



## HEALTH REFORM ADVISORY PRACTICE

### Weekly Legislative Update



Feb. 17, 2017

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## **GOP Leaders Inching Closer to Releasing ACA Repeal and Replace Legislation**

Yesterday, GOP leaders in the House of Representatives unveiled a [19-page proposal](#) outlining their principles for Affordable Care Act (ACA) repeal-and-replace. Published reports indicate the leaders presented the outline to GOP House members in a contentious meeting that ended without broad consensus on the best way forward. In all likelihood, we will have to wait at least another week before seeing the actual draft legislation on which the proposal is apparently based.

***Lockton comment:*** The proposal comes as House Republicans are about to face their constituents during a Congressional recess next week. Last week some constituent town halls featuring GOP lawmakers turned heated over healthcare policy – even to the point of needing police escorts for the lawmakers. Release of this proposal should provide some cover for Republicans who will be back in their districts in the week ahead, as it offers some reassurance for a smooth transition from the ACA.

The proposal, which appears to be heavily influenced by Speaker Paul Ryan's [A Better Way](#) outline released last June, promises to effectively repeal the ACA's individual and employer mandates by zeroing out the penalties for those who fail to comply.

Advance tax credits remain available to purchase individual coverage, but the new tax credit is significantly different from the ACA tax credit. Some key differences include:

	<b>GOP Proposal</b>	<b>ACA</b>
<b>Universal availability</b>	Yes – available regardless of income	No – Availability is based on income
<b>Available if offered employer coverage</b>	No – It’s unclear what counts as an offer. There is no discussion in the policy outline of a minimum value or affordability requirement.	Maybe – Credits can be available if the coverage offered is not minimum value or not affordable.
<b>Age adjusted</b>	Yes	No
<b>Refundable</b>	Yes – Taxpayer can keep any credit that exceeds the cost of coverage.	No
<b>Amount</b>	Not described	Varies by income
<b>Available for COBRA coverage</b>	Yes	No
<b>Available in advance</b>	Yes	Yes

**Lockton comment:** Tying the availability of credits to the absence of an employment-based offer makes sense if one aim of the GOP proposal is to avoid disrupting the group health insurance market. Employer plans could experience adverse selection problems if employees are allowed to choose between the plan and refundable credits with which to purchase individual policies. That is, the young and healthy might be tempted to flee the group plan and use the refundable credit to purchase cheap catastrophic coverage and pocket any excess credits. That would leave the greater health risks (i.e., more expensive) in the employer plan, negatively impacting the plan’s risk profile.

Absent from the proposal is a direct call to tax workers and retirees (and maybe employers) on the value of their employer-provided health coverage. However, hints in the proposal and statements in published reports suggest that such a tax increase is almost certain to find its way into the actual proposed legislation.

**Lockton comment:** See our recent [blog post](#) for a discussion of how such a tax might undermine employer-sponsored plans and how Congress might use repeal of the Cadillac tax as leverage to impose this new cap on workers and retirees.

Expansion of health savings accounts (HSAs) has been a staple of prior Republican proposals, and the outline unveiled yesterday is no different. Specifically, the proposal calls for increasing how much individuals and families can contribute to an HSA, allowing HSA money to pay for over-the-counter healthcare items, permitting spouses to make additional contributions, and allowing HSA money to be used to pay for healthcare expenses incurred prior to the account being established.

The proposal closes with a discussion of “state innovation grants,” which would give states more flexibility to lower the cost of coverage in their states. More state control might make sense on paper, but the details could be highly problematic for employers with employees in multiple states

### **Moving from a Proposal to Legislation**

GOP leaders, in the House particularly, appear to have significant work ahead of them to develop consensus around specific legislative language for repeal-and-replace. Earlier in the week, the Freedom Caucus, a group of about 40 conservative GOP House members, suggested it might oppose any bill that did not go far enough in repealing the ACA, while other House members expressed concern over any replacement bill that would provide tax credits.

***Lockton comment:*** We don’t expect to see serious legislative action until there is clear consensus among Republicans. The GOP wants very much to avoid losing on an ACA repeal-and-replace vote on the House or Senate floor.

Despite the apparent lack of unity among Republicans on the issue, GOP leaders (including President Donald Trump) maintain that ACA repeal and maybe some replacement will happen in the next couple of months.

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