

# Office Hours

## From Obamacare to Trumpcare: What to Expect from the Likely “Replace” Alternatives

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NOVEMBER 29, 2016

[Audio](#)

# Trump's Plan: The Big Picture

**From His Campaign Website:**

<https://www.donaldjtrump.com/policies/health-care/>

## **DONALD TRUMP'S VISION**

- Repeal and replace Obamacare with Health Savings Accounts (HSAs)
- Work with Congress to create a patient-centered health care system that promotes choice, quality, and affordability
- Work with states to establish high-risk pools to ensure access to coverage for individuals who have not maintained continuous coverage
- Allow people to purchase insurance across state lines, in all 50 states, creating a dynamic market
- Maximize flexibility for states via block grants so that local leaders can design innovative Medicaid programs that will better serve their low-income citizens

# The “Health Care Reform Roadmap”

## Law is effective

- 2010:** No Lifetime Limits
- 2010:** Controls On Policy Rescissions
- 2010:** Coverage For Adult Children to age 26
- 2010:** Patient Access to Care Protections
- 2010:** Enhanced Claims and Appeals Process
- 2010:** No Cost Share On Preventive Services
- 2011:** MLR Rebates
- 2012:** W-2 Cost of Coverage Reporting
- 2012:** Women's Preventive Services Coverage
- 2012:** Summary of Benefits and Coverage
- 2012 – 2019:** PCORI Fee
- 2013:** Notification of Exchanges
- 2014:** Max Annual Out of Pocket Costs
- 2014:** Guarantee Issue/Renewal and No Pre-Ex Restrictions
- 2014:** Health Insurance Tax
- 2014:** Clinical Trial Coverage & Provider Non-Discrimination
- 2014:** No Annual Limits
- 2014:** Transitional Reinsurance Fee

## Law is effective

- 2015:** Pay or Play Employer Mandate 100+
- 2016:** ACA Information Reporting (1094-C and 1095-C)
- 2016:** Pay or Play Employer Mandate 50+
- 2020:** Excise / Cadillac Tax
- TBD:** Fully Insured Medical Non-Discrimination

**What Will Survive???**

# The “Health Care Reform Roadmap”

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~~2012: Women's Preventive Services Coverage~~

~~2012: Summary of Benefits and Coverage~~

~~2012 – 2019: PCORI Fee~~

~~2013: Notification of Exchanges~~

~~2014: Max Annual Out of Pocket Costs~~

~~2014: Prohibition on Preexisting Condition Exclusions~~

~~2014: Health Insurance Tax~~

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## What Will Survive???

