The American Health Care Act

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Republicans in the U.S. House of Representatives passed the American Health Care Act (AHCA), legislation that begins the process of repealing and replacing the Patient Protection and Affordable Care Act (ACA).

Senate Republicans have now released their own health care repeal-and-replace effort, the Better Care Reconciliation Act of 2017 (BCRA), a bill that reflects the House version in many of its broadest outlines, but which diverges in details.

The following is a summary of the changes that may result from enactment of the the provisions of these bills: what's out, what's in, and what changes if the new bill successfully passes both the Senate and a return trip to the House and is signed into law by the President.

Bear in mind that the AHCA has not yet become law, and what the bill looks like from day to day may change significantly due to amendment and reconciliation efforts.

The primary source of this document is the House bill; Senate additions and revisions are included in the gray boxes.

What's out?

Individual/Employer Mandate Penalties

If passed, the Republican plan would reduce to zero the penalties associated with the ACA's two most significant mandates, the Individual and Employer Mandates. The elimination of these penalties is retroactive to January 1, 2016, which means that individuals and employers will not pay a penalty for failing to carry or offer coverage during 2016, but may still owe ACA-related tax bills for tax year 2015.

Limit on Reimbursement of Over the Counter Items

The ACA limited reimbursement from a Health Flexible Spending Account (Health FSA) or Health Savings Account (HSA) of over-the-counter (OTC) healthcare items to those that were prescribed by a physician. The proposal would eliminate the requirement to obtain a prescription for OTC items to qualify for reimbursement beginning January 1, 2018.

Health FSA Contribution Limits

Health FSAs receive an additional benefit under the bill, which starting January 1, 2018, would repeal the ACA's limitation on contributions to Health FSAs, currently capped at $2,600 per year. This would allow employers to return to the pre-ACA practice of setting their own contribution limits for Health FSAs. Dependent Day Care FSA contributions remain capped at $5,000 per year.

Repeal of Other Taxes

In addition to zeroing out ACA penalties and loosening restrictions on Health FSAs, the Republican plan does away with other assorted taxes imposed by the ACA, including the tax on health insurers, brand name and imported prescription drugs, medical devices, indoor tanning, net investments of high income individuals, and the additional 0.9% Medicare tax on high-wage earners. The proposal also reduces the threshold for claiming an itemized deduction for the cost of unreimbursed medical expenses from 10% to the pre-ACA level of 7.5% of adjusted gross income. All of these tax changes would take effect in 2017.

> **Senate modification:** The Senate bill would leave some of those taxes intact. While this would help alleviate revenue concerns associated with the previous version of the bill, it may not fully sway some legislators as the taxes were the source of significant Republican objection to the ACA. Those taxes include the tax on net investment income, tax on the income of certain health insurance executives, and the additional Medicare Health Insurance tax.

Cost-Sharing Subsidies

The bill would also repeal the cost-sharing subsidies available under the ACA to help low income families pay for out-of-pocket expenses, such as deductibles and co-pays, for Public Exchange (Marketplace) coverage.

> **Senate modification:** Unlike the House bill, the Senate proposal would temporarily fund the cost-sharing subsidies available under the ACA to help low income families pay for out-of-pocket expenses, such as deductibles and co-pays, for Public Exchange (Marketplace) coverage. Cost sharing reduction payments would continue through 2019 and then be repealed entirely.

Medicaid Expansion

Under the ACA, 32 states accepted increased federal funding to expand Medicaid eligibility to people making up to 138% of the federal poverty level. The Republican plan would retain the current Medicaid expansion until 2020, at which point enrollment under the expansion would freeze, and states would have to pay if they chose to continue eligibility for expansion enrollees. The bill also proposes to cap future Medicaid funding based on each state's Medicaid spending during 2016.

> **Senate modification:** The Senate bill also phases out the Medicaid expansion, but would implement a three-year phase-out beginning in 2020, and would tie Medicaid funding to standard inflation, rather than the more generous medical inflation, starting in 2025. States may respond by cutting enrollment, benefits or provider payments.

