

Benefits BULLETIN

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Brown & Brown Benefit Advisors

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ACA Replacement Bill Announced

Update: On March 24, 2017, House Republicans pulled the American Health Care Act (AHCA). It is unclear whether the bill might be rescheduled, and if so, when. You can expect updates in the future, but in the meantime, the failed legislation provides information about potential future Republican health care reform.

On March 6, 2017, Republican leadership in the U.S. House of Representatives issued two bills—collectively known as the [American Health Care Act \(AHCA\)](#)—to repeal and replace the Affordable Care Act (ACA) through the budget reconciliation process. To address concerns raised by both Democrats and fellow Republicans, the House Republican leadership released [amendments](#) to the bills on March 20, 2017. If enacted, the new law would not repeal the ACA entirely, although it would make significant changes to key provisions.

The ACA's employer and individual mandates would be repealed retroactively beginning in 2016. Key consumer protections, like the ACA's prohibition on pre-existing condition exclusions and dependent coverage to age 26, would remain intact.

ACA Provisions Not Impacted

The majority of the ACA is not affected by the new legislation. For example, the following key ACA provisions would remain in place:

- Cost-sharing limits on essential health benefits (EHBs) for non-grandfathered plans
- Prohibition on lifetime and annual limits for EHBs
- Requirements to cover pre-existing conditions
- Coverage for dependents up to age 26
- Guaranteed availability and renewability of coverage
- Nondiscrimination rules
- Prohibition on health status underwriting

Repealing ACA Mandates

The AHCA would reduce the penalties imposed under the ACA's employer and individual mandate provisions to zero, effectively repealing both mandates (although they technically would still exist). These changes would apply retroactively for months beginning after Dec. 31, 2015.

However, the AHCA would impose what it calls a "continuous coverage incentive." Issuers would be permitted to add a 30 percent late-enrollment surcharge to the premium cost for any applicants that had a lapse in coverage for greater than 63 days during the previous 12 months.

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Health Care Literacy Pays Off

According to the U.S. Department of Education's National Assessment of Adult Literacy (NAAL), over 77 million people are considered to have inadequate health literacy, meaning they have difficulty with common health tasks like reading a prescription drug label or making a wise health care decision.

Low health literacy often results in higher utilization of basic and expensive health services like emergency care and inpatient visits. It is estimated that low health literacy costs the United States \$106 billion to \$238 billion annually and accounts for 7 to 17 percent of all personal health care expenditures.

To be considered health literate, the National Network of Libraries of Medicine says a consumer must be able to do the following:

- Access health care services.
- Analyze relative risks and benefits.
- Calculate dosages.
- Communicate with health care providers.
- Evaluate information for credibility and quality.
- Interpret test results.
- Locate health information.

Contact Brown & Brown Benefit Advisors to help assess your company's health literacy, educate employers and employees, and keep track of health care expenses.



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ACA Replacement

Replacing ACA Subsidies with Tax Credits

Effective 2020, the AHCA would replace the current ACA subsidies with a portable, monthly tax credit to all individuals that can be used to purchase individual health insurance coverage. The tax credit could be used to purchase any state-approved major medical health insurance and unsubsidized Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage.

The new tax credit would be both advanceable and refundable, and would be age-rated, with older individuals eligible for larger credits. The new tax credits would be capped at \$14,000 per family and would be adjusted for inflation over time. In addition, the credits would be phased out for individuals making over \$75,000 per year (\$150,000 for joint filers).

The AHCA would also repeal the ACA's small business tax credit beginning in 2020. In addition, between 2018 and 2020, the small business tax credit generally would not be available with respect to a qualified health plan that provides coverage relating to elective abortions.

Enhancements to Health Savings Accounts (HSAs)

HSAs are tax-advantaged savings accounts that are tied to a high deductible health plan (HDHP), which can be used to pay for certain medical expenses. To incentivize use of HSAs, the AHCA would do the following:

- Increase the maximum HSA contribution limit.
- Allow both spouses to make catch-up contributions to the same HSA.
- Address expenses incurred prior to establishment of an HSA.

