conditions. However, if the Senate does make significant changes, the amended bill would then have to either go back to the House to be passed anew in its amended form, or go through a conference process in which

³ For a more in depth discussion of Senate procedure, please see the previous *Health Care in Motion* piece [here](#).



Health Care in Motion

the House and Senate would need to resolve their differences. Either scenario could prove challenging, however, given the level of disagreement between more conservative elements in the House Freedom Caucus and the more moderate views of both the Tuesday Group in the House as well as Senate Republicans.

The Senate's deliberation represents an opportunity to address the serious access to care concerns raised by the AHCA. Advocates must work quickly to ensure that their voices are heard in Congress. Advocates should reach out to their Senators, particularly moderate Senate Republicans, to urge them to oppose the AHCA and educate them on the impact that the bill could have on Medicaid, the Marketplaces, and consumer protections. Advocates should urge their Senators to oppose the AHCA altogether, or at the least to heavily amend the bill in order to address the negative impacts that would likely result for people living with chronic illnesses and disabilities. Advocates should also follow the rulings of the Senate Parliamentarian closely, because they will determine the shape of the final version of the AHCA.

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