What stays?

Cadillac Tax

The Republican plan delays but does not repeal the Excise Tax on High Cost Plans (aka Cadillac Tax), a 40% tax on the value of applicable coverage exceeding designated threshold amounts. The bill would delay the effective date of the Cadillac tax by six years, from 2020 to 2026.

Employee Tax Exclusion for Employer Provided Medical Coverage

The Republican plan leaves untouched (for now) a long-standing tax law that permits employees to exclude the value of employer-provided accident and health coverage from their taxable income. Many press briefings prior to the introduction of the AHCA indicated Republicans were considering a limit on the exclusion, which we may see in future legislation.

IRS Reporting

Notably, the legislation does not repeal the Internal Revenue Service ("IRS") Forms 1094 and 1095 reporting requirements imposed on insurers and employers by the ACA. IRS reporting is expected to continue until the "phase out" of the ACA's Marketplace subsidies, which sunset in 2020 under the Republican plan. Even after 2020, when the bill's new system of refundable, advanceable tax credits is set to go into effect, a simpler version of reporting by employers would likely be necessary because those credits are only available to individuals without access to job-based coverage. The AHCA sets forth a process under which employers would indicate an offer of health coverage on the employee's W-2 tax form. The House Ways and Means Committee stated in its summary of the bill that while "reconciliation rules limit the ability of Congress to repeal the current reporting, but, when the current reporting becomes redundant and replaced by the reporting mechanism called for in the bill, then the Secretary of the Treasury can stop enforcing reporting that is not needed for taxable purposes."

In addition to the W-2 reporting, the AHCA provides that, to help determine eligibility for an advanceable tax credit starting in 2020, if an individual applying for the credit is employed, the employer will be required to provide a written statement noting whether the individual and/ or family member is eligible for employer-sponsored coverage, subject to penalties for noncompliance.

Market Reforms

Also left intact are the ACA's market reforms, including out-of-pocket spending limits, zero cost sharing for preventive care, the ban on annual and lifetime limits for services defined as essential health benefits, the prohibition on pre-existing condition exclusions, and coverage for dependent children up to age 26 under a parent's plan. In addition, unless a waiver applies, small group and individual insurers would still have to cover the ACA's list of ten essential health benefits, including maternity care. States could apply for a waiver of this provision. Other market reform provisions may be targeted by future repeal legislation, but likely cannot be eliminated using the budget reconciliation process Republicans are seeking to use to enact the ACHA, which limits the bill to tax and budget-related provisions.

What changes?

Health Savings Accounts

The Republican proposal would expand access to Health Savings Accounts (HSAs) by aligning HSA contribution limits with the yearly out-of-pocket limits applicable to qualified high deductible health plans (HDHPs). In 2018, this would mean that an individual could deposit as much as $6,550 and a family $13,100 into an HSA. In addition, both spouses could make additional "catch-up" contributions to the same account, expenses incurred since the start of HDHP coverage could be reimbursed as long as the HSA is established within 60 days, and the excise tax on non-qualified distributions would be reduced from 20% to the pre-ACA 10%. All of the HSA changes are proposed to take effect January 1, 2018.

> **Senate modification:** The Senate bill would permit qualified individuals to use Health Savings Account (HSA) funds to pay insurance premiums.

Tax Credits for Individual Insurance Coverage

Beginning in 2020, the subsidies currently available to income-qualified individuals via the Public Exchanges (Marketplaces) would be replaced by a new system of advanceable, refundable tax credits. AHCA tax credits would be available in full to individuals/households earning less than $75,000/$150,000 per year, but would not be available to individuals who are eligible for government-provided or employer-sponsored coverage. The tax credits would be capped for higher earners and would vary based on age. For example, the maximum subsidy for a single person under 30 would be $2,000, while a single person aged 60 or above would receive $4,000. Unlike the current Public Exchange (Marketplace) subsidies, AHCA tax credits would not be adjusted for regional differences in the cost of health insurance premiums. The tax credits may be used to purchase qualified individual insurance or COBRA coverage.

