

# An Update on ACA Repeal and Replace Efforts and the Cadillac Tax

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## Agenda


- The latest news
- How did we get here?
- What's been proposed?
- What could happen next?
- What this means for employers

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# The Latest News

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## In the Senate

- Not enough votes to pass Senate bill
- Proceeding with repeal-only
- Reviving and negotiating Senate bill

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## In the Senate

Passed motion to proceed

Failed to pass BCRA

Failed to pass repeal-only

Failed to pass “skinny repeal”

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## Why?

“What we need to do in the Senate is figure out what the lowest common denominator is — what gets us to 50 votes so that we can move forward on a health care reform legislation.”

HHS Secretary Tom Price

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## Why is this relevant?

Possible new attempts at health care reform

Potential impacts of tax reform

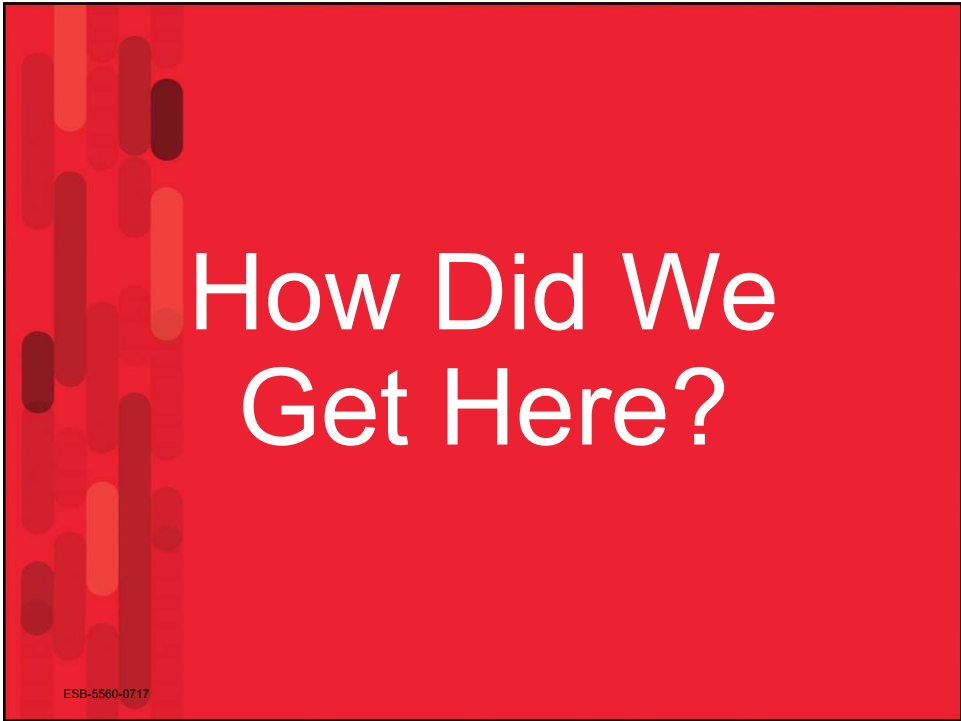
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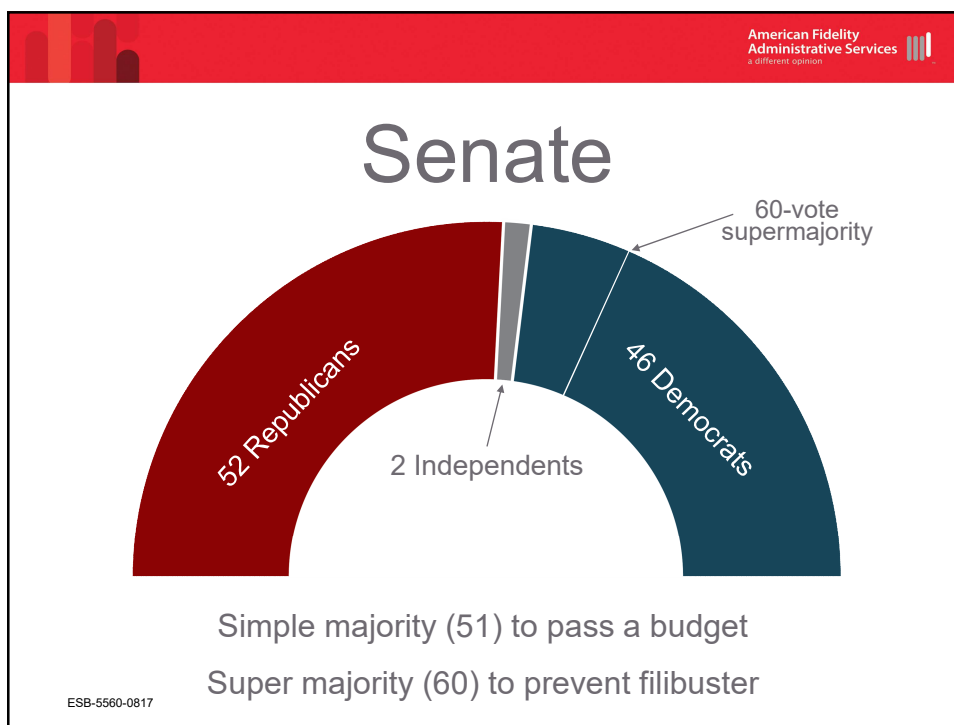
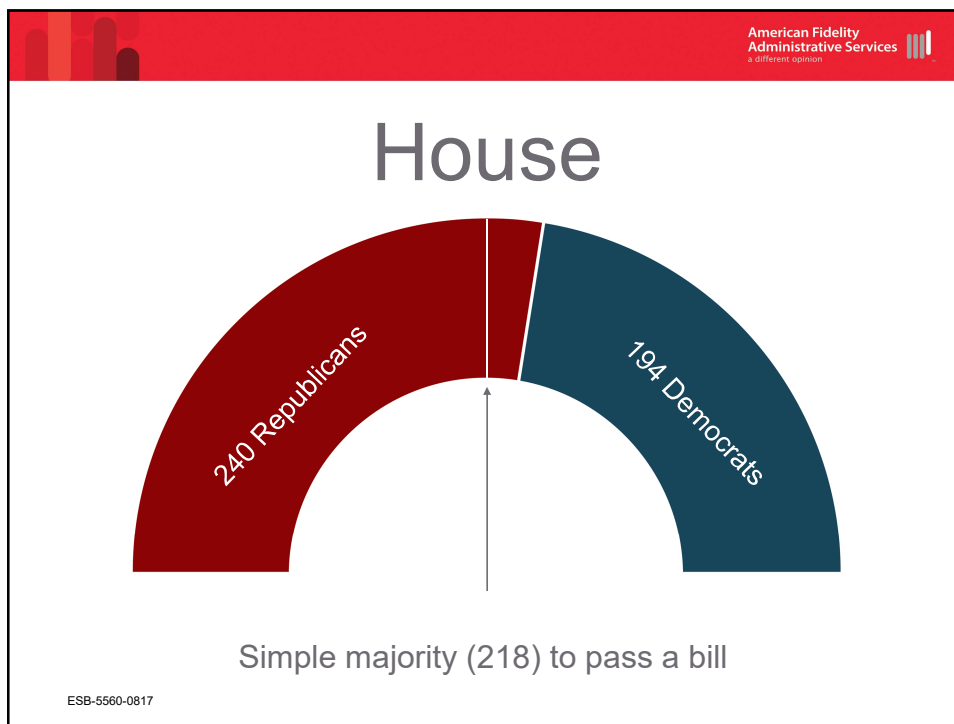
## ACA Remains Law

