



COMPLIANCE ALERT



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ACA Repeal and Replace Update: Leaked House Draft Bill

Late Friday a [draft House budget reconciliation bill](#) was leaked to the media. The draft bill is the most comprehensive Republican plan seen to date on repealing and replacing the Affordable Care Act. Although it addresses wide ranging issues raised by the ACA, it is somewhat limited in that budget reconciliation bills can only address taxes and spending. Specifically, employer ACA reporting was most likely not included because of the limits of the budget reconciliation process. The draft bill offers no big surprises given the prior repeal legislation on which GOP leaders have relied to clarify their position, but notably for our purposes, the bill eliminates all employer and individual mandate shared responsibility penalties for 2016 (presumably payable from the 2015 calendar year). Below are additional details:

-) **Individual and Employer Shared Responsibility Payments:** The bill zero's out all ACA penalties for BOTH the individual and employer mandate for 2016 (presumably payable for the 2015 calendar year).
-) **ACA Taxes:** The bill eliminates countless additional ACA taxes including but not limited to, the Cadillac tax, the increased penalty on HSA non-medical distributions (returns the penalty to 10%), the Medicare tax increase, the tanning tax, the net investment tax, the medical device excise tax, the insurers tax etc.
-) **Health FSAs:** The bill repeals the H-FSA salary reduction election limit imposed by the ACA. It also removes the ACA requirement that over-the-counter medications be prescribed for tax favored reimbursement from account based plans.
-) **A New "Cadillac" Tax:** Although the bill repeals the ACA's "Cadillac tax, it implements a very similar tax. The new Cadillac tax would provide that if the value of benefits an employee receives exceeds an established threshold, the employee would have that amount reflected as taxable income. The value of coverage to measure against the threshold amount includes both employer and employee contributions towards the cost of coverage but excludes certain "excepted" benefits like dental and vision plans. The threshold is very difficult to discern. The bill states that the threshold is an "amount determined by the secretary to be equal to the 90th percentile of annual premiums for coverage . . . for group health plans."
-) **HSAs:** The bill increases HSA contribution limits to match out of pocket maximum limits required for HSA compatible High Deductible Health Plans.
-) **Cost Sharing Reductions:** The bill would repeal ACA cost sharing reductions available to individuals with incomes between 100% and 250% of the Federal Poverty Level by 2019. This was one of the ACA's two possible "subsidies" for lower wage earners.
-) **Tax Credits:** The bill extends the ACA premium tax credit through 2019 and expands it to allow the credit to apply to plans purchased outside of Exchanges. It also adds a sliding scale to the availability of existing tax credits based on age. In 2020, the bill transitions to a fixed dollar tax credit based on age. The credit is capped at \$14,000 but would be adjusted for inflation. In addition to individual plans, it could be put towards unsubsidized COBRA coverage. Like the ACA's existing tax credits, the amounts would be available in advance. It would not be available to non-resident aliens.
-) **Medicaid:** The bill ends the ACA's optional state Medicaid expansion. Instead it establishes a per-capita approach to funding state Medicaid programs beginning in 2019. It also provides additional

funding that states could use for high risk pools, reinsurance programs, programs to subsidize providers for direct provision of care or to reduce cost sharing, or programs to promote access to preventive services.

- J **Individual and Small Group Enrollment Penalties:** In lieu of an individual mandate, by 2019 in the individual and small group markets individuals would pay a 30 percent premium increase for twelve months if they had a gap in “creditable coverage” of at least 63 days during the preceding 12 months. The bill does not otherwise address preexisting conditions exclusions or individual medical underwriting.
- J **Essential Health Benefits:** The bill repeals the ACA’s list of ten Essential Health Benefits. In the bill defining EHBs is delegated to states. The bill also changes ACA age banding from 3:1 to 5:1. It does not address cost sharing limits under the ACA or the prohibition on lifetime and annual limits.
- J **Special Enrollment Period Verification:** The bill requires special-enrollment period verification.
- J **New “Grandfathered” Plans:** The bill provides that you can keep your ACA coverage and allows these “Grandfathered” plans to be sold outside of Exchanges. It specifies that these plans would be considered Minimum Essential Coverage.

Although this draft bill is the most comprehensive repeal and replace plan most of us have seen, these provisions will likely change as the political climate continues to shift and subsequent drafts are released (or leaked). The biggest outstanding question remains funding for any repeal and replace plan. This bill eliminates all of the taxes that funded the ACA while providing additional tax credits to millions of additional individuals, but does not address the budgetary consequences of those provisions. The only revenue generation in the bill is the “new” Cadillac tax. We will continue to monitor developments in this dynamic arena.

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