



COMPLIANCE ALERT

Alliant
EMPLOYEE BENEFITS

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Senate Releases Draft Repeal and Replace Legislation

Earlier today the Senate Republicans released their proposed legislation to repeal and replace parts of the Affordable Care Act (ACA)—entitled the Better Care Reconciliation Act (BCRA)—with the intent to vote on the proposal next week, prior to the July 4 holiday recess. Last month the House of Representatives (the House) passed the American Health Care Act (AHCA). Our Alert on that bill is available [here](#). The Senate proposal appears very similar to the AHCA with some minor, yet notable differences. We have prepared a chart comparing the ACA, the AHCA, and the Senate proposal, available at the end of this Alert. The Senate proposal includes the following provisions:

- **Individual and Employer Mandate Penalties:** Eliminates ACA penalties for both the individual and employer mandate for any penalties payable for the 2016 calendar year and beyond. This retains Pay or Play penalties for the 2015 calendar year, although no assessment and collection guidance has been issued to date.
- **Cadillac Tax:** Eliminates the employer tax on high cost health coverage effective 2020 and reinstates the tax effective 2026. This reinstatement provision is likely included to comply with the budget reconciliation rules.
- **Other ACA Taxes:** Eliminates most other ACA taxes by 2017.
- **Health FSAs:** Repeals the H-FSA salary reduction election limit effective January 1, 2018, and repeals the requirement that OTC medications have RX to be reimbursable effective January 1, 2017.
- **Health Savings Accounts (HSAs):** Increases maximum contribution limit to out of pocket maximums permissible under a qualified high deductible health plan (\$6550 for individual coverage, \$13,100 for family coverage in 2017). Allows reimbursement for qualified expenses incurred up to 60 days prior to opening an HSA. Allows spouses to both make catch-up contributions to a single HSA and reduces the penalty for non-qualified distributions back from 20% to 10%.
- **Cost of Coverage:** Effective January 1, 2019, increases age rating ratios from 1:3 to 1:5 in the individual and small group markets and allows states to determine another ratio.
- **Medicaid:** Ends the ACA's optional state Medicaid expansion beginning in 2020.
- **Tax Credits:** Transitions to a sliding scale tax credit based on age and income. The tax credit will be based on the median cost bronze plan, not the higher cost silver plan. Caps eligibility for the tax credit at household incomes 350% of the federal poverty level (FPL), rather than 400%. Available to "qualified aliens" rather than individual "lawfully present" in the country.
- **Repeal after Continuing Cost Sharing Reductions in Short Term:** Continues ACA cost sharing reductions available to individuals with incomes between 100% and 250% of the Federal Poverty Level until 2020, after which they are repealed. This ACA provision is the subject of ongoing litigation between the Department of Health and Human Services (HHS) and the House. The Administration has asked to delay this litigation pending repeal and replace legislation.

- **State Waivers:** Allows states to waive essential health benefit requirements. Must show that proposal will increase access to comprehensive coverage and reduce costs. Eliminates the requirement that the proposal not increase the federal deficit.

ACA Mandates Not Impacted by House or Senate Bill

- Prohibition on pre-existing condition exclusions
- Dependent coverage to age 26
- Prohibition on lifetime and annual limits
- Maximum out of pocket cost limits
- Prohibition on excessive waiting period (90 days)
- Patient Protections (Designating PCP and referral to OB, Emergency Services, etc.)
- Prohibition on recessions of coverage
- Essential health benefits requirements (state waivers may dilute the impact of this requirement)
- Section 1557 nondiscrimination protections
- Section 6055 and 6056 (MEC and ALE) Reporting
- W2 Reporting
- Requirement to distribute Summary of Benefits and Coverage (SBC)
- Enhanced claims and appeals procedures
- PCORI fees through 2019
- Clinical Trials
- Exchange Notice
- Nondiscrimination for insured, non-grandfathered plans (delayed)

See our prior [Alerts](#) for more [in depth discussion](#) of the House's repeal and replace efforts.

