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# Health Care Legislation Status

## ACA vs. AHCA

May 9, 2017

The American Health Care Act (AHCA) passed in a 217-213 House floor vote on May 4, 2017. This is the initial step to repeal and replace the Affordable Care Act (ACA). From here, the proposed legislation moves to the Senate for continued debate and deliberation. The Senate is expected to make significant changes or potentially craft a separate bill; and if so, a new deliberation will begin in a conference committee with members from both chambers. Both the House and Senate must vote again on the compromise bill. Importantly, until the AHCA is signed by the President, the Affordable Care Act (ACA) remains the law today and all current compliance requirements remain in place. Below is a snapshot of the AHCA. These highlights assume the legislation remains unchanged.

## ACA vs AHCA

**The AHCA Effectively Eliminates the Employer Coverage Mandate & Penalty Exposure.** The ACA requires employers with 50 or more full-time employees to offer ACA-complaint, affordable, minimum value coverage or pay a penalty. The AHCA effectively eliminates the employer mandate by changing the penalty to $0, retroactive to January 1, 2016.

**The AHCA Effectively Eliminates the Individual Coverage Requirement & Penalty Exposure.** Beginning in 2014, the ACA required every American to purchase health insurance or pay a penalty. The AHCA effectively eliminates the individual coverage mandate by changing the penalty to $0, retroactive to January 1, 2016; yet includes a financial incentive to encourage all to maintain continuous coverage. Insurance companies will be permitted to charge a 30 percent penalty for those whom purchase health insurance after a gap in coverage of more than 63 days.

**The AHCA Permits Insurance Companies to Charge More for Pre-Existing Conditions if a State Requests a Waiver.** Under the ACA, insurance companies are prohibited from charging higher premiums for individuals with pre-existing conditions. The AHCA permits states to obtain waivers to allow insurers to charge more to insure those with pre-existing conditions, yet only for those whom have a gap in coverage of more than 63 days. The AHCA provides $8 B in additional funding for states that obtain the waiver to provide larger subsidies to impacted individuals, and $130 B for states to cover these anticipated costs for states that apply for the waiver.

**The AHCA Retains Popular Market Reforms.** The ACA prohibits insurers from denying coverage to people who have preexisting medical conditions; allows dependents to remain on a parent's plan until age 26 and prohibits insurers from setting annual and lifetime dollar limits. The AHCA retains these ACA market reforms. Regarding preexisting condition exclusions, states may apply for waivers that allow health status underwriting, in certain circumstances for individuals whom do not maintain continuous coverage for 63 days (in lieu of the 30% surcharge).

**The AHCA Allows Insurance Companies to Charge Older Adults Five Times the Rate of Younger Adults.** ACA limits insurance companies to charging older adults a maximum of three times the rates charged to younger adults. The AHCA raises the ratio limit from three to five.

**The AHCA Establishes an Option for States to Obtain Waivers in Defining EHBs.** The ACA includes a list of federally mandated Essential Health Benefits (EHBs), which are the 10 broad categories of services that all health insurance policies must offer. While large group plans (>100) and self-funded employer plans are not directly subject to these rules under the ACA, the ACA prohibits those plans from imposing annual or lifetime dollar limits on any plans that do cover the federally mandated EHBs. Currently, large group plans and self-funded employer-sponsored plans may use any state's definition of EHBs for this purpose. The AHCA will allow states to apply for waivers to change these benefits, effective in 2020. A state may potentially choose the EHB definitions from a state with a waiver, providing employers additional flexibility to establish annual or lifetime dollar limits on certain high-cost benefits.

The AHCA Expands Health Savings Accounts (HSAs). The ACA did not significantly change the initial HSA rules. Under the ACA, the maximum annual Health Savings Account (HSA) contribution is $3,400 for individuals and $6,750 for families in 2017. The AHCA increases the maximums to $6,550 for individuals and $13,100 for families beginning in 2018. The AHCA permits spouses to make catch-up contributions; reduces the tax penalty for HSA withdrawals used for non-qualified expenses from 20% to 10%; and allows over-the-counter (OTC) medications to be considered qualified medical expenses.