# Trump's HSA "Specifics"

## From His Campaign Website

<https://www.donaldjtrump.com/positions/healthcare-reform>

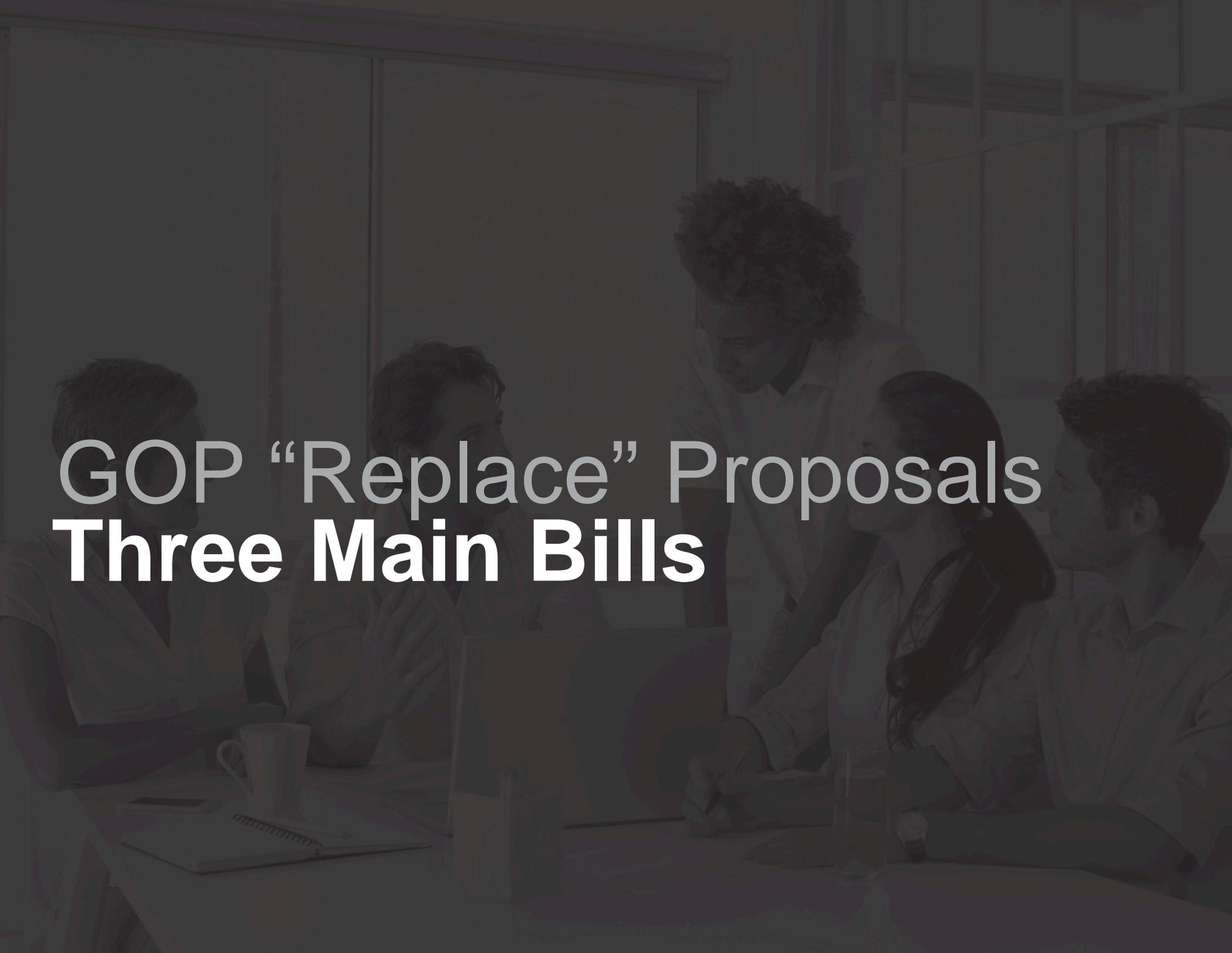
- “Allow individuals to use Health Savings Accounts (HSAs). Contributions into HSAs should be tax-free and should be allowed to accumulate. These accounts would become part of the estate of the individual and could be passed on to heirs without fear of any death penalty. These plans should be particularly attractive to young people who are healthy and can afford high-deductible insurance plans. These funds can be used by any member of a family without penalty. The flexibility and security provided by HSAs will be of great benefit to all who participate.”

## How Does This Differ From Current HSA Law?

- That description is very close to how we currently treat HSAs
- There will have to be some type of reform involved to expand the use of HSAs for this to make sense
  - Will individuals be HSA eligible without regard to HDHP enrollment? Or without regard to disqualifying coverage?
  - Greater contribution limits?
  - Ability to use for premiums?
  - Anything?

# What About HSAs?





# GOP “Replace” Proposals **Three Main Bills**

# GOP “Replace” Proposals

## Three Main Bills

### Previously Proposed Legislation:

#### **A Better Way**

- Introduced to the public June 22, 2016
- Primarily promoted by Speaker Ryan (R-WI)
- [https://abetterway.speaker.gov/\\_assets/pdf/ABetterWay-HealthCare-PolicyPaper.pdf](https://abetterway.speaker.gov/_assets/pdf/ABetterWay-HealthCare-PolicyPaper.pdf)

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#### **The World’s Greatest Healthcare Plan**

- Introduced in the House May 19, 2016 (H.R. 5284)
- Rep. Sessions (R-TX) and Rep. Cassidy (R-LA)
- Intellectual brainchild primarily of John Goodman, health policy commentator
- <https://www.congress.gov/bill/114th-congress/house-bill/5284>

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#### **The Patient Choice, Affordability, Responsibility, and Empowerment Act**

- Introduced to the public February 5, 2015 (aka “Patient CARE Act”)
- Promoted by Sen. Burr (R-NC), Sen. Hatch (R-UT), and Sen. Upton (R-MI)
- The main reform concept from the powerful Senate Finance Committee
- <https://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/114/20150205-PCARE-Act-Plan.pdf>

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A hand holding a pen over a document with a bar chart, overlaid with a red gradient.

