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## **Making Health Care Reform Work for You**

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# Affordable Care Act (ACA) Framework



## ACA Framework

- ACA was signed into law on March 23, 2010.
- Primary goal was to expand coverage.
- Required health insurers to provide a minimum level of benefits and consumer protections.
- Established health insurance marketplaces.





## ACA Framework

- Approximately 28 million Americans are uninsured, down from 41.3 million in 2013.
- Reduction in uninsured result of the ACA, including expansion of Medicaid.



## ACA Framework

- ACA required states to expand their Medicaid programs to cover all nonelderly individuals with incomes up to 138% of the federal poverty level.
  - Federal poverty level for a single individual in 2017 is \$12,060.
- In June 2012, the U.S. Supreme Court found the Medicaid expansion to be unconstitutional.



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## ACA Framework

- ACA's individual mandate requires most U.S. citizens and legal residents to obtain coverage.
- Uninsured may have to pay a penalty unless they qualify for an exemption.



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## ACA Framework

- Certain individuals qualify for premium tax credits for health insurance purchased through the marketplace.
- In June 2015, the U.S. Supreme Court affirmed legality of premium tax credits.



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## ACA Framework

- Law requires large employers with 50 or more full-time equivalent employees to offer health coverage that meets affordability and minimum value requirements.
  - Sledgehammer Penalty
  - Mallet Penalty



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## Executive Order



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## Executive Order

- On January 20, 2017, President Trump issued an executive order regarding the ACA.
- Order instructed all federal governmental agencies “to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement” of the ACA.



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## Executive Order

- Executive order cannot be used to repeal any law or regulation.
- Former President Obama's expansive use of administrative powers will make it easier for President Trump to make changes.



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### Treasury Notes

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#### Continuing to Implement the ACA in a Careful, Thoughtful Manner

By: **Mark J. Mazur** 7/2/2013

Over the past several months, the Administration has been engaging in a dialogue with businesses - many of which already provide health coverage for their workers - about the new employer and insurer reporting requirements under the Affordable Care Act (ACA). We have heard concerns about the complexity of the requirements and the need for more time to implement them effectively. We recognize that the vast majority of businesses that will need to do this reporting already provide health insurance to their workers, and we want to make sure it is easy for others to do so. We have listened to your feedback. And we are taking action.

### SOCIAL HUB

#### Treasury Notes Blog

- A Comparison between the College Scorecard and Mobility Report Cards  
*Thursday, January 19, 2017*
- In 2015, the Department of Education launched the College Scorecard, a vast database of student outcomes at specific c...
- The Economic Security of American Households  
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#### TREASURY FACTS

- The Treasury is the oldest departmental building in Washington and at the time of its completion, it was one of the largest office

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## Executive Order

- Modification of existing regulations will require advance notice and a meaningful opportunity to comment.
- A final regulation must be published at least 30 days before its effective date.



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## Executive Order

- Executive order also may signal that Trump administration will change litigation posture on existing and future litigation involving the ACA.
  - Administration likely will settle quickly any lawsuits related to contraceptive mandate.



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# Leading ACA Replacement Proposals



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## ACA Replacement Proposals

- At this time, there are three primary proposals to replace the ACA:
  - Republicans in House of Representatives
  - Senators Susan Collins and Bill Cassidy
  - Senator Rand Paul



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## ACA Replacement Proposals

- Three primary proposals emphasize market-based solutions in lieu of federal government intervention.
- Proposals provide some protections for individuals with pre-existing conditions.



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## American Health Care Act



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## American Health Care Act

- Introduced by House Republican leadership on March 6, 2017. AHCA withdrawn prior to vote on March 24, 2017.
- However, amendments were subsequently made to the bill on April 6, 2017.
- Media refers to AHCA as “Zombie Trumpcare.”



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## American Health Care Act

- AHCA eliminates various tax penalties.
- Eliminates penalty on individuals who do not purchase health insurance coverage effective January 1, 2016.
- Eliminates tax on health insurers.
- Eliminates ACA taxes on high-income individuals.



## American Health Care Act

- Eliminates tax on sale of medical devices.
- Eliminates tax on tanning beds.
- Repeals annual limit on contributions to health flexible spending accounts.



