

SECTION-BY-SECTION SUMMARY
OBAMACARE REPEAL RECONCILIATION ACT OF 2017 [LYN17479]

Title I

Sec. 101: Recapture Excess Advance Payments of Premium Tax Credits

Section 101 would not apply IRC Section 36B(f)(2)(B), relating to limits on the excess amounts to be repaid with respect to the premium tax credits, to taxable years ending after December 31, 2017, and before January 1, 2020. In other words, for tax years 2018 and 2019, any individual who was overpaid in premium tax credits would have to repay the entire excess amount, regardless of income.

Sec. 102. Premium Tax Credit

Section 102 would exclude from the definition of QHP a plan that provides coverage for abortions (except if necessary to save the life of the mother or if the pregnancy is the result of rape or incest), for taxable years beginning in 2018. The section would repeal authorization for the premium tax credit (IRC Section 36B), for taxable years beginning in 2020. Section 102 would also repeal relevant ACA provisions regarding eligibility determinations (generally ACA Section 1411) and for receiving the premium credit in advance (ACA Section 1412), effective on January 1, 2020. In addition, the new provision would amend IRC Section 6103(l), related to the disclosure of taxpayer information, by providing that no disclosures may be made after December 31, 2019.

Sec. 103. Small Business Tax Credit

For taxable years beginning in 2018, Section 103 would amend IRC Section 45R to indicate that the term “qualified health plan” does not include any health plan that includes coverage for abortions, except abortions necessary to save the life of a mother or abortions for pregnancies that are a result of rape or incest.

The section would provide that the small employer health insurance credit would not be available for taxable years beginning in 2020.

Sec. 104. Individual Mandate

Section 104 would effectively eliminate the annual penalty associated with IRC Section 5000A, the individual mandate, by reducing the percentage of income to 0% and the flat dollar amount to \$0, retroactively beginning calendar year 2016.

Sec. 105. Employer Mandate

Section 105 would modify the tax penalty associated with IRC Section 4980H, effectively eliminating it by reducing the penalties to \$0, retroactively beginning in calendar year 2016.

Sec. 106. Federal Payments to States

Section 106 would prohibit federal funds made available to a state through direct spending from being provided to a prohibited entity (as defined), either directly or through a managed care organization, for a one-year period beginning upon enactment. The provision specifies that this prohibition would be implemented notwithstanding certain programmatic rules (e.g., the Medicaid freedom of choice of

provider requirement that requires enrollees to be able to receive services from any willing Medicaid participating provider, and states cannot exclude providers solely on the basis of the range of services they provide).⁶ The section defines a “prohibited entity,” as an entity that meets the following criteria at enactment: (1) it is designated as a not-for-profit by the IRS; (2) it is described as an essential community provider that is primarily engaged in family planning services, reproductive health, and related medical care; (3) it is an abortion provider that provides abortion in cases that do not meet the Hyde amendment exception for federal payment; and (4) it received more than \$350 million in Medicaid expenditures (both federal and state) in FY2014.

Sec. 107. Medicaid

Section 107(1)(A) would repeal the ACA Medicaid expansion and state option to extend coverage to adults above 133% of FPL by specifying the end date of this provision as December 31, 2019.

After January 1, 2020, Section 107(1)(B) would no longer allow hospitals that participate in Medicaid to elect to make presumptive-eligibility determinations, and would provide that any such election that a hospital had already made would cease to be effective as of that date.

Sections 107(2) and 207(3) would repeal the (1) newly eligible matching rate on January 1, 2020; (2) expansion state matching rate on January 1, 2020; and (3) increased FMAP rate for the Community First Choice Option on January 1, 2020. Sections 107(2)(A) also would change the FMAP rate for the territories back to 50% on or after January 1, 2020.

For states that elected the option to provide a presumptive-eligibility period to children and pregnant women, Section 107(4) would repeal the state option to provide a presumptive-eligibility period any time after December 31, 2019, for (1) the ACA expansion group, (2) the mandatory foster care group through the age of 26, or (3) low-income families.

Under Section 107(5), SSA Section 1937(b)(5) would not apply after December 31, 2019. This means that Medicaid ABP coverage would no longer be required to include the essential health benefits after that date.

Section 107(6) would repeal the requirement for states to coordinate their eligibility and enrollment systems across all of the ACA low-income subsidy programs as of January 1, 2020.

Section 108: Repeal of DSH Allotment Reductions

Section 108 would repeal the Medicaid DSH allotment reductions (SSA Section 1923(f)(7)) under current law beginning in 2018.

