ACA COMPLIANCE BULLETIN

HOUSE REPUBLICANS RELEASE ACA REPLACEMENT PLAN

HIGHLIGHTS

- House Republicans released a policy brief describing their approach for replacing the ACA.
- The proposals include providing monthly tax credits and enhancing health savings accounts.
- The proposed plan would also eliminate the ACA's individual and employer penalties immediately.

IMPORTANT DATES

February 16, 2017

House Republicans issued a policy brief describing their intended approach for replacing the ACA.

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OVERVIEW

On Feb. 16, 2017, Republican leadership in the U.S. House of Representatives issued a policy brief describing its intended approach for replacing the Affordable Care Act (ACA).

In this policy brief, House Republicans reiterated their goals of **repealing the ACA** and **implementing a replacement plan** aimed at providing more choices, lower costs and greater control for consumers over their health care. In addition, the policy brief promised a "stable transition period to a patient-centered health care system" following the ACA's repeal, until a replacement plan can be implemented.

IMPACT ON EMPLOYERS

The ACA and its requirements remain intact for now, and employers should continue to comply. However, efforts are underway to make changes to the law's key provisions.

Legislation may be advanced in the weeks ahead to repeal and replace the ACA. The policy brief provides valuable insight into how many aspects of the current health care system, including employer plan rules, could be impacted.

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Overview

The policy brief outlines key failures of the ACA as identified by House Republicans, and describes the ways in which they intend to address those failures. According to the policy brief, key failures of the ACA include:

- Higher premiums for health insurance coverage;
- Low issuer participation in the Exchanges;
- A new class of uninsured—those that don't qualify for subsidies and can't afford health coverage, and those that have plans with high premiums and deductibles, prohibiting access to actually receiving care; and
- An additional $1 trillion in taxes imposed on individuals and businesses.

The House Republicans' proposed replacement plan would eliminate the ACA's individual and employer penalty taxes immediately.

The replacement plan described in the policy brief would address these issues by building on a proposed approach created by House Republicans in June 2016, called the "Better Way" health care plan. Key elements of the new replacement plan include:

- Providing **relief from the ACA's taxes and mandates**, including eliminating the individual mandate and employer shared responsibility penalties;
- Providing **portable, monthly tax credits** that individuals can use to purchase health insurance;
- **Enhancing health savings accounts (HSAs)** by increasing the amount that can be contributed and allowing them to be used to pay for over-the-counter (OTC) medications;
- Providing more **flexibility and control to states in managing their Medicaid programs**; and
- Utilizing state innovation grants.

Relief from ACA Taxes

In an effort to lower the cost of health care, the Republicans' replacement plan would provide relief from all the ACA tax increases, including:

- The health insurance providers' fee;
- Restrictions on using HSAs for OTC medications;
- The medical devices excise tax;
- The annual fee on manufacturers of branded prescription drugs; and
- The increased expense threshold for deducting medical expenses.

The proposed plan would also eliminate the ACA's individual and employer penalty taxes immediately.

Health Care Tax Credits

The Republicans' replacement plan would repeal the ACA's system of health insurance subsidies, and instead provide 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 eligible plan approved by a state and sold in its individual insurance market, including catastrophic coverage.

The new tax credit would be both **advanceable** and **refundable**, and would not be based on income. In addition, it would be:

- *A **refundable** tax credit is one that is available to an individual even if he or she has no tax liability.*
- *An **advanceable** tax credit allows an individual to receive assistance at the time of the purchase, rather than being reimbursed when filing a tax return.*

- ✔ **Universal**: It would be available for all citizens or qualified aliens not offered other qualifying insurance (although incarcerated individuals would not be eligible);
- ✔ **Age-rated**: Older individuals will receive a higher credit amount than younger individuals, reflecting the higher cost of insurance for older individuals;
- ✔ **Available for dependent children up to age 26**: Taxpayers would be able to receive credits for their dependents, including children up to the age of 26; and
- ✔ **Portable**: It can travel with individuals from job to job, state to state, into the home to start a business or raise a family, or even into retirement.

If an employer does not subsidize COBRA coverage, the individual would be able use the credit to help pay unsubsidized COBRA premiums while he or she is between jobs. Additionally, if an individual does not use the full value of the credit, he or she can deposit the excess amount into an HSA.

The credit would not be available to individuals who are eligible for coverage through other sources (specifically, through an employer or government program). In addition, it would not be available to be used for plans that cover abortion.

To provide relief during the transition period, individuals eligible for the ACA's health insurance subsidy will be able to use their credit for expanded options, including catastrophic plans. To promote market stability and premium stabilization during the transition period, the ACA subsidies would be adjusted slightly to provide additional assistance for younger individuals and reduce over-subsidization of older individuals.

Enhance 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. According to House Republicans, HSAs tied to HDHPs allow individuals and families to control their health care utilization by providing incentives to shop around, making health care more affordable and increasing quality.

Therefore, the House Republicans' replacement plan would increase the amount of money that can be contributed to an HSA, and allow HSA dollars to be used on OTC health care items. It would also allow spouses to make additional contributions, and expand the amount of time a consumer can use an HSA on certain expenses.

