DEMOCRATS READY REVISED LEGISLATION TO BOLSTER THE AFFORDABLE CARE ACT FOR HOUSE FLOOR VOTE AHEAD OF JULY 4 RECESS

House Democrats unveiled updated legislative text of H.R. 1425, the Patient Protection and Affordable Care Enhancement Act – a bill to bolster coverage rates in the Affordable Care Act (ACA) Exchanges and state Medicaid programs. The bill would be paid for by incorporating provisions from the House Democrats' prescription drug plan (H.R. 3), which passed the House on December 12, 2019 (estimated to provide $456 billion in savings to offset the package). Neither of these two "message" bills are expected to be considered by the Republican-controlled Senate but will, no doubt, be touted by Democrats during the campaign season heading into the November 2020 elections.

The House Rules Committee is scheduled to discuss H.R. 1425 this Wednesday, June 24. A House floor vote on the bill is anticipated before the 4th of July Congressional recess – potentially even as early as this Thursday, June 25. A vote this Thursday would be timed to coincide with the deadline for the Department of Justice (DOJ) to file its opening brief with the Supreme Court in the Affordable Care Act (ACA) lawsuit.

A summary of the major provisions of the bill follows:

Title I – Lowering Health Care Costs and Preexisting Condition Protections (Marketplace Provisions)

- **Sec. 101. Expanding Premium Assistance** – Increases the ACA marketplace premium subsidies to individuals with household incomes above 150 percent of the federal poverty line (FPL), while expanding eligibility to qualify for these subsidies beyond the current statutory cap of 400 percent of the FPL. These provisions are effective for Calendar Year (CY) 2020 tax years and beyond. Specifically, the chart stipulated in the legislative text (p. 3) delineates a final premium percentage ranging from 3 percent for individuals with income between 150-200 percent of the FPL to 8.5 percent for individuals with income in excess of 400 percent of the FPL. (Under current law, ACA marketplace premium subsidies are only available to individuals with a household income between 100 and 400 percent of the FPL (but not in excess of that upper amount)).

- **Sec. 102. Reducing Out-of-Pocket and Premium Costs –** Reduces out-of-pocket and premium costs for consumers by adjusting the annual limitation on out-of-pocket costs to reflect estimates and projections of the applicable CY in which the average per enrollee premium for eligible employer-sponsored coverage exceeds the average per enrollee premium for the preceding CY.

- **Sec. 103. Fixing the "Family Glitch"** – Effective for CY 2022 tax years and beyond, aims to address the ACA "family glitch" by enabling families to access subsidized coverage if their contribution to the cost of employer coverage exceeds 9.5 percent of income based on the family, not individual, contribution level, thus addressing the longstanding "family glitch." (Note that this provision was included in last year's House Democratic bill aimed at protecting ACA's preexisting conditions; our summary).

- **Sec. 104. Tax Credit Reconciliation Protections –** Outlines tax credit reconciliation protections for individuals receiving social security lump-sum payments.

- **Sec. 105. State-Based Exchanges** – Delineates new options – including via the authorization of $200 million in additional planning and evaluation grants to states to operate a state exchange.

- **Sec. 106. Health Insurance Affordability Fund** – Establishes a Health Insurance Affordability Fund, to be administered by the Centers for Medicare and Medicaid Services (CMS), to provide funding to states to provide reinsurance payments to certain health insurance issuers and to provide assistance to individuals enrolled in qualified health plans (QHPs) by reducing out-of-pocket costs (e.g., co-payments, coinsurance, premiums and deductibles.

- **Sec. 107. Rescinding Short-Term Plans** – Rescinds the Trump Administration's short-term limited duration insurance (STLDI) regulation, given that these plans – as the House Democratic bill purports – may discriminate against individuals with preexisting conditions – including children with complex medical needs – in addition to lacking certain financial protections.

- **Sec. 108. Revoking 1332 Waiver Guidance** – Revokes the Trump Administration's section 1332 waiver guidance, which House Democrats contend weakens preexisting protections for individuals.

- **Sec. 109-Sec. 113. Marketplace Outreach, Education and Experience** – Aims to improve the overall Marketplace experience and ultimate enrollment therein, including via: enhanced Marketplace outreach and education (sec. 109); a report on the effects of Marketplace website maintenance during open enrollment (sec. 110); enhanced consumer outreach and education (sec. 111); improved Marketplace transparency and accountability (sec. 112); and improved awareness of health coverage options (sec. 113).

- **Sec. 114. State Innovation** – Authorizes grants to foster state innovations to expand coverage – e.g., streamlined enrollment, technological investments etc.

- **Sec. 115. Strengthening Network Adequacy –** Strengthens network adequacy through the delineation of quantitative network adequacy standards to be prescribed by the Department of Health and Human Services (HHS), applicable to plan years beginning on or after CY 2022.

- **Section 116. Preventing Unreasonable Rate Hikes** – Includes provisions aimed at protecting consumers from unreasonable rate hikes by authorizing states to impose requirements on health

issuers – including those related to rate review standards – that are additive to the requirements and protections set forth in this section of the law.