House passage was only the first step in the effort to repeal and replace

Employers must remain compliant with current law for the time being

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# Repeal Options

Bipartisan repeal

Budget reconciliation

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# A Limitation

Budget measures: items that  
address taxing or spending

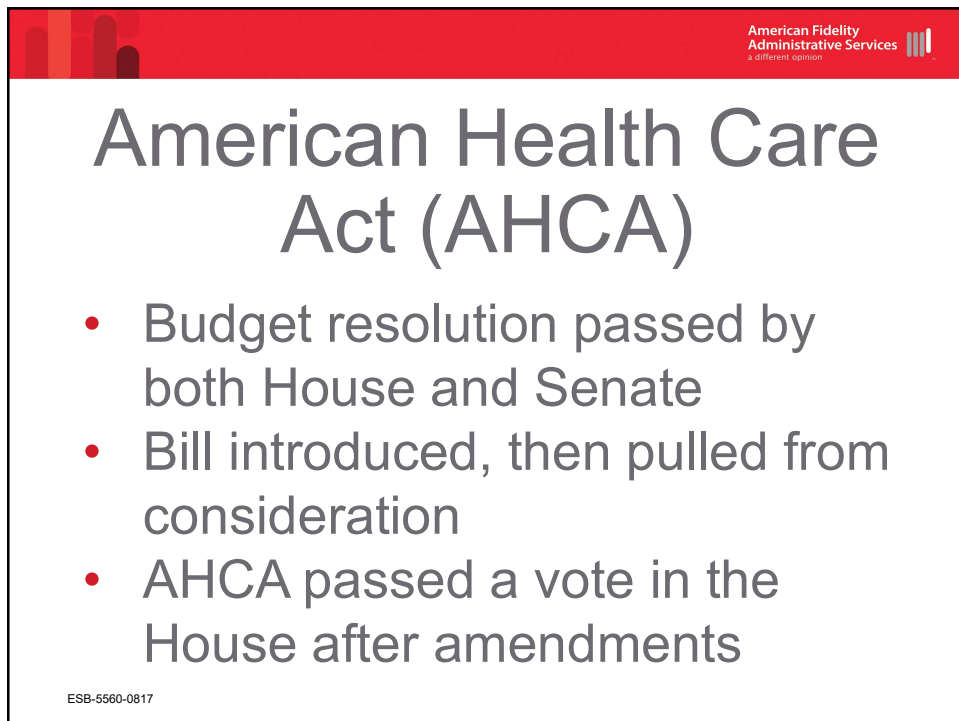
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# The House

