ACA COMPLIANCE BULLETIN

ACA REPLACEMENT BILL WITHDRAWN

HIGHLIGHTS

- House Republicans withdrew their ACA replacement legislation, determining that it did not have enough votes to pass.
- As a result, the ACA will remain in place at this time.
- President Trump indicated that he would not continue to pursue ACA repeal and replacement.

IMPORTANT DATES

March 6, 2017
House Republicans issued two bills to repeal and replace the ACA through the budget reconciliation process.

March 23, 2017
A House vote was scheduled to take place, but House Republicans canceled the vote and pulled the legislation.

Provided By:
Faison Group

OVERVIEW

On March 24, 2017, Republican leadership in the U.S. House of Representatives **withdrew the American Health Care Act**—their proposed legislation to repeal and replace the Affordable Care Act (ACA).

A House vote was scheduled to take place on that day, but House Republicans could not secure enough votes to approve the legislation and, instead, canceled the vote. **As a result, the ACA will remain in place at this time**.

IMPACT ON EMPLOYERS

Because the House was unable to pass the American Health Care Act, the ACA remains current law, and employers must continue to comply with all applicable ACA provisions.

President Donald Trump has indicated that he would not continue to pursue an ACA repeal if the American Health Care Act could not be passed. Both President Trump and House leadership have stated that they now intend to focus on other issues. Despite this, Congress may choose to pursue their own ACA repeal and replacement in the future.

Legislative Process

Two separate bills that make up the American Health Care Act were released in response to a budget resolution passed by Congress on Jan. 13, 2017. The budget resolution is a nonbinding spending blueprint that directs House and Senate Committees to create federal budget "reconciliation" legislation. To become law, budget reconciliation bills must go through the legislative process. However, a budget reconciliation bill is generally filibuster-proof, and can be passed by both houses with a simple majority vote.

A full repeal of the ACA cannot be accomplished through the budget reconciliation process. A budget reconciliation bill can only address ACA provisions that directly relate to budgetary issues—specifically, federal spending and taxation. A full repeal of the ACA must be introduced as a separate bill that would require 60 votes in the Senate to pass.

Debate on the American Health Care Act began on March 8, 2017. To address concerns raised by both Democrats and fellow Republicans, the House Republican leadership released amendments to the legislation on March 20, 2017, followed by a second set of amendments on March 23, 2017. The House vote was originally expected to take place on March 23, 2017, but was delayed for one day, until March 24, 2017.

Following the announcement that the House vote would be delayed, President Trump stated that he would not continue to pursue an ACA repeal if the House could not pass this legislation. As a result, the ACA will remain in place at this time. However, Congress may choose to pursue their own ACA repeal and replacement in the future.

ACA Provisions Not Impacted

The majority of the ACA would not have been 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 (currently $7,150 for self-only coverage and $14,300 for family coverage)
- ✓ Prohibition on lifetime and annual limits for EHBs
- ✓ Requirements to cover pre-existing conditions
- ✓ Coverage for adult children up to age 26
- ✓ Guaranteed availability and renewability of coverage
- ✓ Nondiscrimination rules (on the basis of race, nationality, disability, age or sex)
- ✓ Prohibition on health status underwriting

Age rating restrictions would also continue to apply, with the age ratio limit being revised to 5:1 (instead of 3:1), and states would be allowed to set their own limits.

Repealing the Employer and Individual Mandates

The ACA imposes both an employer and individual mandate. The American Health Care Act would have **reduced the penalties imposed under these provisions to zero** beginning in 2016, effectively repealing both mandates (although they would technically still exist).

However, beginning with open enrollment for 2019, the American Health Care Act would have allowed issuers 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. The late-enrollment surcharge would then be discontinued after 12 months.

Replacing Health Insurance Subsidies with Tax Credits

The ACA currently offers federal subsidies in the form of premium tax credits and cost-sharing reductions to certain low-income individuals who purchase coverage through the Exchanges. The American Health Care Act would have repealed both of these subsidies, effective in 2020, and replace them with a portable, monthly tax credit for all individuals that could be used to purchase individual health insurance coverage.

