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GRIST: House Republicans unveil ACA overhaul legislation for committee action

By Mercer's Leslie Anderson, Cheryl Risley Hughes, Karen Koide, Geoff Manville, Katharine Marshall, Barbara McGeoch, Kaye Pestaina, and Catherine Stamm | March 8, 2017

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Summary

House Republican legislation to repeal and replace much of the Affordable Care Act (ACA) is undergoing committee review and may see a full House vote within weeks. Released as a pair of bills that will be combined into one, the American Health Care Act drops an earlier GOP proposal to cap the employee tax exclusion for employer-provided health benefits and further delays the "Cadillac" tax on high-cost employer-sponsored coverage. While the Trump administration has endorsed the package, some conservative lawmakers have criticized the measure's policy positions and the lack of a revenue score from the Congressional Budget Office. That backlash could prompt changes before the package comes up for a House vote. If approved by the House, the legislation heads to the Senate, where Republicans will use the budget reconciliation process to sidestep a Democratic filibuster (GRIST #US20160128, Dec. 12, 2016). However, the legislation in its current form will face challenges securing the 51 Senate votes needed for approval.

Legislation repeals much of ACA by 2020

Although the bills differ in a few significant ways from a draft leaked last month (Mercer Select Intelligence, Feb. 27, 2017), the legislation reflects the same GOP goals: Repeal the ACA's shared-responsibility mandates and almost all of its funding mechanisms, replace the public exchange subsidies with a tax credit, and end Medicaid expansion over time. The bills leave intact most of the ACA's plan design mandates, such as the ban on pre-existing condition exclusions, the elimination of lifetime and annual dollar limits for essential health benefits, and the mandate to cover preventive care without cost sharing. Key Republicans want to preserve many of these provisions, and any changes to these parts of the ACA will probably have to occur outside the reconciliation process.

This GRIST summarizes key provisions of interest to employers in the GOP legislation released for committee consideration. While the risk of shared-responsibility assessments would go away, the Cadillac tax would come into play starting in 2025. Employers apparently would continue to have at least some coverage-reporting obligations. A number of GOP reforms would impact benefit and payroll design, including changes to health savings accounts (HSAs) and health flexible spending arrangements (FSAs), elimination of the Medicare surtax on higher-income individuals, and removal of the cap on deductible compensation for health insurance companies. The legislation would also reinstate the pre-ACA deduction for employers receiving payments from the Medicare Part D retiree drug subsidy (RDS) program. Other provisions would usher in major changes to the Medicaid program, the individual and small-group insurance market, and the availability of federal tax credits to purchase coverage.

Cadillac tax and current tax exclusion for health benefits stay

Cadillac tax delayed again. The legislation retains the ACA's 40% excise tax on high-cost employer-provided coverage (GRIST #US20150037, March 13, 2015), but further delays the 2020 effective date to Jan. 1, 2025. This marks a change from the leaked draft, which would have eliminated the Cadillac tax but capped employees' income tax exclusion for employer-provided coverage. While the 40% Cadillac tax will impose a high cost on affected employers (or their insurers), limiting the tax exclusion for health benefits would have increased some employees' taxable income — and their employers' payroll taxes as a result.

If other ACA taxes are repealed, the Cadillac tax would be the remaining funding source for the legislation's provisions to replace other ACA reforms. Congress may continue to consider including new health care taxes for employers or employees in this reconciliation package or possibly as part of broader tax reforms in another reconciliation bill later this year. Employers should monitor ongoing developments on this issue.

Employers' ACA reporting continues for now

The GOP legislation would retroactively repeal both the employer and individual shared-responsibility assessments, effective as of the end of 2015. However, the employer shared-responsibility reporting requirements of Code Sections 6055 and 6056 cannot be repealed through the reconciliation process. As a result, employers' ACA reporting continues — unless and until the IRS or other legislation provides separate relief. Employers should maintain their plans for 2016 ACA reporting.

New W-2 reporting in 2020. To help the IRS administer restructured premium tax credits for individuals (discussed below), the GOP measure would add a new Form W-2 reporting obligation in 2020. On the revised W-2, employers would indicate each month the individual was eligible for group health coverage other than COBRA. Employers also would have to provide employees, on request, a written statement about their eligibility (or ineligibility) for employer coverage. The legislation leaves details of the coverage-eligibility statement for the Treasury secretary to hash out. For any individual receiving a tax credit, the measure would require additional reporting from the health coverage provider — apparently including any employer that doesn't subsidize COBRA coverage.

Most — but not all — ACA taxes, assessments, and fees eliminated

The legislation would retroactively repeal both the individual and employer shared-responsibility assessments, effective as of the end of 2015. Most other ACA taxes used for funding purposes would go away at the end of this year. However, the legislation only delays the Cadillac tax and does not repeal two transitional ACA fees: the Patient-Centered Outcomes Research Institute (PCORI) fee and the reinsurance fee. So the final reinsurance fee (for split-payers) on 2016 coverage remains due this year, and PCORI payments will be due until the fee's 2019 sunset date. The table below summarizes the various tax provisions slated for repeal or revision.

