

Legislate[®]

Key Legislative Developments Affecting Your Human Resources

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House GOP Healthcare Plan Released in the Midst of a Flurry of Activity

Congress was hopping last week until the House left early for a July 4 holiday recess amid a “sit-in” by House Democrats. Efforts were made to advance appropriations bills and legislation was introduced to modify the FMLA and to create an online “lost and found” registry for retirement accounts. In addition, there were hearings, markups and votes held on a plethora of topics including the fiduciary rule, the overtime rule, healthcare and open multiple employer plans. In the end, however, the big news of the week was the rollout of the House Republicans’ report outlining a replacement plan for the Affordable Care Act. Below we focus on the report, with other highlights from last week’s congressional activity covered in this and subsequent issues of *Legislate*.

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House GOP Blueprint for ACA Alternative

The [fifth installment of the House GOP’s policy paper called “A Better Way”](#) (report) reflects the work of Speaker Paul Ryan’s (R-WI) Task Force on Health Care Reform, one of six committee-led task forces charged with developing “a bold, pro-growth agenda.” (For information on the prior installments of the report, please see our [June 13](#) and [June 20](#) issues of *Legislate*.) The report’s healthcare installment outlines the House GOP’s view of how and why the Affordable Care Act (ACA) “simply does not work” and provides an alternative. However, the report does not reflect an effort to dismantle the employer-sponsored healthcare system. Indeed, the report makes clear that the House GOP strongly supports employer-based healthcare and that their plan “protects the health insurance Americans receive through their jobs.”



The House GOP's comprehensive healthcare blueprint, which addresses the total healthcare system — including Medicare and Medicaid — is based on the following five principles:

Principles	Comment
Repeal the ACA	<p>With a full repeal, the ACA's so-called Cadillac tax, as well as the employer and employee mandates, would be eliminated.</p> <p>Numerous Republican-sponsored bills have called for full repeal of the ACA. None have gained traction or advanced. However, legislation providing for targeted repeal of certain ACA provisions, such as the Cadillac tax, have garnered attention and had some movement. For background on pending bills aimed at repealing the ACA, generally, and the Cadillac tax, specifically, see our June 6 Legislate.</p>
Provide more choices, lower costs and greater flexibility	The report, which characterizes the ACA as a “one-size-fits all approach,” criticizes the law as dictating “the contents of every American’s health insurance plan” and taxing those who choose not to buy it. The premise of the GOP recommendation is to return power from the federal government to the states.
Protect the most vulnerable	The report reflects the view that the healthcare system should not “force” those with pre-existing conditions and complex medical needs into Medicaid, which is characterized in the report as a “broken” program that has “failed lower-income families.”
Spur innovation	The ACA's 2.3% medical device tax is cited as an example of “slowing the development of new and innovative products.” (Notwithstanding, pursuant to legislation adopted at the end of 2015 , the tax is not being assessed for the 2016 and 2017 calendar years.)
Protect and preserve Medicare	The report highlights the House GOP's view that the “unsustainable” program was made worse by the ACA's “raid” of more than \$800 billion from the program to finance the ACA.

Although the first principle is “repeal the ACA” — the House GOP's blueprint reflects the following ACA “market reforms.”

Market Reform	Report Recommendation
Pre-existing conditions	Put protections in place to ensure pre-existing conditions cannot be used to deny coverage or impose an exclusion.
Dependent child coverage	Permit dependents up to age 26 to stay on parents' plan.
Lifetime limits	Eliminate lifetime limits on coverage.

Other recommendations included in the House GOP report of particular interest to plan sponsors and employers are highlighted below:

