



NationalAssociationofHealthUnderwriters



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NAHU



WASHINGTON ★ **UPDATE**

February 2018



With Mike Embry
NAHU President

WHERE

Are We Today?

Key Actors in the Administration



Alex Azar

Secretary of the Department
of Health and Human Services



Donald Trump
President



Steven Mnuchin

Secretary of the Treasury



Seema Verma

Administrator of the Centers for
Medicare and Medicaid Services



Alexander Acosta

Secretary of Labor



Key Actors in Congress



Speaker of the House
Paul Ryan (R-WI)

Republicans control the chamber **239-193**.

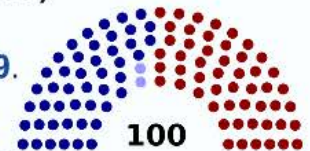
Republicans have more than the 218 votes necessary to pass legislation under regular order using only a simple majority.



Senate Majority Leader
Mitch McConnell (R-KY)

Republicans control the chamber **51-49**.

Republicans **do not** have enough votes to overcome a filibuster (60 votes), and will need *at least* 9 Democrats to pass legislation through regular order.



Democrats who may not vote along party lines

SENATOR	STATE	RE-ELECT YEAR	ISSUE ALIGNMENT	PERSONAL SUPPORT	ELECTORAL INCENTIVE	TRUMP SUPPORT SCORE
Heitkamp	ND	2018	3.5	1	5	3.4
Manchin	WV	2018	3	1	5	3.3
Tester	MT	2018	2.5	1	5	3.1
Donnelly	IN	2018	3	1	4.5	3.1
McCaskill	MO	2018	2.5	1	4.5	2.9
Brown	OH	2018	1	1	4	2.3
Stabenow	MI	2018	2	1	3	2.1
Klobuchar	MN	2018	2	1	3	2.1
Casey	PA	2018	2	1	3	2.1

Source: <https://fivethirtyeight.com/features/which-republican-senators-are-most-likely-to-fight-trump/>

Republicans who may not vote along party lines

SENATOR	STATE	RE-ELECT YEAR	ISSUE ALIGNMENT	PERSONAL SUPPORT	ELECTORAL INCENTIVE	TRUMP SUPPORT SCORE
Collins	ME	2020	2.5	3	2.5	2.7
Heller	NV	2018	3.5	3	2.5	2.9
McCain	AZ	2022	3	3	3.5	3.1
Gardner	CO	2020	4	3	2.5	3.2
Portman	OH	2022	3	3	4	3.2
Murkowski	AK	2022	3	3	4.5	3.3
Flake	AZ	2018	3.5	3	3.5	3.4
Graham	SC	2020	4	2	4.5	3.5
Lee	UT	2022	3.5	3	4.5	3.5
Toomey	PA	2022	4	4	3	3.8

Source: <https://fivethirtyeight.com/features/which-republican-senators-are-most-likely-to-fight-trump/>

2017

Recap

Legislative Actions

Healthcare Reform

7/28/17

Senate votes **49-51** rejecting the Health Care Freedom Act, a substitute amendment to the reconciliation bill (the "skinny repeal").

Three Republicans defect.

9/13/17

Senators Lindsey Graham (R-SC) and Bill Cassidy (R-LA) introduce reconciliation bill to relegate ACA powers to the states, following interest expressed by Senator John McCain (R-AZ), one of the defectors from July.

9/26/17

Senate Majority Leader Mitch McConnell (R-KY) announces that the Graham-Cassidy plan will not be voted on, after three Republicans announce opposition.

5/4/17

House votes **217-213** to pass the AHCA, with additional amendments including a state flexibility amendment and additional high-risk pool funding.