ACA provision	Summary of legislation's impact	Effective date
Individual mandate	Eliminates individual assessments for not having health coverage.	Eliminated after 2015
Employer mandate	Eliminates employer shared-responsibility assessments for either offering minimum essential coverage to an insufficient percentage of full-time employees or not offering affordable, minimum-value health coverage to full-time employees.	Eliminated after 2015
Cadillac tax on high-cost health coverage	Delays 40% excise tax on high-cost, employer-sponsored health coverage.	Delayed until Jan. 1, 2025
Medical device tax	Repeals ACA's tax on sales of medical devices.	Repealed for sales after 2017
Tax deduction for qualified medical expenses	Trims individuals' deduction for qualified medical expenses from current 10% to pre-ACA 7.5% of adjusted gross income.	Trimmed for tax years beginning after 2017
Medicare surtax on high earners	Repeals 0.9% Medicare surtax on higher-income individuals.	Repealed for pay received after 2017
Fee on brand-name prescription manufacturers and importers	Eliminates annual fee on manufacturers and importers of brand-name prescription drugs.	Repealed for calendar years after 2017
Health insurance provider fee	Repeals annual fee on certain health insurance providers.	Repealed for calendar years after 2017
Excise tax on tanning services	Repeals 10% excise tax on indoor tanning services.	Repealed for services performed after 2017

ACA provision	Summary of legislation's impact	Effective date
Net investment tax	Repeals 3.8% tax on net investment income for higher-income individuals.	Repealed for tax years beginning after 2017
Deductible compensation cap for health insurers	Eliminates health insurers' $500,000 cap on deductible compensation paid to any officer, director, or employee.	Eliminated for tax years beginning after 2017

Restrictions on account-based plans eased

Several changes would affect HSAs, health FSAs, and health reimbursement arrangements (HRAs).

Expansion of HSAs. Beginning in 2018, the legislation would expand HSAs in three ways:

- Increase the HSA annual pretax contribution limit to equal the annual cost-sharing cap (on deductibles and out-of-pocket expenses) for a high-deductible health plan (HDHP). The 2018 limits would be at least $6,550 for self-only coverage and $13,100 for family coverage (much higher than the 2017 limits of $3,400 and $6,750).
- Allow both spouses to make catch-up contributions to one HSA.
- Allow withdrawals for medical expenses incurred after HDHP coverage begins but before an HSA is established, as long as the individual sets up an HSA within 60 days of HDHP enrollment.

HSA tax penalty. The tax on HSA funds used for anything other than a qualified medical expense would drop from 20% to 10% for distributions made after 2017.

Nonprescription drugs as qualified medical expenses. Starting in 2018, health plans, including HSAs, health FSAs, and HRAs, could once again reimburse or pay for over-the-counter (OTC) drugs without requiring a prescription (GRIST #20100153, Jan. 25, 2011).

Health FSA limits. Starting in 2018, employees' pretax contributions to health FSAs would no longer have a $2,500 annual limit (GRIST #20120118, May 31, 2012).

Tax deduction restored for employers receiving Medicare Part D RDS

Beginning in 2018, the measure would reinstate the business-expense deduction for retiree prescription drug costs incurred by employers participating in the RDS program. Under the RDS program, employers that provide retiree prescription drug coverage that is actuarially equivalent to the standard Medicare Part D benefit can receive a tax-free reimbursement of 28% of certain retiree drug costs (GRIST #20050043, Feb. 22, 2005; for 2017 indexed RDS availability, see GRIST #US20160126, Nov. 23, 2016).

Employers used to be able to take a corporate tax deduction for the cost of retiree drug coverage, even if they also received RDS reimbursements. The ACA changed that treatment, effectively reducing the tax deduction available to RDS recipients (GRIST #20100086, April 14, 2010). This change made participation in the RDS program less valuable to employers, leading many to begin using Medicare employer group waiver plans for Medicare-eligible retirees.

Premium tax credits restructured

The GOP measure retains the ACA's premium tax credits (with some changes) to subsidize individual market coverage through the end of 2019, but significantly restructures these credits beginning in 2020.

Credits expanded to nonexchange coverage. Until 2020, individuals buying health coverage could continue to qualify for advance premium tax credits based on household income, eligibility for employer-provided coverage, and — starting in 2019 — age. In a change from the current rules, premium tax credits would be available for individual coverage offered not only on the ACA public exchanges but also in the nonexchange marketplace. However, individuals purchasing nonexchange coverage could not get an advance credit and would instead have to claim the credit on their federal tax returns.

2020 changes. Starting in 2020, the size of a premium tax credit would depend on an individual's income and age, rather than household income and other ACA factors. The credit would vary from $2,000 for a young adult under age 30 to $4,000 for someone age 60 or older. Taxpayers with spouses or dependent children younger than 27 could receive a maximum tax credit of $14,000 for up to five family members. In a change from the leaked bill, the tax credit would start to decrease at incomes over $75,000 for single filers or $150,000 for joint filers and phase out entirely above a certain income level.

