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## House Republicans Advance Health Care Reform Proposals

Earlier this summer, the Republican leadership in the House of Representatives released a proposal to repeal and replace the Patient Protection and Affordable Care Act (“ACA”) entitled “A Better Way: Our Vision for a Confident America – Health Care” (the “Health Care Report” or “Report”). The Health Care Report would generally repeal the ACA while retaining some popular features of the law (e.g., extension of dependent coverage to age 26 and a ban on the exclusion of individuals with pre-existing conditions). This proposal marks the first comprehensive offering by House Republican leadership of an alternative to the health reforms included in the ACA. As a result, it provides significant insight into the types of policy proposals that might be considered in the next Congress.

In addition, the House of Representatives passed a series of more targeted health care reforms before Congress adjourned for its long summer recess.

Below is a report on these recent health care-related legislative developments.

### **I. House Republican Health Care Report**

On February 4th, Speaker of the House Paul Ryan (R-WI) announced the establishment of six task forces (poverty, taxes, healthcare, national security, regulations, and constitutional authority) charged with developing a comprehensive vision of domestic and foreign policy – labelled “A Better Way” -- for Republicans in the next Congress. As we previously discussed (<http://www.groom.com/resources-1056.html>), the report of the Task Force on Poverty, Opportunity, and Upward Mobility (the “Poverty Report”) included several proposals related to the private retirement system. In addition, the report of the Tax Reform Task Force called for the continuation of tax incentives for retirement savings while noting that the Ways and Means Committee “will work to consolidate and reform the multiple different retirement savings provisions in the current tax code to provide effective and efficient incentives for savings and investment” and “explore the creation of more general savings vehicles” such as “Universal Savings Accounts.”

Notably, the policies included in the Health Care Report contrast with proposals put forth by both Presidential nominees. While Secretary Clinton has indicated that she will work to retain and improve the basic structures of the ACA, Donald Trump has provided few details on how he proposes to replace the ACA, although he has indicated some willingness to consider some policy ideas that appear to be consistent with proposals in the Health Care Report. As a result, the Report may serve as a starting point for health reform efforts if the Republicans retain control of the House of Representatives and Donald Trump wins the White House.

### **Proposed Changes to Employer-Provided Benefits**

The Health Care Report contains numerous provisions that would impact the current system of employer-provided health coverage. Importantly, the Health Care Report proposes to cap the tax exclusion for employer-provided benefits, while providing a refundable tax credit for individuals purchasing health coverage in the individual market. The Health Care Report also includes proposals to expand consumer-directed health care options, including Health Savings Accounts (“HSAs”) and Health Reimbursement Arrangements (“HRAs”).

**Cap on Employer-Provided Exclusion.** The Report proposes capping the exclusion for employer-sponsored health coverage at an unspecified level that “would ensure job-based coverage continues unchanged for the vast majority of health insurance plans” and under which “only the most generous plans would see a difference.” According to the Report, this would have the effect of “shifting compensation away from health care and toward take-home pay.” The Report tries to distinguish this proposal from the ACA’s excise tax on high cost health care (the so-called “Cadillac Tax”), and notes that the proposed cap would be adjusted for individuals living in geographic areas with a higher cost of living and would be better for lower income individuals.

**Expanded Use of HSAs, HRAs.** The Health Care Report calls for expanding the use of defined contribution arrangements. In particular, it proposes—

- allowing spouses to make catch-up contributions to the same HSA account;
- allowing qualified medical expenses incurred before HSA-qualified coverage begins to be reimbursed from an HSA account as long as the account is established within 60 days;
- setting the maximum contribution to an HSA at the maximum combined, annual deductible and out-of-pocket expense limits;
- expanding accessibility for HSAs to certain groups, like those who get services through the Indian Health Service and TRICARE and
- encouraging the expansion of HRAs by allowing employers to reimburse premiums for coverage in the individual market.

**Self-Insurance/Stop Loss Insurance.** The Report proposes preserving employers’ flexibility to self-insure and purchase stop-loss insurance to protect against large claims. It proposes maintaining the current definition of “stop-loss insurance” and its distinction from “group health insurance,” while opposing what it labelled the Obama administration’s attempts to prevent employers from using self-funded plans and stop-loss coverage.

**Wellness Plans.** The Report would clarify that wellness programs with financial incentives or surcharges that “do not exceed the limits under current law” do not violate the Americans with Disabilities Act (“ADA”), and that programs that collect genetic information under a wellness program do not violate the Genetic Information Nondiscrimination Act (“GINA”). In May, the Equal Employment Opportunity Commission (“EEOC”) published a final rule on how wellness programs can comply with the ADA and GINA that included guidance that does not align with the HIPAA wellness plan rules.

**Pooled Arrangements.** The GOP plan would allow small businesses and other groups to “band together” to offer association health plans (“AHPs”), and would allow individuals to band together to create “individual health pools (“IHPs”). The proposal states that AHPs would be prohibited from “cherry picking” only health participants or

“charging higher rates for sicker people . . . except to the extent already allowed under the relevant state law[,]” but it does not explain how that would be accomplished.

