



Health Care Reform

Employer-Sponsored Group Health Plans and Affordable Care Act Repeal Efforts

This chart compares the Affordable Care Act to provisions of both the House-passed American Health Care Act (AHCA) and the Senate Discussion Draft, called the Better Care Reconciliation Act (BCRA). The House passed the AHCA on May 4, 2017 (HR 1628). The BCRA was initially released on June 22, 2017. The Senate leadership released a revised version on June 26, 2017, and then again on July 13, 2017. An amendment proposed by Senator Ted Cruz (R-TX) is included in the latest draft bill, but in brackets, indicating it is subject to change. The Cruz amendment would permit an insurer to offer individual market plans outside the federal Marketplace/state Exchanges that do not comply with multiple Affordable Care Act (and other federal) requirements as long as the insurer offers some Affordable Care Act-compliant plans in the federal Marketplace/state Exchanges. The chart refers to those plans as “off-Exchange plans.”

Affordable Care Act (Current Law)	American Health Care Act (House-Passed Bill)	Better Care Reconciliation Act (Version of the Senate Discussion Draft Released June 26, 2017 with July 13, 2017 Draft Revisions on a Shaded Background)
Individual shared responsibility penalty for not having health coverage is the greater of \$695 (indexed) or 2.5 percent of income.	Individual shared responsibility penalty would be reduced to zero, retroactive to January 1, 2016. Effective in 2018 for mid-year enrollments and open enrollments in 2019, a continuous-coverage requirement would require individuals to pay a 30 percent premium surcharge for individual market coverage if they have a coverage gap of 63 or more days during a 12-month look-back period. The surcharge would last for the entire plan year. States could apply for a waiver from the continuous-coverage surcharge under certain circumstances.	Same approach to individual shared responsibility penalty as House bill Effective in 2019, individuals with a coverage gap of 63 or more days in a 12-month look-back period would have to wait 6 months for individual market coverage to take effect, with limited exceptions.

Affordable Care Act (Current Law)	American Health Care Act (House-Passed Bill)	Better Care Reconciliation Act (Version of the Senate Discussion Draft Released June 26, 2017 with July 13, 2017 Draft Revisions on a Shaded Background)
Employer shared responsibility penalty imposes \$2,000 (indexed) penalty under Internal Revenue Code (IRC) Section 4980H(a) or a \$3,000 (indexed) penalty under Section 4980H(b).	Penalty would be reduced to zero, retroactive to January 1, 2016. If the penalty were to be repealed, the rules related to it would also be rendered obsolete, including the 30-hour rule for defining full-time employees.	Same as House bill
40 percent excise tax on certain high-cost health plans (“Cadillac tax”); applies to amount over thresholds (\$10,200 for single coverage, \$27,500 for other coverage tiers); effective in 2020	This tax would be delayed until 2026.	Same as House bill
Health Flexible Spending Arrangements (FSAs) — statutory salary reduction limitation (\$2,600 in 2017)	No statutory limit on FSA salary reduction for tax years starting in 2017.	Same as House bill, but effective in 2018

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Affordable Care Act (Current Law)	American Health Care Act (House-Passed Bill)	Better Care Reconciliation Act (Version of the Senate Discussion Draft Released June 26, 2017 with July 13, 2017 Draft Revisions on a Shaded Background)
<p>Health Savings Accounts (HSAs)</p> <p>Maximum HSA contribution \$3,400 single/ \$6,750 family in 2017</p> <p>20 percent penalty on non-qualified distributions</p>	<p>Maximum HSA contribution would be increased to the out-of-pocket limit (in 2018, \$6,650 for single coverage and \$13,300 for family coverage), effective in 2018.</p> <p>The penalty would be reduced to 10 percent in 2017.</p> <p>Additional administrative changes</p>	<p>Same as House bill</p> <p>Effective in 2018, the revised draft would permit individuals to use their HSA to pay for the premium for an HSA-qualified high-deductible health plan (HDHP), including the portion of an individual market premium not covered by a premium assistance tax credit. However, employee premiums for group health plan coverage would not generally be reimbursable. The HSA could not pay the premium for an HDHP that covers abortions, with limited exceptions. Revised draft would permit reimbursement of medical expenses for children who have not reached age 27 by end of tax year. (This rule currently applies to health coverage generally, but is not included in IRC Section 223 governing HSAs.)</p>
<p>Over-the-counter (OTC) medications not payable without a prescription</p>	<p>Effective in 2017, OTC could be paid without a prescription.</p>	<p>Same as House bill</p>
<p>Health insurance provider tax (suspended for 2017)</p>	<p>Repealed</p>	<p>Same as House bill</p>
<p>Medicare Part D retiree drug subsidy expenses not deductible</p>	<p>Expenses would be deductible beginning in 2017.</p>	<p>Same as House bill</p>

This chart is current as of July 13, 2017.

