Key Provision Comparison: AHCA and PPACA

On May 4, 2017, the United States House of Representatives narrowly passed the American Health Care Act ("AHCA"), a bill that seeks to repeal and replace the Patient Protection and Affordable Care Act ("PPACA"). The AHCA is now before the Senate where Republicans hold a 52-48 majority. Since the bill was introduced through the budget reconciliation process it will require only 50 Senate votes to move forward (in case of a tie, Vice President Pence will cast the deciding vote). However, as the bill moves forward, it is important to remember that because Republicans are using the budget reconciliation process to advance the legislation, they are limited with respect to what they can include within the bill. In general, reconciliation rules prohibit the Senate from considering issues that do not impact the federal budget. As such, some provisions in the AHCA that do not impact the federal budget, such as broad policy based changes, will likely be excluded from the Senate bill. Although the timeline for moving forward is unclear, changes to the AHCA are likely. To help employers understand which PPACA provisions may be impacted by the AHCA, we have compiled a list of significant PPACA provisions and examine how the AHCA, as it is currently written, impacts those provisions.

PPACA		AHCA
• Requires employers with 50 or more full-time employees to offer affordable health coverage that meets minimum value to at least 95% of their full-time employees in order to avoid a penalty	 **Employer Mandate**	• Would retain the Employer Mandate. Since the provision does not impact the federal budget the bill cannot eliminate it.
• In 2017, the penalty for failing to offer minimum essential coverage is $2,260 per full-time employee minus 30, if at least one full-time employee receives subsidized coverage through the Marketplace. • In 2017, the penalty for offering coverage that is either unaffordable or fails to meet minimum value is $3,390 per full-time employee who received subsidized coverage through the Marketplace.	 **Employer Shared Responsibility Penalty**	• Would reduce the penalty for violations of the Employer Mandate to $0 as of 2016. • Would apply PPACA penalties for 2015.
• Requires individuals who are not exempt to have minimum essential coverage or face a penalty.	 **Individual Mandate and Penalty**	• Would retain the Individual Mandate; however, it would reduce the penalty for failing to have minimum essential coverage to $0. • Proposes a new "penalty" based on the concept of continuous coverage. Individuals who do not have continuous health coverage (a lapse of more than 63 days) and wish to enroll in the individual market would be subject to higher premiums (30% higher) for failing to maintain continuous coverage. The higher premium can only be charged for one year.
• Imposes the following taxes and fees (among others): - Annual health insurer fee - Medical device excise tax - Net investment tax on high income earners - Prescription drug tax - Cadillac Plan tax	 **Taxes and Fees**	• Would repeal the following: - Annual health insurer fee - Medical devise excise tax - Net investment tax on high income earners - Prescription drug tax • Would not apply the Cadillac Plan tax until 2026.

Key Provision Comparison: AHCA and PPACA

PPACA		AHCA
• Requires employers to report on coverage provided pursuant to Sections 6055 and 6056.	 **Sections 6055 and 6056 Reporting**	• Would retain the employer reporting requirements pursuant to Sections 6055 and 6056 until an alternative method is prescribed.
• Requires employers that filed 250 or more Forms W-2 during the previous calendar year to report the aggregate cost of coverage for an individual under an employer-sponsored group health plan.	 **Employer W-2 Reporting**	• Would continue the requirement that employers report health coverage amounts on Forms W-2. • Would require employers to fill out a new field to capture information for each month an employee is eligible for group health coverage
• EHBs are a set of 10 broad health care service categories established by PPACA that define the scope of services that must be included in health insurance policies in the Marketplace and in small employer insured plans.	 **Essential Health Benefits ("EHBs")**	• Would retain EHBs. • Would permit a state, beginning in 2020, to apply for a waiver that would allow the state to define and apply its own EHBs.
• Allows dependent coverage until age 26. • Prohibits pre-existing condition limitations.	 **Other Marketplace Reforms**	• Retains dependent coverage until age 26. • Retains prohibition against pre-existing condition limitations, but allows states to obtain a waiver to let insurers charge higher premiums to sicker individuals if their coverage has lapsed for at least 63 days.
• Allows participants in a high-deductible health plan ("HDHP") to use pre-tax dollars (subject to annual limits) to fund HSAs to use for purchasing qualified medical expenses. • In 2017, HSA contribution limits are $3,400 for self-only coverage and $6,750 for family coverage. • Imposes a 20% tax penalty on non-qualified distributions.	 **Health Savings Accounts ("HSAs")**	• Would nearly double annual HSA contribution limits. Effective in 2018, the bill would increase the HSA contribution limits to equal the maximum limits on the annual out-of-pocket for HSA-compatible HDHPs. For example, assuming the 2017 HDHP amounts, under the AHCA, the HSA contribution limits would be $6,550 for self-only coverage and $13,100 for family coverage. • Would reduce the tax penalty from 20% to 10% on non-qualified distributions. • Would allow spouses to make catch-up contributions to the same HSA.
• Places a limit on the amount employees can contribute to a health FSA. In 2017, the health FSA contribution account limit is $2,600.	 **Health Flexible Spending Accounts ("Health FSAs")**	• Repeals the dollar limit on individuals' pre-tax contributions to health FSAs.

Key Provision Comparison: AHCA and PPACA

PPACA		AHCA
• Permits reimbursement for the cost of prescription drugs or insulin as a qualified medical expense.	 **Reimbursement of Over-the-counter ("OTC") Medications**	• Would permit health FSAs and HSAs (and other employer-sponsored benefits) to reimburse prescription drugs and OTC medications and supplies as qualified medical expenses.
• Established federal and state Marketplaces that allow individuals to purchase health insurance.	 **Federal and State Marketplace**	• Retains both federal and state Marketplaces.
• Offers premium tax credits for coverage provided in the Marketplace to individuals and families based on household income in relation to the Federal Poverty Level ("FPL"). Households between 100% and 400% of FPL are eligible for premium subsidies.	 **Premium Tax Credits**	• Would phase out income-based subsidies for plan years 2018 and 2019. • Would tier Marketplace subsidies in the form of tax credits based on age beginning in 2020. The following subsidies would be available based on the age of an individual: - $2,000 per year for anyone under age 30. - $2,500 per year for ages 30-39. - $3,000 per year for ages 40-49. - $3,500 per year for ages 50-59. - $4,000 per year for ages 60 and above. • Would decrease subsidy levels for individuals making $75,000 per year ($150,000 for joint filers) or more. • Would make an individual ineligible for a tax credit subsidy if eligible for coverage in an employer-sponsored health plan.
• Allowed states to expand Medicaid coverage for individuals based on income levels in relation to FPL.	 **Medicaid**	• Would roll back Medicaid expansion beginning in 2017 and ending in 2020. Employers and Marketplaces may see increased enrollment due to individuals being phased off of Medicaid coverage. • In 2020, would convert Medicaid to a per capita system, which would allow states to choose block grants (lump sum) for Medicaid funds for each enrollee. • Would allow states to adopt work requirements for recipients of Medicaid funds.

The compliance experts and consultants of Gallagher's Health & Welfare Consulting team will continue to monitor developments on healthcare reform legislation and regulation and will provide you with relevant updated information as it becomes available. In the interim, please contact your Gallagher representative with any questions that you may have.