

# Compliance Alert



## The American Health Care Act Released

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Yesterday, House Republicans unveiled their legislative draft to repeal and replace the ACA titled the “American Health Care Act” or the “AHCA.”

The AHCA draft is broken into two components:

- 1) **House Ways and Means Committee**
  - [Full-text of legislative draft](#)
  - [Section-by-section summary](#)
- 2) **House Energy and Commerce Committee**
  - [Full-text of legislative draft](#)
  - [Section-by-section summary](#)

The AHCA incorporates a number of provisions that have been championed by Speaker Ryan and Secretary Price for years. See [our webinar on the replacement proposals](#) for a more detailed summary of the Republican “replace” vision.

### Summary of the American Health Care Act Provisions

- **Employer Mandate Pay or Play:** Reduces the §4980H pay or play penalties to zero. This effectively repeals the mandate to offer minimum essential coverage to full-time employees that is affordable and provides minimum value. This is made effective retroactive to 2016.
- **Individual Mandate:** Reduces the individual mandate penalties to zero. This effectively repeals the requirement for individuals to maintain minimum essential coverage to avoid a tax penalty. This is made effective retroactive to 2016.
- **Cadillac Tax Delayed (Surprise!):** Virtually every republican proposal prior to the AHCA repealed the Cadillac tax and replaced it with some form of a cap on the employer exclusion from income for health coverage. The AHCA does not include a direct cap on the employer exclusion from income for health coverage. However, it preserves the Cadillac tax by delaying its effective date to 2025.
- **ACA Reporting:** The proposal acknowledges the procedural hurdles with removing the ACA reporting requirements through reconciliation. However, the Ways and Means summary document states that the Secretary of Treasury will can stop enforcing the ACA reporting rules as they become irrelevant with the elimination of the ACA components subject to reporting. It is not clear whether 2017 ACA reporting would be required.

- Refundable Tax Credit:** The AHCA provides a new refundable tax credit to replace the §36B premium tax credit under the ACA. The AHCA's approach varies the credit from \$2,000/year to \$4,000/year depending on age, with a family overall cap at \$14,000. The credits adjust for inflation plus 1%. In an interesting change from prior proposals, there is also an income tested phase-out starting at \$75,000 for individuals, \$150,000 for families. The credit is eliminated entirely at \$215,000 for individuals, \$290,000 for families. The credit does not apply for employer-sponsored group health plans (but does apply for unsubsidized COBRA coverage). The new credit would be effective in 2020 (the ACA premium tax credit is transitioned through 2019).
- Pre-Existing Conditions:** The AHCA replaces the ACA's blanket prohibition of pre-existing condition exclusions (and individual mandate) with an incentive for individuals to maintain continuous coverage similar to the HIPAA rules that previously applied to group health plans. Individuals who maintain continuous coverage (without a break of 63 days or longer) will not be subject to any pre-existing condition exclusions. Insurers can impose a 30% premium surcharge for up to 12 months for individuals who had a break in coverage in the previous 12 months. These provisions would generally take effect beginning with an open enrollment period for individual market coverage in 2019.
- Actuarial Value and Price Variation:** The AHCA eventually eliminates the metal tiers (Bronze, Silver, Gold, Platinum) determined by plans' actuarial value, allowing more plan options (presumably at below-Bronze levels). It also modifies the ACA's 3-to-1 age band ratio to 5-to-1 (based on an estimated true cost of care ratio at 4.8 to 1), with state flexibility to apply different ratios.
- Over-the-Counter Medicines and Drugs (FSA/HRA/HSA):** The AHCA eliminates the ACA requirement that over-the-counter medicines and drugs (other than insulin) be provided pursuant to a physician prescription to be reimbursed by a health FSA, HRA, or HSA. This would be effective 2018.
- Health FSA Limit:** The AHCA eliminates the ACA's \$2,500 cap on health FSA salary reduction contributions (currently \$2,600 after inflation adjustments). It was common for employers to offer a \$5,000 health FSA contribution limit prior to the ACA. This would be effective 2018.
- HSA Contribution Limits:** The AHCA would significantly increase the annual HSA contribution limit to match the current HDHP out-of-pocket maximum limits. The individual contribution limit would increase from \$3,400 to \$6,550, and the family contribution limit would increase from \$6,750 to \$13,100. This would be effective 2018.
- HSA Additional Tax:** The AHCA restores the pre-ACA 10% additional tax for non-qualified medical distribution from an HSA. The ACA increased the additional tax to 20%. This would be effective 2018.
- HSA Catch-Up Contributions:** The AHCA allows both spouses to make catch-up contributions to the same HSA beginning in 2018. Currently, each spouse must make a catch-up contribution to his or her separate HSA. [See slide 18](#) for a summary of the current limitation.
- HSA Expenses Incurred Prior to Establishment:** The AHCA allows individuals to take tax-free medical distributions from an HSA for expenses incurred prior to the date the HSA is established (generally the date the HSA receives its first contribution). Individuals who establish an HSA within 60 days of becoming covered by a HDHP will be able to take tax-free HSA reimbursements for expenses incurred dating back to the HDHP enrollment. [See slides 23-24](#) for a summary of the current limitation.

- **Selling Insurance Across State Lines:** The AHCA does not address the ability to sell insurance across state lines. As discussed in [our previous webinar](#), this was a cornerstone of President Trump's replace proposal. President Trump tweeted today: "Don't worry, getting rid of state lines, which will promote competition, will be in phase 2 & 3 of healthcare rollout." (@realDonaldTrump)

### What is Next?

The bill must be debated by the entire House, then eventually passed and moved to the Senate. The Senate can pass this bill by a simple majority (51 votes) without the threat of filibuster through this reconciliation process. Stay tuned for further updates.

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