NAELA
National Academy of Elder Law Attorneys

Practitioner's Guide to the American Health Care Act
House Version Passed May 4, 2017

Key Medicaid Changes

- **Enacts per-capita caps.** The legislation would end Medicaid's current open-ended financing system. Instead, states would receive from the federal government a fixed dollar amount per beneficiary starting in 2020. The fixed dollar amount will use 2016 as the base year and will vary by state and by beneficiary designation (elderly, blind and disabled, children, non-expansion adults, and expansion adults). The dollar amount per beneficiary will grow by medical inflation plus 1% for the elderly, blind, and disabled populations. In addition, states would have the option to receive a lump-sum for the non-disabled adult and children population in exchange for limited oversight and a lower federal contribution growth rate. The Act makes no changes to the requirements of state participation beyond those listed below.

- **Effectively ends Medicaid expansion.** Starting in 2020, Medicaid expansion may continue, but states will receive financing at their traditional FMAP level and subject to a per-capita cap. Experts anticipate that the cost shift would likely lead expansion states to stop enrolling people in their expansions in 2020.

- **End of three-month retroactive coverage.** Retroactive benefits for Medicaid would be limited to the month in which the application was made.

- **End state's option on home equity limits.** States must continue to exempt home equity up to the minimum under Federal law, presently $560,000. However, states would no longer have the option to increase this amount up to the current $840,000 limit.

- **Ends Community First Choice financing boost.** Community First Choice is a state plan option that allows certain individuals with disabilities to get access to HCBS without any waitlists. In exchange, states received a 6% FMAP boost in spending on this program. This FMAP boost would be eliminated beginning January 1, 2020.

Key Health Insurance Changes

- **Maintain continuous coverage or face a 30% penalty.** The individual mandate would be repealed, but insurers could still not discriminate based on pre-existing conditions. In exchange, any applicant who does not have coverage for 63 days or more would face a 30% penalty on top of their base premium for 12 months in order to re-enroll in a plan.

- **Allow insurers to charge older adults more for a plan.** Current law limits insurers from charging more than three-to-one for the same plan between older and younger adults. This provision loosens the ratio to five-to-one.

- **Refundable tax credit now based on age:**
  - Under age 30: $2,000
  - Between 30 and 39: $2,500
  - Between 40 and 49: $3,000
  - Between 50 and 59: $3,500
  - Over age 60: $4,000

  The credits are additive for a family and capped at $14,000. The credits grow over time by inflation plus 1%. The credits are available in full to those making under $75,000 per year ($150,000 joint filers). The credit phases out by $100 for every $1,000 in income higher than those thresholds.

- **State Waivers for Essential Health Benefits and Pre-existing Conditions.** States may seek waivers, including of Essential Health Benefits and for the “community rating” provision that requires insurers to charge the same rate, except for a narrow rules band based on age and tobacco use. This means that states under a waiver could allow insurers to charge for those with pre-existing conditions.

Other Tax Changes (all effective 2017)

- **Medical Expense Deduction.** Reduces the qualifying adjusted gross income threshold from 10% to 5.8%, which is lower than the pre-Affordable Care Act level of 7.5%.

- **Over-the-counter drugs:** Over-the-counter medications would count as qualified medical expenses that can be reimbursed from a health savings account, flexible spending account, or a tax-exempt trust known as an Archer MSA, which stands for medical savings account.

- **Withdrawals from Health Savings Accounts:** Taxpayers who withdraw money from HSAs for non-medical expenses face a 20% penalty. The legislative package would lower the penalty to 10%, the amount before the 2010 law was passed.

- **Limits on Flexible Spending Accounts:** The ACA set a $2,500 cap, adjusted for inflation, on the amount an employee can contribute to an FSA on a pre-tax basis. The legislation would lift the cap.

- **Repeal of the Medicare Tax on High-income Earners:** Under the ACA, individuals earning more than $200,000 or $250,000 for couples pay a surtax of 0.9% on top of the 1.45% that is withheld from their salaries or wages for Medicare. This would be repealed.