



# Memo

Subject: House passes American Health Care Act

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Today, the House passed the American Health Care Act of 2017 (“AHCA”, H. R. 1628). Since the initial bill was introduced on March 2<sup>nd</sup> (see [The GOP Proposal to Repeal and Replace the Affordable Care Act](#), HRB 127, 3/10/17), there have been several amendments made to the law’s text. The bill will now progress to the Senate for consideration; its fate in the Senate is unclear at this point.

To reiterate some of the highlights of the introduced bill, the AHCA would retain certain ACA insurance market reforms such as coverage of adult children up to age 26 and prohibition of caps on lifetime and annual limits. The AHCA intends to expand health savings accounts (HSA) beginning in 2018, as described in HRB 127.

The AHCA would **repeal** certain ACA provisions including:

- ♦ The individual mandate which requires individuals to maintain minimum health coverage or pay a tax. Further, it would repeal the premium assistance tax credit and cost-sharing available to individuals who fall below 400% of the federal poverty level, replacing it with an advanced, refundable tax credit for the purchase of state-approved, major medical health insurance and unsubsidized COBRA coverage for U. S. citizens who do not have access to employer or government-sponsored coverage, or who are otherwise exempt. The credits are age-adjusted as follows:

<i>Age of Individual</i>	<i>Amount of Credit</i>
Under 30	\$2,000
Between 30 and 39	\$2,500
Between 40 and 49	\$3,000
Between 50 and 59	\$3,500
Over 60	\$4,000

The credits are capped at \$14,000, and are available to individuals whose income is less than \$75,000 per year (\$150,000 joint filers). The credit phases out by \$100 for every \$1,000 in income higher than those thresholds.

*AHCA repeals, cont'd*

- ♦ The employer shared responsibility mandate that requires public and private employers employing 50 or more full-time employees to offer adequate and affordable health coverage to their employees;
- ♦ The Small Business Tax Credit, beginning in 2020;
- ♦ Flexible medical spending account cap;
- ♦ Health insurance tax imposed on insurers;
- ♦ Reduction of Medicare Part D retiree drug subsidy;
- ♦ Medicare tax imposed on high earners – the unearned income and 0.9 percent tax surcharge;
- ♦ Medical device excise tax;
- ♦ Branded prescription drug tax;
- ♦ For health savings accounts and other reimbursement arrangements, the tax favored status of over-the-counter medications would be returned; and
- ♦ The 3.8% net investment tax on individuals, estates, and trusts with income above certain levels.

With regard to other ACA-imposed taxes, the AHCA further delays the imposition date of the Cadillac tax on high cost of employer-sponsored coverage until 2026. In addition, the income threshold for the medical expense tax deduction would be returned to 5.8% of income, from 10% under the ACA. Notably, this bill does not repeal the ACA's Patient-Centered Outcomes Research (PCOR) fee. The ACA's requirement to pay the transitional reinsurance fee expired last year in 2016.

With regard to the employer's reporting obligation under the ACA to include the cost of health coverage on the Form W-2, the bill would create a new entry on the W-2 whereby the employer would indicate whether an individual was offered coverage. Presumably, ultimately, this could take the place of the current IRC Section 6056 reporting obligations, i.e., the Forms 1094 and 1095. Though again, for the moment, this obligation remains in full force and effect.

Under the AHCA, states can apply for waivers of a 10-year duration for certain purposes. In particular, states could apply for waivers to establish their own essential health benefit package in the individual and small group market (the initial bill would have retained the ACA's ten essential health benefits mandate). Waivers could also be sought to allow aged-based or other premium rating, as well as permit health status underwriting for individuals who experience extended gaps in coverage. The latest amendment to AHCA provides for an additional \$8 billion in federal funds for the period between 2018 and 2023 to be allocated to states with health status underwriting waivers.

The ACHA would also repeal the expansion of Medicaid to individuals falling below 133% of the federal poverty level (FPL), returning it to 100% of the FPL ceiling.

We will keep you updated as this bill progresses in the Senate. In this interim, remember the Affordable Care Act has not been repealed and is still in force and effect.

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