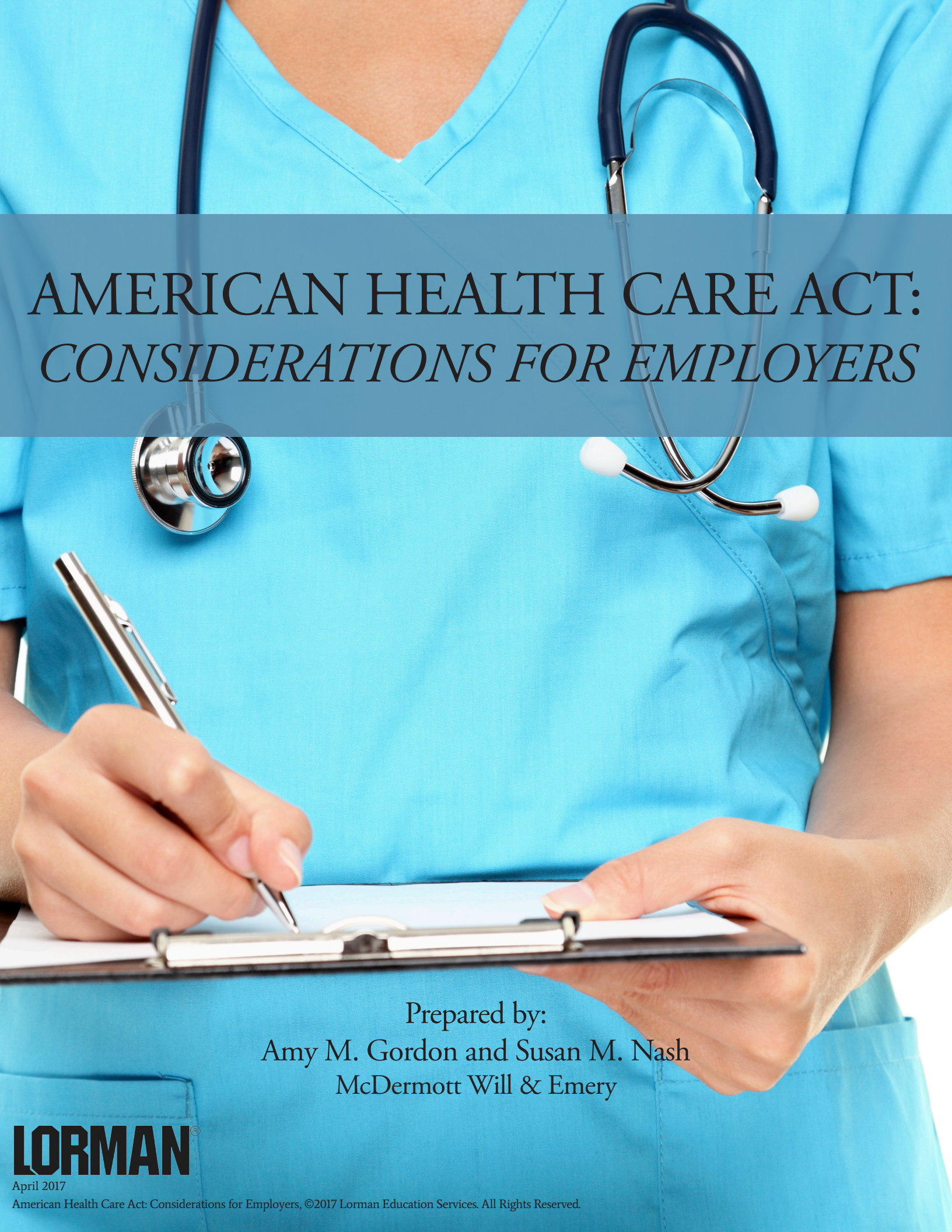

AMERICAN HEALTH CARE ACT: *CONSIDERATIONS FOR EMPLOYERS*

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American Health Care Act: Considerations for Employers