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## American Health Care Act (AHCA)

- Budget resolution passed by both House and Senate
- Bill introduced, then pulled from consideration
- AHCA passed a vote in the House after amendments

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# Meadows-MacArthur Amendment

- Set higher ratios for premiums charged to older enrollees;
- States may specify their own list of services that are required to be covered;
- In some states, would allow increased premiums based on health status; resulting in potentially higher premiums for sicker people

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# Upton Amendment

- \$8 billion over five years to help cover insurance costs for those with pre-existing conditions
- Helped develop support among moderate Republicans

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# Impact on Coverage

- First House bill: 24 million more uninsured
- Second House bill: 23 million more uninsured
- Senate bill: 22 million more uninsured

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# The Senate

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## Senate Approach

- Formed working group to write a health care bill
- Small group represents diverse views across GOP


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## Better Care Reconciliation Act of 2017 (BCRA)

- Similar to AHCA
- Cruz Amendment
- Byrd Rule

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# Mandates

Would immediately repeal individual and employer mandate penalties

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# OTC Reimbursement

Would repeal requirement to have a prescription to receive FSA/HSA reimbursement of over-the-counter items

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# Health FSA Limits

Would repeal contribution limits so employers may return to setting their own

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# Other Tax Repeals

- Health insurers
- Prescription drugs
- Medical devices
- And more

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# Cost-Sharing Subsidies

Would repeal subsidies to assist with out-of-pocket expenses under Public Exchange (Marketplace) coverage

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# Medicaid Expansion

Would phase out federal funding for ACA Medicaid expansion

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# ACA provisions that would stay

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# Cadillac Tax

Delay (but not repeal) the Excise Tax on High Cost Plans (Cadillac Tax) from 2020 to 2026

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## Understanding the Excise Tax (Cadillac Tax)

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## Excise Tax on High Cost Plans

- Sometimes called the “Cadillac Tax”
- Now effective 2020: 40% excise tax
- Imposed on aggregate value of health coverage that exceeds threshold amounts
- Important caveat – still waiting on IRS regulations
- Impact of Republican repeal-and-replace efforts unknown

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## PATH Act Creates Delay

- Excise tax on high cost plans delayed until 2020
- Tax becomes deductible for employers
- Threshold amounts will continue to be indexed as before the delay and therefore the 2020 threshold amounts not yet known
- Thresholds for certain plans may be increased due to age and gender adjustments

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## Excise Tax on High Cost Plans

- General thresholds applicable in 2018 (will be indexed for 2020):
  - Individual coverage: \$10,200
  - Family coverage: \$27,500
  - High Risk Professionals or retired individuals age 55 and older and not eligible for Medicare
    - Individual Coverage: \$11,850
    - Family Coverage: \$30,950

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# Who Does What?

- Following entities pay the tax:
  - Insured plans – insurance company
    - Expected to pass expense to the employer
  - Self-funded plans – plan administrator
    - Unclear who this is
  - HSA - employer
- Employers must:
  - Calculate value of coverage on a per employee/ per month basis
  - Notify entity required to pay and IRS

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# Included in Applicable Coverage

- Major medical and prescription drug coverage
- Health FSAs
- HSAs (employer contributions, plus employee pre-tax contributions)
- HRAs
- Pre-tax specified disease and hospital indemnity insurance
- Gap insurance
- On-site medical clinics (unless provide only de minimis care)
- Retiree coverage

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## Excluded from Applicable Coverage

- Employee after-tax contributions to HSAs and Archer MSAs
- Stand alone dental and vision insurance
- Accident insurance
- Disability insurance
- After-tax specified disease and hospital indemnity insurance
- Long-term care insurance
- EAPs qualifying as an excepted benefit

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## Excise Tax on High Cost Plans

- Family limit applies to everyone in a multiemployer plan (e.g., Taft-Hartley plan)
  - Distinction from multiple employer plan
  - Important for the employer to confirm whether the plan qualifies

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## How is Excise Tax Calculated?

