



# COMPLIANCE ALERT



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## House Republicans Release ACA Repeal and Replace Legislation

Yesterday the House released two ACA related bills drafted by the House Ways and Means Committee and the House Energy and Commerce Committee. Committee debate on the bills will begin tomorrow, with the intent to move to a full vote before the spring recess scheduled for April 7. Together the two bills seem very similar to the draft proposal previously leaked to the press and summarized in our previous [Alert](#). Of significant note for employers, the new bills **do not tax employer provided coverage**, as proposed in the previously leaked draft bill. This provision was being called the new Cadillac Tax and received significant opposition from industry groups and stakeholders, and does not appear to have made the cut. It was the only revenue generator included in the draft bill and was generally considered insufficient to fund the GOP plan. The bills released yesterday include a new phase out of subsidies to purchase health coverage on the individual market at a certain income threshold. This phase out of subsidies for higher wage earners is apparently intended to replace the elimination of the tax on employer coverage as the bills' funding mechanism. Note, however, that the Congressional Budget Office (CBO) has not yet reviewed the bills for projected costs and loss of coverage implications. Below are additional details:

### What's Out

- **Individual and Employer Shared Responsibility Penalties:** The bills eliminate ACA penalties for both the individual and employer mandate for any penalties payable for the 2015 calendar year and beyond.
- **ACA Taxes:** The bills eliminate ACA taxes including but not limited to 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 bills repeal the Health FSA salary reduction election limit imposed by the ACA. They also remove the ACA requirement that over-the-counter medications be prescribed for tax favored reimbursement from account based plans.
- **Cost Sharing Reductions in Exchange:** The bills 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 purchasing coverage in the individual market.
- **Exchange Income-based Subsidies:** Eliminated effective December 31, 2019.
- **Medicaid:** The bills end the ACA's optional state Medicaid expansion. Instead they establish a per-capita approach to funding state Medicaid programs beginning in 2019. They also provide 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.

- **Essential Health Benefits:** The bills repeal the ACA's list of ten Essential Health Benefits. In the bills, defining EHBs is delegated to states. The bills also change ACA age banding from 3:1 to 5:1. Note that these changes will impact the individual and small group markets. While large employers are not required to offer all 10 EHBs, the ACA limited cost sharing for those EHBs that are offered. Those provisions have not been eliminated so the lasting impact on large employers is unclear.

### What's In

- **Dependent Coverage to Age 26:** The bills do not eliminate the ACA provision that allows children to remain on their parents' plan until age 26.
- **Prohibition on Pre-existing Condition Exclusions:** Insurers and plans are still prohibited from denying coverage or charging more to people with preexisting medical problems.
- **HSAs:** The bills increase HSA contribution limits to match out of pocket maximum limits required for HSA compatible High Deductible Health Plans.
- **Tax Credits:** The bills extend the ACA premium tax credit through 2019 and expand it to allow the credit to apply to plans purchased outside of Exchanges. They also add 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 and are reduced for individuals with annual incomes over \$75,000 and married couples with incomes over \$150,000. 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.
- **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 bills do not otherwise address preexisting conditions exclusions or individual medical underwriting.
- **Cadillac Tax:** Retained but delayed until 2025.

We will continue to monitor developments and keep you updated. To view the full text of the draft legislations, please refer to the links below:

- [House Ways and Means Committee Draft Bill](#)
- [House Energy and Commerce Committee Draft Bill](#)

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