

## Legislative Fail

# ACA Repeal Plan Is Dead; So What Should You Do?

**N**OW THAT the American Health Care Act has suffered a defeat in Congress and President Trump has said he'll move on to other matters, the Affordable Care Act will stand as the law of the land.

The big question hanging over the law, however, is the executive order that Trump signed shortly after taking office in January. While that order did not abolish the legislation, it set the stage for agencies to act immediately on regulations that are deemed overly burdensome.

But, the administration has not said what it will do now that the AHCA has ground to a halt.

While the executive order still stands, it's now unclear whether ACA will be repealed/repaid this year, and how the agencies will enforce the law's regulations in the interim.

They can choose, for example, not to enforce the penalties for applicable large employers who do not provide acceptable health insurance for their employees, or not to enforce the penalties for individuals that do not secure health insurance if none is offered by their employer.

There are two main agencies that have

enabling regulations in place for the ACA: the Department of Treasury and the Department of Health and Human Services.

There has been no indication or announcement from these agencies that they will or will not enforce the regulations currently in place or whether they are in the process of starting to write new ones.

Regardless, rule-making takes time... often years. In fact, the regulations that enabled the ACA took four years to unfold.

And any rules would still have to be changed within the confines of the ACA, and it's unclear how much leeway the agencies have in deviating from that law. The executive order reads:

*"...it is imperative for the executive branch to ensure that the law is being efficiently implemented, take all actions consistent with law to minimize the unwarranted economic and regulatory burdens of the Act, and prepare to afford the States more flexibility and control to create a more free and open healthcare market."*

It also said that the HHS secretary and other agency heads "shall exercise all authority and

*discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision... that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications."*

Meanwhile, Trump has said he is willing to work with the Democrats to get a new law pushed through, but the chances of that are slim if he insists on repealing the ACA. They are more likely to be open to changes to address some of the problems, particularly the lack of participation by private insurers in health exchanges in some parts of the country.

### The takeaway

So what does this mean for employers? Continue providing insurance for your employees if you are an applicable large employer, and continue submitting the required forms to the IRS.

For now, do what you've been doing. ♦

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# Companies Struggle with Compliance, Administration

**M**ORE AND more employers are being overwhelmed by all of the compliance requirements associated with managing employee benefits.

The Guardian Life Insurance Company of America's "Benefits Balancing Act" study found that 60% of employers are feeling overwhelmed with the increased complexity of managing their benefits programs. One of the main reasons for the additional burden is the Affordable Care Act, with its myriad of compliance and reporting requirements.

The employer mandate and the documentation and new filing requirements with the IRS are high on the list of compliance issues, as are evolving Family Medical Leave Act (FMLA) and ERISA requirements.

Interestingly, larger firms with 100 or more employees are having the hardest time, with 70% saying they are especially challenged by installing new coverages, changing carriers and employee communications and enrollment.

The shackles of compliance are so great that it's the number one benefits-related concern for nearly 30 % of employers, the study found. In fact, 70% said that their firms are not equipped to keep up with the steady changes in federal and state laws governing employee benefits.

## What companies are doing

As the regulatory landscape has shifted so dramatically over the last seven years, many employers have opted for outsourcing their benefits compliance.

## TOP COMPLIANCE CONCERNS

- The ACA excise tax ("Cadillac tax")
- Changes to paid parental leave laws
- ACA employer mandate
- ERISA requirements
- State and local FMLA requirements

## TOP ADMINISTRATIVE CONCERNS

- Employee communications and education
- Adding new benefits or changing plans and insurers
- Establishing electronic data interchanges
- Account management and service delivery
- Claims and employee customer service
- Enrolling employees

This may be an especially smart move for smaller employers, which often do not have in-house benefits administration resources.

If you are concerned about your benefits compliance and administration call Einstein Advanced Health Insurance Solutions. We are glad to help. ❖

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# Bill Would Make Collecting Employee Health Info Easier

**L**EGISLATION HAS surfaced in Congress that would allow employers to collect biometric and genetic information from employees and their family members as a precondition for participation in a company wellness program.

The bill would essentially repeal a portion of the Genetic Information Non-discrimination Act (GINA), which in part bars employers from collecting genetic information on employees or members of their family for certain wellness programs.

