



Regulatory Update

Republicans Release Health Policy Proposed Legislation

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House Republicans have released the “American Health Care Act” (ACHA), the first official draft of ACA “repeal and replace” legislation. As of March 9, the legislation is being reviewed, debated, and changed in the relevant House committees, so details are likely to change; however, much of what is contained in this draft is likely to move forward as Congress tries to finalize legislation that can pass both the House and the Senate.

Cadillac Tax v. Limits on the Tax Exclusion for Employer Sponsored Health Benefits

The ACHA contains many of the same elements as the draft legislation that was leaked to the press a few weeks ago, with one very significant change. The leaked draft included a repeal of the Cadillac tax, which was replaced by a new limit on the tax exclusion for employer-sponsored health benefits. Now, however, the limit on the tax exclusion has been removed from the draft of the AHCA, but the Cadillac tax is back.

The leaked bill proposed that, beginning in 2019, the tax exclusion for employer-sponsored health benefits would be capped at the 90th percentile of average health insurance premiums. Any amount above that limit would be treated as taxable income to the employee. This approach is missing from the ACHA, and the Cadillac tax, with a delayed effective date of 2025, is again part of the bill.

Applicable Large-Employer “Penalties” Under §4980H Reduced to \$0

The ACHA is designed to be able to pass both the House and the Senate using the process known as budget reconciliation. This would allow Republicans in the Senate to avoid a Democratic filibuster and pass a bill with a simple 51-vote majority. However, budget reconciliation cannot be used for a full repeal of the §4980H employer shared responsibility rules that require applicable large employers to provide health insurance to full-time employees. So instead, the bill leaves the employer requirements in place, but eliminates the penalty for violating the rules. It is still unclear exactly what it will mean for employers if the employer mandate still exists in the law, but the penalty is reduced to \$0.

Other Employer-Related Provisions

The ACHA draft includes a number of other interesting employer-related provisions:

- An age-based tax credit for people who purchase individual health insurance policies would not be available to individuals who are eligible for employer coverage. Due to this provision, there will likely continue to be some IRS employer reporting requirements. There is mention of at least some of the necessary reporting requirements being captured in the Form W-2.
- Beginning in 2019, a premium penalty of 30% would apply to health plans if an individual has a break in coverage requirement of more than 63 days. This will probably require employers to provide certificates of creditable coverage, similar to the old HIPAA rules that existed prior to the ACA.



Regulatory Update

- The limit on contributions to Health Flexible Spending Accounts (currently \$2,600) would be repealed effective for 2018.
- The bill would repeal the Health Insurance Tax (HIT). This tax applies to health insurance companies, but is reflected in rates charged to employers.
- Over-the-counter medications would be treated as an eligible expense in HSA and HFSA.
- The penalty for HSA withdrawals used for ineligible expenses would be reduced from 20% to 10%.
- HSA contribution limits would be raised to the current maximum out-of-pocket that applies to a High Deductible Health Plan (currently \$6,550 for self-only and \$13,100 for family), and catch-up contributions for both spouses may be made into the same HSA.
- HSA funds can be used to reimburse expenses incurred from the date an individual is covered by an HDHP as long as the HSA is established within 60 days of the beginning of the HDHP coverage.

Other Legislative Activity

Rep. Pete Sessions, R-TX, and Sen. Bill Cassidy, R-LA, have also introduced H.R. 1275, the “World’s Greatest Healthcare Plan of 2017,” their version of a replacement for the ACA. Do not confuse this bill with the American Health Care Act (AHCA); it is an entirely different piece of legislation.

Sessions’ bill differs from the AHCA in a number of particulars, including a full repeal of the §4980H employer shared responsibility rules and employer reporting, introduction of a Roth HSA, and more liberal rules regarding employer payment of individual health insurance policies.

Sessions’ bill has virtually no chance of becoming law in its current form. The ACHA is the bill to watch. As explained above, Republicans designed the ACHA to be able to use the budget reconciliation process. The World’s Greatest Healthcare Act of 2017 contains elements that will not be allowed under existing budget reconciliation rules, meaning it would need 60 votes to make it through the Senate.

Summary

The details are starting to take shape, but there is still a lot that has to happen before any of this becomes law. After the House committees complete their review and make revisions to the ACHA, it will be sent to the House floor for a vote. If it passes the House, it will go to the Senate, where additional changes will likely be made. Only if and when the House and the Senate reconcile their differences will the bill be sent to the President for his signature.

For More Information

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