

## ACA repeal and replace: The proposed American Health Care Act and its potential impact on employers

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On March 6, 2017, House Republican leaders made public the American Health Care Act (AHCA). Leaders have expressed a desire to move the legislation through the House in the next few weeks, leaving time for the Senate to complete action on the bill prior to Congress's two-week recess set to begin April 10. Committee mark-ups have begun, and below is a summary of the primary provisions of the AHCA as it stands now, obstacles that may lead to changes prior to adoption and what the main provisions mean to employers.

### AHCA Summary of Key Provisions

- **Individual and Employer Mandates “Repealed”:** The bill would immediately (and retroactively) reduce the individual and employer mandate penalties to zero. The rules would remain on the books, but there would be no consequence for violating them.
- **Advanced Premium Tax Credits Replaced with Refundable Tax Credits:** Beginning in 2020, Affordable Care Act's (ACA) premium assistance credits for low-income households would be replaced with age-adjusted refundable tax credits to assist those who don't receive coverage through their employer or a government program (e.g., Medicare, Medicaid). These credits would be phased-out for households with income over \$150,000 (indexed for inflation).
- **Some Employer Reporting Still Required:** To support the Refundable Credits, the bill would establish a new employer reporting requirement. This credit would not be available to anyone who is eligible for employer-sponsored coverage that meets certain minimum requirements. In order to enforce this eligibility requirement, employers would be required to report offers of coverage on employees' Forms W-2. The bill does not eliminate the current reporting done on Form 1095-C but it is intended that this would be duplicative and the Secretary of the Treasury could stop enforcing the reporting as it would not be needed for taxable purposes.
- **The “Cadillac Tax” Will Be Delayed (Again), But Not Repealed:** The bill would further delay the effective date of the ACA's Cadillac Tax, so that it would not begin to apply until 2025. This delay enabled the drafters to avoid (for now, at least) the need to come up with a replacement revenue source—such as capping the taxable income exclusion for employer-provided coverage.
- **The ACA's Group Health Plan Mandates Survive:** The bill would not repeal or alter many of the ACA's group health plan mandates, including the ban on preexisting condition exclusions and the requirement for employers to allow employees' children to remain eligible until age 26.
- **Enhanced HSAs:** The bill would make several changes to enhance health savings accounts (HSAs).
- **No Annual Limit on Salary Reduction Contributions to Health FSAs:** The bill would repeal the \$2,500 annual inflation-adjusted limit on salary reduction contributions to health flexible spending arrangements (FSAs). It also would repeal the rule prohibiting health FSAs and health reimbursement arrangements (HRAs) from reimbursing the cost of over-the-counter drugs obtained without a prescription.
- **High-income individuals:** The bill would repeal the 0.9% additional Medicare tax on high-income individuals, as well as the 3.8% surtax applicable to high-income individuals' net investment income. It also would again permit employers to deduct retiree medical expenses allocable to the Medicare Part D subsidy. These changes would apply to taxable years beginning after December 31, 2017.
- **Medicaid Expansion cutback:** The proposal would freeze new enrollment under the ACA's Medicaid expansion (which 31 states accepted, including in a number with Republican governors) after 2019. For non-expansion beneficiaries, beginning in 2020 the government would institute a Medicaid policy known as “per capita caps”—where the federal share of Medicaid spending in a particular state would not be open-ended, but rather limited to a set dollar amount based on that state's Medicaid population.
- **Life Sciences and Healthcare Industry Taxes Repealed:** For taxable years beginning after December 31, 2017, the bill would repeal the medical device excise tax, the annual fees on health insurance providers and manufacturers and importers of branded prescription drugs, and the tax on indoor tanning services. As of the same date, the bill would also repeal the limitation on deductible compensation paid to officers, directors, and employees of certain health insurers.

## Anticipated AHCA Obstacles

As of the date of this article, a cost estimate from the Congressional Budget Office (CBO), which will be critical in the determination of whether the plan can be advanced under the budget reconciliation process and avoid a near-certain Democratic filibuster, is still required. The forthcoming analysis from CBO will likely also include projections of how many individuals may gain or lose health coverage under the plan—statistics that could significantly impact the politics of moving the plan through Congress. Based on statements made by Republican leaders, CBO's analysis may be released early next week.

Even setting aside the importance of the CBO information, political hurdles will impact what AHCA ultimately looks like. Congressional Republican leaders can afford to lose few Republican votes; however, various blocs of House and Senate conservatives have expressed concern with some of the AHCA's features, including its refundable tax credits, deferred repeal of the ACA's tax increases, and planned roll-back of the Medicaid expansion.

## Developing Issues of Particular Interest to Employers

While changes can be expected from the bill as introduced, the current draft legislation includes provisions for continued employer reporting offers of coverage, including when the offer started and ended, potentially integrating this into their W-2 process, as noted above. The new rules would be effective for months beginning after December 31, 2019.

While some fashion of employer reporting on offers of coverage are likely to remain, it is still early in the process and there is no assurance the employer mandate will not apply for 2017. Thus, employers are advised that all requirements from the ACA remain in effect unless and until modifications envisioned in the AHCA become law.

Additional information, including the text of the proposed bill, is available on the House Ways and Means Committee's website, at <https://waysandmeans.house.gov/>.

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