



ERIC

*What Laws Will Congress and States
Change in 2017 Affecting How Large
Employers Provide Health and Retirement
Benefits*

**The ERISA Industry Committee
Driven By and For Large Employers
www.eric.org**

The ERIC Perspective

Who we are:

The [ERISA Industry Committee \(ERIC\)](#) is the *only* national association that advocates ***exclusively for large employers*** on health, retirement, and compensation public policies at the ***federal, state, and local levels***.

- Large employers (over 10,000 employees), and leaders in every sector of the economy

What we do:

ERIC is driven by and for large employers – the bridge between those crafting the rules and those who have to comply with them.

- Help our member companies know what [federal](#), [state](#) or local rules are being considered and where the challenges and opportunities are
- Leverage ERIC's trusted status and influence, as well as our relationship with policymakers, to see what is coming around the corner and to shape the final outcome to align with large employer needs



Election Impact Report Agenda

- Election Impact on Policymaking and Governing
 - Presidency, U.S. Senate, U.S. House, States
- Conflicting State Laws Complicating Compliance for Large Employers
 - Paid Sick/Parental Leave, Telehealth, State Retirement Plans, Biologics, etc.
- Health Care Legislation
 - Affordable Care Act (ACA) Repeal and Replacement
 - How will it happen and what does it mean for large employers?
 - Proposals to tax employer-sponsored health insurance
 - Congressional and President-Elect Trump Health Reform Plans
- Retirement Legislation
 - Tax reform impact on defined contribution retirement plans – will benefits be taxed?
 - Financial Wellness
- Compliance and Other Federal Regulations Impacting Large Employers
- What can you do to track and shape proposed rules that affect large employers?

Election Impact on Policymaking and Governing

Composition of U.S. Congress

- Demographics (more women, minorities)
- Political divide more acute
- Oversight and investigations
- Term limits for Committee chairs
- Senate filibuster rules
- 2018 election already begun
 - 25 Democratic Senators up for re-election, 10 from states carried by Trump
- Slim margin for Senate majority/Power of small blocks of votes in the House
- Committee ratios and staff resources impacted by majority margin
- Presidential appointments of business leaders and policy experts to shape labor, health and benefits rules

What Really Impacts Governing in the Short-Term: Physical Disruption and Budget Rules

Driven By and For Large Employers

Risks and Opportunities Lie Ahead

- Divided country, competing political forces
- Rewriting of ACA – taxing health benefits? Cost and quality policy opportunity?
- Paid sick/parental leave movement in states and at federal level
- Increased state activity and mandates
- Telehealth availability
- Higher health care costs/Personalized medicine/Innovation
- Government meddling in employer retirement savings efforts
- Gig economy impact on employers and benefits
- Potential for tax reform – taxation of employee benefits?

Need to look around the corner to see what is coming, and know what you can do about it

115th Congress: Senate (2017-2018)

U.S. Senate (52 R to 48 D)

- Democrats Net Gain of Two Seats
- Six Freshmen Senators
- Democratic Leadership
 - Chuck Schumer (D-NY) Minority Leader
 - Dick Durbin (D-IL) Minority Whip
 - Patty Murray (D-WA) Assistant Leader
- Republican Leadership
 - Mitch McConnell (R-KY) Majority Leader
 - John Cornyn (R-TX) Majority Whip
 - John Thune (R-SD) Conference Chair

Key Senate Committee Leadership

Senate Health, Education, Labor and Pensions Committee

- Lamar Alexander (R-TN) Chair
- Patty Murray (D-WA) Ranking

Senate Finance Committee

- Orrin Hatch (R-UT) Chair
- Ron Wyden (D-OR) Ranking

115th Congress: House (2017-2018)

U.S. House (241 R to 194 D)

- Democrats Net Gain of Six Seats
- 52 Freshmen House Members
- Republican Leadership
 - Paul Ryan (R-WI) Speaker
 - Kevin McCarthy (R-CA) Majority Leader
 - Steve Scalise (R-LA) Majority Whip
 - Cathy McMorris Rodgers (R-WA) Conf. Chair
- Democratic Leadership
 - Nancy Pelosi (D-CA) Minority Leader
 - Steny Hoyer (D-MD) Whip
 - Joe Crowley (D-NY) Caucus Chair
 - Linda Sanchez (D-CA) Vice Chair