Focus	Report Recommendation	Comment
Health Savings Accounts (HSAs)	<p>Allow spouses to make catch-up contributions to the same account</p> <p>Set the maximum HSA contribution at “the maximum combined and allowed annual deductible and out-of-pocket expense limit”</p> <p>Permit certain groups currently ineligible (e.g., those covered by Indian Health Service and TRICARE) to contribute</p>	<p>The Restoring Access to Medication Act of 2015 (H.R. 1270 and S. 709) would repeal an ACA rule prohibiting over-the-counter medications from being an eligible expense reimbursable from HSAs on a tax-favored basis.</p> <p>The Health Savings Act of 2016 (H.R. 4469 and S. 2499) is a comprehensive bill that, among other things, would permit certain currently ineligible individuals to contribute to HSAs.</p> <p>For information on these and other pending bills that seek to expand HSAs, please see our February 8 and May 23 issues of <i>Legislate</i>.</p>
Health Reimbursement Accounts (HRAs)	<p>Encourage the expansion and use of HRAs and “defined contribution” methods</p> <p>“Create space” for private exchanges</p>	<p>The ACA has limited the utility of HRAs. Stand-alone HRAs are no longer permissible for active employees. Please see our <i>For Your Information</i> from March 31 for additional details.</p> <p>The Small Business Health Care Relief Act (H.R. 5447), approved by the full House last week, would permit small employers (generally with 50 or fewer full-time employees) to provide HRAs (funded solely by employers) that would reimburse employees for qualified medical expenses (up to a cap), including health insurance premiums.</p>
Tax exclusion for employer-sponsored health insurance	<p>Provide cap on tax exclusion for employer-sponsored health insurance (report did not include any detail on level of the proposed cap or methodology for calculating it)</p>	<p>The report views this recommendation as a “fundamental departure” from the so-called Cadillac tax. It further states that employee (pre-tax) contributions to an HSA would not count toward the cost of coverage for purposes of determining the cap. For information on current bills seeking to exclude HSA contributions from the Cadillac tax calculation, as well as other proposed changes for the tax, see our February 8 <i>Legislate</i>.</p>
Wellness programs	<p>Encourage continuation of wellness programs by clarifying that financial incentives do not violate the ADA and the voluntary collection of medical information from an employee’s family member does not violate GINA</p>	<p>The current regulatory framework, and the accompanying exposure to litigation risk, has created uncertainty for employers seeking to roll out innovative and effective wellness programs. Our January 19 <i>For Your Information</i> describes one lawsuit that underscores the challenges employers face in designing programs. Also, please see our June 17 <i>For Your Information</i> for background on the EEOC’s final rules under the ADA and GINA; and our December 9, 2015 <i>FYI In-Depth</i> for a comprehensive review of the laws and rules affecting wellness programs.</p>

Comment. Looking ahead, we expect the House GOP to support legislation that reflects the healthcare principles and recommendations in the report. The report states that the “plan will serve as the foundation for multiple pieces of straightforward legislation.” While it’s possible that one of these currently pending comprehensive Republican-sponsored health care bills — The World’s Greatest Healthcare Plan (H.R. 5284), The Empowering Patients First Act (H.R. 2300), and American Health Care Reform Act of 2015 (H.R. 2653) — could be leveraged, none would cap the exclusion for employer-sponsored healthcare in the way expressed in the report. (For background on these bills, please see our [May 23](#) and our [June 6](#) issues of *Legislate*.)

Mental Health Bill with Parity Provisions Advances

Earlier this month, Congress made great strides in advancing bipartisan comprehensive legislation designed to reform our mental health system. Specifically, the House Energy and Commerce Committee, chaired by Rep. Fred Upton (R-MI), unanimously passed the [Helping Families in Mental Health Crisis Act of 2016 \(H.R. 2646\)](#).

Title VIII of the bill would require HHS, DOL and Treasury to issue guidance to assist group health plans and health insurance companies to comply with mental health parity requirements. Among other things, the guidance would provide examples illustrating requirements for information disclosures and nonquantitative treatment limitations. Notably, the bill would also clarify that coverage for eating disorder benefits must be provided “in alignment with current mental health parity standards.” The bill is expected to be brought to the full House for a vote before the extended summer recess.

Comment. The Senate has also focused on mental health reform, including mental parity. Two pending Senate bills with a focus on mental health parity are the [Behavioral Health Coverage Transparency Act of 2016](#) and the [Mental Health Reform Act of 2016](#). For background on these bills, see our *Legislate* issues from [March 14](#) and [March 21](#); for additional information on mental health parity requirements, including guidance in April by the Departments of Labor, Health & Human Services and Treasury for compliance with the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA), see our [May 19](#) *For Your Information*.

Fiduciary Rule

Congress’ effort to block this controversial rule by a [joint resolution](#) disapproving it has ended. Although both chambers passed the legislation, they were unable to muster the necessary two-thirds vote in each chamber to override President Obama’s veto. Specifically, last week — in the evening during the gun sales “sit-in” staged by House Democrats — Speaker Ryan called the House into session for a vote. In the end, the tally was 239-180, not enough to override the veto. There is no Senate vote scheduled and, should there be one, it would have no impact on the veto. (For background on the DOL’s fiduciary — conflict of interest — rule, see our [April 22](#) *For Your Information*.)

Looking Ahead

This week the Senate is in session through Thursday while the House is on recess until July 5. In our next issue of *Legislate*, we will cover more June hearings and Hill activity, including the House GOP’s release of the final installment of their report — [A Better Way](#) — that provides their vision and blueprint for tax reform.

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