According to the Republicans, they have continued to advance legislation to expand access and accessibility of these plans, especially in the context of ACA repeal and replacement. Their proposed policies include:

- **Increase the Maximum HSA Contribution Limit**: Currently, the maximum amount that can be contributed (both employer and individual contributions) to an HSA for 2017 is $3,400 for self-only coverage and $6,750 for family coverage. H.R. 1270 and A Better Way significantly increase the HSA contribution limits by allowing HSA contributions to equal the maximum out-of-pocket limits allowed by law. For 2017, those amounts are $6,550 for self-only coverage and $13,100 for family coverage.
- **Allow Both Spouses to Make Catch-up Contributions to the Same HSA**: H.R. 1270 and A Better Way provide that if both spouses of a married couple are eligible for catch-up contributions and either has family coverage, the annual contribution limit that can be divided between them includes both catch-up contribution amounts. Thus, for example, they can agree that their combined catch-up contribution amount is allocated to one spouse to be contributed to that spouse's HSA. In other cases (as under present law), a spouse's catch-up contribution amount is not eligible for division between the spouses. The catch-up contribution must be made to the HSA of that spouse.
- **Administrative Fix for Expenses Incurred Prior to Establishment of HSA**: H.R. 1270 and A Better Way provide that, if a taxpayer establishes an HSA within 60 days of the date that the taxpayer's HDHP coverage begins, any distribution from an HSA used as a payment for a medical expense incurred during that 60-day period after the HDHP coverage began is excludible from gross income as a payment used for a qualified medical expense, even though the expense was incurred before the date that the HSA was established.

Modernize Medicaid

According to Republicans, many state Medicaid programs suffer from significant waste, fraud and abuse, due to failures in state and federal oversight. In addition, Medicaid's incentives often lead states to offer more benefits, but cut payments to health care providers, causing less access to quality care for low-income patients. As a result, Republicans believe that the Medicaid program in its current state is unsustainable.

In their replacement plan, Republicans are proposing the following changes to the Medicaid program:

- **Repealing the ACA's Medicaid Expansion**: The replacement plan would repeal the ACA's Medicaid expansion for able-bodied adults, while providing a period of stability in the interim. States that chose to expand their Medicaid programs under the ACA could continue to receive enhanced federal payments for currently enrolled beneficiaries for a limited period of time. However, after a certain date, if states choose to keep their Medicaid programs open to new enrollees in the expansion population, states would be reimbursed at their traditional match rates for these beneficiaries. To provide equity, non-expansion states could be eligible to receive additional temporary resources for safety net providers during this time frame.

- ✓ **Establishing a Budget for Medicaid Using a Per Capita Allotment**: Based on A Better Way, House Republicans are looking at transitioning Medicaid's financing to a per capita allotment. Under this change, a total federal Medicaid allotment would be available for each state to draw down based on its federal medical assistance percentage (FMAP). The amount of the federal allotment will be calculated as the product of the state's per capita allotment for major beneficiary categories—aged, blind and disabled, children and adults—and multiplied by the number of enrollees in each group. The per capita allotments for each beneficiary group will be determined by each state's average Medicaid spending in a base year, grown by an inflationary index. Some federal payments—including disproportionate share hospital (DSH) payments, administrative costs and others—are excluded from the total allotment.
- ✓ **Giving States the Choice to Receive a Medicaid Block Grant**: Under this approach, states would also have the choice to receive federal Medicaid funding in the form of a block grant or global waiver. Block grant funding would be determined using a base year, and would assume that states transition individuals currently enrolled in the Medicaid expansion out of the expansion population into other coverage. States would have flexibility in how Medicaid funds are spent, but would be required to provide required services to the most vulnerable elderly and disabled individuals who are mandatory populations under current law.
- ✓ **Repealing the ACA's Medicaid DSH Cuts**: Federal law requires states to make Medicaid DSH payments to hospitals treating large numbers of Medicaid and uninsured patients. The federal government provides each state an annual maximum DSH allotment, which was reduced under the ACA. Under their replacement plan, House Republicans would repeal the Medicaid DSH cuts.

Utilize State Innovation Grants

The proposed replacement plan would also implement state innovation grants, in an effort to allow states to repair their health insurance markets. House Republicans believe that providing funding for state innovation programs—whether it is high-risk pools, cutting out-of-pocket costs or promoting access to health care services—will allow states to gain the resources to best take care of their unique patient populations.

Under these new state innovation grants, states would have sole flexibility to use the funds as they see fit to help lower the cost of care for some of their most vulnerable patients. Among other purposes, states could use these state innovation grants to:

- ✓ Reduce patients' out-of-pocket costs (such as copayments, coinsurance, premiums and deductibles);
- ✓ Promote access to preventive services (such as an annual checkup), as well as dental and vision care;

- Lower the cost of providing care to high utilization patients;
- Stabilize the individual and small group markets; or
- Promote participation in private health care plans.

Also, states could choose to funnel the money through a now-dormant high-risk pool to achieve the same goals of the dated program.