



NAVIGATING HEALTHCARE REFORM

June 2017

ACA In The News: SENATE RELEASES DRAFT ACA REPLACEMENT BILL

OVERVIEW

On June 22, 2017, Republicans in the U.S. Senate released their proposal to repeal and replace the Affordable Care Act (ACA), called the Better Care Reconciliation Act (BCRA). The Senate bill closely mirrors the proposal passed in the House of Representatives—the American Health Care Act (AHCA)—with some differences. For example, unlike the AHCA, the BCRA would enhance the ACA’s Section 1332 State Innovation Waiver program and would not allow issuers to impose a surcharge for individuals who do not maintain continuous coverage.

The Senate has not taken a vote on any ACA repeal or replacement proposal at this time. The proposal would need a simple majority vote in the Senate to pass. However, amendments may be made before a Senate vote is taken. Senate Republicans indicated that they would like to take a vote prior to the Senate’s July 4 recess. If the BCRA passes the Senate, it would need to go back to the House for approval before being signed into law by President Donald Trump.

LEGISLATIVE PROCESS

On May 4, 2017, the U.S. House of Representatives voted 217-213 to pass the AHCA, which is their proposal to repeal and replace the ACA. As a result, the AHCA moved on to the Senate for consideration. In response, the Senate drafted the BCRA as their own ACA repeal and replacement bill. Because the Senate version differs from the House version, the proposal, if passed by the Senate, would need to be approved by the House before moving on to the president to be signed into law.

Both the House and Senate’s proposed ACA repeal and replacement legislation are budget reconciliation bills, which mean that they can only address ACA provisions that directly relate to budgetary issues—specifically, federal spending and taxation. As a result, these proposals cannot fully repeal the ACA. Budget reconciliation legislation can be passed by both houses with a simple majority vote. However, a full repeal of the ACA must be introduced as a separate bill that would require 60 votes in the Senate to pass.

ACA PROVISIONS NOT IMPACTED

Like the AHCA, the BCRA would not affect the majority of the ACA. For example, the following key ACA provisions would remain in place:

- Cost-sharing limits on essential health benefits for non-grandfathered plans
- Prohibition on lifetime and annual limits for EHBs
- Requirements to cover pre-existing conditions
- Coverage for adult children up to age 26
- Guaranteed availability and renewability of coverage
- Nondiscrimination rules (on the basis of race, nationality, disability, age or sex)
- Prohibition on health status underwriting

Similarly, the requirement to offer the EHB package for individual and small group plans also remains in place. In addition, age rating restrictions would also continue to apply, with the age ratio limit being revised to 5:1 (instead of 3:1), and states would be allowed to set their own limits.

IMPACTED ACA PROVISIONS

Employer and Individual Mandates

The ACA imposes both an employer and individual mandate. Like the AHCA, the BCRA would reduce the penalties imposed under these provisions to zero, effectively repealing both mandates (although they would technically still exist). These changes would apply retroactively for months beginning after December 31, 2015.

The AHCA would have allowed issuers to add a 30 percent late-enrollment surcharge to the premium for applicants that had a lapse in coverage, in an effort to limit adverse selection and encourage individuals to maintain health coverage. However, the BCRA removed this late-enrollment surcharge, so that issuers may not charge higher premiums for individuals who do not maintain continuous coverage.

Note that neither the AHCA nor the BCRA would repeal the ACA's reporting requirements related to the employer and individual mandates (Section 6055 and Section 6056 reporting).

Replacing Insurance Subsidies with Tax Credits

The ACA currently offers federal subsidies in the form of premium tax credits and cost-sharing reductions to certain low-income individuals who purchase coverage through the Exchanges. Like the AHCA, the BCRA would repeal both of these subsidies, effective in 2020, and would replace them with a portable, monthly tax credit to all individuals that can be used to purchase individual health insurance coverage.

The BCRA (like the AHCA) would also repeal the ACA's small business tax credit, beginning in 2020. In addition, between 2018 and 2020, the small business tax credit generally would not be available with respect to a qualified health plan that provides coverage relating to elective abortions.

State Waivers

The AHCA included an option for states to obtain limited waivers from certain ACA standards, in an effort to lower premiums and expand the number of insured. Specifically, states could apply for waivers from the EHB requirement and community rating rules (except strict limitations applied with respect to rating based on gender, age and health status). The BCRA eliminated this state waiver option.

However, the BCRA would provide states additional flexibility to use waivers that currently exist under Section 1332 of the ACA. The ACA's Section 1332 State Innovation Waivers are intended to allow states to pursue innovative strategies for providing their residents with access to high quality, affordable health insurance while retaining the basic protections of the ACA. The BCRA would expand the ACA provisions that could be waived under Section 1332, and lower the standards that states must meet in order to be eligible for a Section 1332 Waiver.

Relief from ACA Tax Changes

Like the AHCA, the BCRA would provide relief from many of the ACA's tax provisions. The affected tax provisions include the following:

- Cadillac tax: Delayed effective date to 2026.
- Restrictions on using HSAs for over-the-counter medications: The BCRA would allow these accounts to be used for over-the-counter purchases, beginning in 2017.
- Increased tax on withdrawals from HSAs: The BCRA would lower the rate to pre-ACA percentages, beginning with distributions in 2017.
- Health flexible spending account limit: Repeal the limitation on health FSA contributions for taxable years beginning in 2018.
- Additional Medicare tax: Repeal this beginning in 2023.

MEDICAID CHANGES

Most of the differences between the AHCA and the BCRA relate to the Medicaid program. Like the AHCA, the BCRA would repeal the ACA's Medicaid expansion, and make certain other changes aimed at modernizing and strengthening the Medicaid program. The BCRA would also guarantee coverage for children with medically complex disabilities and ease restrictions on coverage of treatment for mental diseases in psychiatric hospitals.