On May 4, the House of Representatives passed H.R. 1628, the American Health Care Act to replace tax elements of the Affordable Care Act (ACA) by a vote of 217 to 213. H.R. 1628 was initially created under the budget reconciliation process and requirements and is limited in its scope to amend only the tax provisions of the ACA. However, several amendments were added to the legislation to ensure passage in the House and it is not yet clear that these provisions will adhere to Senate budget reconciliation rules.

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 The employer mandate will remain and would have to be repealed through future legislation. Effective date: 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 The individual mandate will remain and would have to be repealed through future legislation. Effective date: 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. Effective date: 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. Effective date: for taxable periods beginning after December 31, 2025.

- **Repeals the Health Insurance Tax** - The ACA imposed an annual fee on certain health insurers. Effective date: repeals the health insurance tax beginning after December 31, 2016 and would be retroactive.

- **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 10 percent. The bill also allows individuals to use HSA funds for over-the-counter medical items. Effective date: after December 31, 2016 and would be retroactive.

- **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. Effective date: for taxable years beginning after December 31, 2016 and would be

retroactive. The bill also allows FSAs to reimburse over-the-counter medications also beginning in 2017 and would be retroactive.

In addition, the bill includes several provisions providing states the flexibility to apply for three types of waivers for individual market plans and group plans offered by small employers.

- **States to Opt to Increase Age Rating Ratio in Insurance Plans** - Allows states to increase the age rating ratio above the 5 to 1 ratio as proposed in the AHCA. The ACA established a 3 to1 premium ratio based on age to prevent older Americans from being charged more than three times the premium charge to a younger consumer for the same coverage. Effective dates: applicable for plan years beginning on or after January 1, 2018.

- **States to Opt out of the Essential Health Benefits (EHB) Requirements** - Allows states to opt out of mandating insurers to cover 10 essential health benefits in plans. Since the ACA's prohibitions of lifetime and annual limits and cap on out-of-pocket expenditures also only apply to essential health benefits, states granted a waiver would be able to define these protections as well. Effective date: applicable to plan years beginning on or after January 1, 2020.

- **States to Opt to Permit Insurers to Engage in Health Status Underwriting** - Gives states the option to allow insurance companies operating in their individual insurance market to charge higher premiums for a person with a health condition who does not maintain continuous coverage of at least 63 days. This premium increase would be for 12 months preceding coverage. To obtain this waiver, the state must operate a program under the AHCA's patient and state stability fund, including the establishment of its own high-risk pool or participate in a Federal high-risk pool that reinsures high cost cases. Effective date: applicable for plan years beginning in 2019 (or special enrollment periods beginning with plan year 2018).

The House-passed bill, H.R. 1628 does not directly impact Employee Retirement Income Security Act covered self-insured health plans, however these plans might be subject to increase costs. The requirement that insurance carriers offer coverage to individuals with pre-existing conditions would remain the law. In addition, other existing ACA insurance standards like providing coverage for adult children up to age 26, guaranteed renewability, no discrimination based on gender and community rating requirements, except as permitted by waiver would remain the law. The legislation does not eliminate the employer reporting requirements under the ACA.

The bill now goes to the Senate for consideration. The fate of bill in the Senate is uncertain since it includes a few provisions unrelated to tax provisions, a requirement under the budget reconciliation process. In addition, the Congressional Budget Office score estimating the potential costs and number of people who would lose insurance was not released until after House passage of the bill, which could impact the Senate's consideration of the measure.

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.