

WS&Co. Briefing

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House Republican ACA Repeal and Replacement Proposal

On March 6, 2017, the House Ways and Means and the Energy and Commerce committees unveiled two budget reconciliation bills intended to “repeal and replace” certain provisions of the Affordable Care Act (ACA). The Ways and Means bill focuses on health-related tax policy whereas the Energy and Commerce bill focuses more on access to public health programs (e.g., Medicaid). This alert provides a highlight of some of the key provisions affecting healthcare benefits in the proposed bills, collectively referred to as the American Health Care Act (AHCA).

Eliminate Penalties for Individual and Employer Mandates as of January 1, 2016

The proposed bills would reduce the penalties to zero for either failing to (1) maintain minimum essential coverage under the individual responsibility requirement, or (2) offer health insurance that is both affordable and adequate under the employer shared responsibility requirement. The relief would be retroactive to January 1, 2016. Presumably there would be no relief for months prior to 2016.

ACA Reporting

The budget reconciliation rules limit Congress’ ability to repeal the current ACA reporting requirements (meaning the reporting requirement cannot be eliminated through a budget reconciliation bill). Even if the proposed budget bills pass and reduce the Employer Mandate penalty to zero, it is unclear whether employers would then still need to comply with the 2017 ACA reporting cycle to report if they offered

coverage to full-time employees. Official guidance from the Treasury on this matter would be welcome.

However, we note that the summary provided by the Ways and Means committee calls for “simplified reporting of an offer of coverage on the W-2 by employers.” The summary further states that the Treasury can stop enforcing the current ACA reporting rules when the new reporting mechanism is implemented.

Repeal or Delay of Various ACA Related Taxes

A slew of ACA taxes would be eliminated, reduced or delayed as of the various effective dates in the chart below (not an inclusive list).

Affected Tax/Revenue Provision	Effective
Repeal tax on OTC medication (i.e., permit reimbursement of OTC medication via FSA/HSA/HRA)	2018
Remove annual limit on FSA contributions	2018
Lower 20% tax penalty on non-qualified (non-medical) HSA distributions to 10%	2018
Repeal additional 0.9% Medicare surcharge on incomes exceeding \$200,000 (\$250,000 joint)	2018
Repeal 2.3% medical device excise tax	2018
Roll back the 10% AGI threshold for deducting itemized medical expenses back to the pre-ACA 7.5%	2018
Reinstate unreduced business expense deduction for employers offering retiree prescription drug coverage	2018
Delay Cadillac Tax	2025

Continuous Coverage Requirement for Pre-Existing Conditions

Starting with the 2019 coverage year, the current prohibition against excluding individuals with a pre-existing condition would be replaced with a 30% premium surcharge for individuals who cannot prove that they had continuous coverage (no breaks lasting 63 days or more) during the prior 12 months. The 30% surcharge would apply for up to 12 months.

Increase Contributions to Health Savings Accounts

Beginning in 2018, the role of the HSAs will be expanded by:

1. Increasing the HSA contribution limit to match the combined sum of the HDHP's annual deductible and out-of-pocket maximum (e.g., at least \$6,550 self-only/\$13,100 family)
2. Permitting both spouses to make a catch-up contribution to the same HSA
3. Allowing HSA reimbursement of a qualified medical expense incurred up to 60 days prior to the establishment of the HSA if established within 60 days of the HDHP coverage start date

Replace Individual Subsidy with Refundable Tax Credit

Beginning in 2020, the AHCA would replace the premium tax credit (individual subsidy) with a new age-adjusted refundable tax credit that can be used **upfront** to purchase state-approved medical insurance and unsubsidized COBRA coverage. The annualized credits would be provided as follows:

Age	Credit
Under 30	\$2,000
30 – 39	\$2,500
40 – 49	\$3,000
50 – 59	\$3,500
Over 60	\$4,000

The maximum credit for a family caps out at \$14,000. These amounts will be increased over time to help keep up with inflation, at a rate of CPI + 1%.

The tax credit is fully available for individuals making up to \$75,000/year (\$150,000 for joint filers). Beyond these income limits, the credit starts to phase out at a rate of \$100 for every \$1,000 of income. For example, a 25 year old single tax filer earning an adjusted gross income of \$80,000 would be eligible for a \$1,500 annual credit (\$500 of credit was phased out because he earned \$5,000 above the \$75,000 income threshold).

Adjust Age Band Ratios and Actuarial Value Requirements

Effective in 2018, the permitted age band ratio would increase to 5-to-1 (up from 3-to-1). This means that a plan would be able to charge up to 5 times more to cover an older participant than a significantly younger participant.

Effective in 2020, the ACA's actuarial value standards would be repealed so that plans with an AV of less than 60% could technically be issued and sold. Plan issuers would no longer be required to label their offerings by metal tiers (i.e., bronze, silver, gold and platinum).

What Employers Can Expect Next

There are other significant changes contained in the AHCA, such as the Medicaid expansion and the creation of state high risk pools, which were not discussed in this compliance alert, but will be addressed in detail in a future alert if/when the AHCA passes the House. The AHCA proposed legislation will begin the process of being marked up immediately and could include resolutions from Democratic members of the House before being debated and voted on the floor. If the bill is passed, it will make its way to the Senate where 51 votes will be needed to send the legislation to the President's desk. However, the legislation faces a significant hurdle in the Senate where the GOP has only a slim 52 vote majority and at least 4 GOP senators have already expressed opposition to the AHCA as currently proposed. A key objection from some members of Congress is with the potential \$1.1 trillion decrease in revenues over a 10 year period due to repealing the various ACA related taxes (in accordance with a 2015 report by the Congressional Budget Office). Arguably, the lost revenue would be offset by the AHCA's proposed repeal of Medicaid expansion and other programs. We will keep you posted as significant developments take shape.

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