A Better Way  
**Speaker Ryan's Vision**

# A Better Way: HSA Expansion

## **Allow spouses to make catch-up contributions to the same HSA account**

- Currently requires spouse to make the second \$1,000 catch-up contribution to separate HSA in the spouse's name

## **Allow qualified medical expenses incurred before HSA eligibility to be reimbursed tax-free if HSA is established within 60 days**

- Currently only expenses incurred after HSA establishment (generally after account has been funded) are eligible for tax-free medical distributions

## **Increase the maximum contribution limit to the sum of the annual deductible and OOP maximum limits**

- Would increase the employee-only HSA contribution limit from \$3,400 to \$7,850
- Would increase the family HSA contribution limit from \$6,750 to \$15,700

## **Expand HSA eligibility for certain groups, including those who get services through Indian Health Services and TRICARE**

- TRICARE is disqualifying coverage, currently a three-month block on HSA eligibility for those who receive coverage from IHS
- Recent changes already prevent VA benefits from blocking HSA eligibility for veterans with a service-connected disability

# A Better Way: Employer Health Exclusion Cap

## Proposal targets the unlimited exclusion from income for employer-sponsored health coverage under Section 106

- Expensive: Largest so-called tax expenditure—estimated to reduce government revenue by \$3.6 trillion over the next decade
- Regressive: Provides a bigger tax savings to those in higher tax brackets
- Wages: Reduces wages by prioritizing employer compensation be paid in health care rather than standard wages as take-home pay
- Premiums: Estimated to increase the cost of employer-sponsored coverage by 10%-15% because of the incentives it creates to purchase more coverage

## Highlights difference from Cadillac tax

- No mandates, no penalties, no special-interest carve-outs
- Also omits employee pre-tax HSA contributions from counting toward cap

## What is the actual cap?

- Nobody knows! More of a conceptual proposal at this point
- Remember Jeb(!) Bush? His campaign proposal was \$12,000 for individuals, \$30,000 for families (indexed for medical inflation)—expect something similar

# A Better Way: The Health Care “Backpack”

## **GOP talking point is to refer to health plan portability as a “backpack”**

- Idea is to allow individual to take same policy job-to-job
- How could this possibly work if we still have employer-sponsored group health plans and group policies?

## **Another refundable tax credit?**

- Described as a “universal advanceable, refundable tax credit for individuals and families” without access to an employer-sponsored plan
- The §36B advanceable, refundable premium tax credit for exchange coverage is a cornerstone of the ACA
- This proposal differs by making the credit:
  - a) A fixed amount
  - b) Be sufficient to purchase a “typical pre-Obamacare health insurance plan”
  - c) Unused amounts could be deposited into “HSA-like account”
  - d) Available outside the exchange

# A Better Way: Deregulation

## **Purchasing Coverage Across State Lines**

- This is one area where Trump and Ryan are in clear agreement
- Current law makes the sale of insurance across state lines difficult—primarily through the 1945 McCarran-Ferguson Act anti-trust exemption giving states exclusive power to regulate insurance sold within their borders
- Goal would be for consumers to be able to purchase coverage out-of-state where reduced state mandates and other state regulatory differences reduce cost
- How will state regulators resist? Their licensing power currently gives them essentially monopoly control over all policies sold in the state

## **Small Employer Pooling through Association Health Plans**

- ACA addressed small employer risk issues by community rating (frequently referred to as age rating) all employers under 100 employees (subsequently dropped to back 50 in most states, but not CA)—this approach ultimately proved costly
- GOP proposal is to address the issue by allowing small employers to join together to form association health plans (AHPs)
- Appears the goal would be ease the current multiple employer welfare arrangement (MEWA) rules which permit a similar approach for “bona fide associations” only when strict and narrow conditions are satisfied

# A Better Way: Pre-Existing Conditions

## The HIPAA Approach

- Prior to the ACA, pre-existing condition exclusions (PCEs) weren't much of an issue in the group market
- This is because HIPAA prohibiting plans from imposing PCEs as long as the individuals had maintained creditable coverage without a 63-day break in coverage
- Idea here is to apply the same concept to the individual market

