On Monday, March 6, the House Republican leadership introduced legislation, known as the American Health Care Act, to replace tax elements of the Affordable Care Act (ACA). The American Health Care Act was created under the budget reconciliation process and requirements and is limited in its scope to amend only the tax provisions of the ACA. It does not amend the insurance and the underlying coverage requirements of the ACA. Using this process allows supporters of the American Health Care Act to pass changes to the ACA in the Senate with a simple majority of 51 votes instead of the 60 votes needed to override an expected Democratic filibuster.

In introducing the legislation, House Speaker Paul Ryan outlined three steps Congress and the Trump Administration will now take to replace the ACA:

1. Pass the American Health Care Act.

2. Make additional changes to the rules that govern the ACA through the regulatory process.

3. Work with Democrats to pass legislation to address the insurance elements of the ACA that need reform, which will require support of Senate Democrats in order to avert a filibuster.

The Ways and Means and Energy and Commerce Committees began work on the bill this week and the legislation will likely change as it works its way through the legislative process. Early Thursday, March 9 the House Ways and Means Committee approved the bill by a vote of 23-16. The House Budget Committee is expected during the week of March 13 to package the Ways and Means language with provisions from the Energy and Commerce Committee, which is yet to vote on the bill. If passed by the Committees, the legislation could be considered by the full House as early as the week of March 20.

Key issues of interest to the HR profession and the workplace:

- **Reduces Employer Mandate Penalty -** Under current law, certain employers are required to provide health insurance or pay a penalty. This bill would reduce the penalty to zero for failure to provide minimum essential coverage. The employer mandate will remain and would have to be repealed through future legislation. The effective date would apply beginning after December 31, 2015, providing retroactive relief to those impacted by the penalty in 2016.

- **Reduces Individual Mandate Penalty -** Under current law, most individuals are required to purchase health insurance or pay a penalty. This bill would reduce the penalty to zero for failure to maintain minimum essential coverage. The individual mandate will remain and would have to be repealed through future legislation. The effective date would apply beginning after December 31, 2015, providing retroactive relief to those impacted by the penalty in 2016.

- **Creates a Continuous Coverage Requirement Surcharge -**This bill creates a new continuous coverage requirement surcharge. To avoid a 30 percent premium surcharge, individuals must prove that they did not have a gap in creditable coverage beyond 63 continuous days during the

12 months preceding coverage. Individuals aging out of dependent coverage must prove that they enrolled during the first open enrollment period after which dependent coverage ceased. The penalty does not vary by health status but would be greater for older individuals since premiums may vary with age. The penalty lasts for the remainder of the plan year for special enrollments during 2018, and for the 12-month period beginning with the first day of the plan year for 2019 and succeeding years.

- **Delays Excise Tax On High-Value Health Care Plans –** The ACA imposed a 40 percent excise tax on high cost employer-sponsored health coverage to benefits exceeding certain thresholds ($10,200 for individual coverage and $27,500 for family coverage). Under current law, the tax is scheduled to go into effect in 2020. This bill changes the effective date of the tax for taxable periods beginning after December 31, 2024.

- **Repeals the Health Insurance Tax –** The ACA imposed an annual fee on certain health insurers. The proposal repeals this health insurance tax beginning after December 31, 2017.

- **Repeals Increase of Tax on HSAs –** The ACA increased the percentage of the tax on distributions that are not used for qualified medical expenses to 20 percent. This bill lowers the rate to pre-ACA percentages. This change is effective for distributions after December 31, 2017.

- **Repeals the Limit on Contributions to FSAs –** The ACA limits the amount an employer or individual may contribute to a health Flexible Spending Account (FSA) to $2,500, indexed for cost-of-living adjustments. This bill repeals the limitation on health FSA contributions for taxable years beginning after December 31, 2017.

As noted above, the bill does not repeal the ACA insurance reforms, including the following health plan requirements:

- Coverage of preexisting conditions;
- Guarantee availability and renewability of coverage;
- Coverage of adult children up to age 26;
- Cap out-of-pocket expenditures;
- Prohibitions against health status underwriting, lifetime and annual limits, and discrimination on the basis of race, nationality, disability, age, or sex.

Since the legislation does not eliminate the employer mandate, employer reporting requirements under the ACA would not change.

SHRM Position: SHRM supports reforms that lower health care costs and improve access to high-quality and affordable coverage. The Society believes that congressional reforms should strengthen and improve the employer-based health care system. Health care reform proposals should: ensure that tax policy contributes to lower costs and greater access; preserve the federal Employee Retirement Income Security Act to allow for common benefit plans across state lines; encourage increased use of prevention and wellness programs; improve quality and transparency; and streamline medical liability laws to reduce health care costs.