

CLIENT BULLETIN

House GOP Releases Draft “American Health Care Act” Bill

The primary House Committees with jurisdiction over health care – Ways and Means and Energy and Commerce – have just released their portions of the *American Health Care Act* – legislation to fulfill the GOP campaign promise to “repeal and replace” the *Affordable Care Act (ACA)*. The drafts moved quickly through the House Committees. The next step is for the proposals to combine by the House Budget Committee and sent to the House Rules Committee, and then to the full House for a vote. The Senate would have to pass the same or similar Bill to avoid Conference committee hang-ups. As of this date, a number GOP Senators are unhappy with the House’s efforts.

It is important to note that the two proposals do not repeal the ACA. The two proposals are aimed at repealing various ACA taxes, reforming Medicaid and stabilizing the marketplaces. They are meant to be passed during budget reconciliation when the Republicans need only 51 votes in the Senate.

In fact, the drafts make no changes to the ACA rules governing group health plans such as annual and lifetime limits, age 26 coverage, no pre-existing condition exclusions, the rules for grandfather and non-grandfather plans, essential health benefits and SBCs. In order to make substantive changes to the ACA, the GOP needs to round up 60 votes in the Senate, so these first steps are limited.

The main changes these proposals make are the elimination of penalties for violation of the Individual Mandate and the Employer Mandate, various reforms to Medicaid (such as “block grants”) and steps to stabilize the Marketplaces. As [one commenter noted](#), the proposals leave in place the ACA provisions impacting Medicare, quality of care, program integrity, biosimilars, workforce reform, the Indian Health Service—indeed virtually all of the ACA except for its insurance affordability provisions, individual and employer mandates, taxes, and Medicaid reforms.

The White House has been indicated that “repeal and replace” will take [three stages](#), with the next step, in [HHS Secretary Tom Price’s](#) words, as reviewing ACA guidance (referred to by Price as “192 specific rules and over 5,000 letters of guidance”).

One must remember that these proposals are the starting point for “repeal and replace.” Already [GOP conservatives in the House are breaking rank](#) over the proposals and vowing to draft their own legislation. This first set of proposals do not really impact group health plans or multiemployer health plans in particular. With that caveat in mind, we will take a bird’s-eye view of the two proposals, examining the House Ways and Means draft first. A [Fact Sheet](#) is available. The Committee websites are at [Ways and Means](#) and [Energy and Commerce](#). Other aids are mentioned below.

Proposal 1: House Ways and Means Committee Draft

The House Ways and Means Committee portion of the “repeal and replace” legislation mostly concerns Health-Related Tax policy. The [draft legislation has 23 sections](#) divided into five subtitles which repeal various taxes and make other tax changes. A detailed summary is available [“here.”](#)

Subtitle - Repeal and Replace of Health-Related Tax Policy

- *Changes* made to the premium tax credit (subsidy paid to households to purchase marketplace coverage), including the repeal of the credit and the small business tax credit in 2020. (Sections 1-4)
- *Lowers* the penalty for failure to comply with the “individual mandate” to \$0, retroactive to January 1, 2016. (Section 5)
- *Lowers* the penalty for failure to comply with the “employer mandate” to \$0, retroactive to January 1, 2016. (Section 6)
- *Delays* the “Cadillac tax” until January 1, 2025. (Section 7)
- *Repeals* the tax on over-the-counter (OTCs) medications, now allowing to be paid for with HSAs, etc., as a “qualified medical expense” beginning in 2018. (Section 8)
- *Repeals* the tax increase from on non-qualified distributions from HSAs/Archer MSAs beginning on 2018. (Section 9)
- *Repeals* the \$2,500 limitation on contributions to Flexible Savings Accounts (FSAs), beginning in 2018. (Section 10)
- *Repeals* the 2.3% tax on the sale of certain medical devices beginning in 2018. (Section 11)
- *Repeals* the elimination of business deduction for Part D expenses, allowing deduction of Part D costs without reduction by subsidy, beginning in 2018. (Section 12)
- *Repeals* of increase in threshold for individual medical expense deduction from 10% threshold back to 7.5% threshold. (Section 13)
- *Repeals* the Medicare Hospital Insurance surtax of 0.9%, beginning in 2018. (Section 14)
- *Creation* of refundable tax credit for use in purchasing health insurance based on age of individual, apparently begins in 2020. (Section 15)

- *Increases* maximum contribution to HSAs to be equal to the maximum annual deductible and out-of-pocket limit for a high-deductible health plan, beginning in 2018. (Section 16)
- *Allows* both spouses to make catch-up contributions to a single HSA, beginning in 2018. (Section 17)
- *Technical rules* for medical expenses incurred before the creation of an HSA. (Section 18)

In addition, there are four other Subtitles that repeal the below taxes beginning in 2018:

- The 10% sales tax on indoor tanning services.
- The net investment tax of 3.8% applicable to certain high-income investors (taxpayers earning more than \$200,000 (\$250,000 for joint filers)), including individuals, estates and trusts.
- Lifting the \$500,000 deductibility limit on health insurance expenses paid by health insurance providers.
- The tax on certain prescription medications.
- The health insurance tax on certain insurers.