20 Republicans defect.

- **FY 2017 Reconciliation vehicle expired 9/30/17**
- **FY 2018 Reconciliation vehicle used for tax reform**
- **FY 2019 Reconciliation vehicle is now available (entitlement reform?)**

Tax Reform

- Drastically reduces the top corporate tax rate from 35% to 21% effective in 2018; top rate for individual taxes would be lowered from 39.6% to 37% with standard deductions doubled.
- ACA's individual mandate penalties to obtain health insurance would be eliminated beginning in **2019**.
- The medical-expense deduction would be retained and temporarily expanded for two years by reducing the threshold to 7.5% of AGI, the level that was set prior to the enactment of the ACA.
- Does not address the health insurance (HIT) and Cadillac/excise taxes.
- **Does not address employer exclusion of health insurance.**

Regulatory Actions

Executive Order Directs Regulatory Action


October 12:

- President Trump signs executive order directing federal agencies to reinterpret ERISA to expand the availability of association health plans (AHPs), short-term limited duration insurance (STLDI) policies and Health Reimbursement Arrangements (HRAs)
- The order does not immediately trigger any of these provisions but establishes a specific timetable for the Departments of Labor, Treasury and Health and Human Services to consider proposing regulations or revising guidance and report to the president on the feasibility of enacting such provisions.

AHPs  60 Days for DOL to propose regulations or revise guidance

STLDI  60 Days for all agencies to propose regulations or revise guidance

HRAs  120 Days for all agencies to propose regulations or revise guidance

 180 Days for HHS, Treasury, Labor and the Federal Trade Commission to report on state and federal laws, regulations and policies that limit healthcare competition and choice

WHERE

Are We Going?

2018

Preview

Association Health Plans

Proposed Regulation

- Modifies the definition of “employer” under ERISA regarding AHPs that can sponsor group health coverage.
- Employers must:
 - Be in the same trade, industry, line of business, or profession;
-or-
 - Have a principle place of business within a region that does not exceed the boundaries of the same State or the same metropolitan area (can cross state lines)
- Groups or associations sponsoring the AHPs must be bona fide employment-based associations
- Self-employed individuals/sole proprietors are permitted to take part in associations

Continuing Resolution Delays ACA Taxes

- CR signed into law by President Trump on January 22, 2018
- Delays the Cadillac/excise Tax until January 2022
- One-year moratorium of the Health Insurance Tax for calendar year 2019
- Delays the Medical Device Tax until January 2020
- Six-year extension of the Children's Health Insurance Program (CHIP)

H.R. 1892

- C.R. signed into law by President Trump on February 9, 2018.
- Funds federal government through March 23, 2018.
 - **Medicare changes:**
 - "Doughnut Hole" - pharmaceutical companies would be required to pay 75% of the cost of drugs in 2019, a year earlier than ACA requires.
 - Increases Part B & D premiums from 80% to 85% for individuals earning more than \$500,000 and families over \$750,000
 - Repeals the ACA's Independent Payment Advisory Board (IPAB), which would have recommended Medicare cuts
 - Cuts ACA's public health prevention fund by \$12.7 billion
 - Extends CHIP funding four more years (through FY 2027)
 - Extends community health center funding for two-years
 - Provides \$6 billion in opioid response funding over two-years

NAHU's Legislative Advocacy

Employer-based Market

Preserve the employer exclusion

The employer-based system is highly efficient at providing American workers and their families with affordable coverage options through group purchasing and its associated economies of scale by spreading risk and avoiding adverse selection.

The success of this system is possible because of the preferential tax treatment of employer-sponsored insurance coverage, where employer-paid contributions for an employee's health insurance are excluded from that employee's compensation for income and payroll tax purposes.

Proposals that would cap the maximum value of the exclusion or eliminate it altogether would be detrimental to the stability of the employer-based market and would negatively affect middle-class Americans who currently benefit from this provision.

DON'T RAIN ON THE EMPLOYER-SPONSORED COVERAGE PARADE

The government excludes employer contributions to an employee's health insurance from the employee's income for tax purposes for both parties. This "employer exclusion" encourages businesses to offer health insurance and lowers the employee's taxable income.

Some in Congress want to cap the employer tax exclusion. That could harm millions of workers and their families by reducing their benefits and increasing their taxable income.



WIDESPREAD COVERAGE

1.75 million Americans get health insurance through their employers.¹ People with employer-sponsored plans are more likely to maintain health coverage year after year.²

HELPS MOST WORKERS

82 percent of workers are satisfied with their employer-sponsored health insurance.³ Nearly half say they'd quit if their employer stopped offering benefits.⁴

SHARED RISK, STABLE PREMIUMS

It's easy for employees and their families to sign up for coverage through work. So an employer's insurance pool contains people of all ages and health backgrounds. That spreads risk – and leads to lower, more stable premiums.

