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MEMORANDUM

May 2, 2017

To: Tribal Health Clients

From: Hobbs, Straus, Dean & Walker, LLP

Re: *House Republicans Unveil Additional AHCA Amendments*

On April 25, 2017, House Republicans unveiled a discussion draft of an amendment to the American Health Care Act (AHCA), H.R. 1628. This amendment, proposed by Representative MacArthur (R-NJ), has reportedly helped secure the support of the Freedom Caucus, a group of Republicans in the House of Representatives whose failure to support the AHCA led to Republicans postponing proceedings on the bill last month. The MacArthur amendment, however, has not yet been formally introduced, but the White House and Congress have indicated that they will try to get the bill through the House of Representatives this week.

The MacArthur amendment would allow states to submit waivers to: (1) allow older people to be charged premiums that exceed the 5:1 ratio limit in the AHCA; (2) determine their own essential health benefit package; 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. While issuers would still be required to cover preexisting conditions, this change could mean that those plans could have very high premiums.

States would be required to attest in their waiver applications that the waiver will accomplish one or more of the following purposes: reducing average premiums, increasing enrollment, stabilizing the insurance market, stabilizing premiums, or increasing plan choice. The remainder of the AHCA, including its provisions capping Medicaid payments, remain unchanged.

Waivers would be automatically approved unless the Secretary of Health and Human Services notifies the state within 60 days that the waiver is denied. The only grounds for denial would be failure to: meet the time and manner requirements for submitting an application; failure to attest the waiver will accomplish one of the required purposes; specify the period for which the waiver will be effective, with a limit of 10 years; specify the higher ratio to be applied to a waiver to allow higher premiums based on age; specify the essential health benefits when the state waives essential health benefit requirements; or demonstrate the state participates in a high-risk pool when allowing higher premiums based on health status.

The amendment provides that nothing in the legislation shall be construed to permit health insurance issuers to discriminate based on gender or to limit access to

coverage for individuals with preexisting conditions. However, as discussed above, States would be authorized to allow issuers to charge more for preexisting conditions so long as they established a high risk pool. Additionally, waivers are not allowed to affect coverage provided under certain provisions, including those applying to community mental health centers, coverage for members of Congress, state innovation waivers, and multi-state plans.

We will continue to update you as health care reform efforts move forward. For more information, please contact Elliott Milhollin (emilhollin@hobbsstrauss.com or 202-822-8282), Geoff Strommer (gstrommer@hobbsstrauss.com or 503-242-1745), or Akilah Kinnison (akinnison@hobbsstrauss.com or 202-822-8282).