ACA COMPLIANCE BULLETIN

AMENDED ACA REPLACEMENT PROPOSAL RELEASED

OVERVIEW

On March 6, 2017, Republican leadership in the U.S. House of Representatives issued two bills—collectively known as the **American Health Care Act**—to repeal and replace the Affordable Care Act (ACA) through the budget reconciliation process. To address concerns raised by both Democrats and fellow Republicans, the House Republican leadership released amendments to the bills on March 20, 2017.

To become law, these bills must go through the legislative process, although a budget reconciliation bill can be passed with a simple majority vote. Debate on the legislation began on March 8, 2017, and a House vote is expected to take place on March 23, 2017.

IMPACT ON EMPLOYERS

If enacted, the new law would not repeal the ACA entirely, although it would make significant changes to key provisions. The ACA's employer and individual mandates would be repealed retroactively beginning in 2016. Key consumer protections, like the ACA's prohibition on pre-existing condition exclusions and dependent coverage to age 26, would remain intact.

HIGHLIGHTS

- House Republicans released ACA replacement legislation, collectively called the American Health Care Act.
- If enacted, the new law would:
  - Provide monthly tax credits and enhance health savings accounts;
  - Eliminate the individual and employer penalties; and
  - Preserve some ACA protections.

IMPORTANT DATES

March 6, 2017
House Republicans issued two bills to repeal and replace the ACA through the budget reconciliation process.

March 23, 2017
A House vote on the proposed legislation is expected to take place.

Provided By:
Affiliated Associates

Legislative Process

The two separate bills that make up the American Health Care Act were released in response to a budget resolution passed by Congress on Jan. 13, 2017. The budget resolution is a nonbinding spending blueprint that directs House and Senate Committees to create federal budget "reconciliation" legislation.

Once drafted, any budget reconciliation bill can be passed by both houses with a simple majority vote. If these bills are passed in both the Senate and the House, the law would then go to President Donald Trump for approval. However, a full repeal of the ACA cannot be accomplished through this process.

ACA Provisions Not Impacted

The majority of the ACA is not affected by the new legislation. For example, the following key ACA provisions would remain in place:

- Cost-sharing limits on essential health benefits (EHBs) for non-grandfathered plans (currently $7,150 for self-only coverage and $14,300 for family coverage)
- Prohibition on lifetime and annual limits for EHBs
- Requirements to cover pre-existing conditions
- Coverage for adult children up to age 26
- Guaranteed availability and renewability of coverage
- Nondiscrimination rules (on the basis of race, nationality, disability, age or sex)
- Prohibition on health status underwriting

The requirement to offer the EHB package for individual and small group plans also remains in place, although the actuarial value requirement would be repealed. Age rating restrictions would also continue to apply, with the age ratio limit being revised to 5:1 (instead of 3:1), and states would be allowed to set their own limits.

Repealing the Employer and Individual Mandates

The ACA imposes both an employer and individual mandate. The American Health Care Act would **reduce the penalties imposed under these provisions to zero**, effectively repealing both mandates (although they would technically still exist). These changes would apply retroactively for months beginning after Dec. 31, 2015.

However, the American Health Care Act would impose what it calls a "**continuous coverage incentive**" in an effort to limit adverse selection in health care markets and to encourage individuals to maintain health coverage. Beginning with open enrollment for 2019, issuers would be permitted to add a **30 percent late-enrollment surcharge** to the premium cost for any applicants that had a lapse in coverage for greater than 63 days during the previous 12 months. The late-enrollment surcharge would be discontinued after 12 months.

Replacing Health Insurance Subsidies with Tax Credits

The ACA currently offers federal subsidies in the form of premium tax credits and cost-sharing reductions to certain low-income individuals who purchase coverage through the Exchanges. The American Health Care Act would repeal both of these subsidies, effective in 2020, and replace them with a portable, monthly tax credit for all individuals that could be used to purchase individual health insurance coverage. The tax credit could be used to purchase any state-approved major medical health insurance and unsubsidized COBRA coverage.

The new tax credit would be both **advanceable** and **refundable**, and would be age-rated, with older individuals eligible for larger credits. The new tax credits would be capped at $14,000 per family and would be adjusted for inflation over time. In addition, the credits would be phased out for individuals making over $75,000 per year ($150,000 for joint filers).

The American Health Care Act would also repeal the ACA's small business tax credit beginning in 2020. In addition, between 2018 and 2020, the small business tax credit generally would not be available with respect to a qualified health plan that provides coverage relating to elective abortions.