LESS COVERAGE, LOWER PAY

Workers and employers would pay tax on health plans with premiums above a to-be-determined amount. Employers would respond by cutting benefits, to stay under the tax threshold.

There's no guarantee that employers would increase salaries to replace lost benefits.

HARMS MANY WORKERS

Because premiums are rising faster than inflation, more and more plans would exceed the tax threshold each year. Ordinary workers, not just those with generous plans, would pay higher taxes and suffer reduced benefits.

As taxes mount, some employers may stop offering insurance altogether.

HEIGHTENED RISK, HIGHER PREMIUMS

As more employers drop coverage, employees would have to buy insurance on their own.

Older workers would see their premiums spike, since the risk of insuring them would no longer be spread across the entire workforce.

¹<https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-253.pdf> table 1
²<http://newsmanager.com/partners.com/nahuw/issues/2016-04-15/index.html>

³<https://www.accenture.com/us-en/insight-employer-beware-workers-demand-health-coverage>
⁴https://www.accenture.com/_acnmedia/Accenture/Conversion-Assets/DotCom/Documents/Global/PDF/Dualpub_18/Accenture-Chart-Employer-Beware-Impact.pdf#zoom=50

Medical Loss Ratio

Exclude Broker Commissions from Formula

Remove independent agent and broker compensation from the definition of “administrative expense” from the Medical Loss Ratio (MLR) calculation.

H.R. 4575 | Reps. Billy Long (R-MO)
and Kurt Schrader (D-OR)

S. 2303 | Sens. Johnny Isakson (R-GA)
and Chris Coons (D-DE)

Taxes & Other Repeals

Repeal the Excise/Cadillac Tax

Permanently repeal the “Cadillac Tax,” which will impose a 40% excise tax on health plans that exceed certain cost thresholds beginning in 2022, following the delays passed in December 2015 and January 2018.

H.R. 173 | Reps. Mike Kelly (R-PA)
and Joe Courtney (D-CT)

S. 58 | Sens. Dean Heller (R-NV)
and Martin Heinrich (D-NM)

Taxes & Other Repeals

Repeal the Health Insurance Tax

Permanently eliminate the national premium tax (HIT) that will add more than \$500 annually in costs to a typical family policy, with the total cost in 2016 of \$11.3 billion.

H.R. 246 | Reps. Kristi Noem (R-SD)
and Kyrsten Sinema (D-AZ)

Employer Reporting

Streamline the Reporting Process

Establish a new voluntary reporting system, reduce the number of individuals and amount of information that would need to be reported, and eliminate the requirement to collect dependent social security numbers.

H.R. 3919 | Reps. Diane Black (R-TN)
and Mike Thompson (D-CA)

S. 1908 | Sens. Mark Warner (D-VA)
and Rob Portman (R-OH)

Full Time Definition

Restoring the 40-Hour Workweek

Repeal the 30-hour threshold for full-time employee for purposes of the employer mandate in the ACA and replace it with 40-hours.

H.R. 3798 | Reps. Jackie Walorski (R-IN)
and Dan Lipinski (D-IL)

S. 1782 | Sens. Susan Collins (R-ME)
and Joe Donnelly (D-IN)

Individual Market Stability



Sens. Lamar Alexander (R-TN) & Patty Murray (D-WA)

Funds the CSRs through 2019; provides for greater flexibility for Section 1332 waivers, establishes a new “copper-level” plan and provides for additional federal funding on enrollment outreach.



Sens. Susan Collins (R-ME) & Bill Nelson (D-FL)

Provides \$4.5 billion in federal reinsurance funding over 2018 and 2019

Problem Solvers Caucus (40+ bipartisan house mem.)

Fully funds CSRs; establish reinsurance; employer mandate to 500+; full-time definition to 40 hrs; repeal medial device tax

Compliance Concerns

Employer Reporting

- 226J notices to employers with preliminary penalties owed for tax year 2015 are going out before year-end
- For calendar year 2015, the amounts are \$2,080 and \$3,120.