Proposal 2: Energy and Commerce Committee Draft

The House Energy and Commerce Committee portion of the GOP “repeal and replace” legislation concerns Medicaid reform and marketplace stabilization. **The draft legislation** has 15 sections divided into four subtitles which makes funding changes to various federal-state health funding programs, ends the ACA Medicaid expansion, makes eligibility and funding rule changes to state Medicaid programs such as switching to block grants and other reforms to the Medicaid program and takes steps to stabilize marketplace plans. A detailed summary is available [“here.”](#)

Subtitle A: Patient Access to Public Health Programs

The Prevention and Public Health Fund (Section 101)

This Section repeals the Prevention and Public Health Fund (PPHF) as an advanced appropriation for prevention, wellness, and public health initiatives and stops appropriations from 2019 onwards.

Community Health Center Program (Section 102)

This section provides increased funding for the Community Health Center Fund, which awards grants to Federally Qualified Health Centers (FQHCs), which are community-based outpatient facilities that provide health services to medically underserved populations.

Federal Payments to States (Section 103)

This section imposes a one-year freeze on mandatory funding to a class of providers designated as prohibited entities. It appears to be aimed at Planned Parenthood.

Subtitle B: Medicaid Program Enhancement

Repeal of Medicaid Provisions (Section 111)

Repeals certain Medicaid eligibility and funding rules.

Repeal of Medicaid Expansion (Section 112)

Repeals the State option to extend coverage to adults above 133% of federal poverty by December 31, 2019 and make funding rule changes. Also repeals the requirement that State Medicaid plans must provide the same “essential health benefits” that are required by plans on the exchanges beginning in 2020.

Elimination of DSH Cuts (Section 113)

Repeals the Medicaid Disproportionate Share Hospital (DSH) cuts for non-expansion States in 2018. States that expanded Medicaid would have their DSH cuts repealed in 2020.

Reducing State Medicaid Costs (Section 114)

Makes various procedural and eligibility changes to save money.

Safety Net Funding for Non-Expansion States (Section 115)

Provides \$10 billion over five years to non-expansion States for safety net funding.

Providing Incentives for Increased Frequency of Eligibility Redeterminations (Section 116)

Requires States with Medicaid expansion populations to redetermine expansion enrollees' eligibility every 6 months.

Subtitle C: Per Capita Allotment for Medical Assistance**Per Capita Allotment for Medical Assistance (Section 121)**

Reforms federal Medicaid financing by creating a per capita cap model (i.e., per enrollee limits on federal payments to States) starting in fiscal year 2020.

Subtitle D: Patient Relief and Health Insurance Market Stability**Repeal of Cost-Sharing Subsidy (Section 131)**

The ACA cost-sharing subsidy program designed to lower out-of-pocket costs for those who purchase Silver plans through a Marketplace exchange is repealed in 2020.

Patient and State Stability Fund (Section 132)

This section establishes the Patient and State Stability Fund, which is designed to lower patient costs and stabilize State markets, such as high-risk pools, and other options to lower health costs.

Continuous Health Insurance Coverage Incentive (Section 133)

Instead of an “individual mandate”, the GOP plan proposes a “continuous coverage incentive.” This incentive is designed to limit adverse selection in health care markets by allowing marketplace insurers to charge a 30% surcharge on the base premium for a year in order to encourage people to keep continuous health coverage.

Increasing Coverage Options (Section 134)

Repeals the “metal tiers” and the actuarial value standards, to help improve benefit design flexibility.

Change in Permissible Age Variation in Health Insurance Premium Rates (Section 135)

Allows insurers to use a 5 to 1 ratio in setting premiums for marketplace plans for older Americans compared to younger people instead of the 3 to 1 ratio used in the ACA.

Main Committee Proposal Sites

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- <https://energycommerce.house.gov/news-center/press-releases/energy-and-commerce-republicans-release-legislation-repeal-and-replace>
 - <https://waysandmeans.house.gov/american-health-care-act/>

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