

AFFORDABLE CARE ACT: STATUS CHART – Health Plans



July 2017

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As Updated: July 1, 2017

This document is designed to provide a general overview of key mandates of the Affordable Care Act applicable to health insurance and other health plans, and legislative and regulatory developments that may impact these mandates. This chart does not address the status of proposed changes to Medicare and Medicaid or other aspects of the Affordable Care Act.

References to AHCA refer to the American Health Care Act of 2017 (H.R. 1628) as passed by the U.S. House of Representatives on May 4, 2017.

DISCLAIMER: Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.

ACA – Coverage Mandates

COVERAGE MANDATES			
REQUIREMENT	DESCRIPTION	DEVELOPMENTS	CURRENT STATUS
No Pre-Existing Condition Limitations	Group health plans and health insurers cannot impose pre-existing condition limitations.		In Effect
Waiting Period Limitation	Group health plans and health insurers cannot impose a waiting period for new employees in excess of 90 days.		In Effect
Prohibition on Rescissions	Group health plans and health insurers are prohibited from rescinding coverage for someone covered by the plan or policy except for fraud or intentional misrepresentation of a material fact.		In Effect
Coverage for Adult Children	Group health plans and health insurers must provide coverage of adult children to age 26.		In Effect
Designation of Primary Care Provider	Group health plans and health insurers must permit participants to designate a primary care provider, and designate a pediatrician as a primary care provider for a child.		In Effect
Access to Obstetrical and	A group health plan or health insurance policy		In Effect

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Gynecological Care	cannot impose any preauthorization or referral requirement for obstetrical and gynecological care.		
Emergency Services	A group health plan or health insurance policy that covers emergency services must provide coverage without preauthorization, provide coverage regardless of whether the provider is in or out-of-network and on the same terms as an in-network provider, and must comply with cost sharing limitations.		In Effect
Preventive Care Coverage	Group health plans and health insurers must provide coverage for certain preventive services without imposing any cost-sharing.		In Effect
Coverage for Clinical Trials	Group health plans and health insurers may not deny participation in an approved clinical trial, deny coverage of routine patient costs or discriminate against the individual based on participation in the trial.	.	In Effect
Lifetime and Annual Limits	Group health plans and health insurers may not apply lifetime or annual limits to essential health benefits.	AHCA would permit states to opt-out of the ACA definition of essential health benefits thereby allowing lifetime or annual limits on health benefits no longer defined as "essential."	In Effect

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Limitations on Stand-alone HRAs	HRAs will violate the prohibition on lifetime or annual limits unless they are integrated with another health plan that does comply or meet an exception for retiree HRAs, are frozen HRAs, provide coverage only for excepted benefits, provide coverage only for Medicare or TRICARE premiums, or do not qualify as a group plan.	The 21 st Century Cures Act amended the ACA to permit stand-alone HRAs for small employers (50 or fewer employees).	In Effect - except for new exception for small employers.
FSA Limitations	Limits FSA salary reductions to an indexed amount. (\$2,600 for 2017). FSAs must also be structured as excepted benefits or they will violate the lifetime and annual limit requirements. FSAs are also prohibited from reimbursing over-the-counter drugs.	AHCA would repeal the ACA restrictions on FSAs.	In Effect
Cost Sharing Limits	Non-grandfathered group health plans and health insurers must limit deductibles and co-insurance for essential health benefits to certain out-of-pocket maximums.	AHCA would permit states to opt-out of the ACA definition of essential health benefits.	In Effect
Nondiscrimination Rules for Insured Health Plans	Fully insured health plans would have to comply with same rules prohibiting discrimination in favor of highly compensated employees as apply to self-funded plans.		Delayed effective date until after regulations are issued.