Affordable Care Act (Current Law)	American Health Care Act (House-Passed Bill)	Better Care Reconciliation Act (Version of the Senate Discussion Draft Released June 26, 2017 with July 13, 2017 Draft Revisions on a Shaded Background)
<p>Medical device tax (suspended for 2016 and 2017)</p> <p>Fee on branded prescription drugs</p> <p>Medicare tax on investment income</p> <p>Tanning tax</p> <p>\$500,000 limit on deduction of remuneration to health insurance executives</p>	<p>Repealed in 2017</p>	<p>Same as House bill, but two taxes (medical device tax and fee on branded prescription drugs) repealed in 2018</p> <p>Revised draft would not repeal the Medicare tax on investment income or the limit on deduction of remuneration to health insurance executives.</p>
<p>Medicare payroll tax for certain high-income individuals (0.9 percent)</p>	<p>Repealed effective 2023</p>	<p>Same as House bill</p> <p>Not repealed in revised draft</p>
<p>Threshold for deducting medical expenses on personal income tax return (10 percent of adjusted gross income)</p>	<p>5.8 percent of adjusted gross income beginning in 2017</p>	<p>7.5 percent of adjusted gross income beginning in 2017</p>
<p>W-2 reporting of health coverage</p>	<p>W-2 requirement retained, and new rule added requiring employers to indicate the months in which an employee was eligible for group health coverage</p>	<p>Unchanged from Affordable Care Act</p>
<p>Form 1094 and 1095 reporting</p>	<p>Unchanged from Affordable Care Act</p>	<p>Unchanged from Affordable Care Act</p>
<p>Comparative Effectiveness Research Fees – paid annually to fund Patient-Centered Outcomes Research Institute (PCORI) through 2019</p>	<p>Unchanged from Affordable Care Act</p>	<p>Unchanged from Affordable Care Act</p>

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Affordable Care Act (Current Law)	American Health Care Act (House-Passed Bill)	Better Care Reconciliation Act (Version of the Senate Discussion Draft Released June 26, 2017 with July 13, 2017 Draft Revisions on a Shaded Background)
<p>Rules applicable to Medicare Part D and Medicare Advantage employer group waiver plans (EGWPs)</p>	<p>No provisions in American Health Care Act</p>	<p>No provisions in Better Care Reconciliation Act</p>
<p>Essential health benefits (EHBs) must be provided by individual and small group plans. Group health plans cannot place an annual or lifetime maximum on EHBs.</p>	<p>States could apply for waiver from EHB requirements. Group health plans could probably use a waiver state's EHB benchmark and place maximums on non-EHB benefits.</p>	<p>Expands Affordable Care Act Section 1332 waiver authority. States could obtain from the Health and Human Services Department a waiver of EHB requirements, cost-sharing limits, and actuarial value level requirements without demonstrating that coverage would be as comprehensive or as affordable, or that a comparable number of people would have coverage. Only requirement would be that the state's plan not increase the federal deficit. The impact on group health plans is uncertain, but likely would be similar to House bill.</p> <p>Off-Exchange plans would not have to offer EHBs.</p>
<p>Plans in Exchanges must meet "metal" levels (bronze, silver, gold, platinum) based on their actuarial value. Provides exception for certain "catastrophic" plans that may be purchased only by people who are under age 30 or exempt from the individual mandate to purchase health coverage.</p>	<p>Metal levels would be eliminated effective in 2020.</p>	<p>A waiver under Section 1332 could include a waiver of these requirements.</p> <p>Off-Exchange plans would not have to meet metal levels. Revised draft would permit any individual to purchase a "catastrophic" plan in the federal Marketplace/state Exchanges, not just those under 30.</p>

This chart is current as of July 13, 2017.