Key House Committee Leadership

House Ways & Means

- Kevin Brady (R-TX) Chair
- Richard Neal (D-MA) Ranking

House Energy & Commerce

- Greg Walden (R-OR) Chair
- Frank Pallone (D-NJ) Ranking

House Education & Workforce

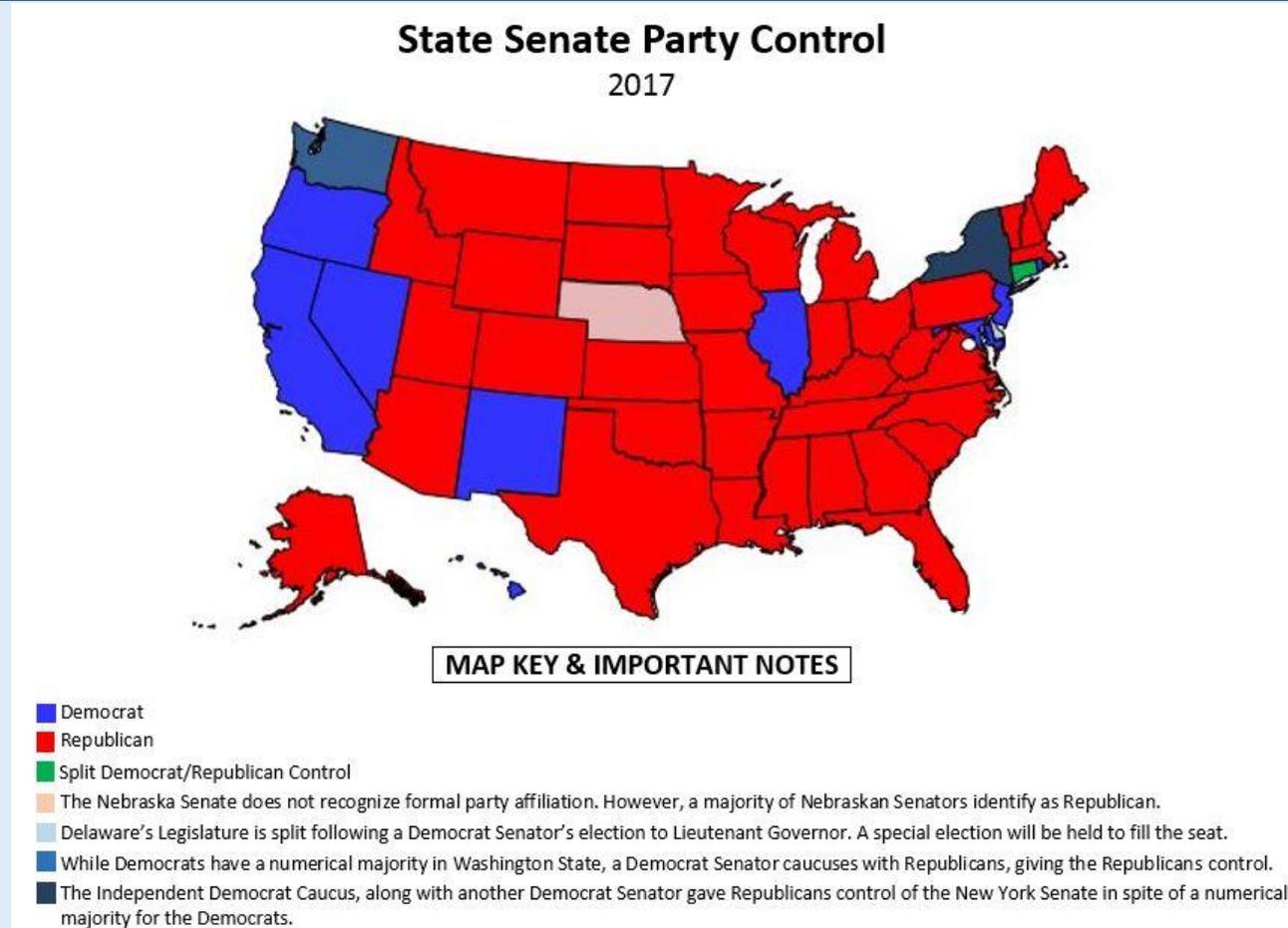
- Virginia Foxx (R-NC) Chair
- Bobby Scott (D-VA) Ranking

