



What's News in Tax

Analysis that matters from Washington National Tax

Taxes and the Better Care Reconciliation Act of 2017: Senate Discussion Draft

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On June 22, 2017, the Senate released a discussion draft of the Better Care Reconciliation Act of 2017, a legislative development for healthcare reform. This article compares key tax provisions of the Better Care Reconciliation Act discussion draft with the Patient Protection and Affordable Care Act and the House-passed American Health Care Act.

On May 4, 2017, the U.S. House of Representatives passed H.R. 1628, also known as the American Health Care Act of 2017 (the "AHCA"). The AHCA is intended to repeal, replace or modify various provisions of the Patient Protection and Affordable Care Act (which was enacted during the Obama Administration).

On June 22, 2017, the U.S. Senate released a [discussion draft](#) of the "Better Care Reconciliation Act of 2017," which procedurally takes the form of an amendment to H.R. 1628. (The discussion draft was modified and re-released on June 26, 2017, to include a provision limiting the ability of individuals to buy a health insurance policy for six months if they had a break in coverage of 63 days or longer during the prior year.) The Senate draft is similar in many respects to the House bill, but there are some minor differences in the tax provisions of the two bills and more significant differences among the non-tax provisions (e.g., Medicaid expansion rollback). It is important to note that the document released by the Senate is designated a "discussion draft." It is expected that amendments would be added to the Senate version of the legislation, so it is not possible at this time to know what a final Senate bill might

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look like. In addition, several Republican Senators have stated publicly that they are not comfortable with the draft bill in its current form, so it is not possible at this time to know whether the bill will garner sufficient support to pass in the Senate.

Also, keep in mind that identical legislation must be passed by both the House and the Senate for such legislation to go to the President for signature. Thus, if the Senate passes health care reform legislation based on the discussion draft, the House and the Senate still would need to work out differences and pass identical legislation.

The Appendix to this article includes a table that compares key tax provisions of the Better Care Reconciliation Act discussion draft to the House bill and to the Affordable Care Act.

For previous editions of *What's News in Tax* on the topic of healthcare reform, please see:

- ⇒ [Taxes and the American Health Care Act: Frequently Asked Questions](#) (May 22, 2017)
- ⇒ [Potential Tax Implications of Healthcare Reform](#) (February 28, 2017)
- ⇒ [What Does the Future Hold for the Tax Provisions of the Affordable Care Act?](#) (November 29, 2016)

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Appendix

Tax Provisions of the ACA, AHCA and BCRA

The table below compares key tax provisions of the [Patient Protection and Affordable Care Act](#), the House-passed [American Health Care Act](#), and the Senate Republican healthcare reform bill discussion draft, cited as the “[Better Care Reconciliation Act of 2017](#).” This table does not address the non-tax provisions of the Affordable Care Act or the House and Senate legislative proposals.

It is important to note that the Senate has not yet voted on its healthcare reform bill, and the bill may be further amended prior to such a vote. This chart is current as of June 26, 2017, and does not reflect any such amendments.

	Patient Protection and Affordable Care Act	American Health Care Act of 2017 (H.R. 1628)	Better Care Reconciliation Act of 2017 (Senate Amendment to HR 1628)
Introduced by	Rep. Charles Rangel	Rep. Diane Black	Not yet introduced (available as a discussion draft)
Date introduced	September 17, 2009 Passed the House on October 8, 2009 and the Senate with amendment on December 24, 2009 House agreed to Senate amendment on March 21, 2010	March 6, 2017 Amendments added prior to passage by the House, May 4, 2017	Not applicable
Summary	Signed into law by President Obama on March 23, 2010, this healthcare reform law requires insurers in the individual marketplace exchanges to accept all applicants, cover a specific list of conditions, and charge the	This “repeal and replace” legislation was passed by the House on May 4, 2017. It would repeal many of the ACA taxes and fees (as outlined below), roll back Medicaid expansion under the ACA, expand HSAs, and provide	Similar to the House bill, the Senate’s “repeal and “replace” legislation would repeal many of the ACA taxes and fees (as outlined below), roll back Medicaid expansion under the ACA (albeit at a different pace),