Individuals could receive advance premium tax credits. The credit could be used for both individual coverage and unsubsidized COBRA premiums. Eligibility for employer health coverage other than excepted benefits would eliminate eligibility for the premium credit.

Individual and small-group market reforms targeted

The legislation includes several changes to the individual and small-group insurance market. Whether these reforms can make it into a Senate reconciliation bill is unclear, since provisions must have a budgetary or revenue impact to use the reconciliation process. If the Senate parliamentarian finds the House's insurance market reforms fall outside the scope of reconciliation legislation, those changes will have to advance in another bill through the regular process requiring 60 Senate votes to pass.

Incentive for continuous health insurance coverage. Although the GOP proposal would eliminate the penalty for individuals who lack minimum essential coverage, a lapse in coverage could trigger a premium surcharge beginning in 2019 (2018 for certain special enrollees). Individuals with a gap in coverage lasting more than 63 days would have to pay a 30% premium surcharge for coverage purchased in the individual or small-group market. The surcharge would apply for 12 months after the coverage takes effect. This creditable-coverage requirement may necessitate some employer disclosure or reporting obligations beyond what the draft legislation would require (as discussed earlier).

Age-rating changes for individual market starting in 2018. The ACA restricts age-based variations in individual health insurance premiums to no more than a 3:1 ratio for adults 21 and older (GRIST #US20140038, March 18, 2014). The GOP legislation would change this ratio to 5:1 or let states set their own ratio for adults for plan years beginning on or after Jan. 1, 2018.

Elimination of metal levels in 2020. Under the ACA's essential health benefits mandate, health insurance in the individual and small-group market must meet specific actuarial value levels set for specific tiers (platinum, gold, silver, and bronze). The House legislation would eliminate this requirement, effective in 2020.

$100 billion in new funds for market stabilization. The measure would allocate $100 billion to states over nine years (2018 to 2026) to stabilize the individual and small-group market. States could apply for annual funds to use for a variety of activities, such as providing financial assistance to high-risk individuals without access to employer coverage and reducing health insurance costs in the individual and small-group markets. Funds not used by a state in a given year could go to reinsure insurers for 75% of claims between $50,000 and $350,000 in that state.

Medicaid expansion repealed

Under current law, states can elect to expand Medicaid coverage to cover childless adults with incomes up to 133% of the federal poverty level, with the federal government paying for most of this expansion. The GOP legislation would eliminate Medicaid expansion at the end of 2019 and change how the federal government pays for state Medicaid programs.

Per capita Medicaid replacement program. Under the GOP proposal, instead of paying a percentage of certain state expenditures (a federal matching rate), the federal government would pay a capped amount per enrollee, determined by a formula. The cap will increase annually by the medical component of the Consumer Price Index (CPI). This indexing method produces a smaller increase than the leaked draft's formula, which would have added 1% to the medical CPI adjustment.

Changes during transition years. Medicaid beneficiaries currently enrolled — or enrolling before 2020 — under the ACA expansion would keep their coverage as long as they don't experience an enrollment gap longer than a month. States that have not expanded Medicaid would receive new funding between 2018 and 2022 to pay Medicaid providers.

No CBO projections yet. These changes could substantially reduce federal expenditures for Medicaid over time, producing savings to help pay for other parts of the GOP proposal. CBO scoring of these provisions could play a significant role in determining what reforms get included in the measure presented for a House vote.

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Section-by-section summary of Ways & Means bill (House Ways & Means Committee, 6 Mar 2017, 5 pages)

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Revenue estimates and descriptions of budget reconciliation provisions (JCX 6-17 to JCX 16-17) (Joint Committee on Taxation, 7 Mar 2017)

Mercer briefs policymakers on effects of capping tax exclusion for employer health benefits (Mercer Select Intelligence, 1 Mar 2017, 2 pages)

Draft GOP bill signals direction of ACA effort, including cap on employee tax exclusion (Mercer Select Intelligence, 27 Feb 2017, 1 page)

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GOP to use budget reconciliation bill as first step in ACA repeal (GRIST 12 Dec 2016, 6 pages)

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Later Developments

House GOP revises ACA overhaul bill (22 Mar 2017, 3 pages)

CRS summary of the American Health Care Act (Congressional Research Service, 14 Mar 2017, 18 pages)

ACA repeal bill progresses, but CBO fuels debate (17 Mar 2017, 2 pages)

Two House committees advance health overhaul (The Wall Street Journal, 10 Mar 2017, via Dow Jones Factiva™)

Health groups unite to oppose Republican bill (The New York Times, 9 Mar 2017, via Dow Jones Factiva™)

Ways & Means advances health legislation (Associated Press Newswires, 09 Mar 2017, via Dow Jones Factiva™)

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