

# HCR ALERT

February 28, 2017

## Early Look at Possible ACA Repeal and Replace Plan

Last Friday, details of a “discussion draft” of a Republican bill to repeal and replace the Affordable Care Act (ACA) were leaked to the public. The bill resembles House Speaker Paul Ryan’s existing [A Better Way](#) proposal and also includes elements from other GOP repeal and replace plans proposed previously. Key features of this most recent draft bill are highlighted below.

### ACA Provisions Proposed for Repeal

On a positive note for employers, the bill would effectively eliminate the ACA employer mandate by setting penalties to \$0 retroactive to 2016. The bill would also repeal the “Cadillac tax” on high value health coverage scheduled to begin in 2020, which is assessable on the plan insurer or employer-plan sponsor if self-insured.

Additional ACA provisions that would be repealed under the draft bill include:

- Individual mandate (by setting penalties to \$0 retroactive to 2016);
- Income-based individual premium tax credits (i.e., subsidies) for ACA insurance Marketplace coverage (elimination as of 2019);
- Medicaid expansion (elimination as of 2020); and
- Additional ACA taxes and fees
  - Health insurer tax (immediate elimination)
  - Additional Medicare tax (immediate elimination)
  - Additional net investment income tax (immediate elimination)
  - Prescription drug tax (immediate elimination)
  - Medical device tax (immediate elimination)
  - Patient-Centered Outcomes Research Institute (PCORI) fee (elimination as of 2020).

Although not specifically addressed in the bill, the ACA’s cumbersome annual employer reporting requirements would be rendered unnecessary by the dismantling of the employer and individual mandates.

### Proposed Replacement Measures / Changes

The draft bill is not all good news for employers or, in particular, for employees. The cost of the bill's proposed replacement provisions would be offset, in part, by a cap on the value of employer-sponsored health coverage that can be excluded from employees' taxable income as of 2020. The cap is essentially the Cadillac tax reinvented, except the financial burden for the tax would shift from insurers and employer plan sponsors to employees.

Currently, employer contributions to employer-sponsored health coverage are not treated as taxable employee income and employee contributions can be paid on a pre-tax basis. Under the proposal, any cost of coverage in excess of the cap would become taxable income for employees. Employers would also incur standard employer-paid payroll taxes on that additional taxable income. It appears coverage subject to the cap would include medical, prescription drug, and health flexible spending account (FSA) plans, but would not include health savings account (HSA), medical savings account (MSA), stand alone dental or vision, or long term care plans.

The draft bill sets the initial cap at the 90<sup>th</sup> percentile of premiums for coverage under group health plans in 2019 (determined separately for self-only and other than self-only coverage). The bill assigns the Secretary of Department of Health & Human Services (HHS) responsibility for determining how the 90<sup>th</sup> percentile would be calculated. An annual adjustment would be applied each year after 2020, but because the adjustment is based on change in Consumer Price Index (CPI) plus 2% rather than medical inflation rate, it's questionable whether the cap would remain at 90<sup>th</sup> percentile of cost.

The bill's proposals for replacing the ACA include swapping the ACA's income-based premium tax credit subsidy mechanism with age-based tax credits for individual market plans beginning 2019. The tax credits would be limited to individuals who are not eligible for employer coverage or government coverage (e.g., Medicare, Medicaid, etc.) and would be structured as follows:

- \$2,000 per year for individuals under age 30
- \$2,500 per year for individuals age 30-40
- \$3,000 per year for individuals age 40-50
- \$3,500 per year for individuals age 50-60
- \$4,000 per year for individuals age 60 and older
- \$14,000 per year overall aggregate family limit

Additional actions proposed in the draft bill include:

- Increasing HSA contribution limit to high deductible health plan out-of-pocket cost and allowing spouse catch-up contributions.

- Allowing insurers to apply premium surcharges if individuals do not maintain continuous coverage.
- Increasing individual and small group market premium rating age bands from 3-1 to 5-1.
- Eliminating HHS' authority to define the scope of "essential health benefits" and allowing states to set their own benefits packages.
- Implementing Medicaid reform (conversion from unlimited to capped funding to states).
- While ACA premium tax credits are still available through 2018, modifying qualification requirements, allowing coverage purchases outside ACA Marketplace, and excluding grandfathered plans and plans that cover abortions.

### **What's Next**

It's important to keep in mind the bill disclosed last week is an unofficial draft and is likely to undergo changes before it is presented for a vote. There are questions about whether the plan can gain enough support within the party in light of a Congressional Budget Office projection suggesting it would significantly increase the number of uninsured. Some GOP lawmakers believe fewer covered people would mean their plan restored personal liberty by not forcing people who don't want coverage to buy it. Other party members, however, are disconcerted by constituent backlash at recent town hall meetings. The idea of fewer insured also contradicts President Trump's earlier pledge of "insurance for everybody".

The House of Representatives returned this week from a 10-day recess. House Speaker Paul Ryan indicated he wants to present a repeal bill as early as next week and pass it through the expedited budget reconciliation process before the Easter recess in early April. President Trump seemed to echo Ryan's thoughts on timing during a recent press conference, stating he expects legislation will be introduced in early to mid-March. As always, we will keep you apprised as new developments occur.

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Your Trion Strategic Account Managers are here to answer any questions you might have as you prepare to comply with upcoming ACA requirements. If you are not currently a Trion client and would like assistance navigating the changes required by health care reform, please contact us today by emailing [trionsales@trion-mma.com](mailto:trionsales@trion-mma.com).

### **ACA Regulations & Guidance Issued In the Last Two Months**

Feb. 2017: HHS Issues [Proposed Regulations to Stabilize Individual Market](#)

- Jan. 2017: HHS Issues Updated Standards for External Review Process
- Jan. 2017: President Issues Executive Order Regard ACA and Agency Memo
- Jan. 2017: DOL Issues Final Rule on Various Employee Benefit Plan Penalty Adjustments
- Jan. 2017: ACA FAQs 37 – HRA Integration
- Jan. 2017: ACA FAQs 36 – Preventive Care
- Jan. 2017: HHS Issues Notice of Benefits and Payment Parameters for 2018 Final Rule and Fact Sheet
- Jan. 2017: IRS Updates Q&As on Employer Shared Responsibility and Annual Reporting (Section 6056 Reporting and Forms 1094-C/1095-C)