

Benefits BULLETIN

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Health Care Reform: Timeline of Events

In March 2017, the House Ways and Means Committee and the House Energy and Commerce Committee each released budget reconciliation bills. These pieces of legislation are part of the House Republican's **American Health Care Act** (AHCA), the legislation designed to repeal and replace the Affordable Care Act (ACA). This article details the act's milestones thus far.

- **March 24**—The House failed to secure enough votes to pass, so the AHCA was pulled from the floor before a vote was held.
- **April 24**—The MacArthur Amendment was introduced. This amendment would allow states to apply for a waiver that would let them opt out of many ACA provisions. Accepting the waiver could allow insurers to raise premiums on individuals with pre-existing conditions, charge more depending on age and not cover all of the ACA's essential health benefits.

- **May 3**—The Upton Amendment was introduced. This amendment would establish an \$8 billion fund for states that applied for waivers, to help with the higher premiums that would come as a result.
- **May 4**—The AHCA passed the House in a party-line vote, with 217 for and 213 against. Soon after, the Senate said it would begin drafting its own version of the health care legislation.
- **June 22**—Senate Republicans unveiled their own version of the ACA repeal bill, called the **Better Care Reconciliation Act** (BCRA). It is similar to the AHCA, but contains some differences.

What to Expect

The BCRA would need a simple majority vote in the Senate to pass. However, amendments may be made before a Senate vote is taken.

Senate Republicans have indicated that they would like to take a vote prior to the Senate's July 4 recess. If the BCRA passes the Senate, it would need to go back to the House for approval before being signed into law by President Donald Trump.

For more information on health care reform, contact Evolution of Benefits today.

Possible Change to Overtime Rules

On May 2, 2017, the House of Representatives passed the Working Families Flexibility Act (also known as H.R. 1180). If approved, H.R. 1180 would authorize private employers to offer compensatory time off instead of overtime pay for nonexempt employees who work more than 40 hours per week. H.R. 1180 still needs approval from the Senate and the executive branch before it becomes law.

Compensatory time off is already a common practice for many federal and state employers, but it is not currently allowed by the Fair Labor Standards Act (FLSA) for private employers. H.R. 1180 would amend the FLSA to allow this practice, if certain conditions are met.

H.R. 1180 is proposing that compensatory time off be calculated at the rate of 1.5 hours of compensatory time off for every hour of overtime work. As it stands, H.R. 1180 would expire within five years of its enactment. Additionally, the bill would limit the amount of compensatory time off to 160 hours for eligible employees.

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Changes to Overtime

H.R. 1180 would only apply to private sector employers, meaning that if it were to be adopted, it would not affect current compensatory time off requirements for public sector employees.

Under H.R. 1180, both employers and employees would have to agree to compensatory time off instead of overtime wages. Employers would not be allowed to directly or indirectly intimidate, threaten or coerce (or attempt to intimidate, threaten or coerce) employees to agree to receive or use any accrued compensatory time off.

Under H.R. 1180, employees would be eligible to receive compensatory time off after 1,000 hours of continuous employment during the previous 12 months.

In addition, H.R. 1180 would require employers to allow employees to use any earned compensatory time off within a reasonable period, as long as this does not unduly disrupt the employer's operations.

Employers would be required to provide monetary compensation to their employees for any compensatory time off that is not used by the end of the calendar year. However, employers would be able to determine a different 12-month period as long as it remains consistent.

Because H.R. 1180 is not yet law, no action steps are currently required of any employers. We will continue to monitor the progress of this bill through the legislative process and update you as more information becomes available. In the meantime, contact Evolution of Benefits for more information regarding the FLSA and overtime wage payment requirements.

ACA Affordability Percentages Decreasing in 2018

On May 5, 2017, the Internal Revenue Service (IRS) issued Revenue Procedure 2017-36 to index the contribution percentages in 2018 for purposes of determining affordability of an employer's plan under the Affordable Care Act (ACA).

For plan years beginning in 2018, employer-sponsored coverage will be considered affordable if the employee's required contribution for self-only coverage complies with the following:

- Does not exceed **9.56 percent** of the employee's household income for the year, for purposes of both the pay or play rules and premium tax credit eligibility
- Does not exceed **8.05 percent** of the employee's household income for the year, for purposes of an individual mandate exemption (adjusted under separate guidance)

This is the first time since these rules were implemented that the affordability contribution percentages have been reduced. As a result, some employers may need to reduce their employee contributions starting Jan. 1, 2018, to meet the adjusted percentage.

Employer Shared Responsibility Rules

The affordability of health coverage is a key point in determining whether an applicable large employer will be subject to a penalty. Employers may use an affordability safe harbor to measure affordability of their coverage. The three safe harbors measure affordability based on Form W-2 wages from that employer, the employee's rate of pay or the federal poverty line for a single individual.

The affordability test applies only to the portion of the annual premiums for self-only coverage, and does not include any additional cost for family coverage.

Individual Mandate Exemption

The ACA's individual mandate requires most individuals to obtain acceptable health coverage for themselves and their family members or pay a penalty. However, individuals who lack access to affordable minimum essential coverage are exempt from the individual mandate.

This affordability contribution percentage was adjusted to **8.05 percent** for plan years beginning in 2015, **8.13 percent** for plan years beginning in 2016, **8.16 percent** for plan years beginning in 2017 and **8.05 percent** for plan years beginning in 2018.

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SHOP Exchanges to End Online Enrollment

On May 15, 2017, the Centers for Medicare and Medicaid Services (CMS) announced significant changes to the Small Business Health Options Program (SHOP) Exchanges under the Affordable Care Act (ACA). Under these changes:

- Employers would be able to obtain an eligibility determination for SHOP participation through www.HealthCare.gov.
- Employers would enroll directly with an insurance company offering SHOP plans, or with the assistance of an agent or broker registered with the Exchange, instead of enrolling online at www.HealthCare.gov.

CMS plans to issue regulations implementing these changes, effective Jan. 1, 2018.

These changes apply in federally facilitated SHOPs (FF-SHOPs) and state-based SHOPs using the federal platform. State-based SHOPs could continue to provide online enrollment or adopt the federal direct enrollment approach.

According to CMS, these changes are being made to promote insurance company and agent or broker participation and make it easier for small employers to offer SHOP plans to their employees, while maintaining access to the Small Business Health Care Tax Credit.

CMS noted that insurance company and agent or broker participation, as well as overall enrollment in the FF-SHOP Exchanges, has been lower than anticipated and, at its current pace, is unlikely to reach expectations.

The information contained in this newsletter is not intended as legal or medical advice. Please consult a professional for more information.

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