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compliance ALERT

House Unveils the American Health Care Act, The Affordable Care Act Replacement Bill

March 7, 2017

On March 6, 2017, the U.S. House of Representatives unveiled a long-awaited bill designed to repeal and replace the Affordable Care Act (ACA). The newly-proposed bill, called the American Health Care Act ("the Act"), would unwind many key components of the ACA over the next three years.

While additional changes are still likely to occur, this legislative proposal is the most comprehensive look yet at how Republican lawmakers are approaching the process of replacing the ACA. Most notably, the Act would repeal both the Employer Mandate (commonly referred to as "Pay or Play") and the Individual Mandate, two of the most unpopular parts of the ACA. However, the Act would keep two of the most popular parts of the ACA—the rule prohibiting insurers from denying insurance to those with pre-existing conditions, and the rule allowing dependent children to stay on their parent's plan until age 26.

How Does the Act Affect Employers?

The Act has several provisions that have a direct impact on employers. Key provisions include:

- The Act eliminates the penalty on employers for failing to offer health insurance, commonly referred to as the Employer Mandate or Pay or Play.
- The Act extends, but does not eliminate, the unpopular Cadillac Tax, a 40% excise tax on employer-sponsored coverage that exceeds certain maximum dollar thresholds. The Act proposes to delay the Cadillac Tax's implementation until 2025.
- The Act significantly enhances and expands Health Savings Accounts (HSAs) by nearly doubling the amount of money individuals can contribute to HSAs and broadens how the funds can be used.
- Notably, the Act does not repeal, revise or simplify in any way, the complex ACA information reporting rules. While the Act eliminates the unpopular Employer Mandate and Individual Mandate, it still imposes several new tax requirements (discussed below) which will likely require some form of reporting. However, specific details about how such new reporting would work were not included in the Act.

What Happened to the Proposal to Cap the Tax Exclusion for Employer-Sponsored Health Insurance Coverage?

Significantly, the Act does not include a controversial provision contained in an earlier version of the bill that was leaked in February. That provision capped the tax exemption on employer-sponsored coverage at the 90th percentile of current premiums. The cap was introduced as an option to fund the replacement plan, but it was harshly criticized for being a new version of the politically unpopular Cadillac Tax.

SYNOPSIS

- The Act eliminates the penalty on employers for failing to offer health insurance.
- The Act does not eliminate the Cadillac Tax, but proposes to delay implementation until 2025.
- The Act expands the allowable size of contributions to HSAs.
- The Act does not repeal, revise or simplify information reporting rules.

What Other Changes Have Been Proposed?

Significantly, the Act immediately ends the ACA's Individual Mandate—the requirement that individuals have health insurance coverage or else pay a penalty.

Additionally, to help individuals pay for health insurance, the Act proposes a refundable, age-based tax credit. Unlike the ACA, the refundable tax credit will not be as closely tied to an individual's income as it was under the ACA.

Specifically, the size of the credit grows with age and the number of people in a family. Generally, the annual amounts of the credit are as follows:

- Individuals under 30 would receive $2,000
- Individuals ages 30-39 would receive $2,500
- Individuals 40-49 would receive $3,000
- Individuals 50-59 would receive $3,500
- Individuals over 60 would receive $4,000

The credit would be phased out for people making more than $75,000 (and $150,000 for a couple filing jointly). The tax credits would disappear completely for individuals making more than $215,000 (and $290,000 for a couple filing jointly).

Other key provisions include the following:

- The Act winds down the ACA's expansion of Medicaid and changes it to a per-capita system, where states are given a set amount of money for the number of people in certain categories, including the disabled, elderly, childless adults and pregnant mothers.
- The Act provides states with a $100 billion fund over a decade to help lower-income people afford insurance, and to help stabilize state insurance markets. The fund could be used to help lower out of pocket costs or to promote access to preventive services.
- The Act requires "continuous" health insurance coverage. Individuals who go uninsured face a 30 percent higher health insurance premium as a penalty.

What Should Employers Do Next?

While there is nothing for employers to do now, as this is not a final law, and as changes to the bill are still likely to occur during the committee markups scheduled for later this week, employers may want to contact their Congressional leaders to continue to urge them to repeal the Cadillac Tax.

The Act proposes an immediate end to the ACA's requirement that individuals have health insurance coverage or else pay a penalty.

We will continue to monitor these developments closely.

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