GOP Controls Majority of Governorships Post-2016 Election

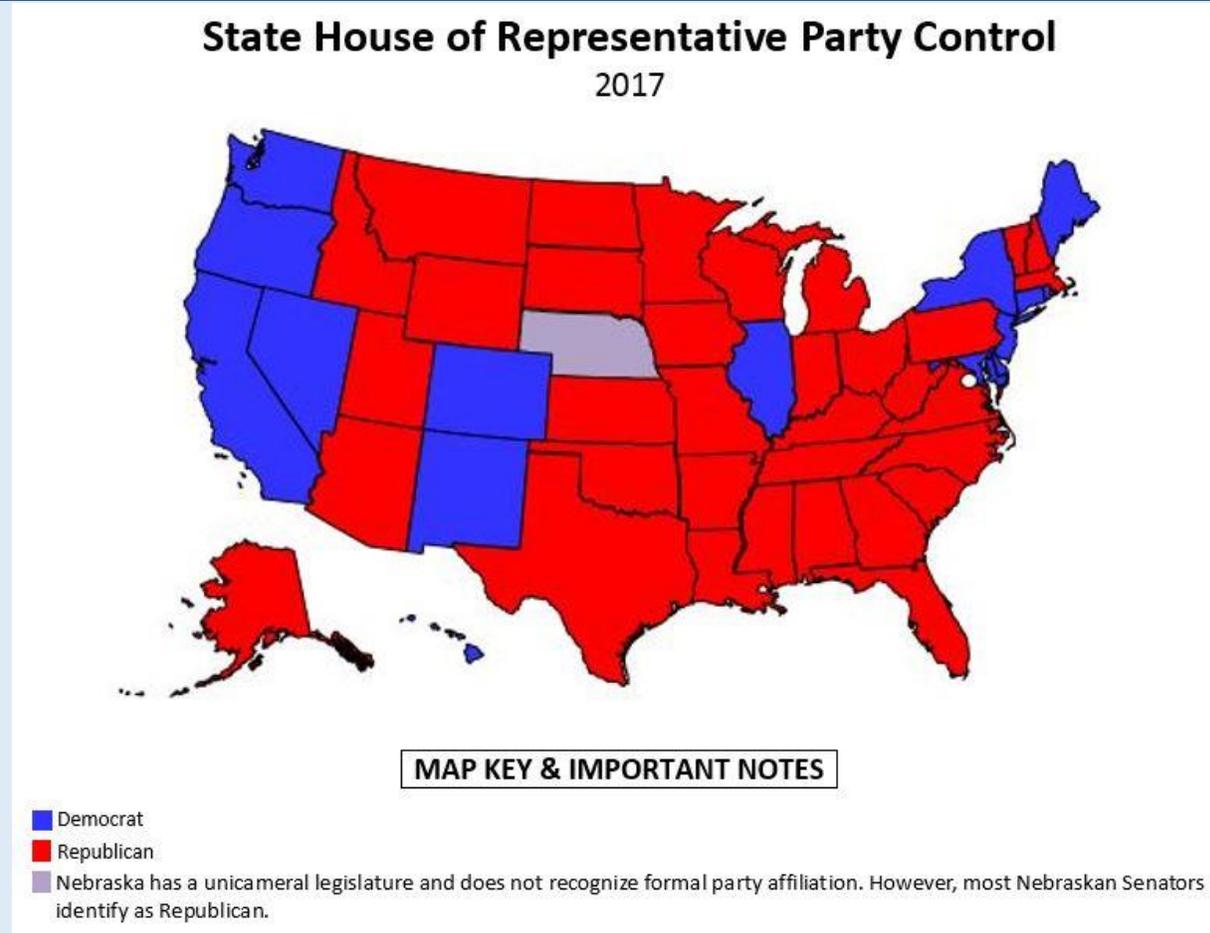


Driven By and For Large Employers

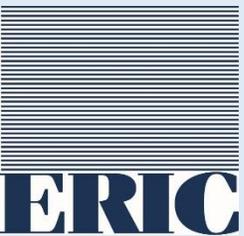
State Senate Control Post-2016 Election



State House Control Post-2016 Election



State Update



Driven By and For Large Employers

State Policy – Adds Complications and Drives Federal Action

- States adopting conflicting rules
 - Paid sick or parental leave, telehealth barriers, etc.
 - Hard for employers to track and comply
- Employers facing conflicting rules
 - Can't just follow the California or the federal contractor sick-time rule in all states
 - Can't offer “better” benefits than the most generous state mandate
 - Must comply with all aspects of state laws – reporting, recordkeeping, accruals, caps, etc.
- Activist state policymaking drives federal legislation
 - Conflicting state laws intended to push constituencies to negotiate at federal level
 - What do employers want and is a federal solution the answer, even if possible?
 - President-Elect Trump's child care plan imposes six weeks of maternity leave paid by unemployment insurance fund

ERIC's [State Mandate Action Program](#) enables large employers to keep track of proposals that impact them, so they can comply

Forecasting Key Policy Trends in 2017

1. With states rights as a critical thread underlying popular policy positions at the federal level, expect an increase in state activity across the board.
2. In the spirit of 2017: expect the unexpected. We are in uncharted territory and are wise to be prepared for quick pivots and new bursts of policy issues.
3. Watch ACA repeal and replace debate closely, and expect concerned states to act quickly (both amidst the uncertainty, and particularly once final decisions are made at the federal level that can impact state funding – *e.g.*, Medicaid reforms.)

State Policy Issue Focus: Telehealth

ERIC encourages states to adopt policies that:

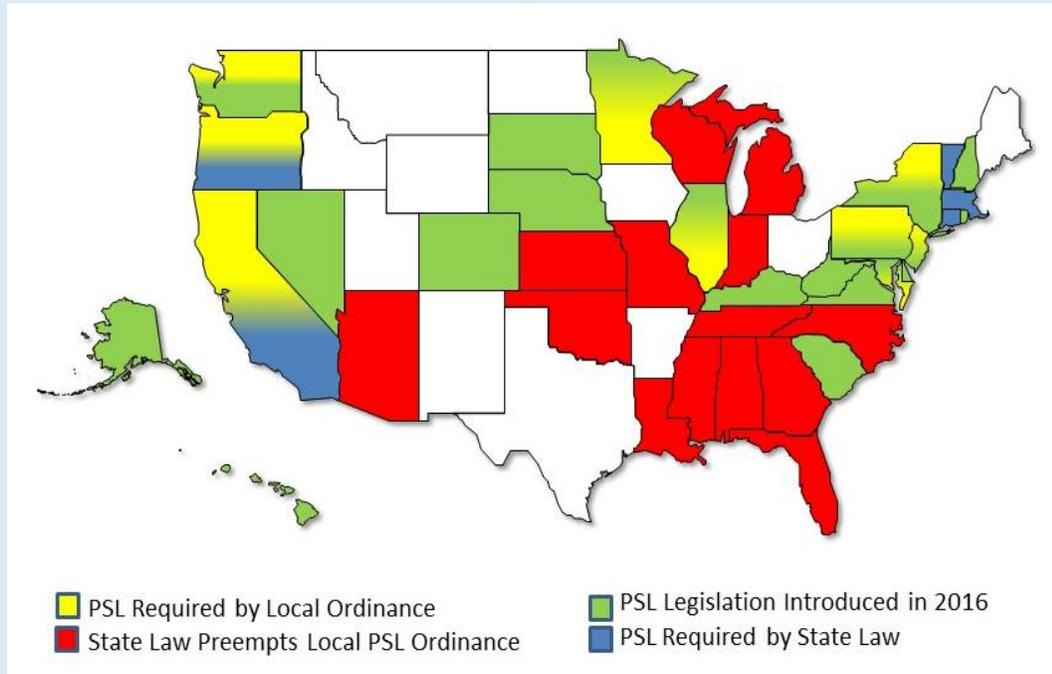
- Do not impose additional requirements on providers that offer telehealth services that are not imposed on in-person visits;
- Avoid restrictions requiring patients to visit specific locations (e.g., “originating sites”) in order to access telehealth services;
- Are technology-neutral, permitting use of different types of technology platforms that are designed for telehealth;
- Support licensing policies that facilitate inter-state practice; and
- Consider the needs of patients to have better access to care that can be provided via telehealth, either through a telehealth visit or remote monitoring of health conditions.