March 8, 2017
Amy M. Gordon *Susan M. Nash*

Summary

On Monday March 6, 2017, the House Republican leadership in the Energy and Commerce and Ways and Means Committees unveiled their signature bill to "repeal and replace" the Affordable Care Act (ACA). The "American Health Care Act" (AHCA) is an effort to make good on President Trump's promise to dismantle the ACA. Democrats are united in their opposition to the AHCA and other stakeholders have also come out against the bill – while the proposed legislation is subject to modification as it is marked up in committee and debated in Congress, certain provisions of the AHCA, if enacted, will be of particular importance to employers and provide the framework for a strategic road map as employers plan and design future health care benefits for their employees.

In Depth

On Monday March 6, 2017, the House Republican leadership in the Energy and Commerce and Ways and Means Committees unveiled their signature bill to "repeal and replace" the Affordable Care Act (ACA). The "American Health Care Act" (AHCA) is an effort to make good on President Trump's promise to dismantle the ACA. Democrats are united in their opposition to the AHCA and other stakeholders have also come out against the bill. While the proposed legislation is subject to modification as it is marked up in committee and debated in Congress, certain provisions of the AHCA, if enacted, will be of particular importance to employers and provide the framework for a strategic road map as employers plan and design future health care benefits for their employees.

The AHCA retains many of the ACA's market reforms popular with employees, such as elimination of pre-existing condition exclusions, coverage of adult dependent children up to the age of 26, capping out-of-pocket expenses, coverage of preventive care with no cost-sharing and elimination of annual and lifetime maximums on essential health benefits. These provisions of the ACA do not directly affect government revenue and cannot be modified through the budget reconciliation process. Secretary of the US Department of Health and Human Services Tom Price has indicated the Trump administration expects to introduce additional legislation in the coming months to address other non-budget related provisions of the ACA.

Employers will welcome many of the new proposed features of the AHCA, such as the elimination of employer penalties for failure to offer insurance to full-time employees and the delay of the Cadillac Tax. Other features of the proposed AHCA that will impact employers are summarized below.

- The earlier Republican proposal to tax employer-provided health insurance over the 90th percentile of premiums is no longer a feature of the bill. This is a victory for employers who vigorously opposed any taxation of employer provided health care benefits. The bill also delays, but does not repeal, the effective date of the Cadillac Tax—the tax on employers who provide high cost health insurance—from 2020 to 2025. This is largely viewed as an attempt to keep a placeholder in the legislation for future taxation of health benefits either through the vehicle of a Cadillac Tax on employers or a tax on employees who are covered under employer-provided health insurance that exceeds certain limits.
- The penalties under the individual and employer mandates under the ACA would be reduced to zero, retroactive to January 1, 2016. While this is a welcome development for employers, cumbersome employer reporting to both the Internal Revenue Service (IRS) and covered individuals would likely continue to be required. Reconciliation rules limit the ability of Congress to repeal the current reporting rules. However, if the current reporting scheme based on employer and individual mandates

becomes redundant under a revised system of tax credits, the secretary of the Treasury can cease to enforce and modify current reporting requirements. Simplified reporting of an offer of coverage on the W-2 by employers is under consideration.

- Government subsidies in the form of premium subsidies and cost-sharing reduction for individuals who purchase coverage on the public Health Market Place Exchange (Marketplace Exchange) would apply to coverage sold outside of the Marketplace Exchanges and to catastrophic coverage, but will be eliminated by 2020. The premium subsidies would be replaced with new health tax credits that could be used by individuals to purchase coverage on the individual market, provided they are not covered under employer sponsored insurance or other forms of governmental health care plans. The credits would be based on age with credits beginning at $2,000 for individuals under age 30 and gradually doubling for individuals over age 60. The credits are additive for a family and capped at $14,000 and grow over time by CPI+1. The credits would be available in full to those making $75,000 per year or less ($150,000 for joint filers). The credit would phase out by $100 for every $1,000 in income higher than those thresholds. Conservative members of the House have criticized the refundable tax credits as a thinly disguised entitlement program threatening overall adoption of the AHCA.
- It is anticipated that the elimination of the premium subsidies and cost-sharing reduction for purchase of Marketplace Exchange coverage, in combination with the elimination of the individual mandate, will be a death knell for the public Marketplace Exchanges. The Republican leadership is hoping to replace the public Marketplace Exchanges with free market choice to purchase qualifying health coverage in the individual market that will further the adoption of high deductible health plans compatible with Health Savings Accounts (HSAs). To this end, the AHCA contains a number of proposals designed to expand the adoption of HSAs. The maximum contribution to HSAs would double increasing the maximum contribution limit under HSAs to the out-of-pocket maximums (OOP max) under high deductible health plans (for 2017, the single OOP max is