### **Proposed Changes to Insurance Market Reforms and Exchange Rules**

**Mandatory Plan Features.** Although the proposal would generally repeal the ACA, it would retain some of the popular patient protection provisions, including –

- A ban on exclusions for pre-existing conditions.
- Allowing dependent children to stay on their parents’ plans up to age 26.
- Ending the imposition of lifetime limits on coverage.
- Banning rescissions and sickness related non-renewals.
- Continuous coverage protection: if an individual has a qualifying life event, “he or she would not be charged more than standard rates—even if he or she is dealing with a serious medical issue” -- as long as the individual remains continuous coverage in the individual or employer markets.
- Fixing the age-rating ratio by removing the “unrealistic” three-to-one ratio imposed by the ACA and returning to a five-to-one ratio, though states would be permitted to expand and narrow the ratio as they wished.

**Universal Tax Credits.** The Report recommends replacing the ACA’s financial support payments with a “universal, advanceable, refundable tax credit” available at the start of every month. These credits would allow individuals to purchase health insurance coverage if their employer did not provide it. The credits would be for a fixed amount that would grow over time, as the individual ages. If an individual did not use the full credit, the excess could be deposited in an HSA-like account and used to pay for future medical expenses or for cost-sharing associated with the coverage chosen.

**Purchase Across State Lines.** The Health Care Report would allow consumers to purchase coverage offered in other states and would “make it easier for states to enter into interstate compacts for pooling” which the Report claims would decrease federal control over health care options by increasing competition. This proposal is consistent with long-standing GOP proposals to permit the purchase of health insurance across state lines.

**Exchanges.** The Report recommends the elimination of state and federal exchanges while allowing for the expansion of private exchanges to work in conjunction with expanded account-based health care arrangements like HRAs and HSAs.

**Open Enrollment.** The Report proposes providing a one-time open enrollment period for individuals to join the health care market if they are uninsured. If an individual fails to elect coverage at this time, the individual will forfeit continuous coverage protections and may have to pay more in the future.

**State Grants.** The Report calls for providing at least \$25 billion for State Innovation Grants that would reward states for “developing effective reforms that make health care more affordable and accessible.” It also would provide at least \$25 billion for high-risk pools.

**Medical Liability Reform.** The Report includes proposed medical liability reforms that would create federal “caps on non-economic damage awards.”

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**Marketplace Competition.** The GOP proposes “charging the GAO to study the advantages and disadvantages of removing [the] limited McCarran-Ferguson anti-trust exemption.” The Report notes that the CBO has previously concluded that removing the exemption would not have a “significant effect” on the cost of health insurance.

### **Proposed Changes to Medicare & Medicaid**

The Health Care Report also makes a series of recommendations with respect to Medicaid and Medicare. In general, it recommends increasing flexibility in both programs while seeking to insert competitive forces to reduce costs to federal and state governments, as well as beneficiaries.

**Medicaid Reform.** The Report recommends repealing the ACA’s Medicaid expansion, and replacing the current Medicaid funding mechanism with a per capita allotment of federal dollars. It also would allow states to elect to opt out of the per capita allotment and instead receive a block grant from the federal government.

**Medicare Reform.** The Health Care Report includes significant structural reforms to Medicare. Among other things, it recommends combining Medicare Parts A and B and creating a new Medicare Exchange coupled with a new premium support model under which Medicare beneficiaries could choose between a number of private plans and traditional Medicare.

## **II. House-Passed Health Care Bills**

In June, the House of Representatives passed the Small Business Health Care Relief Act (H.R. 5447) by voice vote. The bill, which was originally introduced by Ways and Means Committee members Reps. Charles Boustany (R-LA) and Rep. Mike Thompson (D-CA), would permit small employers with under 50 full-time employees (and that do not offer another group health plan) to fund HRAs or similar defined contribution arrangements that their employees could use to pay health insurance premiums in the individual market. The bill would effectively override IRS guidance (e.g., Notice 2013-54; Notice 2015-17) with respect to such small employers (but not larger employers). It is notable that the bill passed the House on a voice vote, which generally indicates a strong consensus, after it previously was approved by the Ways and Means Committee on a voice vote. Given its bipartisan support, it is possible that the bill could be considered and passed by the Senate later this year.

In July, the House approved the Restoring Access to Medication Act (H.R. 1270), which incorporates a number of changes that would apply to HSAs and Flexible Spending Arrangements (FSAs), including several proposals that mirror ones in the Health Care Report. In particular, H.R. 1270 includes provisions to—

- Permit payments from HSAs, FSAs and Medical Savings Accounts for over-the-counter medications to be treated as eligible medical expenses, thus generally repealing the ACA provision limiting such payments to only prescription drugs or insulin.
- Permit both spouses to make catch-up contributions to the same HSA.
- Treat as a qualified medical expense certain medical expenses incurred before establishment of the HSA.
- Increase the maximum HSA contribution limit so that it equals the maximum out-of-pocket limitation.

H.R. 1270 passed the House on a largely party-line vote with very little Democratic support, and the White House issued a statement that President Obama would veto it if it reaches his desk.