The AHCA Repeals the Limit on Flexible Spending Arrangement (FSA) Salary Reduction Contributions. The AHCA repeals the ACA limit on the employee salary reduction contributions to a health FSA each year, effective in in 2018. Under the limits imposed by the ACA, the current FSA limit is $2,600 in 2017. The AHCA repeals the ACA's prohibition against the use of funds from an individual's health FSA for reimbursement of most over-the-counter (OTC) medications.

The AHCA Replaces Premium Subsidies with Tax Credits. Both the ACA and the AHCA include refundable tax credits; yet, the structure differs. Specifically, ACA credits are based on income, accounting for geographic and regional differences in costs. The AHCA bases tax credits on an individual's age and family size; therefore, credits provided to younger Americans are, on average, more generous than those provided under the ACA. The opposite is true for older Americans. The ACA subsidies will be replaced by tax credits for those not covered by their employer or through a government program. The tax credits will range from $2,000 to $14,000 based on age with details listed below. The credits will be reduced for individuals making over $75,000 annually and for families making over $150,000 annually. The AHCA refundable tax credit tiered by age:

- $2,000 per year for anyone under 30
- $2,500 per year for 30-39
- $3,000 per year for 40-49
- $3,500 for 50-59
- $4,000 for over 60

### The AHCA Repeals the Majority of ACA Taxes

- Repeals ACA Tax Credits in 2020
- Repeals Small Business Tax Credit in 2020
- Delays "Cadillac Tax" until 2026
- Reinstates Medical Expense Deduction to 7.5% Threshold
- Repeals Medicare Wage Surtax of 0.9 % in 2023. This applies to employer withholdings on wages in excess of $200,000 (single) and $250,000 (married couples filing jointly)
- Repeals Net Investment Tax
- Reinstates Deduction for Insurance Executives
- Repeals Tax on Prescription Drug Manufacturers & Importers
- Repeals Health Insurance Tax
- Repeals Medical Device Tax
- Repeals Indoor Tanning Tax
- Reinstates Employer Deduction for the Medicare Part D Subsidy in 2018. This Pre-ACA tax deduction for employers' retiree RX expenses allows employers to deduct the full amount without accounting for any Medicare Part D retiree RX drug coverage subsidy received by from the Federal government

The AHCA Does Not Impact Employer Pre-Tax Treatment of Group Plan Premiums. Premiums for employer-sponsored coverage are excluded from employees' taxable income and employers are required to report cost of coverage on Form W-2 under the ACA. The AHCA does not cap the employee tax benefit for employer-sponsored coverage and retains the obligation to report coverage amounts on Form W-2.

The AHCA Discontinues the Medicaid Expansion in 2020. The ACA provides funds for states to expand Medicaid. The AHCA repeals this expansion, yet allows states to continue the expansion with less support and restructures the federal financing system for Medicaid into a per capita model (with per-enrollee caps on federal payments). Under the AHCA, states will receive a set amount per beneficiary from the federal government or a lump-sum block grant. Additionally, the AHCA gives states the option to require Medicaid recipients to either work, participate in job-training programs or help with community service (for those whom it's feasible, which will not include nondisabled, nonelderly, non-pregnant adults).

## What Happens Next?

The AHCA moves to the Senate where additional modifications are anticipated. If modified, a joint conference committee will rework this proposed legislation to seek compromises within the spectrum from moderate-to-conservative positions.

## Takeaways

Discussion and debate are anticipated in the coming months as current uncertainty influences both insurance underwriters in setting rates as well as business decisions. As details and the CBO scoring assessment are released, and the legislative process continues in the Senate, Oswald will provide ongoing guidance and strategic direction for employers based on the most current information available. We will remain vigilant in monitoring all regulatory actions, and through our relationships with industry experts in Washington, DC, we will continue our proactive communication efforts to anticipate change. Importantly, until the AHCA is signed by the President, the Affordable Care Act (ACA) remains the law today; therefore, all current compliance requirements remain in place.

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