

Taking a Look at the House GOP Proposals to “Repeal and Replace” the ACA

On March 6, 2017, the House Republican leadership introduced two budget reconciliation proposals aimed at “repealing and replacing” key components of the Affordable Care Act (ACA). By using the reconciliation process, the Republicans hope to be able to pass the legislation with a simple majority vote in the Senate. Separate proposals were introduced by the Energy and Commerce Committee and the Ways and Means Committee and section-by-section summaries are available [here](#) (E&C summary) and [here](#) (W&M summary). Here’s what you need to know.

Overview. The reconciliation requirements limit the scope of reconciliation bills to provisions associated with federal revenue and spending. Because of these constraints, the GOP proposals leave much of the ACA untouched. For example, the GOP proposals do not repeal the ACA’s insurance reforms, so all of the ACA requirements applicable to group health plans would remain in effect (no annual/lifetime limits for essential health benefits; cover children to age 26; cover preexisting conditions; maximum out-of-pocket limits; no health status underwriting; cover preventive services with no cost-sharing).

Having said that, the GOP proposals would repeal most of the ACA’s penalties and taxes, increase the contribution limits for health savings accounts (HSAs), modify the tax credits available for the purchase of health insurance coverage, significantly revise the ACA’s Medicaid provisions and create a new State Stability Fund for reinsurance. In a welcome reprieve from earlier ACA repeal bills, the GOP proposals do *not* cap the tax exclusion for employer-provided health coverage.

Penalties. The GOP proposals would reduce the employer and individual mandate penalties to zero retroactively to January 1, 2016. Due to reconciliation constraints, the associated reporting requirements for Forms 1094 and 1095 would remain in effect (the Ways & Means summary indicates that the Treasury Department could stop enforcing those requirements when no longer necessary for tax enforcement purposes).

To accommodate insurance industry concerns, the GOP proposals would replace the individual mandate with a new “continuous coverage requirement.” If a person failed to maintain health insurance for a period longer than 63 days, an insurance carrier could add a 30% premium surcharge (applies to individual and small group market).

Taxes. The GOP proposals would repeal nearly all of the ACA taxes and tax-related changes, effective January 1, 2018. The repealed taxes include the tax on prescription drugs, the tax on health insurance, the medical device excise tax, the additional 0.9% Medicare tax on high-income taxpayers, and the Medicare tax on unearned income of high-income taxpayers.

Other tax-related changes include repealing the annual limit on salary-reduction contributions to health care FSAs (currently \$2,600), eliminating the prohibition against paying for over-the-counter medications through HSAs, FSAs and HRAs, reinstating the deduction limit for medical expenses to 7.5% of adjusted gross income, and permitting employers receiving the Medicare retiree drug subsidy to once again deduct the full cost of retiree drugs.

The only ACA tax *not* repealed is the 40% excise tax on high-cost plans, commonly known as the Cadillac tax. Instead of repealing the Cadillac tax, the GOP proposals would further delay this tax until 2025 (this avoids Senate rules that prohibit reconciliation proposals from increasing out-year deficits).

Health Savings Accounts. The GOP proposals would make three changes to the HSA rules, effective January 1, 2018. First, the HSA contribution limits would be increased to mirror the maximum out-of-pocket limits for high deductible health plans (for 2017, those limits are \$6,550 for single coverage and \$13,100 for family coverage). Second, both spouses age 50 and older would be permitted to make “catch-up” contributions to the same HSA. Third, HSAs could be used to pay qualified medical expenses incurred up to 60 days before the HSA is established as long as the individual was covered during that 60-day period by a high deductible health plan.

New Tax Credits. The GOP proposals would maintain the ACA’s premium tax credits through December 31, 2019. Beginning in 2020, the ACA premium tax credits would be replaced with new advanceable, refundable tax credits based on age - \$2,000 up to age 30; \$2,500 between age 30 and 39; \$3,000 between age 40 and 49; \$3,500 between age 50 and 59; and \$4,000 over age 60. The credits are additive for a family, with an overall family cap of \$14,000. The credits are available in full for individuals with incomes up to \$75,000 (single) or \$150,000 (family), and the full credit would be reduced by \$100 for each \$1,000 over those thresholds. The credits are not available to taxpayers eligible for employer coverage or government programs, and employers would be required to provide statements to employees seeking the credit indicating whether the employees or family members are eligible for coverage.

Medicaid. The GOP proposals would maintain the ACA’s federal funding for Medicaid expansion enrollees through 2019. Beginning in 2020, federal Medicaid funding would be converted from matching contributions to per-capita caps based on complex state-specific algorithms (separate caps would be set for each Medicaid enrollee category). The GOP proposals would also provide \$10 billion in safety-net funding for States that did not expand their Medicaid programs, and would eliminate the ACA’s disproportionate share hospital cut by 2020 (and earlier for non-expansion States).

State Stability Fund. The GOP proposals would appropriate \$100 billion for a new State Stability Fund from 2018 through 2026. The money would be allocated to the States based on a complex formula, and could be used by the States to provide financial assistance to high-risk individuals, to provide reinsurance payments to insurance carriers in the individual market and for similar purposes. States would be required to match federal funding, with the State match increasing to 50 percent by 2026.

What's Next? The House Committees will begin markup on the GOP proposals on March 8, 2017. Assuming the proposals pass out of the Committees, the proposals will be sent to the Budget Committee, then to the Rules Committee and then to the House floor. After House approval, the proposals will be sent to the Senate where they could be further modified, then any House/Senate differences would need to be resolved and, finally, the legislation would be sent to the President.

It is unclear whether the GOP leadership will be able to advance these proposals quickly. There is considerable pressure from both sides of the aisle, but especially among Republican factions – conservative Republicans in the House and Senate are already disparaging the GOP proposals as a version of “Obamacare Lite” and moderate Republicans in the Senate do not believe the GOP proposals adequately protect low-income individuals who benefit from the ACA’s premium tax credits. The Democrats will undoubtedly pour gasoline on these fires, in hopes of stripping Republican votes in the Senate.

An additional hurdle will be budgetary constraints. The Congressional Budget Office (CBO) must “score” the GOP proposals, and the proposals must comply with the spending and revenue levels established in the budget resolution. When CBO scored a similar ACA “repeal” bill in 2015, they estimated that the repeal of the ACA penalties and taxes would result in the loss of over a trillion dollars of revenue over ten years.

Early reaction from the insurance industry has been negative, and other affected industries will have concerns. The State governors will also need to be comfortable with the Medicaid changes, and differences of opinion will arise among States that expanded their Medicaid programs and those that did not.

At this point, we don’t know whether and to what extent President Trump will take an active leadership role in advancing the GOP proposals. The President’s tweet earlier today speaks volumes: “Our wonderful new Healthcare Bill is now out for review and negotiation” – suggesting that, as one might expect, he is always open for negotiation. It’s going to be interesting.