What Happens Now?

The Senate is expected to vote on the proposal next week and needs 51 votes for the bill to pass. In the meantime, we expect the Congressional Budget Office (CBO) to score the bill in terms of cost and an estimated number of individuals who would lose coverage under the bill. It is certain to be a politically charged week. If the bill passes, it will move back to the House for any additional amendments. Once the two chambers have agreed upon a bill, it will move to the President's desk for signature.

Employer Action Items

Employers should become generally familiar with the provisions in this proposal that would directly impact their benefit plans and operations. In the meantime, we will continue to monitor this legislation closely and communicate any developments.

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	Affordable Care Act	American Health Care Act (House)	Better Care Reconciliation Act (Senate)
Individual and Employer Shared Responsibility Penalties	<ul style="list-style-type: none"> ○ Large Employers that do not offer coverage to substantially all full-time employees pay \$2,000 (indexed) for every FT employee (minus the 1st 30) ○ Large Employers that offer coverage that is unaffordable or does not meet minimum value pay \$3,000 (indexed) for every ineligible FT employee or FT employee that declines coverage and purchases subsidized Exchange coverage ○ Individuals that do not maintain coverage pay a tax penalty of \$695 or 2.5% of modified adjusted gross income 	<p>Eliminates ACA penalties for both the individual and employer mandate for any penalties payable for the 2015 calendar year</p> <ul style="list-style-type: none"> ○ creates a late enrollment penalty on individuals who do not maintain continuous coverage 	<p>Eliminates ACA penalties for both the individual and employer mandate for any penalties payable for the 2016 calendar year</p> <ul style="list-style-type: none"> ○ No late enrollment penalty
ACA Taxes	<ul style="list-style-type: none"> ○ Cadillac Tax ○ Insurers tax ○ Net Investment Income Tax ○ Tanning Tax ○ Medical device Manufacturers Tax ○ Increase on HSA tax penalty from 10-20% 	<p>Eliminates most ACA taxes by 2017; Delays Cadillac tax to 2025</p>	<p>Eliminates most ACA taxes by 2017; Cadillac Tax eliminated effective 2020 and reinstated in 2026</p>
Health FSAs	<p>Creates a \$2,500 (indexed) H-FSA salary reduction election limit and requirement that OTC medications have RX to be reimbursable.</p>	<p>Repeals the H-FSA salary reduction election limit effective 2018 and requirement that OTC medications have RX to be reimbursable.</p>	<p>Repeals the H-FSA salary reduction election limit effective 2018 and requirement that OTC medications have RX to be reimbursable effective 2017.</p>

Cost of Individual and Small Group Coverage	Health insurance issuers may vary the insurance premium for coverage in the individual and small group markets only based on family size, geographic rating region, age within a ratio of 3:1, and tobacco use within a ratio of 1.5:1.	Increases age rating ratios from 1:3 to 1:5 in the individual and small group markets and allows application for higher ratio.	Increases age rating ratios from 1:3 to 1:5 in the individual and small group markets and allows states to set different ratios.
Medicaid	Created an optional state Medicaid expansion for individuals with incomes up to 138% of the Federal Poverty Level (as opposed to previous limits based on minority, pregnancy or disability).	Ends the ACA's optional state Medicaid expansion and imposes either a block grant or per capita caps on Medicaid.	Ends the ACA's optional state Medicaid expansion and imposes either a block grant or per capita caps on Medicaid (Note that Medicaid changes are complex and more details will be provided shortly).
Premium Reduction Tax Credits	Established income based premium reduction tax credit available to individuals with incomes between 100% and 400% of the Federal Poverty Level on a sliding scale (reducing premiums for lower income individuals); requires enrollment in Silver Plan.	Extends the ACA premium tax credit through 2019; in 2020 transitions to a fixed dollar tax credit based on age and phases out for higher wage earners.	Extends the ACA premium tax credit through 2019; in 2020 transitions to a sliding scale credit based on age AND income <ul style="list-style-type: none"> ○ Credit now available for Median Cost Bronze Plan in individual Market ○ Credit only available for incomes up to 350% FPL
Cost Sharing Reductions in Exchange	Established income based cost sharing reductions available to individuals with incomes between 100% and 250% of the Federal Poverty Level on a sliding scale (reducing out of pocket maximums for low income individuals creating richer coverage).	Repeals ACA cost sharing reductions available to individuals with incomes between 100% and 250% of the Federal Poverty Level by 2019.	Repeals ACA cost sharing reductions available to individuals with incomes between 100% and 250% of the Federal Poverty Level by 2020 <ul style="list-style-type: none"> ○ Funds CSR subsidies through 2019 (ending House v. Burwell challenge)