State Policy Issue Focus: Telehealth (Cont.)

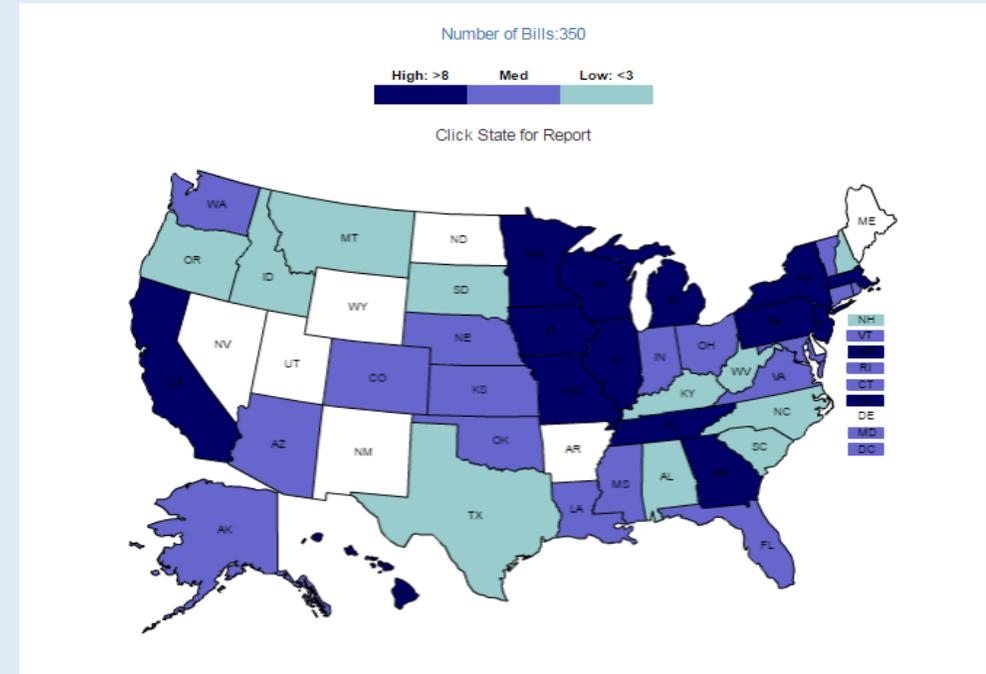
- Many bills prefiled and introduced the first week of session. These bills commonly address:
 - Reimbursement
 - Licensure compacts (for a variety of providers)
 - Modification of existing telemedicine laws to expand scope (workers comp, e-prescribing, etc.)
- States of note:
 - North Dakota -- Introduced and had a hearing on a bill (SB 2052) that reaches reimbursement issues; recommended passage by the Human Services Committee
 - New Jersey – Carryover of a previously introduced bill (SB 291); anticipating a hearing to be set any day
 - New York – Introduced 3 telemedicine bills, including one aimed at reimbursement parity (SB 834)
 - Virginia – Introduced 3 telehealth bills, including one to expand e-prescribing authority for providers
- Coming soon: ERIC's model telehealth legislation

Snapshot of Paid Sick Leave State & Local Laws

Paid Sick Leave State & Local Laws



Paid Leave Legislative Tracker



Driven By and For Large Employers

Paid Leave: Activity To-Date & New Local Activity

- Activity To-Date:
 - Since the first law was passed by voter initiative in 2006 in San Francisco, seven states plus Washington DC, 28 cities, and 2 counties have adopted paid sick leave laws
- New Local Activity
 - Morristown, New Jersey paid leave ordinance goes into effect tomorrow
 - Santa Monica paid sick leave ordinance goes into effect
 - SF paid parental leave law takes full effect
 - DC passed generous paid leave law

Paid Sick Leave: State-Level Activity

- State-level activity continues to grow
 - Bills commonly address unique populations (state employees, veterans, etc.)
 - Legislation is taking a variety of forms with paid leave mandates – some are studies, others establish employer mandates
- States of Note:
 - Maryland – Introduced legislation (HB 1/HB 65) to mandate paid sick leave for all employers in the state (although slightly different requirements for those with 15 or more employees)
 - Montana – Introduced 5 bills pertaining to different aspects of leave; noted interest in legislating this area
- Coming soon: ERIC’s model paid sick leave legislation

State Policy Focus: Biologics & Biosimilars

- What is a biosimilar?
 - A biosimilar product is a highly similar successor to a biologic product that has lost its exclusive patent
 - There must be no clinically significant difference in safety, purity, and potency between a biosimilar product and the biologic product that is its reference
 - Biosimilars are not the same as generic drugs
 - Biologics and biosimilars are complex drugs that do not neatly fall within the former framework for prescription drug regulations

Why are biologics and biosimilars important?

