MEMORANDUM

TO: INTERESTED CLIENTS
FROM: CORNERSTONE GOVERNMENT AFFAIRS
SUBJECT: HOUSE REPUBLICAN PLAN FOR ACA REPEAL AND REPLACE
DATE: MAY 4, 2017

On Monday, March 6th, the House Energy and Commerce (E&C) and House Ways and Means (W&M) Committees released their long-awaited bill to repeal and replace the Affordable Care Act (ACA). The bill, named the “American Health Care Act,” was formally considered in two parts (one for E&C and one for W&M) and “marked up” in both committees on Wednesday, March 8th. The plan had been to move the bill quickly through the House of Representatives. However, GOP Leadership was unsuccessful in securing enough votes for the bill in its first attempt to bring it to the floor. Since that time, several notable changes have been made to the bill to secure enough support for passage. The major points of the bill are outlined below.

Repeal Provisions:

The House GOP bill retroactively repeals the penalties associated with the individual and employer mandates to December 31, 2015. Without the threat of a penalty, there is no longer a financial incentive for individuals to purchase insurance through the ACA. The ACA small business tax credit is repealed in 2020 and its use is limited to insurance plans that do not cover abortion services from 2018-2020. The health plan actuarial value standards (i.e. bronze, silver, gold, and platinum) outlined in the ACA are repealed beginning in 2020.

The Prevention and Public Health fund is repealed in Fiscal Year 2019 and all unobligated funds from FY2018 will be rescinded. Additionally, the bill imposes a one-year freeze on all federal funding for Planned Parenthood.

Beginning in 2017, the bill would also eliminate: the tax on health insurers, the tax on medical device manufacturers, the tax on pharmaceutical companies, the tax on tanning salons, the increased threshold for deducting medical expenses from your taxes, the surtax on investment income, the limitation on contributions to Flexible Spending Accounts (FSAs), the increased tax on non-medical distributions from Health Savings Accounts (HSAs), and the limitation on using money from FSAs and HSAs to purchase over-the-counter medications. The bill restores the pre-ACA tax deduction for employers that provide prescription drug coverage to their retirees.
There is one notable change from many of the earlier GOP repeal and replace plans. The so-called “Cadillac Tax,” a 40 percent excise tax on high cost employer plans, is not repealed. However, enforcement is deferred until 2026.

**Continuous Coverage Incentive:**

In lieu of an individual mandate, the GOP bill provides a monetary incentive to purchase and remain covered in a health care plan. Beginning in 2019, a 12-month lookback period will be used to determine whether or not an individual went without continuous insurance coverage for more than 63 days. If a determination is made that there was a lapse in coverage, then individuals will be assessed a 30 percent late-enrollment penalty on top of their health insurance premium costs. The penalty will be eliminated after one full year of continuous coverage. This surcharge applies to the individual market only.

**Health Insurance Reforms:**

Conservative Members of the House GOP withheld their support from the initial bill, in part, because it did not repeal any of the health insurance reforms from the ACA. On April 26th, Representatives Tom MacArthur (R-NJ) and Mark Meadows (R-NC) authored an amendment to create a new waiver process for states to opt out of three of the ACA’s health insurance reforms: age rating requirement beginning in 2018, the essential health benefit requirement beginning in 2020, and the 30 percent continuous coverage penalty and/or community rating beginning after the 2018 open enrollment period.

While these changes appealed to many conservatives, the potential vulnerability of patients with preexisting conditions led many moderate Republicans to continue withholding their support. On May 3rd, Representative Fred Upton (R-MI) offered an amendment to supplement the MacArthur/Meadows amendment. Specifically, this amendment adds an additional $8 billion to provide assistance to individuals who experience an increase in their health insurance premium as a result of a state adopting a waiver under the MacArthur/Meadows amendment.

**A New Way to Pay for Insurance:**

As part of the ACA, certain individuals are eligible for a premium subsidy to purchase health insurance in the exchanges. The GOP bill maintains the existing premium subsidy model until 2020 when the subsidy, and all cost-sharing assistance, is eliminated. In the meantime, the GOP bill adjusts the premium subsidy so that it may be used to purchase additional health insurance options, including catastrophic plans but excluding insurance plans that cover abortion. The new bill provides an additional adjustment to the ACA premium subsidy to reflect a person’s age and not just their income level. Finally, the bill would amend the ACA to require the repayment of any subsidy amount received in excess of an individual’s actual eligibility.
After the transition period, the premium subsidy will be replaced with an advanceable, refundable tax credit. This means that the tax credit can be paid out before the end of the year, offering the individual upfront help with their insurance costs. The tax credit is also refundable so the individual may receive the full benefit of the credit even if it exceeds their tax liability for the year.

All citizens and lawful immigrants that do not have another offer of insurance either through an employer or a government-sponsored plan, such as Medicare, would be eligible to receive the tax credit. The amount of the tax credit will be adjusted by age as follows:

- 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 available in full to individuals making up to $75,000 per year or couples earning up to $150,000 a year. The value of the credit decreases by $100 for every $1,000 in income higher than those thresholds. Parents will be allowed to claim a tax credit on behalf of their dependent children until the age of 26. The total value of a family credit is capped at $14,000 per year. To address concerns about the tax credit’s generosity for low-income, elderly individuals, the manager’s amendment created a reserve fund to increase the tax credit, but the amendment defers to the Senate on how to actually change the tax credit.

The GOP plan will allow individuals to apply the credit toward the purchase of any eligible plan approved by a State and sold in their individual insurance market or unsubsidized COBRA continuation coverage. Individuals will not be permitted to use the credit to purchase insurance that covers abortion.

