HOBBS STRAUS DEAN & WALKER

2120 L Street, NW, Suite 700
Washington, DC 20037

T 202.822.8282
F 202.296.8834

HOBBSSTRAUS.COM

MEMORANDUM

May 12, 2017

To: Tribal Health Clients

From: Hobbs, Straus, Dean & Walker, LLP

Re: *House of Representatives Passes the American Health Care Act*

On May 4, 2017, the House of Representatives passed the American Health Care Act (AHCA), H.R. 1628, by a vote of 217–213. Health reform now moves to the Senate, which has begun working on its own bill. To assist in conveying tribal priorities to the Senate, we have attached to this memorandum a set of tribal talking points on the AHCA and a letter from the Centers for Medicare & Medicaid Services' (CMS) Tribal Technical Advisory Group (TTAG) on the issue of Medicaid work requirements.

As we have previously reported, the AHCA would make significant changes to the Affordable Care Act (ACA). Importantly, the AHCA bill passed by the House preserves the Indian Health Care Improvement Act (IHCIA) and Indian-specific provisions of the ACA. It also preserves the 100% federal match for Medicaid payments made to the states for care received through an Indian Health Service (IHS) or tribal health program and exempts reimbursement for services received through the IHS or tribal programs from counting toward a Medicaid cap or block grant. However, other provisions of the AHCA would have a substantial negative impact on American Indians and Alaska Natives (AI/ANs), including the rollback of Medicaid expansion, the end of cost-sharing subsidies for insurance purchased on the exchanges, and greater flexibility for states to reduce private insurance benefits, including allowing higher premiums for older persons and persons with preexisting conditions.

Medicaid Reform

The AHCA would roll back Medicaid expansion by allowing states to cover the expansion population (either newly enrolled or existing) after 2020, but ending the enhanced Federal Medical Assistance Percentage (FMAP) rate for new enrollees or enrollees with a gap of coverage of over a month. Additionally, enhanced FMAP would not be available to states that had not yet expanded Medicaid coverage as of March 1, 2017. The AHCA would not affect 100% FMAP for services received through the IHS or a tribal health program.

The AHCA would also make significant reductions to Medicaid expenditures through per capita caps or optional block grants. Payment for services received through IHS and tribal healthcare providers would be not be counted against a state's per capita cap or block grant.

However, AI/ANs are likely to be harmed by the overall reduction in federal support for the Medicaid program. AI/ANs are subject to the benefit and eligibility parameters established in state plans, and therefore if states reduce the population covered by Medicaid or the benefits offered, then this decreases Medicaid coverage for AI/ANs.

As the Senate considers the AHCA, it will be important for Tribes to advocate for preserving Medicaid expansion in states that have decided to expand; maintaining 100% FMAP for services received through an IHS/tribal program; preserving the exemption of reimbursement for services received through an IHS/tribal program from any cap or block grant; and developing a mechanism that exempts AI/ANs from any state restrictions on eligibility or services that result from the imposition of a cap or block grant.

Changes to the Health Insurance Marketplace

The AHCA would also make significant changes to the private health insurance market. Some of these changes may be beneficial to AI/ANs and Tribes. The AHCA would, for instance, eliminate the penalties associated with the individual and employer mandates. The elimination of the employer mandate penalty resolves the problem of Tribes potentially being forced to purchase insurance for their tribal citizen employees despite the federal government's obligation to provide those employees with coverage.

Other changes to the private insurance marketplaces, however, are likely to have negative impacts on AI/ANs and Tribes. The AHCA would repeal the ACA's premium subsidies and cost-sharing exemptions and replace them with refundable tax credits. Under the ACA, AI/ANs are exempt from cost-sharing in marketplace plans, which is a significant benefit. The AHCA would effectively eliminate this benefit.

The AHCA also provides that states may submit waivers to: (1) allow older people to be charged premiums exceeding the AHCA's 5:1 ratio limit; (2) determine their own essential health benefits packages; and (3) allow higher premiums for individuals with preexisting conditions if the state establishes its own high-risk pool or participates in a federal high-risk pool. These potentially higher premiums and lower benefits will likely negatively impact AI/ANs, many of whom have preexisting conditions, cannot afford higher premiums, or receive care from IHS or tribal health programs that depend on third party funds from coverage of the ACA's ten essential health benefits.

Conclusion

The Senate will now take up health reform and will likely have significant additional amendments to the health care reform legislation. We recommend that Tribes engage the Senate on these issues in order to preserve the IHCIA and the Indian-specific protections in current health care law as well as to seek exemption from AHCA provisions that would negatively impact AI/ANs and tribal health programs.

For more information, please contact Elliott Milhollin (emilhollin@hobbsstraus.com or 202-822-8282), Geoff Strommer (gstrommer@hobbsstraus.com or 503-242-1745), or Akilah Kinnison (akinnison@hobbsstraus.com or 202-822-8282).