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Health Status Discrimination Prohibition	Health plans and health insurers are prohibited from discriminating against a participant on the basis of health status.	AHCA would permit sale of short-term non-renewable policies that include pre-existing condition limitations and underwriting based on health status.	In Effect
Wellness Plan Requirements	Wellness plans tied to health plans must limit the total incentives available and comply with other requirements to ensure that the plan is voluntary and does not discriminate on the basis of a health factor.	The EEOC issued guidance regarding wellness plans imposing additional requirements.	In Effect
Nondiscrimination in Health Care Providers	Health plans and insurers are prohibited from discriminating against a health care provider acting within the scope of license under state law.		In Effect
Appeals and External Review	Non-grandfathered health plans must comply with appeals procedures and external review requirements.		In Effect
Section 1557 Nondiscrimination Rules	Certain covered entities are prohibited from discrimination or discriminatory designs based on listed protected characteristics. Sex discrimination includes discrimination on the basis of gender identity.	In December 2016 a Texas federal court issued a preliminary injunction prohibiting enforcement of the portion of the regulations on gender identity and termination of pregnancy.	In Effect – except for portion blocked by preliminary injunction.

ACA – Insurance Market Rules

INSURANCE MARKET RULES			
REQUIREMENT	DESCRIPTION	DEVELOPMENTS	CURRENT STATUS
Essential Health Benefits Package	Health insurers must ensure that non-grandfathered individual and small group includes the essential health benefits package.	AHCA would permit states to waive out of essential health benefits package requirements in 2018.	In Effect
Coverage Level Requirements	Non-grandfathered individual and small group health insurance policies must provide a coverage level that meets the definition of bronze, silver, gold or platinum level.	AHCA would repeal standards for health plan actuarial values as of 2020.	In Effect
Guaranteed Availability	Health insurers must make individual and small and large group health insurance policies available on a guaranteed issue basis, with some limited exceptions.	AHCA would permit sale of short-term non-renewable policies that include pre-existing condition limitations and underwriting based on health status.	In Effect
Guaranteed Renewal	Health insurers must allow insureds of individual and group health insurance policies to renew their coverage, with some limited exceptions.	AHCA would permit sale of short-term non-renewable policies that include pre-existing condition limitations and underwriting based on health status.	In Effect

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Open Enrollment/ Special Enrollment	Health plans and health insurers must offer annual open enrollment periods and special enrollment for certain qualifying events.		In Effect
Marketing Requirements	Health insurers are required to market their plans to the general public and not in a way that would encourage enrollment of healthier individuals.		In Effect
Rate Filings	Health insurers must report all rate increases for individual and small group policies to HHS and states. Larger rate increases must be approved before becoming effective.		In Effect
Rating Area Requirements/ Risk Pool	<p>Health insurers may not vary premium rates for individual or small group policies except for differences in:</p> <ul style="list-style-type: none"> • Coverage Category (individual vs. small group) • Rating area • Age • Tobacco use (1.5 to 1 max) 	AHCA would permit late enrollment penalty for individual coverage for those not continuously covered (up to 30% of premium for up to 12 months). It would also increase the age variation to 5:1 unless states adopt different ratios.	In Effect
Catastrophic plans	Health insurers can offer catastrophic plans with lower premiums and lower coverage levels for individuals under 30 or who qualify for a hardship exemption.		In Effect

ACA – Taxes Fees and Subsidies

TAXES FEES AND SUBSIDIES			
REQUIREMENT	DESCRIPTION	DEVELOPMENTS	CURRENT STATUS
Individual Coverage Mandate	Individuals must purchase minimum essential coverage or pay a penalty.	AHCA would eliminate the individual coverage mandate effective January 1, 2016 by reducing the penalty to zero.	In Effect
Employer Shared Responsibility (Pay or Play)	Large employers must provide affordable minimum essential coverage or pay a penalty.	AHCA would eliminate the pay or play penalty as of January 1, 2016.	In Effect
Premium Tax Credit	Eligible individuals can get a tax credit to help them purchase health insurance. Credits are based on income levels. Credits are available only for coverage purchased on the exchange.	AHCA would increase credits for younger adults and reduce them for older adults in 2018-2019. Credits would be available for coverage purchased off the exchange and for catastrophic coverage. It would replace the income based tax credits with flat credits based on age with a phase out at certain income levels as of 2020. No premium tax credits available to plans covering abortion services above those saving the life of the woman or in the case of rape or incest.	In Effect

