

# PLAYING THE ODDS: HOW WILL THE FEDERAL HEALTHCARE LAWS CHANGE?

*Presented and Prepared by:*

**Deanna S. Mool**

[dmool@heyloyster.com](mailto:dmool@heyloyster.com)

Springfield, Illinois • 217.522.8822

**Heyl, Royster, Voelker & Allen, P.C.**

PEORIA • CHAMPAIGN • CHICAGO • EDWARDSVILLE • ROCKFORD • SPRINGFIELD

**PLAYING THE ODDS:  
HOW WILL THE FEDERAL HEALTHCARE LAWS CHANGE?**

<b>I.</b>	INTRODUCTION – WHAT ARE THE ODDS?.....	D-3
<b>II.</b>	THE AFFORDABLE CARE ACT.....	D-4
<b>A.</b>	Major provisions of the Affordable Care Act.....	D-4
<b>B.</b>	The Desire for Changes to the Affordable Care Act .....	D-4
<b>C.</b>	Various Interest Groups Advocate a Wide Range of Issues to be Addressed in Healthcare Reform .....	D-4
<b>D.</b>	What Will Change? .....	D-5
<b>E.</b>	Rumored Changes .....	D-5
<b>III.</b>	WHO HAS CONCERNS? .....	D-6

The cases and materials presented here are in summary and outline form. To be certain of their applicability and use for specific claims, we recommend the entire opinions and statutes be read and counsel consulted.

## **PLAYING THE ODDS: HOW WILL THE FEDERAL HEALTHCARE LAWS CHANGE?**

### **I. INTRODUCTION – WHAT ARE THE ODDS?**

Betting on the outcome of sporting events occurs frequently in America. Whether it is serious Vegas-style gambling or your local NCAA pool, we like to go all-in to pick a winner. We may not be so free-wheeling with our healthcare and betting on the changes 2017 will bring to the federal healthcare laws.



Healthcare is a highly regulated industry. Over the past decade, this regulatory scheme has continued to grow with the passage of the Affordable Care Act. The Affordable Care Act contained more than 900 pages of statutory text. As reported in the Washington Post, there were 9,625 pages of final regulations, while proposed rules amount to 17,432 pages. Roughly, that means that individuals in the healthcare industry have reviewed up to 27,057 pages of law and regulations since the Affordable Care Act was passed. Compliance with all of these regulations is a huge effort for the healthcare industry. At times, many health care facilities feel it is impossible to comply with all of the nuances of healthcare billing and reimbursement requirements. The current momentum to alter or repeal the Affordable Care Act has only increased the uncertainty within the health care industry. Thus, the healthcare industry finds itself monitoring news articles and rumors to determine where healthcare funding and regulation will end up in 2017 and beyond.

The current uncertainty in the healthcare industry has actually dictated Vegas-style odds as follows:

#### **American Health Care Act Odds**

Odds the American Health Care Act is approved as it is: 11/9  
Odds a revised version of the AHCA is approved by year-end 2017: 7/13  
Odds that a single Democrat votes in favor of the AHCA: 19/1  
O/U on Republicans that vote against the current AHCA: 15  
Odds that Donald Trump speaks out against the AHCA: 13/7  
Odds that the bill becomes known as:

Trumpcare: 3/1  
Ryancare: 4/1

March 16, 2017  
Sports Betting Dime

<https://www.sportsbettingdime.com/news/entertainment-pros/political-odds-republican-health-care-in-turmoil/>

## **II. THE AFFORDABLE CARE ACT**

### **A. Major provisions of the Affordable Care Act**

Insurance Coverage – Health plans sold under the Affordable Care Act must meet certain coverage standards. These standards set forth what medical procedures and preventative treatments must be provided. Health plans are classified as gold, silver, and bronze plans depending on their level of coverage. All individuals are required to enroll in a health plan or pay a tax penalty (the individual mandate). Individuals covered by employer-provided healthcare are exempt from the individual mandate. The federal government regulates what insurance plans may charge for their premiums, co-payments, and deductibles. Medical-loss ratios and the amount of administrative expenses and allowable profits are set forth by the regulations.