- They treat some of the most serious, life-threatening diseases
- Biologics are on average 20 times more expensive than chemical drugs and their percentage of the pharmaceutical drug market is expanding; biosimilars have the potential to increase competition and reduce cost to these unique therapies

What is the concern with state regulation of biosimilars?

- Some legislation and regulations pre-dated approval of the first biosimilars
 - Concern over mandates and limitations imposed at the state and federal level
- Legislative and regulatory uncertainty dissuades manufacturers from entering the market and developing these drugs
- There will not be a robust biosimilars industry if the regulatory framework and economic conditions are not conducive to manufacturers' bringing biosimilars to market
 - Biosimilars take an estimated 8-10 years to develop and cost \$100-200 million

What are the key issues?

- FDA Regulations:
 - Naming conventions
 - Required testing of biosimilars
- State Laws:
 - Prescriber discretion (can limit substitution)
 - Communication/notification of substitution from pharmacy to provider
 - Patient notification of substitution
 - Recordkeeping requirements
 - Immunity for a pharmacist substituting biologics/biosimilars
 - State list of approved interchangeable biologics/biosimilars
 - Explanation of cost and pricing
 - Requirements for savings accrued due to substitutions

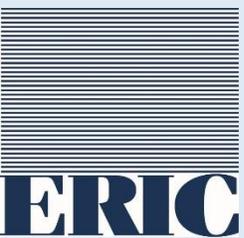
State Legislative Activity To-Date

- 25 states and Puerto Rico have current laws that address biologics and biosimilars
- Common features of the state laws:
 - FDA approval of the biosimilar is required
 - Substitution of a biosimilar for a biologic falls to the discretion of the prescriber
 - If a pharmacy makes a substitution, the prescriber must either be “communicated with” or “notified” within a certain timeframe
 - Patient notification of substitution is required; in some states, patient permission is a prerequisite for substitution
 - Cost and pricing limitations – some states require a discussion between the pharmacist and patient; other states require that a substitution is only permissible for the lowest cost option
 - Immunity for pharmacists who make substitutions that comply with state law
 - Administrative issues – required recordkeeping of substitutions made; available web listing of permissible biosimilars in the state

Expected State Legislative Activity in 2017

- Have heard from key stakeholders that they intend to introduce legislation in at least 13 states
- Nevada and New Jersey already have prefiled bills on the record for the upcoming session
- Expect the conversation to continue heavy focus on substitution issues at the state level
- Note: Recent CMS guidance clarified that drug manufacturers will need to give states brand-level (rather than generic-level) rebates for their biosimilar products, which could lead to more state interest in this policy area

Health Update



Driven By and For Large Employers

Employers, ACA and Health Care Costs

Large employers created processes to comply with the Affordable Care Act (ACA). Now the law will change. Will the new version address rising health care costs? Employers are working hard to:

1) Put plan participants in the driver's seat

- Consumerism, Wellness, Game-ification, Private Exchanges

2) Change the way they pay for care

- Reference pricing, Value-based purchasing, Care coordination, Accountable Care Organizations

3) Use data to improve participant health

- Claims analysis and targeted interventions, Medication adherence

4) Incentivize providers to modernize

- Health IT, Electronic medical records, Telemedicine

What is Driving Health Policy? Will ACA Replacement Address It?

- COSTS, costs, costs. Drug costs. Hospital costs. Out-of-pocket costs. Out-of-network costs. Emergency care costs. Drive-by-doctoring. Balance billing.
- Innovation. Billions more for NIH, FDA. Cancer moonshot. Precision medicine initiative. Gene editing. Direct consequences on plan sponsors and payors. Targeted drugs and treatments at a steep cost.
- Provider and health insurer mergers
- Quality and Transparency. Big data. Claims aggregation and analysis. Never events. Centers of excellence.
- Compliance. Reporting. Forms and more Forms. Is relief in sight?

President-Elect Trump's Seven-Point Health Reform Plan

- 1) Completely repeal the ACA
- 2) Allow the sale of health insurance across state lines
- 3) Allow individuals to fully deduct the cost of health insurance
- 4) Expand use, availability and benefits of Health Savings Accounts
- 5) Require price transparency from providers
- 6) Block-grant Medicaid
- 7) Allow Rx importation (“re-importation”)

House Republican Blueprint on Health Reform

- Repeal the ACA
- Improve consumer-directed health options
- Create universal health insurance tax credit
- **Cap the tax exclusion for employer-sponsored health insurance**
- Allow interstate purchasing and new pooling options
- Repeal the EEOC wellness regulation
- Prevent the Administration from regulating stop-loss insurance
- Limited medical liability reform
- Consider repealing insurer antitrust exemption
- Patient protections:
 - No pre-existing condition exclusions, paired with continuous coverage rules
 - Allow dependents, up to age 26, to remain on parents' plans
 - No rescissions, guaranteed renewals
 - Change default age band from 3:1 to 5:1, but let states alter further
 - State grants for premium reduction projects
 - State high risk pools
 - One open enrollment, followed by penalties for those who do not enroll
- Medicaid reform – per-capita cap or block grants
- Medicare reform – gradual move to “premium support” (vouchers)