$6,550 and the family OOP max is $13,100). Other changes to HSAs in the bill include rolling back the tax for HSA distributions not used for qualified medical expenses to 10 percent. Pre-ACA the tax was 10 percent, but was increased to 20 percent under the ACA. In addition, spouses who are HSA account holders would both be able to take advantage of catch-up contributions to one HSA. Also, effective in 2018, HSA withdrawals can be used to pay qualified medical expenses incurred before the HSA was established. If an HSA is established during the 60-day period beginning on the date that an individual's coverage under a high deductible health plan begins, then the HSA is treated as having been established on the date coverage under the high deductible health plan begins for purposes of determining if an expense incurred is a qualified medical expense.

- The following taxes would also be repealed under the proposed legislation as of the end of 2017: the medical device tax, the 3.8 percent tax on net investment income for certain individuals, the tax on over the counter medicines; the annual fee on certain health insurance issuers; and the Medicare tax increase on high wage earner.
- Limits on health Flexible Spending Accounts (FSAs) that were introduced under the ACA would be repealed essentially removing the $2,500 cap (indexed) on contributions to such accounts.
- Deductibility of company provided Medicare Part D subsidies would be reinstated.
- In an effort to encourage healthier individuals to remain enrolled in the health insurance markets, individuals would be required to pay a 30 percent higher premium in the individual market for health insurance if they have a gap in coverage of more than 63 days and later decide to re-enroll. This continuation of coverage requirement is similar to pre-ACA rules that governed the imposition of pre-existing condition exclusions under the Health Insurance Portability and Accountability Act, but it remains to be seen if they are enough of an incentive to encourage health individuals to remain in the insurance markets.
- Pre-ACA medical-expense deductions exceeding 7.5 percent of a taxpayer's adjusted gross income (AGI) would be reinstated,

versus the 10 percent limit imposed under the ACA. This change would be effective beginning in 2018. The special 7.5 percent of AGI rule for taxpayers who are 65 years or older, or turned 65 during the tax year, would be extended through 2017.

- For health insurance employers, the ACA capped company deductions for compensation paid to an officer, director or employee at $500,000. Under the AHCA, the limit on the deduction of compensation for such companies would be repealed effective in 2018.
- Medicaid expansion would be repealed by 2020 and replaced with state block grants based on the number of Medicaid enrollees in the state. While the bill proposes an increase in payments to the states, the percentage increase is fixed and not pegged to increases in health care costs. The Medicaid proposals under the AHCA remain controversial as they would drastically alter the landscape for Medicaid funding and provider reimbursement. Under the proposal, Medicaid block grants would drastically cut federal funding for state Medicaid programs. As a result, states would either need to increase their funding of Medicaid programs, or cut Medicaid programs to adjust for the reduced federal funds. Cutbacks may involve reduced eligibility, coverage of fewer services, lower payments to providers (which are already lower than commercial insurance) or increased cost-sharing by participants. Doctors and hospitals that serve the Medicaid population will suffer from lower reimbursement, which may lead to fewer providers for this population. Both red and blue states may also be forced to increase taxes to bridge the budget gaps.

We plan to continue to educate our clients on the AHCA and other health care reform proposals as they evolve and anticipate further changes as regulators, industry groups and the public weigh in with their ideas and concerns over these proposed changes to the health care system.