Ironically, all of this regulation was supposed to slow the growth in insurance premiums, but the success of that effort is debated. Most individuals purchasing insurance through the federal exchanges are not enrolled in gold plans. The Heritage Foundation has reported that 90% of individuals purchasing through the federal exchanges were participating through a high-deductible health plan. Deductibles averaged \$2500 for silver plans and \$5300 for bronze plans in March, 2015. Premium increases for 2017 ranged from 15%-22%, depending on the plan level nationwide per HealthPocket research.

In 2025, the “Cadillac” tax will kick in on employer-sponsored plans whose annual cost is more than \$10,200 for individuals and \$27,500 for a families. This provision of the Affordable Care Act was touted as a way for employers to encourage their employees to participate in their healthcare plans, but the 40% tax to employers on any premium costs over the limits has caused a huge uproar in the employer community.

### **B. The Desire for Changes to the Affordable Care Act**

Certainly, many politicians, including the President and Speaker of the House are advocating for the repeal of the Affordable Care Act in full. Others seek sweeping changes; while still others only wish to “tweak” the law.

### **C. Various Interest Groups Advocate a Wide Range of Issues to be Addressed in Healthcare Reform**

For Example, *the American Hospital Association* (AHA) was a proponent of the Affordable Care Act and they continue to support the overall law. AHA has indicated that repeal of the Affordable Care Act without a suitable replacement will result in the loss of billions to the healthcare industry. The AHA has indicated they would like changes to eliminate Stage 3 of the “meaningful use” program, which outlines requirements for provider use of electronic health records. The hospital association also seeks to revise the hospital quality measures which imposed a national rating system on hospitals accessible to the public.

*Physician groups* would like to eliminate the Medicare Provider Enrollment, Chain, and Ownership System (PECOS) system by standardizing physician credentialing through the use of Council for Affordable Quality Healthcare (CAQH) industry standards. Physician groups have also advocated that Congress simplify the Stark Law regulations, which even former Rep. Pete Stark has stated have made his original law unrecognizable.

Most employer groups advocate the removal of the “Cadillac” tax. It is a safe conclusion that most interest groups across the healthcare spectrum desire to change at least some of the provisions of the Affordable Care Act.

#### **D. What Will Change?**

The question for our clients becomes where do they believe healthcare reform will land when all the dust has settled? While no one can see the final language, we can review what interest groups and elected officials are indicating and attempt to identify trends.



#### **E. Rumored Changes**

In addition to the changes discussed regarding the desires of interest groups, the President and conservative members of Congress have advocated repeal or sweeping changes to the Affordable Care Act. The alternative law, the American Health Care Act (AHCA) has not yet passed either federal legislative chamber.

As amended, the AHCA makes several changes to the tax provisions of the ACA and changes the Medicaid funding provisions. Health Affairs published the following list of AHCA tax changes contained in the new AHCA:

The amendments add an additional year to the relief the AHCA offered from the “Cadillac” plan excise tax, moving implementation from 2025 to 2026, and accelerate the repeal of all other ACA taxes from 2018 to 2017, including repeals of:

- The \$500,000 limit on business expense deductibility for compensation to insurance executives;
- The branded prescription drug tax;
- The health insurance tax (already subject to a moratorium for 2017);
- The Medicare tax imposed on unearned income on taxpayers earning more than \$200,000 (\$250,000 for joint filers);
- The prohibition against paying for over-the-counter medications with tax subsidized funds from health savings accounts (HSAs), Archer MSAs, or flexible spending or health reimbursement arrangements;

- The ACA's increase in the penalty for the use of HSA and Archer MSA funds for non-medical purposes (reducing the penalty from 20 to 10 percent for HSAs and 20 to 15 percent for MSAs);
- The ACA's \$2500 limit on contributions to flexible spending accounts;
- The medical device excise tax;
- The requirement that employers reduce their deduction for expenses allowable for retiree drug costs without reducing the deduction by the amount of retiree drug subsidy;
- The repeal of the ACA's Medicare 0.9 percent tax surcharge on taxpayers with incomes exceeding \$200,000 (\$250,000 for joint filers); and,
- The ACA provision prohibiting the use of tax-subsidized account funds to purchase over-the-counter drugs."

<http://healthaffairs.org/blog/2017/03/21/whats-in-the-managers-amendment-to-ahca/>

The proposed changes to Medicaid would end mandatory expansion of Medicaid to non-pregnant adults who are childless and not disabled and who earn at least 133% of the poverty level. States could also impose a work requirement on certain Medicaid recipients who are not disabled, elderly or pregnant. The biggest change to Medicaid under the AHCA, is the ability for states to choose a block grant over per-capita funding.

