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Client Alert

House Democrats Introduce ACA Enhancement Measures to Outline Health Care Priorities Leading Up to the 2020 Elections

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On June 29, 2020, the House of Representatives passed H.R. 1425, the Patient Protection and Affordable Care Enhancement Act ("PPACEA") that seeks to build upon and strengthen the Affordable Care Act, expand access to and enhance Medicaid benefits, and address the rising costs of prescription drugs through price negotiation and other measures. The bill passed the House on a nearly party line vote, with only two Republicans voting in favor and one Democrat opposing. Although the Republican-controlled Senate will not consider the House bill, House Democrats are using it as a political advertisement to contrast their party's health care priorities and agenda against the Trump Administration. The bill reflects a stark juxtaposition between Democrats and the Republican Party, which has repeatedly sought to dismantle the 2010 Patient Protection and Affordable Care Act ("ACA") and currently awaits a Supreme Court decision in *California v. Texas* (formerly *Texas v. United States*) that will determine whether or not the 2010 law remains in effect. The House bill also aligns with a number of policies proposed by the Biden campaign and could serve as a roadmap to the health care policies a potential Biden Administration might pursue immediately.

The provisions included in H.R. 1425 draw upon a number of existing standalone bills and other Democratic proposals that fall into three broad categories and track with the three titles included in the bill: (1) Lowering Health Care Costs and Protecting People with Preexisting Conditions; (2) Encouraging Medicaid Expansion and Strengthening the Medicaid Program; and (3) Lowering Prices Through Fair Drug Price Negotiation. The Congressional Budget Office estimates that the package would provide $15.1 billion in federal savings over ten years as a result of the estimated $581.6 billion in savings expected from Title III, the drug pricing measures. Savings from Title III more than offset the costs of Titles I and II.

The following text provides a more detailed summary of the three health care titles outlined above.

I. Lowering Health Care Costs and Protecting People with Preexisting Conditions

Enhancing ACA Advance Premium Tax Credits (APTC) – H.R. 1425 would expand availability of APTCs to all individuals and families enrolled in ACA exchange plans on a sliding scale, no matter annual income. Currently, the ACA provides for APTCs for individuals with an annual income between 100 and 400 percent of the federal poverty line (FPL), creating what is known as a "subsidy cliff" for middle income individuals above 400 percent FPL. H.R. 1425 would instead allow for all ACA plan enrollees to receive APTCs with no upper income limit on a sliding scale that provides more generous APTCs to lower income individuals. The bill would also lower the mandatory enrollee premium contribution at all income levels. Additionally, H.R. 1425 would eliminate the "family glitch" that has to this point excluded some families

from receiving APTCs if an individual in the family has access to employer coverage deemed "affordable," which is determined by the cost of individual coverage rather than family coverage.

Encouraging State-Based Solutions in the ACA Exchanges – H.R. 1425 would encourage states currently using the federal Healthcare.gov platform to transition to state-based exchanges (SBEs) by providing states with $200 million in federal grants that can be used for two years. The newly established SBEs would be required to be self-sufficient by 2025. Additionally, the bill would encourage states to create individual reinsurance programs for the ACA Exchange market by providing $10 billion annually to states that choose to do so. States that reduce premiums and/or out of pocket costs for ACA Exchange enrollees would also be eligible for additional funding. Although states seeking these funds would be required to apply, the bill anticipates blanket approvals for a five-year timeframe, unless HHS intervenes directly. The bill would also establish an additional $200 million in grants to encourage states to grow ACA Exchange enrollment in innovative ways.

Stimulating ACA Plan Enrollment and Imposing HHS Reporting Requirements – Similar to the SBE initiative, H.R. 1425 seeks to encourage ACA Exchange plan enrollment by appropriating $100 million annually for ACA outreach and educational activities for the federal marketplace, Healthcare.gov. The bill would also direct $100 million from annual user fees to better fund the Navigator program to help potential enrollees determine coverage options in the federal Healthcare.gov marketplace, Medicaid, and CHIP programs. Additionally, the bill would require HHS to establish annual enrollment targets and provide Congress biweekly publicly available reports throughout the enrollment period on Exchange performance beginning in 2021. This provision would also require HHS to publish final reports within three months of the end of open enrollment to track enrollment and agency advertising and outreach efforts. Additionally, HHS would be required to produce an annual report on how the agency allocated and spent user fees collected through the Exchanges.

Rescinding Trump Administration Flexibilities Granted to States – The bill seeks to rescind the Trump Administration's expansion of short-term limited-duration health plans that were allowed to skirt ACA-required protections around preexisting conditions and essential health benefits, among others. The bill also seeks to rescind Trump Administration guidance on Section 1332 State Innovation Waivers that authorized states to waive certain consumer protections.

II. Encouraging Medicaid Expansion and Strengthening the Medicaid Program

Incentivizing Medicaid Expansion – H.R. 1425 would provide states that have not yet expanded Medicaid eligibility an enhanced federal medical assistance percentage (FMAP) match for the expansion population for the first three years the state offers expanded coverage. The federal match would scale down incrementally after three years. The bill would also reduce the federal match for states that choose not to expand Medicaid eligibility by 0.5 percent each quarter with a maximum match reduction of 10 percent and require additional reporting for those states on an annual basis.

Providing Continuous Eligibility for Medicaid and CHIP Beneficiaries – The bill would end the practice of rescinding Medicaid and/or CHIP coverage from enrollees with minor variations in income that drop

them in and out of eligibility. The bill would provide for continuous coverage for 12 consecutive months. Additionally, the bill would guarantee Medicaid and/or CHIP eligibility for 12 months for postpartum women.

Increasing Medicaid Payments for Primary Care – H.R. 1425 would increase Medicaid payment to match Medicare payment rates for primary care physicians who serve Medicaid populations.

Changes to the CHIP Program – The bill would provide permanent funding for the CHIP program, which is currently periodically reauthorized. It would also extend policies that encourage CHIP enrollment and establish a quality metrics system. Finally, the bill would allow states the option to expand CHIP eligibility for children up to 300 percent of the federal poverty line.

III. Lowering Prices Through Fair Drug Price Negotiation

The prescription drug negotiation title tracks identically to Title I of H.R. 3, the Elijah E. Cummings Lower Drug Costs Now Act. H.R. 3 received broad Democratic support in the House and was approved by the chamber in December of 2019.

Establishing the Fair Drug Pricing Program – The drug pricing provisions included in H.R. 1425 would require the HHS Secretary to annually identify and publish a list of the 250 brand-name drugs, including at least 125 drugs covered by Medicare Part D, that lack price competition with the greatest cost to Medicare and the whole U.S. health system. The Secretary would use data provided by Medicare, Medicaid, and commercial insurance to make the determination about aggregate cost and select at least 25 drugs in the first year for voluntary price negotiation with a goal of achieving the most savings for taxpayers. Beginning in 2024, the Secretary would be required to identify no fewer than 50 drugs for price negotiation. The Secretary would be required to prioritize and specifically negotiate with manufacturers to lower the prices of insulin products. Manufacturers who do not comply with the required price adjustments would be subject to an escalating penalty levied on the manufacturer's gross sales of that drug starting at 65 percent and increasing by 10 percentage points every quarter the manufacturer is out of compliance, to a maximum of 95 percent. To fund this provision, the bill establishes a $3 billion implementation fund.

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