Enhancements to Health Savings Accounts (HSAs)

HSAs are tax-advantaged savings accounts that are tied to a high deductible health plan (HDHP), which can be used to pay for certain medical expenses. To incentivize use of HSAs, the American Health Care Act would:

- **Increase the maximum HSA contribution limit**: The HSA contribution limit for 2017 is $3,400 for self-only coverage and $6,750 for family coverage. Beginning in 2018, the new law would allow HSA contributions up to the maximum out-of-pocket limits allowed by law (at least $6,550 for self-only coverage and $13,100 for family coverage).
- **Allow both spouses to make catch-up contributions to the same HSA**: The new law would allow both spouses of a married couple to make catch-up contributions to one HSA, beginning in 2018, if both spouses are eligible for catch-up contributions and either has family coverage.
- **Address expenses incurred prior to establishment of HSA**: Starting in 2018, if an HSA is established within 60 days after an individual's HDHP coverage begins, the HSA funds could be used to pay for expenses incurred starting on the date the HDHP coverage began.

Relief from ACA Tax Changes

The American Health Care Act would provide relief from many of the ACA's tax provisions. The amendments made to the Act would accelerate this relief by one year for most provisions, moving the effective dates for repeal up to 2017. The affected tax provisions include the following:

- **Cadillac tax:** The ACA imposes a 40 percent excise tax on high cost employer-sponsored health coverage, effective in 2020. The new law would change the effective date of the tax, so that it would apply only for taxable periods beginning after Dec. 31, 2025.

- **Restrictions on using HSAs for over-the-counter (OTC) medications:** The ACA prohibits taxpayers from using certain tax-advantaged HSAs to help pay for OTC medications. The new law would allow these accounts to be used for OTC purchases, beginning in 2017.
- **Increased tax on withdrawals from HSAs:** Distributions from an HSA (or Archer MSA) that are not used for qualified medical expenses are includible in income and are generally subject to an additional tax. The ACA increased the tax rate on distributions that are not used for qualified medical expenses to 20 percent. The new law would lower the rate to pre-ACA percentages, effective for distributions after Dec. 31, 2016.
- **Health flexible spending account (FSA) limit:** The ACA limits the amount an individual may contribute to a health FSA to $2,500 (as adjusted each year). The new law would repeal the limitation on health FSA contributions for taxable years beginning after Dec. 31, 2016.
- **Additional Medicare tax**: The ACA increased the Medicare tax rate for high-income individuals, requiring an additional 0.9 percent of wages, compensation and self-employment income over certain thresholds to be withheld. The new law would repeal this additional Medicare tax beginning in 2017, and includes a transition rule to accommodate employer withholding.
- **Deduction limitation for Medicare Part D subsidy:** The ACA eliminated the ability for employers receiving the retiree drug subsidy to take a tax deduction on the value of this subsidy. Effective in 2017, the new law would repeal this ACA change, and reinstate the business-expense deduction for retiree prescription drug costs without reduction by the amount of any federal subsidy.

Beginning after Dec. 31, 2016, the new law would also repeal the excise tax on the sale of certain medical devices, the annual health insurance providers fee and the annual fee on certain brand pharmaceutical manufacturers. The 10 percent sales tax on indoor tanning services would be repealed effective June 30, 2017, to reflect the quarterly nature of this collected tax. Finally, it would also reduce the medical expense deduction income threshold to 5.8 percent (lower than the pre-ACA level of 7.5 percent), beginning in 2017.

Modernize Medicaid

The American Health Care Act would repeal the ACA's Medicaid expansion, and make certain other changes aimed at modernizing and strengthening the Medicaid program. The amendments to the Act make a number of modifications to the proposed Medicaid changes. For example, the new law would provide enhanced federal payments to states that already expanded their Medicaid programs, and then transition Medicaid's financing to a "per capita allotment" model starting in 2020, where per-enrollee limits would be imposed on federal payments to states. It would also allow states the option to implement a work requirement for nondisabled, nonelderly, non-pregnant adults as a condition for receiving Medicaid coverage.

The legislation would also modernize Medicaid's data and reporting systems, repeal the ACA's disproportionate share hospital (DSH) cuts and make changes to the process for eligibility determinations.

Congressional Budget Office (CBO) Report

On March 13, 2017, the CBO issued a cost estimate report on the American Health Care Act. In this report, the CBO estimates that enacting the legislation would:

- Reduce federal deficits by $337 billion over the 2017-2026 period;
- Cause an estimated 14 million more individuals to be uninsured in 2018 than under current law;
- Increase the number of uninsured people relative to the number under current law to 21 million in 2020, and then to 24 million in 2026;
- Not destabilize the individual market; and
- Tend to increase average premiums in the individual market prior to 2020, and then lower average premiums thereafter, relative to projections under current law.

This report has caused some concern among both Democrats and fellow Republicans in approving the legislation. The amendments made to the Act by House Republican leadership are intended to address these concerns. However, this may have an impact on whether there are enough votes in the House and the Senate for this legislation to ultimately be enacted.