The GINA bars health insurers and employers from discriminating against people based on information that their genes carry – say, a family history of heart disease or stroke.

The law contains an exception for employers that collect information from employees for a voluntary wellness program, the kind with no carrots or sticks for participation.

It is aimed at wellness programs that offer employees discounts on their health insurance in exchange for participation. Wellness plans may require participation in a health risk assessment or that the employee meet certain fitness or health goals.

Under the Affordable Care Act, employers can offer discounts of up to 30% on health insurance to employees that participate in wellness plans.

In some cases, the employer can offer up to a 50% discount if the employees meet certain health targets.

HR 1313 would allow employers to collect biometric information

from employees and their family members as a prerequisite for participation in wellness programs that provide discounts or other financial incentives.

Employer groups have decried the GINA's strict rules, which they say inhibit their ability to help employees improve health metrics like high blood pressure and obesity, among others.

## Bill's key language

HR 1313's key language states that:

*"The collection of information about the manifested disease or disorder of a family member shall not be considered an unlawful acquisition of genetic information with respect to another family member as part of a workplace wellness program."*

The bill passed along party lines in the House Education and the Workforce Committee, (22 Republicans for and 17 Democrats against). It still has other committees to clear before the full House votes on the legislation and sends it to the Senate.

Proponents of the bill, like the American Benefits Council, say that it would preserve wellness plans, which they say have suffered under the GINA.

Opponents of the measure say that it would open the door to employers discriminating against employees if they or any of their family members are deemed to pose a serious risk of high medical costs in the future. ❖

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## Insurance Choices

# Executive Benefits Plans Can Help Attract, Retain Top Talent

**W**ITH C-SUITE executives retiring in large numbers and the market for more upper-management talent shrinks, employers are increasingly having to offer more aggressive benefits and compensation packages to attract and retain them.

While you may provide 401(k) benefits to your rank and file, for many executives, the yearly investment limit is far too restrictive to fulfill their needs. So what are your options for your top executives who want to sock away more money for the future than other employees can?

The answer for many firms is a non-qualified deferred compensation plan or a selective executive retirement plan. These plans can help solve retention and motivation problems, helping to retain executives who are much needed for the continuity of your corporation's success.

### Non-qualified deferred compensation plans

One solution to the limits of traditional qualified plans is deferred compensation. Non-qualified deferred compensation plans can be designed to look like the standard features of a 401(k) plan, except that they do not have a cap on the amount the executive can put away in the plan.

In this type of plan, you can defer various forms of pay, including base, bonus, commissions and special incentives. More flexible payout schedules can be arranged as well.

A non-qualified deferred compensation plan does not have to be solely retirement-focused.

You can set a plan up that defers payouts to a future date before retirement. This type of plan may be attractive to a younger executive who wants to save up for her children's college tuition.

Non-qualified deferred compensation programs can be constructed to make it easier for your executives to handle other important expenses, such as a retirement home or other anticipated future costs. For example, your non-qualified plan could allow an executive to elect distribution of four annual payments beginning in a future year to

finance tuition and expenses for a child entering college that year.

These non-qualified plans help close the "retirement gap" by allowing executives to put away the amount they will need for a retirement suitable with their current lifestyle.

Business owners can also pick and choose who participates in the plan. In fact, they can customize a specific plan for each executive.

Non-qualified plans also provide tax advantages, both for employees and businesses. Often, plans can be designed with minimal or no impact to the company balance sheet – and over time can actually improve it.

### SERP's up!

A selective executive retirement plan (SERP) targets key personnel and allows the company to pay out a percentage of an employee's pay at the time of retirement over a number of years, like an annuity or pension.

SERPs are partially funded by the company, like a 401(k)-matching benefit or a defined-benefit plan. But you should now that SERPs are not portable like 401(k) plans are.

SERPs must be limited to a top group of executives and/or directors due to the penalties that could arise through ERISA-based claims if a plan covers more than a top group.

These types of plans are commonly called "non-qualified" because they cannot meet the broad coverage rules that are necessary to secure the special tax treatment afforded to tax-qualified retirement plans.

Although not without tax risk, a SERP may permit executives to self-direct the measures for the return on their account balances. The employer usually selects the range of available choices in order to facilitate plan administration.❖❖

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