### **III. WHO HAS CONCERNS?**

One would be hard-pressed at this point to identify a healthcare provider group or insurer who is not closely monitoring the federal government's debate on healthcare. One sure bet is that it is more likely that something will change in federal health law rather than nothing.





## Deanna S. Mool

- Of Counsel

Deanna's practice is primarily focused on healthcare regulatory law including HIPAA, Stark, and Anti-Kickback compliance, False Claims Act issues, and contracting, and Estate Planning.

In the practice of healthcare law, Deanna has represented hospitals, nursing homes, assisted living facilities, physicians, audiologists, nurses, and other healthcare professionals. She gained valuable healthcare law experience as General Counsel to the Illinois Department of Public Health (1996-2001). She also served as in-house counsel at the SIU School of Medicine (2013-2016). She has assisted more than 200 clients with HIPAA compliance. Deanna also advises clients regarding HIPAA breach compliance. She frequently drafts leases, physician employment agreements and affiliation agreements to assist healthcare facilities and providers in order to comply with Stark and other health care laws. She has drafted compliance plans and is Certified in Healthcare Compliance through HCCA. Deanna advised a local Institutional Review Board with respect to FDA compliance of research matters. Deanna has advised a variety of healthcare clients during audits and during enforcement proceedings before both federal agencies and the Illinois Department of Healthcare and Family Services, including enforcement proceedings related to Medicaid/Medicare reimbursement. Deanna has earned certificates-of-need for healthcare facilities before the Illinois Health Facilities Planning Board; represented facilities in obtaining operating licenses from both the Illinois Department of Public Health and Illinois Department on Aging; and represented clients in professional licensure matters before the Illinois Department of Financial and Professional Regulation.

Deanna also works with families to preserve their assets through estate planning. She advises clients how to protect family assets even if a loved-one requires long term care. She also works on business continuation planning, trust creation, and routine estate planning issues.

Deanna joined Heyl Royster in 2016, after an extensive career in both the private and public sectors. Her practice began advising clients on Environmental Law

in Indianapolis, after which she returned to Central Illinois as General Counsel to a House legislative caucus. While acting as General Counsel, Deanna was in charge of the legal review of all legislation. Following her legislative branch work, Deanna served as General Counsel of the Illinois Department of Public Health where she was in charge of all department legal activities including the state regulation of hospitals, nursing homes, ambulatory surgical centers, and other healthcare facilities. She also provided legal advice to all of the Department's more than 100 programs, including such diverse areas as: bioterrorism, asbestos removal, private wells, plumbing licensure, mobile home regulation, communicable diseases, and a variety of other healthcare programs. Deanna drafted the official HIPAA Preemption Analysis for the State of Illinois. In 2001, Ms. Mool returned to private practice. She opened her own firm in 2005 where she assisted a wide variety of clients in the areas of health law, HIPAA, election law and estate planning.

Deanna also represented Fortune 500 companies in drafting legislation and governmental relation activities before the Illinois legislature. She has represented PACs and state and federal candidates in election recounts, petition challenges and campaign finance issues.

Deanna Mool is a graduate of the University of Illinois College of Law. She also earned a Bachelor's degree in Economics from the University of Illinois in Champaign.

### Significant Cases

- *Graham v. State Officers Electoral Bd.*, 269 Ill. App. 3d 609 (1995) - Election law decision wherein notice to fill vacancy in nomination must be given to members of the committee.

### Public Speaking

- "Stark Law—What Every Physician Should Know"  
SIU School of Medicine Medico-legal Seminar (2017)

- *"HIPAA Compliance and Audits at Your Covered Entity"*  
American Health Lawyers Association's (AHLA)  
"Fundamentals of Health Law" Program (2016)
- *"HIPAA Compliance Program Update"*  
Illinois Association of Public Health  
Administrators (2016)

#### **Professional Recognition**

- Selected as a Leading Lawyer in Illinois. Only five percent of lawyers in the state are named as Leading Lawyers.
- Forty Under 40, Springfield Business Journal

#### **Court Admissions**

- State Courts of Illinois
- State Courts of Indiana

#### **Education**

- Juris Doctor, University of Illinois College of Law, 1990
- Bachelor of Science-Economics, University of Illinois, 1987