The American Health Care Act would have also repealed the ACA's small business tax credit beginning in 2020. In addition, under the Act, 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 tied to a high deductible health plan (HDHP), which can be used to pay for certain medical expenses. To incentivize use of HSAs, the American Health Care Act would have:

- ✓ **Increased the maximum HSA contribution limit**: The HSA contribution limit for 2017 is $3,400 for self-only coverage and $6,750 for family coverage. Beginning in 2018, the new law would have allowed HSA contributions up to the maximum out-of-pocket limits allowed by law (at least $6,550 for self-only coverage and $13,100 for family coverage).
- ✓ **Allowed both spouses to make catch-up contributions to the same HSA**: The new law would have allowed both spouses of a married couple to make catch-up contributions to one HSA, beginning in 2018, if both spouses are eligible for catch-up contributions and either has family coverage.
- ✓ **Addressed expenses incurred prior to establishment of HSA**: Starting in 2018, if an HSA is established within 60 days after an individual's HDHP coverage begins, the HSA funds would have been able to be used to pay for expenses incurred starting on the date the HDHP coverage began.

Relief from ACA Tax Changes

The American Health Care Act would have provided relief from many of the ACA's tax provisions. The amendments made to the Act would have accelerated this relief by one year for most provisions, moving the effective dates for repeal up to 2017.

The affected tax provisions would have included the following:

- **Cadillac tax:** The ACA imposes a 40 percent excise tax on high cost employer-sponsored health coverage, effective in 2020. The new law would have changed the effective date of the tax, so that it would apply only for taxable periods beginning after Dec. 31, 2025.
- **Restrictions on using HSAs for over-the-counter (OTC) medications:** The ACA prohibits taxpayers from using certain tax-advantaged HSAs to help pay for OTC medications. The new law would have allowed these accounts to be used for OTC purchases, beginning in 2017.
- **Increased tax on withdrawals from HSAs:** Distributions from an HSA (or Archer MSA) that are not used for qualified medical expenses are includible in income and are generally subject to an additional tax. The ACA increased the tax rate on distributions that are not used for qualified medical expenses to 20 percent. The new law would have lowered the rate to pre-ACA percentages, effective for distributions after Dec. 31, 2016.
- **Health flexible spending account (FSA) limit:** The ACA limits the amount an individual may contribute to a health FSA to $2,500 (as adjusted each year). The new law would have repealed the limitation on health FSA contributions for taxable years beginning after Dec. 31, 2016.
- **Additional Medicare tax**: The ACA increased the Medicare tax rate for high-income individuals, requiring an additional 0.9 percent of wages, compensation and self-employment income over certain thresholds to be withheld. The new law would have repealed this additional Medicare tax beginning in 2023 (delayed from 2017 under the second set of amendments).
- **Deduction limitation for Medicare Part D subsidy:** The ACA eliminated the ability for employers receiving the retiree drug subsidy to take a tax deduction on the value of this subsidy. Effective in 2017, the new law would have repealed this ACA change, and reinstated the business-expense deduction for retiree prescription drug costs without reduction by the amount of any federal subsidy.

Beginning after Dec. 31, 2016, the new law would have also repealed the medical devices excise tax, the health insurance providers fee and the fee on certain brand pharmaceutical manufacturers. The 10 percent sales tax on indoor tanning services would have been repealed effective June 30, 2017, to reflect the quarterly nature of this collected tax. Finally, it would have also reduced the medical expense deduction income threshold to 5.8 percent (lower than the pre-ACA level of 7.5 percent), beginning in 2017.

Modernize Medicaid

The American Health Care Act would have repealed the ACA's Medicaid expansion, and made certain other changes aimed at modernizing and strengthening the Medicaid program. The amendments to the Act made a number of modifications to the proposed Medicaid changes. For example, the new law would have provided enhanced federal payments to states that already expanded their Medicaid programs, and then transitioned

Medicaid's financing to a "per capita allotment" model starting in 2020, where per-enrollee limits would be imposed on federal payments to states. It would have also allowed states the option to implement a work requirement for nondisabled, nonelderly, non-pregnant adults as a condition for receiving Medicaid coverage.

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

Congressional Budget Office (CBO) Report

On March 13, 2017, the CBO issued a cost estimate report on the American Health Care Act. In this report, the CBO estimated that enacting the legislation would:

- Reduce federal deficits by $337 billion over the 2017-2026 period;
- Cause an estimated 14 million more individuals to be uninsured in 2018 than under current law;
- Increase the number of uninsured people relative to the number under current law to 21 million in 2020, and then to 24 million in 2026;
- Not destabilize the individual market; and
- Tend to increase average premiums in the individual market prior to 2020, and then lower average premiums thereafter, relative to projections under current law.

This report had caused some concern among both Democrats and fellow Republicans in approving the legislation. The amendments made by House Republican leadership were intended to address these concerns.

What Happens Next?

Because the House was unable to pass the American Health Care Act, the ACA remains current law, and employers must continue to comply with all applicable ACA provisions. Both President Trump and House Republican leadership have stated that they now intend to focus on other issues. Despite this, Congress may choose to pursue their own ACA repeal and replacement in the future.