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Small Business Health Care Tax Credit	Small employers with no more than 25 full-time equivalent employees with annual average annual wages that do not exceed an indexed dollar amount (\$52,400 for 2017), that provide coverage through the SHOP exchange and who meet a minimum contribution requirements can receive a tax credit for up to 2 years.	AHCA would repeal this tax credit as of 2020. Between 2018 and 2020 no credit is available for a health plan that covers elective abortions.	In Effect
Tanning Tax	Indoor tanning facilities must collect a 10% excise tax on services they provide.	AHCA would repeal this tax effective January 1, 2017.	In Effect
Branded Prescription Drug Fee	Excise tax on pharmaceutical companies selling branded prescription drugs based on proportion of share of branded prescription drugs market.	AHCA would repeal this tax effective January 1, 2017.	In Effect
Health Insurance Provider Fee	Health insurers and multiple employer welfare arrangements must pay a fee based on net premiums.	2015 legislation suspended collection of the fee for 2017. AHCA would repeal this tax.	Suspended for 2017, in effect for 2018.
Medical Loss Ratio (MLR)	Health insurers offering individual or small group coverage must meet a ratio of expenses paid for claims and improvement of health care related to the premiums they collect or pay a penalty.		In Effect

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Patient-Centered Outcomes Research Institute Fee (PCORI)	Self-funded health plans and health insurers must pay a fee per covered person to support clinical effectiveness research. (\$2.26 for plan years ending before October 1, 2017)		In Effect. Scheduled to end as of October 1, 2019.
Retiree Drug Subsidies	Reimburses plan sponsors a portion of qualifying covered retirees costs for prescription drugs otherwise covered by Medicare Part D.	The AHCA would reinstate the deduction for expenses allocable to Medicare Part D retiree drug subsidies beginning January 1, 2018.	In Effect
Limit on Deduction for Compensation Paid by Certain Health Insurance Providers	A covered health insurer may not deduct compensation paid to service providers in excess of \$500,000.	AHCA would repeal this limit.	In Effect
Risk Adjustment Program	Program designed to transfer funds from insurers with lower-risk enrollees to insurers with higher-risk enrollees for non-grandfathered individual and small group insurance.		In Effect
Transitional Reinsurance Program	Group health plans and health insurers must make contributions to support payments to non-grandfathered individual health plans that cover high-cost individuals.		Program expired in 2016.

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Tax on High-Cost Health Coverage (Cadillac Tax)	Employers would be subject to a 40% excise tax on the amount by which employer-sponsored health coverage exceeds a threshold amount.	AHCA would delay tax until 2025.	Delayed until 2020
Increase Threshold for Itemized Deduction for Unreimbursed Medical Expenses	Itemized deduction for unreimbursed medical expenses increased from 7.5% to 10% of adjusted gross income. Waived for taxable years ending before Jan 1, 2017 for individuals 65 or older.	AHCA would repeal this change effective in 2018.	In Effect
Medical Device Tax	Excise tax of 2.3% on taxable medical devices.	2015 legislation imposed a moratorium on tax from January 1, 2016 to December 31, 2017. AHCA would repeal this tax.	Not effective until January 1, 2018
Refundable Tax Credit	Eligible individuals purchasing health insurance through state and federal exchanges can receive a refundable tax credit. Credit is for low and moderate income individuals and families.	AHCA would replace health subsidies available through the exchanges with tax credits effective as of 2020.	In Effect
Payroll Tax	Payroll tax of .9% on earnings and 3.8% on net investment income for individuals with individuals exceeding \$200,000 and couples with incomes exceeding \$250,000.	AHCA would repeal this tax effective January 1, 2017.	In Effect

