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House passes bill that would remove most ACA consumer protections

The House of Representatives passed an amended version of the *American Health Care Act (AHCA)* by one vote yesterday, sending the controversial bill over to the Senate where it is expected to undergo major changes.

The measure (H.R. 1628) would eliminate funding for the ACA's premium and cost-sharing subsidies and Medicaid expansion, as well as penalties for the individual and employer mandates, while removing most of the law's new taxes on providers, insurers, drugmakers, and wealthy Americans. In its place, it offers tax credits based on age instead of income, which are far more limited despite being available to a broader number of Americans.

The bill also would allow insurers to charge those age 50-64 five times more than younger consumers. While the Congressional Budget Office (CBO) acknowledged last March that this would lower premiums for younger groups, it warned that premiums would jump by roughly 66 percent for older consumers while their out-of-pocket costs would skyrocket by up to 750 percent. The non-partisan scorekeeper also predicted that the bill would slash coverage for up to 24 million Americans overall.

The adverse CBO score initially caused moderate Republicans to largely oppose the bill. However, the ultra-conservative Freedom Caucus also refused to support the first version, insisting that it was "Obamacare lite" and did not go far enough in repealing the ACA. As a result, the AHCA was pulled in March until additional amendments could garner sufficient support from both factions.

The most prominent amendment would let states seek federal waivers allowing them to opt-out of the mandated package of essential health benefits (EHB) and reduce premiums by resuming the sale of "skinny" or "junk" coverage. States could also again let insurers charge higher premiums based on health status for those whose coverage lapses by more than 63 days. (As under the initial bill, persons with coverage lapses would also face a 30 percent premium surcharge for one year.)

The *Wall Street Journal* also pointed to a little-noticed provision that would effectively allow large employers to default to the benefit standards of any state that opt-outs of ACA consumer protections, even if they are not located in the state.

In an effort to appeal to moderates, the amendments also boost the federal funding states can use to cover persons with pre-existing conditions through high-risk pools or reinsurance programs that compensate insurers for extraordinary claims (like those pursued in Alaska and Minnesota). The bill makes $130 billion available over nine years with another $8 billion over the first five for those subject to higher premiums based on health status.

In the end, the amendments garnered the support of all but two conservative House members and 70 percent of moderates. However, the AHCA faces a very different landscape in the Senate, where Democratic support would be required to advance any parts of the legislation that does not directly impact the budget deficit.

None of the AHCA amendments have previously been approved by the Senate parliamentarian for budget reconciliation, meaning they could pass with a bare majority (51 votes). Provisions that waive essential health benefit standards and allow insurers to again discriminate based on pre-existing conditions are not likely to meet the reconciliation standard, but even if they do Republicans could lose no more than two Senators and still reach 51 votes.

However, at least seven Senate Republicans opposed the AHCA before it was amended due to the loss of Medicaid expansion funding and several others have come out against the loss of key ACA consumer protections in the latest version. As a result, Senate leaders promptly announced yesterday that they were likely to reject the AHCA and draft their own repeal and replace bill, which would force another contentious vote in the House.

The AHCA also faces broad opposition from nearly all provider and consumer groups (including AARP, the American Hospital Association, and the National Organization for Rare Disorders), as well as the nation's largest insurers like Blue Shield of California, whose claimed it would allow for "unconscionable discrimination." The American Medical Association (AMA) promptly warned that the AHCA would "result in millions of Americans losing access to quality, affordable health insurance [while] those with pre-existing health conditions face the possibility of going back to the time when insurers could charge them premiums that made access to coverage out of the question."

In addition to the bill's failure to preserve the protection against health status discrimination (consistently the most popular provision of the ACA), critics largely focused on its reliance on high-risk pools to segregate patients with pre-existing conditions into separate marketplace. High-risk pools operated in 33 states prior to the ACA and never covered more than two percent of those eligible due to chronic underfunding. Studies from groups like the Kaiser Family Foundation, the Urban Institute, RAND Corporation, and the University of Chicago showed that high-risk pools would require $30-50 billion per year to be adequately funded (or $7-10,000 per enrollee), an amount that more than doubles the federal budget for the space program and is three times the amount allocated by the AHCA.

The revised AHCA still includes more than $880 billion in cuts to Medicaid by converting it to a federal block-grant program (via per capita spending caps). This provision alone is responsible for most of the 24 million in coverage losses predicted by CBO.

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