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Key Legislative Developments Affecting Your Human Resources US

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Conduent on Capitol Hill; Trump Discusses ACA Repeal and Replace Principles

Conduent Human Resource Services teamed up with the American Benefits Council on Capitol Hill to testify about the need for consistent federal guidance on wellness programs. Additionally, the president highlighted the principles for repealing and replacing the ACA in his address to Congress.

Wellness Programs

Last week, the House Committee on Education and the Workforce held a hearing examining proposals that aim to improve health coverage and lower costs for working families. The committee discussed wellness programs, stop-loss coverage, the purchasing power of small employers and patient protections.

Representing the [American Benefits Council](#) (Council), Allison Klausner, Government Relations Leader of the Knowledge Resource Center at Conduent HR Services and Chair of the Council’s Policy Board of Directors, testified about the need for legislation to simplify wellness program rules. Collectively, the Council’s members, including Conduent, either sponsor directly or provide services to employee benefit plans that cover more than 100 million Americans.

Allison’s key [message](#) to the committee was that the inconsistent regulatory framework has had a chilling effect on the development and rollout of effective employer-sponsored wellness programs. She explained how the final regulations under Title II of the Genetic Information Nondiscrimination Act (GINA), and the Americans with Disabilities Act (ADA) are not consistent with the regulatory framework of HIPAA. (See our [June 17, 2016 FYI In-Depth](#) for information on the HIPAA, ADA, and GINA rules.) Like a game of whack-a-mole, employers struggle to ensure that their wellness program designs comply with all applicable rules. These inconsistent regulatory schemes can stifle innovative program designs that could benefit employees and their families and have caused some employers to step back in implementing and maintaining wellness programs.



Allison testified in support of the Preserving Employee Wellness Programs Act, first introduced in 2015 and reintroduced, with some modification (as [H.R. 1313](#)), by Rep. Virginia Foxx (R-NC) the day after the hearing:

- Under which any wellness program that offers incentives, whether or not subject to HIPAA, will be deemed to comply with the ADA and GINA if it complies with HIPAA's health-contingent program rules
- That would permit, under GINA, the collection of information about a disease or disorder of a family member
- Where more favorable treatment of individuals with adverse health factors would be deemed to comply with the ADA and GINA

A fact sheet on the bill can be found [here](#). The hearing also included testimony on legislation that would allow small businesses to group together (through association health plans) to purchase coverage, and legislation that would prevent stop-loss coverage from being regulated as traditional insurance coverage.

Trump Emphasizes ACA Repeal and Replace

The president [addressed](#) a joint session of Congress last Tuesday evening. Among other topics, he discussed five principles for repealing and replacing the ACA. He stated that any replacement plan must:

- Retain certain patient protections like the prohibition on pre-existing condition exclusions
- Provide tax credits to assist with the purchase of health coverage, and expand health savings accounts (HSAs)
- Turn Medicaid back to the states
- "Implement legal reforms that protect patients and doctors from unnecessary costs that drive up the price of insurance" and work to reduce drug prices
- Permit health insurance coverage to be sold across state lines

Comment. The president did not expand on what legal reforms he thought would help to bring down the price of health insurance, but he could have been referring to tort (also known as medical malpractice) reform. Historically, Republicans have supported tort reform, and have previously proposed capping damages available through such lawsuits and mandating a state or federal alternative dispute resolution system prior to being filed in court.

House GOP's Draft Budget Reconciliation Proposal to Repeal and Replace the ACA Leaked

Last week, a draft (dated February 10, 2017) of a budget reconciliation proposal to repeal and replace the ACA was leaked to the public. While repealing almost all of the taxes implemented by the ACA, the draft legislation includes a tax on employer-provided health coverage valued over a certain threshold amount – as a source of revenue replacement for the ACA taxes it would repeal. The calculation for the value of coverage for purposes of the threshold would exclude contributions (made directly by the employer or through salary reduction) to HSAs, as well as Archer medical savings accounts (MSAs). The calculation also excludes excepted benefits, long term care insurance, separate insured dental and vision coverage, and benefits such as hospital indemnity insurance paid with post-tax dollars. Excess amounts are included in employee's income as wages. The tax would apply starting January 1, 2020.

Looking Ahead

Health care reform will continue to be a top agenda item for House and Senate Republicans. While ideas have been floated to the public, it's not yet clear what proposals for repeal and replacement of the ACA will stick and whether enough Republicans will get behind them.

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