Chairman Tom Price (R-GA) – HHS Designee

- **President-Elect Trump’s Nominee for Secretary of Health and Human Services, House Budget Chairman Tom Price (R-GA)** is a legendary opponent of “Obamacare”
- He is Chairman of the House Committee that sets the budget and architect of his own ACA “replacement” plan -- H.R. 2300, the [“Empowering Patients First Act”](#)
- As a doctor, an orthopedic surgeon, Chairman Price is respected for his knowledge of health issues. He has also sometimes drawn the ire of patient groups due to certain positions he has taken – for instance, he has defended the rights of doctors to eschew networks and to balance-bill patients. Chairman Price also knows what it is to run a business, have employees, and provide benefits. He is in a unique position to shape changes to the ACA.
- Chairman Price’s ACA replacement plan is very similar to the House GOP Blueprint, and in some cases includes more specifics

Comparison of Chairman Price and GOP Health Reform Plans

- Both plans would impose tax on employer paid health coverage:
 - The ACA's Cadillac tax would be a 40% tax on the cost of health coverage, indexed but starting at \$10,200 for individuals and \$27,500 for family plans
 - The House plan would replace this with an unspecified cap on the employee income tax exclusion for employer paid health coverage – so the tax would be dependent on the employee's tax bracket, but would kick in above a certain value
 - Chairman Price's plan got specific: He put the cap at \$8,000 for individual coverage and \$20,000 for family coverage
- ACA and the House GOP Blueprint both include a firewall, preventing those with an offer of affordable employer-sponsored health insurance from receiving federal credits and subsidies to purchase health insurance in the individual market
 - Chairman Price's plan specifically includes an opt-out for those with employer sponsored insurance. This could have a significant adverse impact on employer risk pools
- Chairman Price's plan includes numerous improvements to HSAs and high deductible health plans (HDHPs) – in fact, he renames them "HSA qualified health plans." It also allows employers of any size, and the federal employee health benefit plan for federal government workers, to move completely to a defined-contribution model.

Comparison of Chairman Price and GOP Health Reform Plans

- Chairman Price's plan got a lot more specific than the House plan did on medical liability reform
 - He supports safe harbors for providers following care guidelines, health courts, and spreading damage payments over time
- The House GOP plan would improve wellness by rolling back the EEOC's rule and retaining the tri-agency (Labor/HHS/IRS) rule
 - Chairman Price's plan throws them both out and just says, we're going to 50% premium variation
- Chairman Price's plan prevents HHS from using comparative effectiveness research to make coverage decisions. His plan also preempts state laws aimed at capping provider payments (and thus eliminating balance billing), and prohibits states from conditioning provider licensing on participation in a network.
- Chairman Price's plan also exempts doctors from antitrust laws when they're negotiating with insurance companies and employer-sponsored health plans (not for negotiations with government programs)

The Senate has its own approaches to ACA replacement, including one from Senators Hatch (R-UT) and Burr (R-NC), drafted with House Energy and Commerce Chair Upton (R-MI)

Why the Congressional Interest in Taxing Health Benefits?

- Both the House GOP health reform plan and Chairman Price's plan, and Senate versions call for taxing employer-paid health coverage. Why?
- The exclusion of employer-paid health plan premiums from employees' taxable income estimated to cost \$323.3 billion in calendar year 2016 alone! Contrast: Entire ACA cost \$1.2 trillion over 10 years
 - The largest "tax expenditure" under federal budget scorekeeping
- Satisfies a need to raise revenue to fund new tax credits for those without health insurance
 - Eager to create "parity" between those with and without employer-sponsored insurance
- Belief that employer-paid health coverage suppresses wage growth
- Besides the very high dollar value (as a pay-for), many conservative health economists believe that having 3rd party payers in itself is the cause of America's astronomical health costs
- Meanwhile, as Congress thinks about tax reform or ACA replacement, the clock ticks on the Cadillac tax
 - Employers need to figure out how to avoid it or comply, and regulatory guidance has not been issued
- Disruption of ERISA plans could affect up to 175 million Americans, far greater than the number of uninsured even before ACA

Post-election: Fate of the ACA

- Repealing the ACA is a top priority of President-Elect Trump
- Current plans are for Congress to pass two budget reconciliation bills and a separate health reform bill
- The first budget reconciliation bill would repeal ACA taxes, mandates, subsidies, funding, etc. – beginning at a date in the future (timing of transition being debated and is very political)
 - Starting in the Senate – 51 votes needed and 1 Republican already opposed if Planned Parenthood defunding is included
- The second budget reconciliation bill could be a vehicle for tax reform and/or Medicare reform
- Separate health reform bills (the ACA replacement bills) could include insurance market reforms, health plan standards, etc.. It would begin in the House, but would require 60 votes to pass the Senate under current procedural rules
- Political dynamics and the clock ticking on the future effective date of repeal would put pressure to reach a deal on the ACA replacement plan

More on Repeal: Key Questions

- Can the savings be “banked”?
- Will repeal include all the revenue provisions, in order to create a lower baseline for tax reform?
- Will the parliamentary battle be bigger than it was in the 114th Congress due to the change in circumstances?
- How will Republicans ensure that the repeal has a sense of permanence and inevitability, and can’t give way to “extensions”?

REPLACE: Large Employer Priorities

- Protect and strengthen ERISA and national uniformity
- Protect the tax structure that fosters the employer-sponsored health insurance system
- Ensure that any replacement plan contains robust cost-control measures

On a lesser but still important note, we know there will still be employer reporting, but it should be greatly simplified and streamlined.