## American Health Care Act

- Reduces the amount of the ACA tax penalty for applicable large employers to \$0, retroactive to January 1, 2016.
  - Accordingly, no Sledgehammer or Mallet penalties for 2016 calendar year (filed in 2017).
  - Unclear whether penalty will be imposed or enforced for 2015 calendar year (filed in 2016).
  - Form 1094 and 1095 filing requirements still remain in place under AHCA even though Sledgehammer and Mallet penalties are \$0.



## American Health Care Act

- The Cadillac tax makes a curtain call.
- Cadillac tax is a 40% nondeductible excise tax on high-cost employer-sponsored health plans.
- Under AHCA, Cadillac tax would take effect on January 1, 2025 instead of being repealed.



## American Health Care Act

- Starting in 2020, AHCA would provide an age-adjusted flat tax credit for individuals:
  - \$2,000 for individuals up to age 29;
  - \$2,500 for individuals between 30 and 39;
  - \$3,000 for individuals between 40 and 49;
  - \$3,500 for individuals between 50 and 59;
  - \$4,000 for individuals age 60 and older.
- Families can claim a maximum aggregate tax credit of \$14,000 per year.



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## American Health Care Act

- To receive the tax credit, an individual cannot be eligible for coverage through an employer-based plan, Medicare or Medicaid.
- Eligibility for tax credit starts to phase out for individuals who earn \$75,000 or more.
- Tax credit can be used for any individual health insurance policies (not just those purchased on ACA marketplace) or COBRA coverage.



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## American Health Care Act

- Retains private market rules, including guarantee issue and prohibition on pre-existing condition exclusions.
- However, individuals who are purchasing non-group coverage will be assessed a 30% late enrollment penalty if they have not maintained continuous creditable coverage.
- Private health plans will be required to provide certificates of creditable coverage again.



## American Health Care Act

- AHCA repeals cost-sharing subsidies that are currently provided through the ACA.
  - ACA cost-sharing subsidies reduce deductibles, copayments and out-of-pocket limits for those closest to the federal poverty line.
  - Recent controversy about whether Trump administration would continue to fund cost-sharing subsidies, estimated at \$7 billion annually.



## American Health Care Act

- Group health plans must continue to provide coverage to children up to age 26.
- AHCA continues to prohibit lifetime and annual dollar limits for group health plans.



## American Health Care Act

- Group health plans must continue to cover preventive benefits, including contraception and cancer screenings, with no cost sharing.
- Out-of-network emergency services must still be paid at in-network level.



## American Health Care Act

- Increases health savings account (“HSA”) contribution limits to \$6,550 for self-only coverage and \$13,100 for family coverage.
- Allows both spouses to match catch-up contributions (up to \$1,000 each) to same HSA.
- Allows HSA funds to be used for over-the-counter medications and expenses and medical expenses incurred in the 60 days prior to HSA establishment.



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## American Health Care Act

- Medicaid changes:
  - Limits the enhanced federal matching funds for those states that expanded Medicaid to 133% of federal poverty level as of March 1, 2017.
  - Terminates enhanced federal matching funds as of January 1, 2020 (except for grandfathered enrollees who were enrolled in Medicaid as of December 31, 2019 and who do not have a break in eligibility of more than one month).



## American Health Care Act

- Medicaid changes:
  - Provides \$10 billion over 5 years to states that elected not to expand Medicaid to provide services to low income individuals.
  - Allows states to require work as a condition of eligibility for Medicaid as of October 1, 2017.



## American Health Care Act

- Medicaid changes:
  - Requires eligibility redeterminations every six months for Medicaid enrollees between 100% – 133% of the federal poverty level.
  - Increases civil monetary penalties for individuals who intentionally claim funds when not eligible.



## American Health Care Act

- Establishes a new “Federal Invisible Risk Sharing Program” to offset claims costs for individuals with serious health conditions.
- Funding set at \$15 billion during first 9 years of program.
- FIRSP is designed to minimize insurer losses associated with covering high cost claimants.



# Patient Freedom Act



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# Patient Freedom Act

- Introduced by Senators Bill Cassidy (R, LA) and Susan Collins (R, ME) on January 23, 2017.
- Retains prohibition on lifetime and annual limits, coverage for preventive services, coverage for mental health and substance abuse disorders, and dependent age 26 requirements in all states.
- Retains Cadillac tax, health insurer tax, medical device tax, and taxes on high earners.



