

# DICTA

**DAMN THE TORPEDOES!  
PRESIDENT TRUMP GOES  
FULL SPEED AHEAD WITH  
HIS IMMIGRATION AGENDA**





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# HEALTHCARE REFORM: WHERE ARE WE NOW?

On March 6, 2017, House Republicans announced their plan to repeal the Affordable Care Act (“ACA”) and replace it with the American Health Care Act of 2017 (“AHCA”).<sup>1</sup> Less than three weeks later, on March 24, House Speaker Paul Ryan pulled the bill from the floor mere moments before a vote took place. I was watching live (employee benefits nerd speaking) and it was a scene straight out of *House of Cards*, complete with booing, hissing and a flurry of activity right before the live feed cut to black.

When the dust settled, the ACA was still standing as the law of the land. In the words of House Speaker Paul Ryan, “We’re gonna be living with Obamacare for the foreseeable future.”<sup>2</sup>

But employers shouldn’t get comfortable. There were several provisions of the AHCA that would have significantly affected employers and their benefit arrangements. Because those provisions did not seem to be major points of contention with either side of the aisle, they are likely to reappear, in some form or other, in any revised version of the bill. I’ll briefly discuss a few of those provisions below.

Before we dig in, I should clarify that the AHCA was introduced through the 2017 budget reconciliation process. Accordingly, it could not repeal or modify any provisions of the ACA that do not directly affect government revenue, such as: the elimination of pre-existing condition exclusions, coverage of adult dependent children up to age 26, capping of out-of-pocket expenses, coverage of preventative care services with no cost sharing, or the elimination of annual and lifetime limits on essential health benefits.<sup>3</sup>

**“Repeal” of the Employer Mandate:** The employer mandate requires employers with 50 or more full-time employees to offer those employees ACA compliant health coverage or face a penalty.<sup>4</sup> Because of the reconciliation rules, the AHCA could not repeal the employer mandate in total. However, it was able to accomplish the next best thing – it reduced all employer mandate penalties to zero, retroactive to January 1, 2016, effectively invalidating the provision.<sup>5</sup> The AHCA did not, however, come up with a similar work-around for repealing the annual employer reporting requirements, arguably the most cumbersome aspect of the employer mandate.

**Delay of the Cadillac Tax:** The AHCA would further delay, but would not repeal, the Cadillac Tax – the 40% excise tax levied on the value of group health plans above certain dollar thresholds – from 2020 to 2026.<sup>6</sup>

**Unlimited Flexible Spending Accounts:** The ACA currently limits the amount an employer or employee may contribute to a Flexible Spending Account (“FSA”) to \$2,500, indexed for cost-of-living adjustments. The AHCA would repeal that limit, permitting employers and employees to contribute unlimited, tax-free amounts, to their FSA to pay for out-of-pocket health care costs.<sup>7</sup>

**Expansion of Health Savings Accounts:** A Health Savings Account (“HSA”) is a tax-advantaged medical savings account only available to taxpayers enrolled in a high-deductible health plan (“HDHP”). The AHCA would nearly double the maximum contribution to HSAs to match the out-of-pocket limits under HDHPs.<sup>8</sup> In 2017, for example, HSA maximums would have increased from \$3,400 to \$6,550 for single individuals and from \$6,750 to \$13,100 for families.<sup>9</sup> Additionally, the AHCA would reduce the additional tax assessed on distributions from HSAs that are not used to pay for qualified medical expenses from 20% to 10% and would permit both spouses who are eligible for HSA catch-up contributions to make such contributions to the same HSA account.<sup>10</sup>

Although the AHCA was withdrawn, the changes discussed above may be reintroduced, as written or in some modified form, at any time. If enacted, any one of these provisions, or others, may significantly affect the day-to-day administration of an employer’s benefits and the communication of those benefits to its workforce.

Stay tuned. Things will change.

<sup>1</sup> American Health Care Act of 2017, H.R. 1628, 115th Cong. (2017).

<sup>2</sup> Press conference held by Paul Ryan, Speaker of the House (March 24, 2017).

<sup>3</sup> Secretary of the Department of Health and Human Services, Tom Price, indicated at a March 7, 2017, press conference on the AHCA, that the Trump administration expects to introduce additional legislation to address non-budget related provisions of the ACA.

<sup>4</sup> 26 U.S.C.A. § 4980H (West).

<sup>5</sup> H.R. 1628, Title II, Subtitle A, Section 206.

<sup>6</sup> H.R. 1628, Title II, Subtitle A, Section 207, as amended by Amendment number 5, Manager’s Amendment (Policy Changes), offered by the Hon. Greg Walden (OR) and Kevin Brady (TX).

<sup>7</sup> H.R. 1628, Title II, Subtitle A, Section 210, as amended by Amendment number 5, Manager’s Amendment (Policy Changes), offered by the Hon. Greg Walden (OR) and Kevin Brady (TX).

<sup>8</sup> H.R. 1628, Title II, Subtitle A, Section 216, as amended by Amendment number 5, Manager’s Amendment (Policy Changes), offered by the Hon. Greg Walden (OR) and Kevin Brady (TX).

<sup>9</sup> IRS Rev. Proc. 2016-28.

<sup>10</sup> H.R. 1628, Title II, Subtitle A, Section 217.

**About this column: “The cobbler’s children have no shoes.” This old expression refers to the fact that a busy cobbler will be so busy making shoes for his customers that he has no time to make some for his own children. This syndrome can also apply to lawyers who are so busy providing good service to their clients that they neglect management issues in their own offices. The goal of this column is to provide timely information on management issues. If you have an idea for a future column, please contact Cathy Shuck at 541-8835.**