Reinsurance Fees/Programs	Sponsors of self-funded plans and insurers are required to contribute a per capita fee for 2014-2016 calendar years to a temporary reinsurance program for the individual market in order to offset the risk of high cost claims (in effect shifting risk from insurers to reinsurers).	Provides reinsurance for individual market insurers for high-cost enrollees paid from Treasury under the Federal Invisble Risk-Sharing Program.	Provides funding to address coverage disruption and urgent health care needs through financial assistance to high-risk individuals to reduce premiums or out of pocket costs for individuals without access to employer sponsored coverage under the State Stability and Innovation Program.
State Innovation Waivers	<p>States may apply for a waiver from the following ACA provisions:</p> <ul style="list-style-type: none"> ○ individual and employer mandates ○ the qualified health plan requirements ○ actuarial value and essential health benefit requirements, ○ The premium and small business tax credit and cost-sharing reduction provisions <p>States must show that the proposal will:</p> <ul style="list-style-type: none"> ○ provide coverage at least as comprehensive as that provided under the ACA ○ coverage for an protection against excessive OOP costs as affordable as the ACA ○ cover comparable number of residents as compared to ACA ○ not increase the federal deficit 	<ul style="list-style-type: none"> ○ Allows states to waive the ACA's essential health benefits requirements ○ Allows states to obtain waiver to individually underwrite coverage in lieu of late enrollment penalty ○ Allows states to obtain waiver to increase age rating ratio 	<ul style="list-style-type: none"> ○ Allows state to waive essential health benefit requirements ○ Must show that proposal will increase access to comprehensive coverage and reduce costs ○ Eliminates the requirement that the proposal not increase the federal deficit
State Risk Pools	--	Provides fund of \$138 billion dollars for state risk pools for individuals with	--

		pre-existing conditions and other high cost consumers.	
Medical Loss Ratios	Insurance companies are required to spend a specified percentage of premium dollars on medical care and quality improvement activities, meeting a medical loss ratio (MLR) standard; companies that are not meeting the MLR standard will be required to provide rebates to their consumers.	--	Existing MLR rebate requirements repealed effective 2020 with state flexibility to establish state specific MLR thereafter.
Retiree Drug Subsidies	Subsidy payments for retiree drug coverage made under the Social Security Act are included in the gross income of plan sponsors.	--	Subsidy payments for retiree drug coverage made under the Social Security Act are NOT included in the gross income of plan sponsors.
Small Business Risk Sharing Pools	--	--	Allows insurers to issue large group market plan to a bona fide trade association of small employers.
HSAs	Increased the additional tax on HSA distributions that are not used for qualified medical expenses from 10 to 20%.	Increases HSA contribution limits to the sum of the statutory deductible and out of pocket limit; allows both spouses to make catch up contribution to same HSA; allow HSAs to cover medical expenses incurred up to 60 days before HSA coverage begins; reverts penalty for non-qualified distribution back to 10%.	Increases HSA contribution limits to the statutory out of pocket limit; allows both spouses to make catch up contribution to same HSA; allows HSAs to cover medical expenses incurred up to 60 days before HSA is established if HDHP coverage in force; reverts penalty for non-qualified distribution back to 10%.

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