	Patient Protection and Affordable Care Act	American Health Care Act of 2017 (H.R. 1628)	Better Care Reconciliation Act of 2017 (Senate Amendment to HR 1628)
	<p>same rates regardless of pre-existing conditions or gender. It allows states to expand Medicaid eligibility to people with annual incomes below a certain threshold.</p>	<p>states with funds over 10 years that could be used for a variety of health-related purposes such as establishing a high-risk fund, subsidizing premiums, etc.</p> <p>The legislation included an amendment crafted by Representative Tom MacArthur (R-NJ) that allows states to waive age bands, essential benefits and community rating for certain individuals, and an amendment from Representative Fred Upton (R-MI), that provides an additional \$8 billion to help cover costs for patients with pre-existing conditions in states approved for a community rating waiver.</p>	<p>expand HSAs, provide states with \$112 billion to stabilize insurance exchanges (including through reinsurance funding and reducing premiums and out-of-pocket costs), and offer states the ability to waive ACA essential health benefit requirements through a 1332 waiver.</p> <p>On June 26, 2017, the Senate modified and re-released the discussion draft to include a new rule limiting an individual's ability to purchase a new health insurance policy during open enrollment (or due to a life-qualifying event) for six months if they had a coverage break of 63 or more days in the prior year.</p>
<i>Tax Provisions for Employers</i>			
Employer mandate	Certain employers with 50 or more full-time equivalent employees who do not provide affordable health care coverage may be assessed a penalty if at least one qualifies for (and uses)	Repeal effective for months after 12/31/2015	Repeal effective for months after 12/31/2015

	Patient Protection and Affordable Care Act	American Health Care Act of 2017 (H.R. 1628)	Better Care Reconciliation Act of 2017 (Senate Amendment to HR 1628)
	the premium tax credit to buy coverage in the Marketplace		
Information reporting (section 6056)	Requires applicable large employers to file information returns with the IRS about coverage offered to employees	Unchanged	Unchanged
Cadillac Tax	Imposes a 40 percent excise tax to be paid by insurers on high-cost employer-sponsored plans	Effective date postponed to 2026	Effective date postponed to 2026
Small business healthcare tax credit	Allows a tax credit to small employers who pay premiums on behalf of employees enrolled in a qualified plan through the SHOP Marketplace	Repeal effective for years beginning after 12/31/2019	Repeal effective for years beginning after 12/31/2019
<i>Tax Provisions for Individuals</i>			
Individual mandate	Imposes a tax penalty on individuals who fail to have a basic level of health insurance coverage or qualify for an exemption	Repeal effective for months after 12/31/2015	Repeal effective for months after 12/31/2015
Premium tax credits for individuals	Creates an advanceable and refundable tax credit available to families and individuals based on household income of up to 400% of the poverty level. The amount of the premium tax credit is generally equal to the	The proposal would create an advanceable tax credit that would be age-adjusted as follows: <ul style="list-style-type: none"> • \$2,000 for individuals under 30 • \$2,500 for individuals between 30 and 40 	Creates an advanceable and refundable tax credit that would be based on income and age. People with incomes up to 350% of the poverty level are eligible for tax credits (including people with incomes below poverty).

	Patient Protection and Affordable Care Act	American Health Care Act of 2017 (H.R. 1628)	Better Care Reconciliation Act of 2017 (Senate Amendment to HR 1628)
	<p>premium for the second lowest-cost silver plan available through the Marketplace that applies to family members enrolled in coverage through that marketplace, less a certain percentage of household income.</p> <p>The benchmark silver plan has an actuarial value of 70%, meaning enrollees pay for an average of 30% of their healthcare expenses through cost-sharing.</p>	<ul style="list-style-type: none"> • \$3,000 for individuals between 40 and 50 • \$3,500 for individuals between 50 and 60 • \$4,000 for individuals over 60 <p>The total tax credit for a family would be capped at \$14,000. The tax credit would be available for major medical health coverage or unsubsidized COBRA continuation coverage not covering elective abortions. The tax credit would not be available to individuals eligible for employer coverage (regardless of affordability or adequacy) or a government program.</p>	<p>Premium caps vary by age and will range in 2020 from 2.4% of income for a household below the poverty level (<\$12,500 in 2020), to 17.4% of income for a 60 year old at 350% of poverty (\$43,750).</p> <p>The benchmark plan is a plan with an actuarial value of 58%, meaning enrollees pay for an average of 42% of their healthcare expenses through cost-sharing.</p>
Increased threshold for medical expense deductions	Raised the threshold for deducting unreimbursed medical expenses to those that exceed 10 percent of adjusted gross income	<ul style="list-style-type: none"> • Repeal effective for 2017 • Reduces qualifying threshold from 10 to 5.8 percent (which is lower than the pre-ACA level of 7.5 percent) 	<ul style="list-style-type: none"> • Repeal effective for 2017 • Reduces qualifying threshold from 10 to pre-ACA level of 7.5 percent
Medicare surtax	Imposes a 0.9 percent additional Medicare tax to certain types of income that exceed a threshold amount based on filing status	<ul style="list-style-type: none"> • Repeal effective for 2023 • Includes rule reducing self-employment taxes by 0.9 percent on income in excess of the statutory limits 	<ul style="list-style-type: none"> • Repeal effective for 2023 • Includes rule reducing self-employment taxes by 0.9 percent on income in excess of the statutory limits