Title II – Encouraging Medicaid Expansion and Strengthening the Medicaid Program

- **Sec. 201. Incentivizing Medicaid Expansion** – Incentivizes remaining states to expand the eligible Medicaid population to 138 percent of the federal poverty level (FPL) by providing 100 percent Federal Medical Assistance Percentage (FMAP) for each of the first three consecutive years in which states provide medical assistance to newly eligible individuals, 95 percent FMAP for the fourth year, 94 percent FMAP for the fifth year, 93 percent FMAP for the sixth year, and 90 percent for the seventh and subsequent years.

- **Sec. 202. Providing Continuous Eligibility for Medicaid and CHIP** – Requires state Medicaid and CHIP programs to provide 12 months of continuous eligibility for individuals who are determined to be eligible for benefits under the Medicaid program. States will have 12 months after the public health emergency has ended to comply with this requirement. However, states have the option to implement 12-month continuous eligibility prior to the effective date.

- **Sec. 203. Mandatory Postpartum Medicaid Eligibility** – Amends Medicaid eligibility so that that any woman that becomes eligible for Medicaid through pregnancy is to maintain their Medicaid eligibility for 365 days postpartum, regardless of their eligibility for medical assistance.

- **Sec. 204. Reducing the Administrative FMAP for Nonexpansion States** – For states that have not expanded Medicaid eligibility to 138 percent FPL by October 1, 2022, the HHS Secretary may reduce the FMAP for a calendar quarter by the following percentages: 1) 0.5 percent beginning on October 1, 2022; 2) 0.5 percent for calendar quarters beginning on January 1, 2023 through July 1, 2027; and 3) 10 percent for a calendar quarter beginning on or after July 1, 2027.

- **Sec. 205. Enhanced Reporting Requirements for Nonexpansion States** – For states that have not expanded Medicaid eligibility to 138 percent FPL by fiscal year 2023, states must report the following: (1) the estimated number of individuals who were uninsured for at least 6 months, shown by age-groups; (2) the estimated number of individuals who were uninsured for at least 6 months and would be eligible for Medicaid if the state were to expand eligibility to 138 percent FPL; (3) a comprehensive listing of state income eligibility criteria for all mandatory and optional Medicaid eligibility groups for which the state plan provides medical assistance; and (4) the total amount of hospital uncompensated-care costs. If a state fails to comply with these reporting requirements, the state FMAP will be reduced by 0.5 percentage points for the calendar quarter beginning on April 1; reduced by one percentage point the following quarter; and reduce 1.5 percentage points the subsequent quarter.

- **Sec. 206. Primary Care Pay Increase** – Increases the Medicaid payment rate for primary care services to no less than 100 percent of the Medicare physician fee schedule for the following providers: physicians with a primary specialty designation of family medicine or pediatric

medicine; physician with a primary specialty designation of obstetrics and gynecology; advanced practice clinicians or nurse practitioners under the supervision of a physician; rural health clinics or federal qualified health centers; and physician assistants.

- **Sec. 207. Permanent Funding for CHIP** – Beginning with fiscal year 2024, funding for CHIP is made permanent through specific statutory allotments.

- **Sec. 208. Permanent Extension of CHIP Enrollment and Quality Measures** – Appropriates $15 million for fiscal year 2028 and appropriates the amount from the previous year adjusted by the consumer price index for all urban consumers (CPI-U) for all subsequent fiscal years to permanently extend the CHIP enrollment and quality measures program.

- **Sec. 209. State Option to Increase Children's Eligibility for Medicaid and CHIP** – Allows states the option to offer CHIP benefits to families whose income exceeds the maximum income level otherwise established for children under the state child health plan.

- **Sec. 210. Medicaid Coverage for Citizens of Freely Associated States** – Expands Medicaid eligibility to those individuals who reside in the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Additionally, at the discretion of the Governors, individuals who reside in Puerto Rico, the Virgin Islands, Guam, the Northern Marian Islands, or American Samoa would also be eligible for Medicaid.

- **Sec. 211. Extension of Full Federal Medical Assistance Percentage to Indian health Care Providers** – Increases the FMAP to 100 percent for services furnished within clinics administered by the Indian Health Program and Native Hawaiian Health Care Systems, which include services under the supervision of a physician and services furnished outside the clinics at the referral of the supervising physician.

Title III – Lowering Prices through Fair Drug Price Negotiation

- **Sec. 301. Establishing a Fair Drug Pricing Program** – The bill incorporates provisions from H.R. 3, directing HHS to establish a Fair Price Negotiation Program to begin January 1, 2023. Specifically, HHS must negotiate maximum prices for: (1) insulin products; and (2) at least 25 single source, brand-name drugs that do not have generic competition and that are among the 125 drugs that account for the greatest national spending or the 125 drugs that account for the greatest spending under the Medicare prescription drug benefit and Medicare Advantage (MA).

- **Sec. 302. Drug Manufacturer Excise Tax for Noncompliance** – Provides that manufacturers who decline to negotiate after being selected will be assessed an escalating excise tax on annual gross sales, to begin at 65 percent and increase by 10 percent quarterly until the manufacturer is compliant and caps out at 95 percent.

- **Sec. 303. Fair Price Negotiation Implementation Fund** – Appropriates $3 billion to implement the provisions under Title III, to be distributed in increments of $600 million annually until expended.