Several changes to HSAs are also included in the GOP plan. First, the maximum HSA contribution amount would be amended to match existing out-of-pocket limits. For 2017, that would mean a maximum contribution of $6,550 for self-only coverage and $13,100 for family coverage. Second, the plan would newly allow qualifying spouses to make catch-up contributions to the same HSA. Finally, the plan would provide a 60-day grace period for expenses that occurred after the health plan start date but before the HSA was established.

**Medicaid Reform:**

The GOP plan would maintain the ACA Medicaid expansion until 2019 in states that chose to expand prior to March 1, 2017, and allow those states to grandfather in eligible adults. Grandfathered adults can continue to be paid at the enhanced rate so long as their eligibility does not lapse for more than one month. After the transition period ends, states that continue to offer expanded Medicaid will receive their traditional (i.e. pre-ACA) federal matching rate for new
adult enrollees. Expansion states will be required to confirm the continued eligibility of their adult enrollees every six months. Civil monetary penalties are increased up to $20,000 for the false representation of one’s eligibility for Medicaid.

Non-expansion states may choose to expand Medicaid to able-bodied adults but will only receive the traditional federal match for their expansion population. Non-expansion states will also be eligible for $10 billion over five years to boost payments to safety net providers. Additionally, the cuts to hospital Medicaid Disproportionate Share (DSH) payments are restored in 2018. Expansion states will have to wait until 2020 to have their DSH cuts restored. All states will be eligible for additional administrative funding to update data and reporting systems.

In fiscal year 2020, the GOP plan calls for Medicaid funding to be converted to either a per-capita allotment or a block grant. States may choose their preferred funding mechanism. Under the per-capita option, the amount a state receives will be based on the state’s average Medicaid spending in fiscal year 2016 for each of five categories – elderly, blind and disabled, children, expansion adults, and non-expansion adults. To set the allotment amount for each category, the average Medicaid spending amount will be multiplied by the number of enrollees in each category. There are a few expenses that are not counted in the cap, such as DSH payments and administrative payments. Additionally, some enrollees will be excluded from the capped allotment, including (but not limited to) individuals covered under the CHIP program, individuals who receive medical assistance through an Indian Health Service facility, and dually eligible individuals who qualify for Medicare cost sharing assistance.

The per capita amount will be increased annually by the medical care component of the Consumer Price Index for urban consumers (CPIU). For elderly, blind, and disabled Medicaid beneficiaries, the per-capita amount will be increased by CPIU+1. States that exceed their per capita allotment will have it reduced the following fiscal year.

The bill also permits, but does not require, states to impose work requirements on able-bodied adults. The state has some flexibility in constructing the work requirements but cannot require pregnant women, children under the age of 19, and certain other individuals to participate. The bill provides a 5 percent increase in the federal match for states that implement work requirements.

**The Patient and State Stability Fund:**

Lastly, the GOP bill calls for the creation of a new funding mechanism that is designed to give states additional financial resources and flexibility to implement health care reforms that address the needs of their populations. Using a formula developed by CMS, states will be eligible for a portion of a $15 billion annual appropriation in 2018 and 2019 and a portion of a $10 billion annual appropriation in 2020 and beyond. This funding must be used to lower patient’s costs and stabilize state markets. Some examples of how the money could be utilized are: helping residents reduce out of pocket costs; promoting participation in private health care plans;
providing access to preventive services, dental care, and vision care; reopening high risk pools; and lowering the cost of providing care to high utilization patients. Additionally, the bill appropriates $15 billion to be used only for maternity and mental health services and another $15 billion for an “invisible risk sharing” program between 2018 – 2026.

**Congressional Budget Office:**

On March 13th, the Congressional Budget Office (CBO) released the score for the AHCA. It found that the bill would reduce the federal deficit by $337 billion over ten years. Much of the bill is offset through the Medicaid reforms, which reduce federal spending by $880 billion over ten years. Additionally, the CBO score found that 24 million people would lose their insurance coverage by 2026; 14 million lose it immediately in 2018. The bill also affects premium costs – increasing premiums in the short term but decreasing premiums 10 percent by 2026.

Following the release of the Manager’s Amendment, CBO updated their score to reflect the changes and found that by 2026: the federal deficit will be lowered by $150 billion (reduced from $337 billion in the original text due to the earlier repeal of the ACA taxes) and 24 million people still lose their health care coverage (this remained unchanged).

The House of Representatives voted on the AHCA without an updated score from CBO. A new estimate is needed to measure the impact of changes to state waiver authority to eliminate essential health benefits and community rating. CBO has indicated that a new score will be available in the next two weeks.

**House Action:**

On March 24th, House GOP Leadership attempted to bring the AHCA to the floor. However, they could not garner enough votes to secure its passage. President Trump called Speaker Paul Ryan, while debate on the bill was already underway in the House of Representatives, to tell him to pull the bill from the floor.

Since that fateful day, the White House has continued to work with the House to strike a compromise between conservatives and moderates in the GOP. There was a breakthrough during the Easter recess when the MacArthur/Meadows amendment was announced. Still, that was not enough to win over enough moderates. However, the Upton amendment was sufficient to bring over the necessary final few votes to secure passage.

On May 4th, the House of Representatives brought the AHCA to the floor. The bill passed by a vote of 217 to 213.

The bill now moves to the U.S. Senate, where its future is less than certain. It is our understanding that the Senate Parliamentarian cannot make a determination as to whether or not the bill meets all of the rules for reconciliation until an updated CBO score is released. Given this
limitation, it will be several more weeks until we have a clear sense of the bill’s future success in the Senate. However, we know that many of the moderate GOP Senators have expressed concerns about provisions in the AHCA. We anticipate that the Senate could make substantial changes to the House bill.