Sec. 109. Repeal of the Tax on Employee Health Insurance Premiums and Health Plan Benefits

Section 109 would repeal IRC Section 4980I (the so-called Cadillac tax) effective beginning in taxable year 2020. The repeal would sunset at the end of taxable year 2025.

Sec. 110. Repeal of Tax on Over-the-Counter Medications

Section 110 would repeal the language in IRC Sections 106, 220, and 223 stipulating that a medicine or drug must be a prescribed drug or insulin to be considered a qualified expense in terms of spending from a tax-advantaged health account. The provision would be generally effective beginning tax year 2017.

Sec. 111. Repeal of Tax on Health Savings Accounts

Section 111 would amend IRC Sections 220 and 223 to reduce the applicable rate on improper disbursements to 15% and 10% for Archer MSAs and HSAs, respectively. The lower rates would apply to distributions made after December 31, 2016.

Sec. 112. Repeal of Limitations on Contributions to Flexible Spending Accounts

Section 112 would repeal IRC Section 125(i), the contribution limit for health FSAs, effective for plan years beginning in 2018.

Sec. 113. Repeal of Tax on Prescription Medications

Section 113 would amend ACA Section 9008(j) to provide that the tax would not be imposed effective CY2018.

Sec. 114. Repeal of Medical Device Excise Tax

Section 114 would amend IRC Section 4191 to provide that the medical device excise tax does not apply to sales after December 31, 2017.

Sec. 115. Repeal of Health Insurance Tax

Section 115 would amend ACA Section 9010(j) to repeal the annual fee on certain health insurance providers, effective beginning calendar year 2018.

Sec. 116. Repeal of Elimination of Deduction for Expenses Allocable to Medicare Part D Subsidy

Section 116 would repeal the ACA change and reinstate business-expense deductions for retiree prescription drug costs without reduction by the amount of any federal subsidy. The change would be effective for taxable years beginning after December 31, 2016.

Sec. 117. Repeal of Chronic Care Tax

Section 117 would amend IRC Section 213(a) to reduce the AGI threshold to 7.5% for all taxpayers, effective tax year 2017.

Sec. 118. Repeal of Medicare Tax Increase

Section 118 would amend IRC Sections 1401(b) and 3101(b) to repeal the 0.9% Medicare surtax, effective beginning taxable years after December 31, 2017.

Sec. 119. Repeal of Tanning Tax

Section 119 would repeal the tax on indoor tanning services (IRC Chapter 49), effective for services performed after September 30, 2017.

Sec. 120. Repeal of Net Investment Tax

Section 120 would repeal the net investment tax (Chapter 2A of IRC Subtitle A), effective beginning tax year 2017.

Sec. 121. Remuneration

Section 121 would terminate IRC Section 162(m)(6), effective beginning tax year 2017.

Title II

Sec. 201. The Prevention and Public Health Fund

Section 201 would amend ACA Section 4002(b) by repealing all PPHF appropriations for FY2019 and subsequent fiscal years.

Sec. 202. Support for State Response to Substance Abuse Public Health Crisis and Urgent Mental Health Needs

Section 202 would authorize to be appropriated, and would appropriate, out of monies in the Treasury not otherwise obligated, \$750 million for each of FY2018 and FY2019, to the HHS Secretary to award grants to states to address the substance abuse public health crisis or respond to urgent mental health needs by (1) improving state prescription drug monitoring programs, (2) implementing and evaluating substance abuse prevention activities, (3) training health care practitioners in topics related to substance abuse, (4) supporting access to substance abuse or mental health services, and/or (5) other public health-related activities related to substance abuse or mental health. Funds appropriated pursuant to this authority would remain available until expended.

Sec. 203. Community Health Center Program

Section 203 would provide \$422 million for FY2017 to the Community Health Center Fund in addition to the \$3.6 billion appropriated under current law.

Section 204. Funding for Cost-Sharing Payments

Section 204 would appropriate to the HHS Secretary such sums as necessary for cost-sharing subsidies (including adjustments to prior obligations for such payments) for the period beginning the date of enactment through December 31, 2019. Payments incurred and other actions for adjustments to obligations for plan years 2018 and 2019 could be available through December 31, 2020.

Section 205. Repeal of Cost-Sharing Subsidy Program

Section 205 would repeal ACA Section 1402, terminating the cost-sharing subsidies (and payments to issuers for such reductions), effective for plan years beginning in 2020.