	Patient Protection and Affordable Care Act	American Health Care Act of 2017 (H.R. 1628)	Better Care Reconciliation Act of 2017 (Senate Amendment to HR 1628)
Net investment income tax	Imposes a 3.8 percent tax on individuals, estates and trusts that have certain investment income above certain threshold amounts	Repeal effective for 2017	Repeal effective for 2017
Statutory limit on FSA contributions	Imposed a statutory limit on contributions, indexed for inflation	Repeal effective for 2017	Repeal effective for 2018
Tax exclusion for employer-provided health insurance	Unchanged from prior to enactment; employer-provided health insurance is excludable from the employees' incomes	Remains in effect	Remains in effect
Expanded limits for HSAs	Retained pre-ACA limits on contributions, adjusted for inflation. Also, the additional tax on non-HSA qualified distributions from an HSA arrangement was increased to 20 percent (from 10 percent).	Yes (\$6,550 for self-only and \$13,100 for family coverage) Takes effect for 2018 Also, the additional tax on non-HSA qualified distributions from an HSA arrangement would be reduced to pre-ACA level of 10 percent (from the current 20 percent).	Yes (\$6,550 for self-only and \$13,100 for family coverage) Takes effect for 2018 Also, the additional tax on non-HSA qualified distributions from an HSA arrangement would be reduced to pre-ACA level of 10 percent (from the current 20 percent).
Healthcare Industry Tax Provisions			
Section 501(r)	Adds new requirements (including financial assistance policies, billing and collection practices, and	Remains in effect	Remains in effect

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	community health needs assessments) that charitable hospitals must comply with to maintain their tax-exempt status		
Branded prescription drug fee	Imposes an allocated annual fee on certain manufacturers and importers of brand name pharmaceuticals based on market share	Repeal effective for 2017	Repeal effective for 2018
Medical device excise tax	Imposes a 2.3 percent excise tax on the sale of certain medical devices by the manufacturer or importer of the device	Repeal effective for 2017	Repeal effective for 2017
Health insurer fee	Imposes an allocated annual fee on certain health insurance providers based on market share	Repeal effective for 2017	Repeal effective for 2017
Blue Cross Blue Shield medical loss ratio requirement	If a Blue Cross Blue Shield organization fails to satisfy its medical loss ratio requirements, it loses certain tax benefits	Remains in effect	Remains in effect
Section 162(m)(6)	Limits the compensation deduction available to certain health insurers	Repeal effective for 2017	Repeal effective for 2017
Information reporting by insurers (section 6055)	Requires health insurers to report coverage information to IRS and to individuals covered	Remains in effect, but new reporting is required for off-exchange coverage for purposes of the premium tax credit	Remains in effect

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Patient-Centered Outcomes Reinsurance Trust Fund Fee	Imposes a fee on issuers of specified health insurance policies and plan sponsors of self-insured health plans	Remains in effect	Remains in effect
Section 501(c)(29) CO-OPs	Exempts from taxation the recipients of repayable grants or loans under the HHS CO-OP program	Remains in effect	Remains in effect
Modified tax treatment of retiree drug subsidies to plan sponsors	Limits the ability of plan sponsors to deduct costs for qualified retiree drug plans that are reimbursed through subsidy payments	Repeal effective for 2017	Repeal effective for 2017
<i>Other Tax Provisions</i>			
Indoor tanning tax	Imposes a 10 percent federal excise tax on providers for indoor tanning services	Repeal effective for services performed after June 30, 2017	Repeal effective for services performed after September 30, 2017
Codification of the economic substance doctrine	Codifies the common law doctrine that certain tax benefits with respect to a transaction are disallowed if the transaction does not have economic substance or lacks a business purpose	Remains in effect	Remains in effect