Relief from ACA Tax Changes

The AHCA would provide relief from many of the ACA's tax provisions, including the following items:

- Cadillac tax, further delayed
- Restrictions on using HSAs for over-the-counter (OTC) medications
- Increased tax on withdrawals from HSAs
- Health flexible spending account (FSA) limit
- Additional Medicare tax
- Deduction limitation for Medicare Part D subsidy

Beginning after Dec. 31, 2016, the new law would also repeal the following provisions:

- The excise tax on the sale of certain medical devices
- The annual health insurance providers fee
- The annual fee on certain brand pharmaceutical manufacturers

- The 10 percent sales tax on indoor tanning services (repeal effective June 30, 2017)

It would also reduce the medical expense deduction income threshold to 5.8 percent (lower than the pre-ACA level of 7.5 percent), beginning in 2017.

Modernizing Medicaid

The AHCA would repeal the ACA's Medicaid expansion, and make other changes aimed at modernizing the Medicaid program. For example, the new law would provide enhanced federal payments to states that already expanded their Medicaid programs, and then transition Medicaid's financing to a "per capita allotment" model starting in 2020, where per-enrollee limits would be imposed on federal payments to states.

The legislation would also modernize Medicaid's data and reporting systems, repeal the ACA's disproportionate share hospital (DSH) cuts and make changes to the process for eligibility determinations.

IRS Change Affecting Individual Mandate

The Internal Revenue Service (IRS) has signaled a change in how it monitors compliance with the Affordable Care Act's (ACA) individual mandate. Under this change, tax returns will no longer be automatically rejected if they do not certify whether the individual had health insurance for the year.

The new IRS policy on accepting "silent returns," or returns that do not provide health insurance coverage information, is based on President Donald Trump's [executive order](#) directing federal agencies to provide relief from the burdens of the ACA.

The IRS' policy change does not eliminate the ACA's individual mandate penalty. Individuals must continue to comply with the ACA's requirements, including paying any penalties that may be owed.

Despite the continued applicability of the law, many have argued that this policy change will make it easier for individuals to avoid having health insurance coverage, without having to pay an individual mandate penalty. Opponents of the policy change claim that it will erode health insurance enrollment, which could undermine the ACA as a whole.

With the American Health Care Act (AHCA) working its way through the legislative process, filing rules may change abruptly. Brown & Brown Benefit Advisors will keep you apprised of any

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pertinent developments. Until then, continue to follow the ACA mandates.

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Regulation Reduction

During his first 10 days in office, President Donald Trump took measures to reduce the regulatory burden on businesses in the United States. These measures are based on the position that fewer regulations will provide businesses with more opportunities for growth.

The president has issued the following directives:

- A [memorandum](#) directing federal agencies to freeze any regulation that has not yet become effective.
- An [executive order](#) that requires federal agencies to eliminate two regulations for every new regulation they propose.

The executive order does not require employers to take immediate action. However, employers should continue to monitor any developments that may affect their compliance with federal law in various areas, including banking, employment benefits, health, environmental protection, transportation and workplace safety.

The Memorandum

The memorandum (memo) directs federal agencies to place a freeze on any rule, guidance or regulation that has not yet become effective as of Jan. 20, 2017. Specifically, the memo asks federal agencies to take the following actions:

- Refrain from sending to the Office of the Federal Register (OFR) any regulation that has not been reviewed by a newly appointed department or agency head;
- Withdraw any regulations sent to the OFR if they have not yet been published; and
- Postpone for 60 days the effective date of any regulations that have been published by the OFR but have not yet become effective.

The Executive Order

The executive order requires federal agencies to identify two regulations for elimination for every regulation they propose to implement. However, the order allows for an exemption for any regulation that is related to the military, national security and foreign affairs as well as regulations regarding agency organization, management and personnel.

The order also directs federal agencies to maintain a neutral budget expenditure, meaning that federal agencies will not be allowed to exceed their budgets for the cost of proposing, adopting, implementing, enforcing or repealing any regulation. To this end, federal agencies have been directed to offset the cost of any new regulations by eliminating the costs of existing regulations.

The information contained in this newsletter is not intended as legal or medical advice. Please consult a professional for more information.

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