

SIDLEY UPDATE

The House Republican Study Committee's Affordable Care Act Repeal and Replace Legislation: The American Health Care Reform Act of 2017

On January 4, the House Republican Study Committee (RSC)¹ released the American Health Care Reform Act of 2017 (AHCRA), which would repeal and replace the Affordable Care Act (ACA) of 2010.² Drafted by Rep. Phil Roe, R-Tenn., a physician and RSC member, this legislation is similar to ACA repeal and replace proposals introduced by the RSC in [2013](#) and [2015](#).

RSC Chairman Mark Walker, R-N.C., has noted that the bill would *not* implement a “simultaneous” repeal and replacement of the ACA; instead, it includes provisions addressing both repeal and replacement but does not provide a timeline for the replacement.

Although the AHCRA of 2017 has not (to date) been formally introduced, it is expected to garner support from conservative members of the House and to serve as a basis for negotiation with other key lawmakers, including (among others) the sponsors of three additional significant Republican replacement proposals: [A Better Way](#) from House Speaker Paul Ryan, R-Wisc.; [Empowering Patients First Act of 2015](#) from Department of Health and Human Services (HHS) secretary nominee Rep. Tom Price, R-Ga.; and [Patient Choice, Affordability, Responsibility, and Empowerment Act](#) from Senate Finance Committee Chairman Orrin Hatch, R-Utah.³ Walker reportedly has stated that the AHCRA is not in competition with other proposals and is intended to be a collaborative approach.

Key Highlights:

- **Fully repeals the ACA:** The RSC's proposal would repeal the ACA in its entirety: all insurance reforms, including underwriting restrictions, consumer protections and affordability rules; the Medicaid expansion; Medicare reforms, including filling the Part D doughnut hole; changes to drug reimbursement and approval including amendments to the 340B program; and the new approval pathway for biosimilar biologic products. Repeal would be effective January 1, 2018.

¹ The RSC is Congress's largest conservative caucus, with more than 170 members.

² The draft legislative text and other materials released by the RSC specify that the AHCRA would “repeal the Patient Protection and Affordable Care Act and related reconciliation provisions” enacted through the Health Care and Education Reconciliation Act of 2010.

³ A number of other members of Congress have introduced legislation relating to ACA repeal and replacement. The examples noted here are not exhaustive; there have been other proposals introduced to date, including proposals from Republican members of Congress who may be particularly influential in health reform discussions and negotiations in the 115th Congress.

- **Replaces the ACA's tax credits with a standard deduction:** The AHCRA would establish an above-the-line standard deduction for qualified health insurance plans in the amount of \$7,500 for an individual or \$20,500 for families. Unlike the ACA's tax credits provided on a sliding scale for individuals and families with income at 400 percent of the federal poverty level or below who purchase "qualified health plans" (as defined under the ACA), the proposed standard deduction would not be means-tested and would be adjusted only based on annual inflation. The AHCRA provides that the term "qualified health plan" would be addressed by subsequent regulation and must have "coverage for inpatient and outpatient care, emergency benefits, and physician care" as well as "coverage which meaningfully limits individual economic exposure to extraordinary medical expenses."

This proposal is similar to President Donald Trump's proposal to allow individuals to deduct the cost of health insurance premium payments from their tax returns. In contrast, the three major congressional Republican replacement proposals rely on age-adjusted tax credits.

- **Reforms health savings account (HSA) rules:** The AHCRA makes a number of changes to current HSA rules in order to expand the availability of these accounts. For example, the AHCRA would expand HSA eligibility for individuals who are currently unqualified to maintain an HSA, including certain Tricare participants, veterans, individuals who obtain services through the Indian Health Service and Medicare beneficiaries. In addition, the legislation would ease certain HSA restrictions related to catch-up payments, qualified medical services and maximum contributions.

Increasing the use of HSAs is one of the centerpieces of President Trump's healthcare reform plan and is prominently featured in the three other congressional Republican replacement plans noted above as well.

- **Provides funding for state high-risk pools:** The AHCRA provides \$25 billion in federal funding over 10 years to assist states in establishing high-risk pools. High-risk pools are featured in the President's healthcare reform plan and in the three other congressional Republican ACA replacement plans noted above.
- **Provides for the portability of health insurance policies across state lines:** The AHCRA allows individuals to purchase health insurance policies across state lines. The RSC's draft text proposes that when an insurance plan offered in one (primary) state is sold in a secondary state, the health insurer would still be subject to the consumer protection and fraud laws of the secondary state.
- **Addresses federal antitrust laws:** The AHCRA makes certain changes to the McCarran-Ferguson Act to clarify that federal antitrust laws apply to the business of health insurance.
- **Makes Medicare claims data publicly available:** The AHCRA requires HHS to make Medicare claims data publicly available through a no-cost database.
- **Establishes state transparency portals:** The AHCRA provides \$50 million in federal funding to states to establish optional transparency portals. These portals would serve as a resource for

standard information on certain health plans but would be prohibited from directly enrolling consumers in coverage.

- **Addresses the doctor-patient relationship:** The AHCRA repeals the Federal Coordinating Council on Comparative Effectiveness Research (CER) and prevents provisions of the bill from being interpreted as interfering with the doctor-patient relationship. This provision appears to be designed to replace the provision of the ACA that terminated the Federal Coordinating Council for Comparative Effectiveness Research (which was enacted under section 804 of the American Recovery and Reinvestment Act of 2009). The ACA replaced the Federal Coordinating Council on CER with the Patient-Centered Outcomes Research Institute (PCORI). The AHCRA does not include a replacement for PCORI; it states only that “[e]ffective on the date of the enactment of this Act, section 804 of the American Recovery and Reinvestment Act of 2009 ... is repealed.”
- **Permits the establishment of association health plans:** The AHCRA allows small businesses to join together to establish association health plans.
- **Institutes medical liability reform:** The AHCRA makes several changes to medical liability reform, including establishing a voluntary right of removal to federal court for cases involving a federal payer or federal statute. The AHCRA also would establish a mandatory, pre-discovery independent medical review panel.

For additional information on this legislation, please see the links below:

[Legislative Text](#)

[Section-by-section](#)

[Bill Summary](#)

[Standard Deduction for Health Insurance Explanation](#)

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work or

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