



Background on MacArthur-Meadows Amendment

It was unclear whether the April 25th release of a long-awaited legislative compromise between moderate and ultra-conservative Republicans will generate enough GOP votes to pass [H.R. 1628, the American Health Care Act](#), the legislative keystone to the Trump Administration's Obamacare repeal and replace strategy.

The latest amendment was negotiated primarily by Reps. Tom MacArthur (R-NJ), one of three co-chairs of the Tuesday Group, a 50-member bloc of moderate GOP House members, and Mark Meadows (R-NC), chair of the Freedom Caucus, a collection of approximately 30 staunch ultra-conservatives.

The amendment provides states the ability to seek waivers from some requirements of the Patient Protection and Affordable Care Act (PPACA), commonly referred to as Obamacare. According to legislative text, it would give states the option of waiving existing requirements pertaining to community rating and Essential Health Benefits (EHBs) as long as certain conditions are met.

Moderates and conservatives hope that providing states greater flexibility to soften existing regulations governing insurance products sold in the PPACA exchanges will lead to lower premiums for beneficiaries who purchase health insurance in the individual and small business markets.

Prior to PPACA, insurers principally relied on individual rating, which is the practice of charging beneficiaries varying premiums based on age, health status, behaviors or habits, past medical claims, gender and other factors. Individual rating was designed to help insurers to properly price the cost of a health policy based on estimates of the total amount of future care required by that individual. As a result, sicker people, who purchased insurance in either the individual or small group markets, paid much higher premiums than healthy beneficiaries.

To drive down insurance costs for sicker individuals, PPACA banned individual rating and replaced it with community rating, which is the practice of charging one premium for the entire population of beneficiaries who buy health insurance in the individual or small group markets. In exchange for greater access to health insurance for sicker individuals, community rating produces relatively higher insurance premium costs for healthier people.

As a result, the MacArthur-Meadows amendment allows states, effective Jan. 1, 2018, to opt out of the community rating requirements so long as the waiver application specifies that at least one of the following five conditions are met:

- Reductions in average premiums for coverage
- Increases in health insurance enrollment
- Greater stability in a state's health insurance marketplace

- More stable premiums for individuals with pre-existing conditions, or
- Increases in health plan choices within a state.

State waivers are applicable for 10 years and are automatically granted 60 days after the application is received unless the Secretary of the Department of Health and Human Services (HHS) specifies in writing that the conditions will not be met. States can also apply to renew the waivers after 10 years. It's largely unclear what standards HHS will set to ensure achievement of one of the five waiver conditions.

The amendment, however, does attempt to ensure that certain consumer protections are retained from the PPACA and the use of community rating. In fact, the amendment specifically precludes insurance companies from raising premiums based on gender, age and health status, though insurers may charge older beneficiaries up to five times more than younger, healthy individuals.

Only individuals who live in states that received a waiver and successfully established a high-risk pool, either through the federal government or "patient and state stability funds" authorized in the AHCA, may be charged higher premiums for pre-existing conditions. In addition, individuals subjected to higher premiums because of pre-existing conditions must show they are seeking replacement health insurance following a 63-day or longer break in their previous coverage. The amendment is silent about charging higher premiums based on a beneficiary's health status in the event they no longer receive employer-based coverage and now seek to purchase insurance in the individual or small business market.

With respect to EHBs, the MacArthur-Meadows compromise permits states to apply for waivers from this requirement effective Jan. 1, 2020. EHBs refer to a set of health services, such as for maternity or mental health, that must be provided to all beneficiaries who purchase health insurance in the individual or small business market from the exchanges. Similar to the community rating policy, state exemptions for EHBs must also certify that they meet at least one of the five general waiver conditions.

It's important to note that neither the MacArthur-Meadows compromise, nor AHCA, alters Section 2713, Coverage of Preventive Services, of PPACA, which requires individual and employer-based plans to provide certain preventive screening tests to beneficiaries free of charge as determined by a variety of agencies and advisory bodies including the U.S. Preventive Services Task Force (USPSTF), the Centers for Disease Control and Prevention and the Health Resources and Administration. As a result, patients receiving health insurance either from their employer or the individual market continue to retain free access to annual mammograms, low-dose CT lung cancer screening and CT colonography because the screening procedures were awarded a grade of "B" or higher from the USPSTF. The American College of Radiology applauds the House leadership for not altering Section 2713.

Despite the amendment, a sizable number of moderate House Republicans still oppose H.R. 1628. Although MacArthur is a prominent member of the Tuesday Group, the amendment has not been officially endorsed by his caucus. In addition, many moderate Republicans, such as Reps. Charlie Dent (R-PA) and Leonard Lance (R-NJ), still oppose AHCA due to lingering concerns about the number of Americans projected to lose their health insurance following the legislation's enactment.

The decision by MacArthur and Meadows to explicitly exempt members of Congress and Capitol Hill staff from any state waivers regarding community rating or EHBs further complicates the politics associated with the amendment. House Republicans claim the exemption for members of Congress and their staffs is required to avoid violation of the Byrd Rules governing budget reconciliation, an arcane parliamentary procedure that prohibits a Senate filibuster and allows select bills to be passed by a simple majority vote. House leadership, however, has already signaled a desire to remove this section from the MacArthur-Meadows amendment. It is also largely unclear whether the Senate would adopt H.R. 1628 even with the addition of the MacArthur-Meadows amendment.

ACR's Government Relations Office continues to closely monitoring all developments related to AHCA.