Beyond Repeal & Replace Legislation: Administrative Actions

Much of the pain we've experienced from the ACA has been a result of administrative action and regulations. As such, much can be changed or reversed by a new Administration. ERIC has submitted to the transition a list of requested changes that would provide relief.



This is only a temporary band-aid, as we need legislative change to provide permanent relief. But if it can save employers millions of dollars and a great deal of hassle in the meantime...

On the offense: Cadillac tax repeal bills

Last week, bipartisan and bicameral legislation was introduced to repeal the Cadillac tax. Lead sponsors of the “Middle Class Health Benefits Tax Repeal Act of 2017” include:

- Sen. Dean Heller (R-NV)
- Sen. Martin Heinrich (D-NM)

- Rep. Mike Kelly (R-PA-3rd)
- Rep. Joe Courtney (D-CT-2nd)

This legislation is unlikely to move on its own. However, it serves as a rallying point. If we can get members to cosponsor, they will be locked in to supporting repeal, *without replacing it with a cap on the exclusion.*

On the defense: Preventing TRP from Returning

A trade association representing insurance companies has produced a list of policies they say are necessary to prevent a death spiral in the individual market – one of those things is a continuation of the Transitional Reinsurance Program.

ERIC has been in communication with House and Senate staff, making sure they know that employers *oppose* efforts to reinstitute a “belly button tax” on insurance outside exchanges in order to prop up insurance inside exchanges.

At this time, it sounds like staff are NOT considering bringing back TRP. But we will remain vigilant – it’s our job to worry.



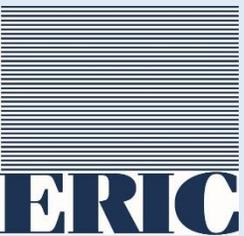
The War to Come: Drug Prices

One of the most hotly debated issues surrounding ACA repeal and replace will be drug costs. While this has traditionally been a Democrat issue, there is a core constituency of Republicans who are making it a priority as well.

For now, the Democrats will focus on flash points: Medicare Rx negotiations, “rebates”, re-importation, and bad actors.

But as the debate evolves, what will be the *real* solutions that garner bipartisan support and have a chance at being enacted? What does real price transparency in this space look like?

Retirement Update



Driven By and For Large Employers

Retirement Legislation – What is Driving Retirement Policy?

- Few are saving enough for retirement
- How to promote financial wellness effectively
- Student loan debt crushing workers and their ability to save
- Will employers be forced to do more for their employees and retirees?
- Public pension plans underfunded/multi-employer plan funding concerns
- State mandates impacting employer retirement plans
- Pay disparity
- 401(k) plan lawsuits
- Tax reform could target retirement plans and savings

What will Congress or the Federal Agencies do about any of this?

Congressional Repeal of Regulations

Midnight Rules Relief Act (H.R. 21)

- Amend the Congressional Review Act (CRA) to Allow Multiple Regulations in One Joint Resolution of Disapproval (currently only one regulation per resolution)
- Passed the House on January 4, 2016 (All Rs and 4 Ds Voting in Favor)
- Senate Companion Bill Introduced by Senator Johnson (R-WI)
- Approximately 61 Regulations Available to be Repealed

What Benefits Regulations Could be Repealed under the CRA (w/o Notice & Comment Period)?

- Overtime Rule (may also simply be delayed by Congressional action)
- Local Retirement Plans Federal Contractor Paid Sick Leave
- Form 5500 Revisions (proposed rule)

What Regulations not Eligible for Repeal Under Congressional Review Act?

- Fiduciary Rule
 - Congressman Wilson (R-SC) Introduced Bill to Delay Effective Date for Two Years from Passage of Legislation
- State Retirement Plans (some argue it is subject to CRA)

Congressional Retirement Activity – Tax Reform in 2017

Background: House Republicans released several “blueprints” in 2016 to guide their overall legislative agenda.

Blueprint on Tax Reform: Proposes that House Ways and Means Committee will “work to consolidate and reform the multiple different retirement savings provisions in the current tax code to provide effective and efficient incentives for savings and investment.”

Are Changes to Retirement Plans and Contribution Limits New? No, tax reform efforts over the past 30 years have included changes to retirement plans, mainly reduced limits on contributions, which could devastate retirement security in America

- Reducing limits to retirement savings contributions raises revenue for other rate reductions in tax reform (e.g., corporate or individual income tax rate cuts)

What’s Next? Tax Reform is a top priority for the new Administration and congressional leaders. Plan sponsors should be concerned with any potential limitations placed on the offering of benefits to employees, or contribution amounts. ERIC will advocate for its members to ensure that legislation maintains the voluntary employer-provided retirement system so employers have the flexibility to design plans that work for their unique workforce.