## One-Time National Open Enrollment

- Would be a one-time national open enrollment without PCEs for those who haven't maintained continuous creditable coverage to join the risk pool without penalty
- Approach balances the desire to eliminate the individual mandate with the need to have some effective mechanism against runaway adverse selection if no PCEs
- Those who fail to enroll during the one-time national enrollment (and do not have other continuous coverage) will face steep costs to purchase insurance if they wait until they experience a condition
- Best thought of as a financial incentive carrot to purchase coverage instead of the ACA's tax penalty stick

# A Better Way: The Other Account-Based Plans

## Health Reimbursement Arrangements (HRAs)

### What the ACA Did:

- Prohibited stand-alone HRAs
- Means everyone covered by an HRA must also be enrolled in a group major medical plan
- Prohibited use of HRA to purchase individual policies for active employees

### What A Better Way Does:

- Permits stand-alone HRAs
- May use an HRA to pay for individual market coverage
- May also directly pay or reimburse for individual policies

## Health Flexible Spending Arrangements (FSAs)

### What the ACA Did:

- Capped the annual employee salary reduction contribution at \$2,500 (adjusted for inflation)
- Capped the annual employer contribution at \$500 (not adjusted)
- Required that over-the-counter medicine and drug expenses be provided pursuant to prescription (same for HRA/HSA)

### What A Better Way Does:

- Probably eliminates all of those rules
- But not directly addressed

# A Better Way: The Other Stuff

## **Express Protection Against Federal Stop-Loss Insurance Regulations**

- To alleviate fears that DOL/HHS will use federal stop-loss regulation as a backdoor way to regulate employer self-funded plan coverage

## **Eliminating EEOC Regulation of Wellness Programs through the ADA**

- Extensive regulation of wellness programs already in place through HIPAA
- Would clarify that EEOC has no authority to regulate wellness programs under ADA
- See our summary of the HIPAA and ADA regulations for wellness programs:  
[http://www.theabdteam.com/sites/default/files/content/presentation/file/ABD%20Office%20Hours--Final%20Wellness%20Rules%20final\\_0.pdf](http://www.theabdteam.com/sites/default/files/content/presentation/file/ABD%20Office%20Hours--Final%20Wellness%20Rules%20final_0.pdf)

## **Medical Malpractice Reform**

- Caps on non-economic damages awards
- Caps on legal fees that plaintiffs attorneys can receive
- Many other reforms that states encouraged to adopt (e.g., loser pays)

## **Per Capita or Block Granting Medicaid**

- Complicated transition rules to protect those newly covered through the ACA Medicaid expansion



Ivanka's Influence  
**Trump's Child Care Plan**

# Child Care: Day Care Expense Deduction

## **A new above-the-line deduction for day care expenses**

- Almost everyone agrees the \$5,000 dependent care FSA limit is outdated
- New deduction approach would provide an above-the-line deduction (available regardless of whether you itemize deductions) capped at the average cost of childcare in the state (national average is approx. \$12,000/year)
- Deduction available for up to four children per family

## **High earners excluded**

- Deduction available for individuals earning less than \$250k
- \$500k income limit for married filing jointly

## **Low earners get EITC bonus**

- For those with no income tax liability, the plan would provide an Earned Income Tax Credit boost of half the payroll taxes paid by the lower earning parent
- Income capped at \$31,200
- Can be directly deposited into Dependent Care Savings Account

## **Other Stuff**

- Unlike current dependent care FSA rules, also available for stay-at-home parents
- Can be used for elder care, too (but capped at lower \$5,000/year limit)

# Child Care: Dependent Care Savings Accounts

## **HSA gets a new triple-tax-advantaged cousin, the DCSA**

- The same triple-tax-advantaged approach as HSAs
- Deductible contributions, tax-free growth, tax-free distributions
- Presumably employers would be able to contribute tax-free, and employees could contribute pre-tax through payroll, in the same manner as HSAs

## **Annual contribution limit**

- \$2,000 contribution limit from all sources
- In addition to dependent care FSA (does not replace it)

## **Federal government matching program**

- Low-income families will receive a 50% matching contribution, up to \$1,000 per year
- No income cap specified in proposal

## **No use-it-or-lose-it**

- Funds roll year-to-year like an HSA

## **Also a cousin of the 529 plan**

- Amounts remaining in the DCSA when child reaches age 18 can be used for higher education expenses

# Child Care: Employer On-Site Daycare

## **Increase incentive to provide on-site daycare**

- Currently only 7% of employers provide on-site daycare at or near worksite
- Goal is to enhance the current tax incentives to increase that number