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## Patient Freedom Act

- Allows each state to decide whether to continue implementation of Title I of the ACA, including employer and individual mandates, private market rules and premium and cost sharing subsidies.
- States that continue ACA will be reimbursed for 95% of subsidies provided for marketplace coverage.



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## Patient Freedom Act

- States that decide to discontinue the ACA and implement alternative subsidies and market rules are known as “Patient-Grant Electing States.”
- Individual and employer mandates do not apply in Patient-Grant Electing States.
- Federal government will make monthly deposits to “Roth HSAs” for eligible individuals in Patient-Grant Electing States. Cannot be eligible for Medicare or Medicaid to receive Roth HSA contribution.



## Patient Freedom Act

- In Patient-Grant Electing States, individuals may obtain non-group coverage during first open enrollment period with no underwriting.
- Thereafter, individuals may obtain non-group coverage without underwriting only if they have maintained continuous coverage (no break in coverage of at least 63 days).
  - Insurers are permitted to deny coverage or impose pre-existing condition exclusions for those without continuous coverage.



## Patient Freedom Act

- All states will still have the opportunity to expand Medicaid and receive federal funding.
- In lieu of electing Medicaid expansion, Patient-Grant Electing States can instruct federal government to make additional Roth HSA contributions for eligible individuals.



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# Obamacare Replacement Act



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# Obamacare Replacement Act

- Introduced by Senator Rand Paul (R, KY) on January 24, 2017.
- Eliminates guarantee issue, prohibition on pre-existing condition exclusions, lifetime and annual limits and most other private market reforms implemented by the ACA.
- Repeals individual and employer mandates.



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## Obamacare Replacement Act

- Continues the ACA marketplaces, subject to certain modifications.
- Retains ACA premium and cost-sharing subsidies for policies purchased through the marketplace by eligible individuals.
- Retains Cadillac tax, health insurer tax, medical device tax, and taxes on high earners.



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## Obamacare Replacement Act

- Allows all taxpayers to exclude health insurance premiums from taxable income, not just those who purchase coverage through their employers.
- Otherwise stated, individuals who purchase coverage on the individual market will be entitled to deduct premiums paid.



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## Obamacare Replacement Act

- Addresses pre-existing conditions as follows:
  - Provides a two-year open-enrollment period for individuals with pre-existing conditions to obtain coverage.
  - Health plans may not impose waiting periods on an individual with a pre-existing condition if s/he has continuous coverage (no break in coverage of 63 days or more).



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## Obamacare Replacement Act

- Significantly expands the use of HSAs:
  - Taxpayers will receive a tax credit of up to \$5,000 for HSA contributions (\$10,000 for joint returns).
  - Maximum contribution limit for HSAs will be lifted.
  - No requirement that an individual participate in a high deductible health plan in order to participate in a HSA.
  - Allows HSA funds to be used to pay premiums.



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## Obamacare Replacement Act

- Establishes Independent Health Pools (IHPs) to allow individuals to form pools to purchase health insurance.
- IHPs may be established by non-profit organizations (*e.g.*, churches, trade groups, entities formed strictly for establishing IHPs) that do not condition membership on any health status-related factor.



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## Obamacare Replacement Act

- Allows insurers licensed to sell policies in one state to offer policies in all states.
- Exempts these insurers from any secondary state laws that prohibit or regulate their operations.
- Primary state has sole jurisdiction to enforce primary state's covered laws in primary state and any secondary state.



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## Obamacare Replacement Act

- Expands opportunities for Association Health Plans (AHPs):
  - Amends ERISA to define AHPs to be treated as a single large group employer health plan.
  - Imposes federal solvency standards.
  - AHPs required to obtain actuarial certification on a regular basis.
  - AHPs must maintain surplus reserves of at least \$500,000.



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## The Path Forward for Indiana Employers



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## The Path Forward

- Ignore the noise.
- Continue to follow the requirements of the ACA until further notice.
- Do not expect the federal government to solve the ongoing problems with rising health care costs.
  - Explore self-funding, transparency tools, on-site medical clinics, wellness initiatives and disease management programs to reduce costs.



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