- 40% of the “excess benefit” of applicable employer sponsored coverage in excess of the “annual limitation”
- Cost of individual (self-only) coverage = \$15,000
- Self-only limit = \$10,200
- Difference = \$15,000 - \$10,200 = \$4,800
- Tax = 40% of \$4,800 = \$1,920

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## Planning Ahead - Impact of Delay

- Delay provides some time for preparation
- Analyze current employer-sponsored coverage that is offered and number of enrollees in each plan
- Actuaries estimate that 50% of medical plans will exceed the 2018 threshold amounts
- Explore strategies

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## When to Start?

- For non-calendar year plans, adjustments will likely need to be in place for the plan year beginning in 2019
  - Tax is calculated each month beginning Jan. 2020
- Allow time for collective bargaining discussions
- Allow for time to adjust offerings and educate employees

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## ACA provisions that would stay

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# Employee Exclusion

Would leave untouched the provision that means employees are not taxed on employer-provided health coverage

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# IRS Reporting

Would continue 1094/1095 reporting until 2020, then migrate to W-2 reporting and verification of plan eligibility

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# Market Reforms

Would maintain ACA plan design mandates

- States could define their own essential health benefits
- Exception for lower-premium catastrophic plans

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# Changes to ACA provisions

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# HSA Expansion

Increased contributions

Catch-up by spouse

Establishing the HSA

Reduced excise tax

Use HSA funds to pay premiums

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# Individual Tax Credits

Advanceable, refundable individual tax credit to purchase insurance

Available to income-qualified individuals without access to government or employer coverage

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# Continuous Coverage

30% premium surcharge for 12 months following 63 day lapse in coverage under AHCA

No surcharge in Senate plan; six month waiting period

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# Age-Based Premiums

Permits states to set their own ratios for the amounts insurers can charge older compared to younger individuals

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# Stability Funds

Provided funding for states to pursue various market stabilization activities

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What could  
happen next?

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# Public Exchanges

Will the last insurers withdraw for next year?

Will the administration enact provisions to entice them to stay?

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# Cost Subsidies

Will Republicans continue to contest payments to insurers in the public exchanges?

Will Congress pay the subsidies due to insurers under the ACA?

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# Apply Trump's Executive Order?

Will the agencies repeal burdensome regulations?

Or will they seek to help the ACA fail?

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# Implement Open ACA Provisions?

Will the administration finally implement ACA provisions currently without regulations?

- Nondiscrimination by insured plans
- Quality reporting
- Transparency disclosures

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## Future Legislation?

Health care reform or tax reform?

Repeal only?

Bipartisan legislation or another pass at budget reconciliation?

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## If Not Now, When?

Best chance for a President to promote their agenda: 1<sup>st</sup> 100 days

Second best chance: 1<sup>st</sup> 15 months

Becomes much more difficult after that as Congress starts running for reelection

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# Who gets the blame if the system fails?

Republicans will point to ACA as  
Democrat-established

Democrats will point to Republican  
failure to replace it with better

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# What This Means for Employers

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# Public Exchanges and Medicaid

Most of the tension with the AHCA is related to the public exchanges and Medicaid

Such parts of the ACA have little impact on employers

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# Connection to Employer Mandate

Employer mandate penalties are not triggered unless a full-time employee enrolls in public exchange coverage and qualifies for a tax credit

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## Continue ACA Compliance Efforts

The ACA remains the law so  
compliance needs to continue

Key provisions:

- Employer mandate
- 1094/1095 reporting

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## Support for Employer Coverage

As a general rule, Republicans are  
very supportive of employers  
providing coverage to employees

Unclear how that will play out in  
enforcement efforts

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# Cost Management

- Consumer driven plans with HSAs or HRAs
- Value based benefit design for members with specific conditions or disease states (e.g. diabetes)
- Wellness programs
- Health promotion
- Telemedicine

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# Cost Management


- Increased cost-sharing through higher deductibles
- Narrow network of providers
- Specialty drug management
  - Prior authorization
  - Step therapy
  - Limited networks
  - Preferred treatment within disease categories
- Provider reimbursement changes (ACOs, bundled payments, etc.)
- Price and quality transparency tools

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# Final Thoughts

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## More Questions than Answers

A lot of this is speculative  
Unclear exactly what will happen next

- Often hard to predict because Trump presidency has not been following the normal rules

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# What We Do Know

ACA remains the law

Repealing it is not as easy as it first appeared

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