

# Health Care Reform Management Alert Series



## House Passes Modified Version of AHCA - Bill to Proceed to Senate

Issue 109

By Benjamin Conley, Diane Dygert and Joy Sellstrom

*This is the one hundred and ninth issue in our series of alerts for employers on selected topics on health care reform. (Click [here](#) to access our general Summary of Health Care Reform and other issues in this series.) This series of Health Care Reform Management Alerts is designed to provide an in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.*

**Seyfarth Synopsis:** *On May 4th, House Republicans were finally able to pass a modified version of the American Health Care Act (“AHCA”) on the thinnest of margins. To muster the votes, the Republicans had to make a series of tweaks to the bill that were requested by both the conservative Freedom Caucus as well as the more moderate Tuesday Group. Most notably, the AHCA (as modified) would permit states to opt-out of the Affordable Care Act’s (ACA’s) community rating and essential health benefits (EHB) requirements. To minimize the potential impact on persons with pre-existing condition exclusions (who would likely pay more in the absence of these standards), the AHCA allocates billions of dollars that states may use to establish high risk pools. The bill now proceeds to the Senate where it faces additional challenges in what is typically a more independent, deliberative legislative body.*

After a [false start](#) in late March, on May 4th House Republicans were finally able to pass a modified version of the American Health Care Act (“AHCA”) on the thinnest of margins. To muster the votes, the Republicans had to make a series of tweaks to the bill that were requested by both the conservative Freedom Caucus as well as the more moderate Tuesday Group. See, [Issue 106](#) for details on the originally proposed AHCA.

### What Changed from the Earlier Bill?

Most notably, the AHCA (as modified) would permit states to opt-out of the Affordable Care Act’s (ACA’s) community rating and essential health benefits (EHB) requirements, as discussed in [Issue 108](#). The ACA requires all plans in the individual and small group markets to cover all EHBs and generally prohibits carriers from charging sick people more for coverage. To minimize the potential impact on persons with pre-existing condition exclusions (who would likely pay more in the absence of these standards), the AHCA allocates billions of dollars that states may use to establish high risk pools.

The amendment originally exempted Congress (whose members must get coverage from the Marketplace) from these changes to the ACA. After a public outcry, the House first voted to remove the Congressional exemption, then voted to pass the AHCA.

House Republicans could only afford to lose 21 Republican votes. They lost 20 (and picked up no Democratic support), so the bill passed with a razor-thin 217-213 margin.

## What Happens Next?

While it may seem surprising given the efforts required to get to this point, the House vote was always viewed as the easier step in the process. The Senate will now take up the AHCA, and significant hurdles remain. Notably:

- **CBO Score.** Immediately following the House vote, Mitch McConnell announced the Senate would wait for the Congressional Budget Office (CBO) score before voting. Prior to the amendments watering down the pre-existing condition exclusion protections and adding billions of dollars in high-risk pool spending, the CBO score suggested the AHCA would save roughly \$300 billion but result in 24 million fewer covered persons over ten years, as compared to the ACA. Most expect the figures in the revised report will be worse.
- **Eligibility for Consideration through Reconciliation.** It's unclear whether some of the changes the AHCA makes to the ACA will qualify for inclusion in a Senate reconciliation bill (which generally can only include revenue-related provisions). If the Senate's parliamentarian disagrees that this bill contains exclusively revenue-related provisions, the Senate would need to either modify the bill (which would then need to go back to the House), or pick up 60 votes (requiring Democratic support, which is unlikely).
- **Changes Expected.** Putting aside the reconciliation-related concerns, several Republican Senators and President Trump himself have suggested the bill will change in the Senate. Many of these amendments would offset the delicate balance the House is trying to strike to win the necessary votes, meaning the two bodies may not be able to pass the same version of the bill (which would be required).
- **President's Promises.** President Trump has promised the AHCA will protect persons with pre-existing conditions. Kaiser Family Foundation is projecting that the billions of dollars allocated to cover people with pre-existing conditions in a separate, high-risk insurance pool will only cover a fraction of the costs. In the past, these high-risk pools have been unsuccessful due to inadequate funding.

Seyfarth Shaw will continue to monitor Congressional and regulatory efforts and will alert clients as new developments occur.

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