Department of the Treasury
Internal Revenue Service
Group 2219
7300 Turfway Road, Suite 410
Florence, KY 41042

Tax year:

Letter date:

Employer ID number:

Contact name:

Contact ID number:

Contact telephone number:

Contact e-tax number:

Response date:

Dear

We have made a preliminary calculation of the Employer Shared Responsibility Payment (ESRP) that you owe.

Proposed ESRP \$ [XXXXXX]

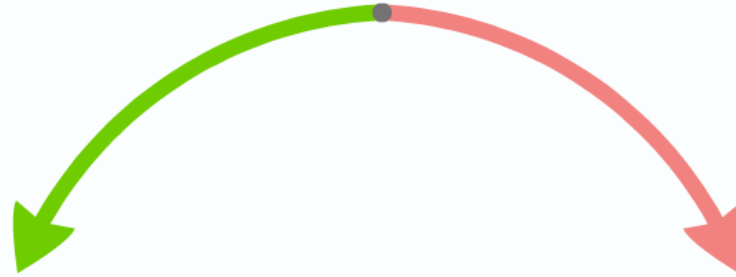
Our records show that you filed one or more Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage, and one or more Forms 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, with the IRS. Our records also show that for one or more months of the year at least one of the full-time employees you identified on Form 1095-C was allowed the premium tax credit (PTC) on his or her individual income tax return filed with the IRS. Based on this information, we are proposing that you owe an ESRP for one or more months of the year.

You generally owe an ESRP for a month if either:

- You did not offer minimum essential coverage (MEC) to at least []% of your full-time employees (and their dependents) and at least one of your full-time employees was certified as being allowed the PTC; or

Letter 226J (10-2017)
Catalog Number 67905G

- Employers must respond within 30 days, telling the IRS whether they agree or disagree with the assessment.



- If the employer agrees with the findings in the letter he must complete, sign and date the **Form 14764** response.
 - It must be sent by the date indicated on the first page of the letter.
 - Payment should accompany the letter or it may be paid electronically.
- An employer that disagrees with the IRS' assessment must also complete **Form 14764**.
 - There must be a signed statement explaining the areas of disagreement.
 - Documentation supporting the statement must be provided.
 - Employers providing added documentation should indicate this by entering a check in the column on the Employee PTC listing titled "Additional Information Attached."
 - The IRS will reply with an acknowledgment letter following the employer's response that provides their final determination.

WHAT


You Can Do

How You Can Get Involved



Join Us!

How You Can Get Involved



Operation Shout!

Take Action

NAHU is very concerned about ongoing discussions in Congress that would undermine the employer-sponsored health insurance system by eliminating or capping a cap on the **employer tax exclusion** for health insurance. More than 170 million Americans currently receive their coverage through this system. Legally due to the tax exclusion, where employers provide contributions for an employee's health insurance that are excluded from that employer's compensation for income and payroll tax purposes. Eliminating the exclusion would eliminate the incentive for employer-sponsored insurance while capping it would degrade the benefit and serve as a tax increase for middle-class Americans.

The employer-based system is highly efficient at providing American workers and their families with affordable coverage options through group purchasing and its associated economies of scale by spreading risk and avoiding adverse selection. Eliminating the exclusion would eliminate most of the benefits of employer-sponsored insurance, including the means for spreading risk among healthy and unhealthy individuals and group purchasing efficiencies. Capping the exclusion for employees would devalue the benefit and result in a significant tax increase for middle-class Americans, forcing many to drop employer-sponsored insurance, including dependent coverage. Employees would be incentivized to only offer coverage to their employees that would fall below the value of the cap in order to avoid being any higher than the cap, potentially resulting in a net loss to the system for employees to a point where insurance that wouldn't meet the cap's thresholds and **over-shifting costs** onto employees. Many of the inherent problems with the **ACA's 23% cap** would exist for eliminating the employer exclusion such as setting a tax credit sufficiently high enough to cover the significant contribution made by employers today. Also, increasing a credit would need to be set to increase inflation if it is to keep up with the typical rise in healthcare expenses.