ACA – Reporting and Disclosure Requirements

REPORTING AND DISCLOSURE REQUIREMENTS			
REQUIREMENT	DESCRIPTION	DEVELOPMENTS	CURRENT STATUS
Summary of Benefits and Coverage (SBC)	Group health plans and health insurers must provide a description of benefits and coverage that meets the SBC requirements.		In Effect
W-2 Reporting	Employers must report aggregate cost of employer-sponsored health coverage on Form W-2.		In Effect
Minimum Essential Coverage Reporting	Insurers and self-funded health plans must report minimum essential coverage under Code § 6055 using forms 1094/1095.		In Effect
Reporting on Large Employer Coverage	Applicable large employers must report whether they offer minimum essential coverage under Code § 6056 using forms 1094-C/ 1095-C.		In Effect

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Exchange Notice	Employers must provide information about the Exchanges and consequences for purchasing employer sponsored coverage or a qualified health plan.		In Effect
Notice of Right to Designate Primary Care Provider	Group health plans that require designation of a primary care provider must provide a notice describe the plan's requirements		In Effect
1557 Notice	Certain covered entities must provide notice alerting individuals with limited English proficiency to the availability of language assistance services.		In Effect
MEWA Reporting	Multiple employer welfare arrangements subject to ERISA must report compliance with ACA on form M-1.		In Effect

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<p>Transparency in Coverage and Cost-Sharing Reporting</p>	<p>A Qualified Health Plan must disclose information about the plan to the Exchange, HHS and the state insurance commissioner and make the information public. It must also provide cost-sharing information to participants.</p>		<p>In Effect</p>
<p>Quality of Care Reporting</p>	<p>Non-grandfathered health plans and health insurers are required to provide a report to HHS addressing quality of care.</p>		<p>Requirement delayed pending regulations.</p>
<p>Notice of Grandfathered Status</p>	<p>A grandfathered health plan must provide notice of status in plan materials summarizing benefits.</p>		<p>In Effect</p>
<p>Rescission Notice</p>	<p>A health plan or health insurer must provide advance notice of any coverage rescission permitted by the ACA.</p>		<p>In Effect</p>

ACA – Other Issues

OTHER ISSUES			
REQUIREMENT	DESCRIPTION	DEVELOPMENTS	STATUS
Exchanges	Creation of state and federal online marketplaces for the sale of Qualified Health Plans. Coverage subsidies available only through the Exchanges.	The AHCA would make coverage subsidies available outside the exchanges and for catastrophic plans.	In Effect
Qualified Health Plans (QHPs)	Individual and small group policies that meet the requirements for a Qualified Health Plan can be sold on the Exchanges.		In Effect
Risk Corridors Program	Program designed to protect against inaccurate rate setting for Qualified Health Plans in Exchanges.		Program expired in 2016.
Early Retiree Reinsurance Program (ERRP)	ACA created temporary program to reimburse employment based plans for cost providing health coverage to early retirees.		Program expired as of January 1, 2014.

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HIPAA Electronic Transactions	Expands HIPAA electronic transactions requirements.		In Effect
Prohibition of Employer Retaliation	Employers are prohibited from taking adverse employment action based on exercise of rights under ACA.		In Effect
Cafeteria Plans-Exchange Benefits	Coverage offered through an Exchange is not a qualified benefit under a cafeteria plan except for SHOP coverage.		In Effect
CO-OP Program	Consumer Operated and Oriented Plan Program to encourage creation and provide initial funding for new not-for-profit health insurance companies.	7 remain out of 23 originally created.	In Effect
Health Savings Accounts	Increase penalty for HSA distribution for nonqualified medical expenses from 10% to 20%. HSAs prohibited from reimbursing over-the-counter drugs.	AHCA would raise limits for HSA contributions and reduce penalties for withdrawals for non-qualified expenses. AHCA would also repeal prohibition of reimbursement of over-the-counter drugs.	In Effect