## **Current tax incentives**

- Tax credit of 25% of facility expenditures
- Tax credit of 10% of resource and referral costs
- \$150,000 cap per year
- Some of the credit amount is recaptured if the daycare services are not available for at least 10 years

## **Trump plan enhancements**

- Increases the \$150,000 cap (unspecified limit)
- Shortens the recapture period (unspecified period)
- Permits companies to pool resources to make the credit more attractive

# Child Care:

## Paid Maternity Leave

### **Only four states have mandated paid family leave**

- California, Rhode Island, Washington, New Jersey (New York in 2018)
- All four state programs are funded through employee payroll taxes for disability

### **New federal paid maternity program to cover all states**

- Available for up to six weeks after birth
- For new mothers only (no paid paternity for baby bonding)

### **Funded through FUTA**

- Program uses the existing federal unemployment tax paid by the employer to fund the maternity leave benefits
- Vague references to eliminating waste, fraud, and, abuse in the unemployment system to avoid making any cuts to existing unemployment benefits
- Paid maternity leave benefit amount would equal current unemployment benefit levels, which are less than a worker's regular wages (varies by state)

A hand holding a pen over a laptop displaying a bar chart, with a red overlay.

Employer-Sponsored  
Group Health Plans  
**What the Future Holds**

# Employer Life After the ACA

## When Pay or Play Goes Away

**No more requirement for ALEs to offer minimum essential coverage that is affordable and provides minimum value to full-time employees to avoid potential pay or play penalties—**

- Will employers return to plan provisions that set eligibility at those regularly scheduled to work 40 hours per week?
- Will anyone still track employee full-time status by the look-back measurement method?
- Will employers charge more for the employee-share of the premium when no longer bound by affordability rules?

## A (Not So) Fond Farewell to ACA Reporting

**No more requirement for ALEs to report multitude of offer and coverage details on Forms 1094-C and 1095-C—**

- A cottage industry has developed around compiling the incredible amount of data needed to complete the ACA reporting forms—what will come of it?
- Most of the ACA reporting vendors provide a comprehensive hours tracking tool to determine employees' full-time status—will this serve any use when not required for pay or play and reporting?
- Expect significant cost savings for most employers that will no longer need to pay for these services

# Employer GHPs OK After the ACA?

## Pre-Trumpcare Tax Incentives for Employer-Sponsored Plans

**Current U.S. tax structure has provided a strong incentive for employer-sponsored coverage since WWII:**

- Medical expenses deductible only in excess of 10% of adjusted gross income (ACA increased from 7.5%)
- Pay or play rules imposed enormous excise tax (the A Penalty) for ALEs not offering a health plan
- Stand-alone HRAs prohibited
- Individual policy direct payment or reimbursement prohibited
- Full exclusion from income for cost of coverage and benefits (pending 2020 Cadillac tax)

## How Trumpcare May Move Many to Individual Coverage

**Trumpcare approach may diminish incentives enough that individual coverage proves more attractive:**

- First-dollar deduction for individual policy
- Cap on the exclusion from income for employer-sponsored coverage
- Permits stand-alone HRAs
- Permits individual policy direct payment or reimbursement
- Changes to HSAs may permit general use of account for premiums
- Continuing the ACA prohibition of pre-existing condition exclusions in individual market removes a pre-ACA incentive for GHP coverage



# Wrap Up Takeaways

# From Obamacare to Trumpcare

## Top Three Items You Need to Know for 2017

### Three Key Points to Remember:

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The ACA as we know it will not exist in a few months. That means no more employer mandate pay or play rules, and no more ACA reporting. But the “replace” picture is far less clear. All we know for sure is that everyone seems committed to keeping age 26 coverage and the prohibition of PCEs.

B

President Elect Trump’s “replace” proposal is skeletal. You have to look to the GOP’s far more detailed “A Better Way” proposal from mid-2016 to find details on a likely proposal to gain traction in 2017. Speaker Ryan champions this structure, which includes some features similar to the ACA (tax credits, cap on exclusion), and some different (HSA expansion, sale across state lines).

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The umbrella “Trumpcare” tag should probably be used broadly enough to include the significant reform proposals for how we fund child care expenses. This includes a very large tax deduction, a new savings account, more employer on-site care, and even a federal paid maternity leave program.

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From Obamacare to Trumpcare

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# Thank You!

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