The employer exclusion tax benefit makes employer-sponsored health insurance a valuable benefit for workers. We urge Congress to maintain the system that has worked for Americans for decades, and preserve employer-sponsored health insurance through the continuation of the employer exclusion because it preserves the employer system for health insurance for the vast majority of Americans. Over the coming weeks, as Congress discusses various healthcare reform proposals, we want to be sure that they hear directly from agents, brokers and employees about the value of the employer tax exclusion. You can help us spread the message by taking action below:

1. Contact your senators and representative. Send an Operation Shout today asking your federal legislators to oppose the elimination or cap of the employer tax exclusion of health insurance in any healthcare reform legislative proposals. You can also call your legislators at the numbers below.
2. Tell your employer clients to take action. Your employer clients would be most directly impacted by the elimination or cap of the employer tax exclusion. Tell them to take action asking why the exclusion must be preserved in any healthcare reform legislative proposals. Tell them to take action [here](#).
3. Share your story. As a licensed insurance specialist, help spread the word closely with employers to help them offer and utilize employer-sponsored health insurance, you know firsthand about how the employer tax exclusion directly impacts your clients. Stories from your clients will demonstrate the value of the exclusion and the need to preserve it. We will share your stories with appropriate legislators and staff. You can share your story [here](#).

Take action today and tell your federal legislators to keep the employer exclusion tax benefit!

Take Action

Don't want to send an email? No problem, you can also reach your legislators by phone. Rep. George Holding (R) can be reached at (202) 224-3022. Sen. Richard Burr (R) can be reached at (202) 224-3124. Sen. Thom Tillis (R) can be reached at (202) 224-6242.

This will be sent in addition to an email message to your legislators. You are welcome to use the prepared text in writing letters to call your legislators, or to adapt the prepared message to share your personal story on file.



Operation Shout!
Email/call your federal representatives

**Lobby with us at
Capitol Conference
February 26-28, 2018**



**SHAPING HEALTHCARE'S
FUTURE THROUGH ADVOCACY**



February 26-28



WASHINGTON UPDATE

November 21, 2017

ACA Prime Reporting

Are you a broker of the future?

Janel Trautwein to Review Impact of Donald Trump's Election on December 1 in "Live from HUPAC"

Don't Trump shocked the political world on Tuesday by winning the presidential election against Hillary Clinton. With the results, the question is correct, "How stable?" What will his actions, and Republicans maintaining control of both the U.S. House and Senate, mean for health reform, making business and health insurance agents and brokers?

Join us on Friday, December 1, at 12:00 p.m. ET for a member-exclusive event! We have HUPAC's exclusive reception hosted by NAHU CEO Janel Trautwein, who will break down the impact of the election and what it will mean for the future of ACA and health insurance policy and policy in the new year. Can Trump and the Republicans repeal the ACA? What would that possibility mean for what would comprise the "realistic" plan? How does NAHU approach the transition to the new Congress, and government? What steps can members take to develop and pursue legislative solutions in their state? And what should we watch for during the lame duck.



Stay Informed:
Read the *Washington Update* every Friday and the *NAHU Newswire* every morning



Leading the News

NAHU 100th CAPITOL CONFERENCE

February 13-15

GOP May Be Able to Repeal ACA Following Election Outcome

What's Next for Health Insurance After the 2017 Election?

What's Next for Health Insurance After the 2017 Election?

Contribute to HUPAC:
Support legislators who fight for agents and brokers and the employer-based system




**Health Underwriters
POLITICAL ACTION COMMITTEE**

As new changes come to health reform, let us help you be their resource

Compliance Corner:

- Webcasts
- Blog
- Questions
- Tools
- Resources

CONTACT US LOOKING FOR AN AGENCY NEWSROOM WHO WE ARE SEARCH

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Compliance Corner

As insurance brokers trained in risk management, it is our job to analyze and identify risks that might adversely affect our client's business objectives. Compliance with federal statutes and regulations in the areas of insurance, labor and taxes is a daunting task for many of our employer clients. With the NAHU Compliance Corner, you now have a one-stop place to find the majority of federal statutes that affect the employee benefits world.

COMPLIANCE CORNERED BLOG WEBINARS QUESTIONS AND ANSWERS HUB PRACTICE TIPS



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