Congressional Retirement Activity in 2017

Who is Focused on Retirement? Senate Finance Committee unanimously passed a package of retirement related provisions in late 2016, but the package was NOT enacted into law. Expect these provisions to be used as a starting point in 2017. The package:

- Mandates Lifetime Income Disclosure on Retirement Plan Statements
- Provides Closed Defined Benefit Plan Non-Discrimination Testing Relief
- Relaxes Hardship Withdrawal Rules
- Expands Automatic Enrollment
- Was paid for with increased Form 5500 late filer fees and accelerated PBGC premium payments in 2026

The provisions contain both positive and negative retirement policy provisions for plan sponsors. We could see these provisions included in tax reform proposals in 2017

Expect other Congressional Committees to focus on multi-employer plans, composite plans, lifetime income policies, and policies that raise revenue but would deter retirement savings

Opportunity to address key concerns of plan sponsors and participants

Congressional Retirement Activity in 2017

- **Lifetime Income Disclosure** – Mandates plan sponsors to include annuitized amount on 401(k) plan statements once per year
 - What if your plan does not offer an annuity?
 - How can human resources staff explain the lifetime income calculation to plan participants?
- **Hardship Withdrawals** – Allows Hardship Withdrawals for Earnings on Elective Deferrals, and for QNECs and Qualified Matching Contributions (and earnings attributable to both); eliminates six-month waiting period
 - What is the appropriate employer role regarding plan loans, hardship withdrawals and other “leakage” from retirement savings?
- **Automatic Enrollment** – Eliminates the 10% Election Rate Cap
 - Proposal Eliminates Safe Harbor Notice for Nonelective 401(k) Safe Harbor Plans
 - Proposal Allows Amendment to become Safe Harbor Nonelective 401(k) Plan as LATE as Close of Following Plan Year, if Provide 4% Contribution (current safe harbor is 3%)

Congressional Retirement Activity – Electronic Reporting

Background: The Receiving Electronic Statements to Improve Retiree Earnings Act would authorize a document that is required or permitted to be given to retirement plan participants to be provided in electronic form if certain conditions are met. The legislation was introduced in both the House and Senate.

What's Next? We expect re-introduction of the legislation and growth in support. ERIC will continue to advocate for passage to permit electronic default for participant statements, rather than paper. Opposition from consumer and senior groups expected.

Student Loan Repayment Relief

Background: There is significant congressional and employer interest in student loan debt and its impact on retirement savings. *How can financial wellness programs help?*

What's Next?: Congressional proposals will provide tax-favored ways to assist employees with student loan debt

- Allow employers to reimburse employees' student loan repayment as they do for tuition and other fees incurred while employed
- Allow employers to provide tax-favored matching contribution to qualified retirement plan of employee who is repaying student loans
- Provide tax credits to businesses to provide student loan repayments (Rep. Brownley (D-CA) Introduced Bill on 1/4/2017)

Will proposals impact retirement savings or drive college costs higher?

Health Care and Retirement Regulations

REGULATIONS

What can large employers expect in 2017?



Health Care Regulations Impacting Large Employers

- **Provider Steerage:** Employers facing provider efforts to get patients enrolled in coverage that maximizes their payments, including referrals to out of network and physician-owned facilities. *What can/will the government do?*
- **Opt-Out Payments:** New rules apply to large employers that offer individuals money NOT to enroll in the employer's group health plan. *How must employers comply?*
- **Shared Responsibility:** Employers have to monitor who is covered by their plans, month-by-month, and report to the IRS. *How does ACA repeal/replacement change this?*
- **HHS' 1557 Nondiscrimination Rule:** No mandate for specific coverage, but HHS will go after (or report to the appropriate regulatory agency) a plan that is discriminatory based on gender. There are questions also about requirements to cover certain autism treatments too. There is uncertainty about how this rule applies. *Will it survive in the new Administration?*
- **HIPAA:** Will HIPAA Phase 2 audits continue? Some plan sponsors began receiving pre-audit questionnaires this Spring.
- **Excepted Benefits:** What counts under HHS proposed rule on "excepted benefits"?
- **New Schedule J on Form 5500:** Voluminous reporting required. *Will the new Administration revoke it?*
- **EEOC Wellness Regulations:** Congressional opposition mounts; AARP sues EEOC. *How do employers comply?*

Retirement/Compensation Regulations Impacting Large Employers

- **EEOC EEO-1 Form Reporting Changes**
- **DoL Overtime Final Rule**
- **DoL Local Retirement Plan Rule:** Rule Extends “Blessing” of Non-ERISA Plans to Large Localities
 - Three Cities Already Expressed Interest: Seattle, New York, Philadelphia
- **Proposed Form 5500 Revisions**
- **Minimum Present Value Calculation Proposed IRS Regulations:** Provide Guidance on Calculations of Non-Annuity Distributions not Eligible for Cash-Balance Exception
- **IRS Determination Letter Program:** Will no longer be available for individually designed plans
- **IRS Hardship Withdrawal Activity:** Does Self Certification Satisfy Audit Requirement of documenting hardship withdrawal
 - IRS to Request Additional Data/Information

ERIC's Policy and Advocacy Team

The ERIC team provides timely updates and expert policy analysis, and advocates for health, retirement, and compensation public policies on the federal, state, and local levels, as part of a trusted community concerned solely with the perspective and needs of large employers. Your priorities become our priorities.

- Annette Guarisco Fildes, CEO & President
 - aguariscofildes@eric.org (202) 627-1910
- James Gelfand, Senior Vice President for Health Policy
 - jgelfand@eric.org (202) 627-1922
- Will Hansen, Senior Vice President for Retirement Policy
 - whansen@eric.org (202) 627-1930
- Allison Wils, Executive Director of State Programs & Senior Director of Health Policy
 - awils@eric.org (202) 627-1925
- For information about membership, contact Deborah Chin, Senior Vice President for Strategic Development, at dchin@eric.org or (202) 789-1400