Affordable Care Act (Current Law)	American Health Care Act (House-Passed Bill)	Better Care Reconciliation Act (Version of the Senate Discussion Draft Released June 26, 2017 with July 13, 2017 Draft Revisions on a Shaded Background)												
<p>Federal Marketplace and state Exchanges provide premium subsidies (premium assistance tax credits) to individuals between 100 and 400 percent of Federal Poverty Level (FPL) on sliding scale. Tax credits are sufficient to purchase second-lowest-cost silver plan.</p>	<p>Repeals premium assistance tax credits in 2020. For 2019, tax credits would be modified slightly (e.g., individual's required contribution would be based on income and age).</p> <p>Effective 2020, bill would create a new age-based tax credit that could be used to purchase insurance in the individual market or an exchange. Credits would be capped at \$14,000/family and phased out at higher incomes. Credits are not designed to ensure purchase of a silver plan. Individuals would be ineligible for credit if they are eligible for coverage in employer-sponsored plan.</p> <table border="1" data-bbox="762 824 1333 1015"> <thead> <tr> <th><u>Age</u></th> <th><u>Annual Credit Amount</u></th> </tr> </thead> <tbody> <tr> <td>Under Age 30</td> <td>\$2,000</td> </tr> <tr> <td>Age 30–39</td> <td>\$2,500</td> </tr> <tr> <td>Age 40–49</td> <td>\$3,000</td> </tr> <tr> <td>Age 50–59</td> <td>\$3,500</td> </tr> <tr> <td>Age 60 or Older</td> <td>\$4,000</td> </tr> </tbody> </table> <p>Individuals would be required to pay back all excess subsidies received in error in 2018 and 2019.</p>	<u>Age</u>	<u>Annual Credit Amount</u>	Under Age 30	\$2,000	Age 30–39	\$2,500	Age 40–49	\$3,000	Age 50–59	\$3,500	Age 60 or Older	\$4,000	<p>Keeps premium assistance tax credits through 2019 and then changes them effective 2020. (No lower income limit, but upper income limit reduced from 400 percent FPL to 350 percent FPL; individual's required contribution for coverage would be based on income and age; would ensure purchase of 58 percent actuarial value plan only, instead of current 70 percent silver plan)</p> <p>Individuals would be required to pay back all excess subsidies received in error starting in 2018.</p> <p>Revised draft would permit individuals to use premium assistance tax credits to purchase a "catastrophic" plan in the federal Marketplace/ state Exchanges (not currently allowed under the Affordable Care Act).</p>
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<p>Cost-sharing subsidies provided to those with incomes below 250 percent of the FPL</p>	<p>Cost-sharing subsidies eliminated in 2020. Bill does not fund cost-sharing subsidies through 2019.</p>	<p>Funds the cost-sharing subsidies through 2019 and then repeals them</p>												

Affordable Care Act (Current Law)	American Health Care Act (House-Passed Bill)	Better Care Reconciliation Act (Version of the Senate Discussion Draft Released June 26, 2017 with July 13, 2017 Draft Revisions on a Shaded Background)
Age rating in the individual and small-group market is limited to 3:1 (<i>i.e.</i> , the premium for an adult who is age 64 cannot be more than three times the premium for a 21-year-old)	Age rating would be 5:1 effective in 2018. States could apply for waiver to set a different ratio.	Age rating would be 5:1 effective in 2019. States could choose a different ratio. Off-Exchange plans would not have to follow the Affordable Care Act's age-rating rules.
Individual-market plans are prohibited from charging higher premiums based on medical status.	States could apply for a waiver that would permit medical underwriting for people who do not maintain continuous coverage. This would be in lieu of the continuous-coverage surcharge discussed above.	Unchanged from Affordable Care Act Off-Exchange plans would be able to deny coverage to people with medical conditions or charge them higher premiums (unless prohibited by state law).
Medical Loss Ratios (MLRs) are 85 percent for large groups and 80 percent for small groups.	Unchanged from Affordable Care Act	Permits states to set MLR ratios starting in 2019. Off-Exchange plans would not have to comply with the Affordable Care Act's MLR ratios.

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Medicaid	<p>Changes ability of states to expand Medicaid eligibility and would cut the amount of federal payments to states for the expansion program.</p> <p>Medicaid would convert from an entitlement program to one with a federal cap beginning with fiscal year 2020 (which begins October 1, 2019). Under the new per-capita-cap structure, the federal government would provide a certain amount of funding per eligible beneficiary, and the states would have to work within that cap or provide additional funding of their own.</p>	Same as House bill, however, slightly delayed phase out of expansion. Also indexes per capita payment amount in future years to basic inflation, resulting in greater funding cut than House bill.
Small business tax credit	Repealed in 2020	Same as House bill
Provision not in the Affordable Care Act	Creates a Patient and State Stability Fund to be used for various purposes, such as a high-risk pool and federal “invisible” risk-sharing program	<p>Creates a similar program called the State Stability and Innovation Program</p> <p>Revised draft would increase funding compared to June 26 version.</p>
Group health plan coverage mandates (e.g., dependents to age 26, no annual or lifetime limits)	Unchanged from Affordable Care Act for group health plans	Unchanged from Affordable Care Act for group health plans
Rules for non-grandfathered group health plans (e.g., coverage of preventive services, out-of-pocket maximum, external appeals)	Unchanged from Affordable Care Act	Unchanged from Affordable Care Act

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Summary of Benefits and Coverage	Unchanged from Affordable Care Act	Unchanged from Affordable Care Act
Section 1557 nondiscrimination rules	Unchanged from Affordable Care Act	Unchanged from Affordable Care Act
Provision not in the Affordable Care Act	Provision not in the American Health Care Act	Would create fully insured “Small Business Health Plans” (small business risk-sharing pools), similar to “association health plans” in previous bills, which could be offered by associations pursuant to a certification by the Secretary of Labor

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For more information about the American Health Care Act and/or the Better Care Reconciliation Act, contact your Segal consultant.



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