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compliance ALERT

Senate GOP Unveils Their Version of the ACA Replacement Bill

June 23, 2017

On June 22, 2017, the Senate unveiled the Better Care Reconciliation Act of 2017 (BCRA) in the form of a "Discussion Draft." Much like the House's ACA replacement bill, the American Health Care Act (AHCA), the BCRA promises to repeal or delay the most significant ACA taxes and penalties on employers and individuals. Among other provisions, the BCRA would retroactively repeal the ACA's Employer Mandate and Individual Mandate provisions by making the tax penalty for noncompliance with these provisions $0 for months beginning after December 31, 2015.

How is the BCRA Different from the AHCA?

The BCRA's provisions are quite similar to the provisions of the AHCA (see our analysis of the AHCA here), with some notable exceptions:

1. Changes to Health Insurance Tax Credits: The BCRA is more generous than the AHCA when it comes to the dollar amount of health insurance tax credits that are available for individuals with lower incomes. The BCRA's system of delegating tax credits resembles the ACA's system. Currently, the ACA's tax credit system provides insurance subsidies to U.S. citizens earning between 100% and 400% of the federal poverty level. The BCRA also looks to the federal poverty level when paying out tax credits, but under the BCRA, starting in 2020, this assistance would be capped for those earning up to 350% of the federal poverty level.

Like the ACA, the subsidies provided under the BCRA would be pegged to a benchmark insurance plan each year, but under the BCRA they would be pegged to a benchmark plan with a lower level of actuarial value than under the ACA's system.

Additionally, the tax credits under the BCRA would not be available to individuals who are eligible for a group health plan through their employer, but unlike the ACA, the BCRA eliminates the requirement that the employer's offer of group health plan coverage be affordable and provide minimum value.

2. Creation of New Rules for Association Health Plans: The BCRA allows for the establishment of association health plans as large group health plans for small businesses and individuals. These plans would be exempt from the ACA's community rating and essential health benefit requirements currently imposed on the small group and individual insurance markets.

3. Elimination of Small Business Tax Credit Rules: The BCRA eliminates the ACA's small business tax credit for health insurance for taxable years beginning after December 31, 2019. Additionally, if small businesses cover abortion services (with the exception of abortions to save the life of the mother or in the case of rape or incest), they will be ineligible for the small business tax credit effective for taxable years beginning after December 31, 2017.

4. Changes to MLR Rebate System: The BCRA eliminates the ACA's medical loss ratio (MLR) rules (rules designed to prevent insurance carriers from overcharging and requiring payment of rebates to plan participants) effective for plan years beginning on or after January 1, 2019. After that date, states will be required to create their own MLR rules with rebates.

5. Continuous Coverage Requirement: Unlike the AHCA, the BCRA does not have any requirement that individuals maintain

SYNOPSIS

The Senate's Better Care Reconciliation Act of 2017 is similar to the House's American Health Care Act with notable exceptions:

1. Changes to health insurance tax credits
2. Creation of new rules for association health plans
3. Elimination of small business tax credit rules
4. Changes to MLR rebate system
5. Continuous coverage requirement
6. Changes to state waiver rules
7. Changes to the Medicaid program

continuous coverage. The AHCA requires individuals to maintain continuous coverage, and if they have a lapse in coverage of 63 days or more, they must pay a premium surcharge.

6. Changes to State Waiver Rules: Unlike the AHCA, the BCRA does not have as complex of a system of state waiver rules. Most notably, the BCRA does not include the AHCA's controversial McArthur Amendment, which allows states to apply to receive a waiver from the Department of Health and Human Services that allows them to (1) increase the age rating ratio (allowing insurers to charge more for older participants than the maximum 5:1 ratio permitted), (2) specify their own list of essential health benefits, and (3) allow health status rating (insurance underwriting) on those who have not maintained continuous coverage. The BCRA simply amends the ACA's current state innovation waiver program by giving states more flexibility to decide on insurance rules.

The BCRA also provides for a "long-term state innovation fund" which would allocate $62 billion over 8 years to encourage states to assist high-cost and low-income individuals with purchasing health insurance.

7. Changes to the Medicaid Program: The ACA's Medicaid-expansion provisions were a hotly contested part of the bill as Senators in states that have opted for the expansion had raised concerns about the roll-back of these provisions in the AHCA. In order to reach a compromise, the BRCA provides a longer transition period on the roll-back, beginning a reduction in the amount of federal ACA funds provided to expand Medicaid in 2021, and then continuing that until 2024. After that, the BCRA proposes cuts to Medicaid funding that are deeper than the AHCA's proposed cuts.

Additionally, it was widely reported that the Senate was considering capping the tax exclusion for employer-provided health insurance coverage in the BCRA. This did not appear in the version of the BCRA released on June 22.

How Will the BCRA Affect Employers if Passed?

If the BCRA were to pass as written, the impact on employers would not be substantially different than under the AHCA. The main impact would be that employers would be relieved of having to comply with several of the ACA's most burdensome taxes and regulatory hurdles, including the Employer Mandate and the Cadillac Tax (at least until 2026).

Without the Employer Mandate and Individual Mandate penalties, the process of information reporting that employers have to complete now (using the Forms 1095-C/1094-C) would become significantly easier.

Additionally, the BCRA retains the AHCA's new rules for HSAs and Health FSAs. Accordingly, employers and employees could contribute more tax-free money to HSAs and Health FSAs, and the HSA rules would become much more flexible.

What are the Next Steps for this BCRA Before it Becomes Law? What are the Challenges to its Passage?

Republican lawmakers hope to vote on the Senate bill at the end of next week after the CBO scores the bill. Their goal is to have the vote before Congress's August recess. However, the BCRA can only afford to lose two Republican votes in the Senate if it expects to be passed into law.

The same day the BCRA was introduced, four GOP senators— Rand Paul of Kentucky, Mike Lee of Utah, Ted Cruz of Texas and Ron Johnson of Wisconsin— released a statement indicating that they were not ready to vote for the bill as written, but would be open to negotiate as a team to improve it.

An additional challenge to passage is the CBO score on the final version of the House bill. The CBO score estimated that the AHCA would result in 23 million fewer people with insurance by 2026. While an additional CBO score should be released next week on the BCRA, given that the BCRA does not have many substantial changes to the AHCA, it will also likely result in a similar estimate. This could dissuade more moderate Republican lawmakers from voting for the bill.

What Should Employers Do Next?

There is nothing for employers to do now, as the bill may still see amendments before it is put to a vote. We will continue to monitor these developments closely.

If you have any additional questions, please call your Corporate Synergies Account Manager or 866.CSG.1719.

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