



Leaked House Affordable Care Act Reconciliation Bill Would Bring Significant Changes to U.S. Healthcare System

On Feb. 24, a draft of the House of Representatives Republican reconciliation bill to repeal and replace the Affordable Care Act (ACA) was leaked. The text mirrors previous House Republican ACA repeal-and-replace proposals, including the 2015 reconciliation bill, HR 3762, that was ultimately vetoed by former President Barack Obama in January 2016. The leaked draft bill has a date stamp of Feb. 10 and may therefore not be the most recent version of the legislation.

Relevant provisions of the bill are summarized briefly below:

- **Individual and Employer Mandates Out; New Premium Tax Credits In:** The draft bill would zero out the ACA's individual and employer mandate penalties. The bill would also transition the existing ACA premium subsidies to refundable, advanceable, age-adjusted tax credits.
- **Medicaid:** The draft legislation would phase out the ACA's Medicaid expansion, including the enhanced federal funding for the expansion provided to states under the ACA, by Dec. 31, 2019. The draft bill would also transition the Medicaid program to a per capita cap system, a change that would fundamentally alter the Medicaid program.
- **Essential Health Benefits (EHB):** The draft legislation would sunset the existing EHB requirement on Dec. 31, 2019, and would allow states to define EHB beginning with the 2020 plan year.
- **Age Rating:** Under the draft legislation leaked on Feb. 10, permissible age variation in premium rates would be increased such that beginning in 2018, insurers would be permitted to charge older customers up to five times as much as younger customers, compared with the 3-1 ratio in place under the ACA.
- **ACA Taxes:** The draft bill would repeal the medical device tax, the prescription drug tax, the Cadillac plan tax, the health insurance tax, the Medicare surcharge tax, the Medicare tax on high-income taxpayers and the tanning tax.

- **Health Savings Accounts (HSAs) and Flexible Spending Accounts (FSAs):** The draft legislation would end the exclusion of coverage for over-the counter (OTC) medications from HSA funds (currently not permitted unless a doctor has prescribed the OTC product) and would also relax contribution limits and rules for HSAs and FSAs.
- **Continuous Coverage:** The draft legislation would replace the ACA's individual mandate with a new continuous-coverage requirement. Under the draft requirement, individuals who failed to maintain continuous coverage would be penalized with a 30 percent increase in premiums for one year.
- **High-Risk Pools:** Seeking to address high-cost, high-risk individuals, the draft bill would provide states with up to \$100 billion over the next 10 years through a to-be-established State Innovation Grants and Stability Program.
- **Employer-Sponsored Health Insurance Tax Exclusion:** The draft bill includes a pay-for that would cap the tax exclusion for employer-sponsored health insurance. Specifically, benefits from employer-sponsored insurance at the 90th percentile or above would be taxed according to the draft proposal. This plan is similar to the ACA's Cadillac tax, which was opposed by many industry groups and by Republicans.

The draft bill text leaked on Feb. 10 does not include specific changes to the ACA's ban on pre-existing condition exclusions, the prohibition on health status as a factor in underwriting, actuarial value requirements, expanded dependent coverage up to age 26, nondiscrimination rules, maximum out-of-pocket limitations or the ban on annual and lifetime caps.

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

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