Senate modification: The Senate bill retains the ACA's advance premium tax credit structure, but starting in 2020 would limit eligibility to taxpayers whose income does not exceed 350% of the federal poverty line (instead of the current 400%) and would modify how the credit works. Subsidies would be available to enrollees below the poverty level, opening up access to individuals in states that chose not to expand Medicaid. Subsidies would be adjusted for age, income and geography.

Continuous Coverage Incentive

In order to incent individuals to maintain health insurance even without an individual mandate penalty, the bill would impose a 30% surcharge on premiums for 12 months following a 63 day lapse in coverage. The surcharge would only apply to individual and small group insurance coverage. States could apply for a waiver of this provision.

Senate modification: The Senate version of the bill imposes a six-month waiting period on individuals who allow their coverage to lapse 63 days or more.

Age-Based Premiums

Age-based insurance premiums could change as well. Under the ACA, insurers may charge older people only three times the amount they charge to younger participants. The Republican plan permits states to set their own ratios, potentially permitting insurers to charge older individuals as much as five times the amount charged to younger ones. States could apply for a waiver of this provision.

Patient and State Stability Funds

The legislation earmarks $100 billion over 10 years for funds which states could utilize for various market stabilization activities such as the creation of high risk pools to help offset the cost of offering coverage to individuals with costly medical conditions.

Senate modification: The Senate bill allocates $132 billion over eight years to help insurers cover higher-cost enrollees, and stabilize the insurance markets.

State Waivers of Certain ACA Provisions

The Meadows-MacArthur Amendment to the AHCA would allow states to apply for waivers to opt out of certain ACA requirements. States with waivers could:

- Set higher ratios for premiums charged to older enrollees;
- Specify their own list of essential health benefits applicable to the individual and small group markets;
- Allow increased premiums based on health status; resulting in potentially higher premiums for sicker people.

States would qualify by attesting that the waiver would reduce premiums, increase enrollment in coverage, stabilize the health insurance market, stabilize premiums for individuals with pre-existing conditions, or increase the choice of health plans in the state.

> **Senate modification:** The Senate bill would not permit a waiver of the ACA's existing community rating rules. Insurers would be required to offer the same prices to everyone regardless of health status and other risk factors.

State waivers could theoretically further impact large group health plans because the ACA's ban on annual and lifetime limits only applies with respect to care that is defined by a state as an "essential health benefit." Under current regulations, large employer plans have the ability to choose among different states' essential health benefit definitions. If states receive waivers, large employer plans could potentially adopt any waiver state's list of essential health benefits. Large group health plans would then be permitted to apply annual and lifetime limits to any service not defined as an essential health benefit by that state.

American Fidelity is committed to providing our customers with up-to-date information on changes to the law. In the meantime, remember that the ACA is still the law. Employers should continue current compliance efforts while watching and waiting for new developments. For more information or to subscribe to our VIP email updates, please visit our website at www.hcreducaiton.com.

Lower-Premium Catastrophic Plans

Based on a plan proposed by Sens. Ted Cruz and Mike Lee, amendments to the Senate bill give insurers the option to offer lower-premium catastrophic plans, which would reduce premiums, but would offer a lower level of coverage required under current law.

American Fidelity Administrative Services Can Help!

American Fidelity Administrative Services provides a variety of services designed to assist employers in understanding the changing rules and developing compliance strategies.

Learn more at hcreducation.com or contact us at **877-302-5073**.

Caution:

American Fidelity Administrative Services does not provide tax or legal advice, and we always recommend working with your own legal counsel to discuss how your plans could be affected by these rules.

Further, this is only a brief summary that reflects our current understanding of select provisions of the law, often in the absence of regulations. All of the interpretations contained herein are subject to change as the appropriate agencies publish additional guidance.

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