HURRY UP AND WAIT—ACA COMPLIANCE IN AN UNCERTAIN LANDSCAPE

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AGENDA

• WHAT'S HAPPENED SO FAR?
• WHAT MIGHT HAPPEN IN THE FUTURE?
WHAT’S HAPPENED SO FAR?

ACA

Coverage mandates (adult children, preventive care, no annual/lifetime limits, no pre-existing condition exclusions, etc.)

Individual mandate & penalties

Medicaid expansion

Health insurance exchanges & premium subsidies

Employer mandate & penalties (look-back measurement, affordability, 1094C/1095C reporting, etc.)

Taxes & fees (PCORI, TRP, Medicare taxes, health insurer fee, medical device tax, etc.)

WHAT’S HAPPENED SO FAR?

AHCA

• American Health Care Act passes House on May 5th in a party-line vote
• First step in “repeal and replace” efforts
• Part of budget reconciliation process
  • Only requires 51 votes to pass Senate – no filibuster
  • But can only contain tax and spending provisions and not raise the deficit – no policy provisions
WHAT’S HAPPENED SO FAR?

Long way to go before bill becomes law

- Bills can be amended at every step in this process so no guarantee all of the provisions in version of AHCA passed by the House will make it into final law in their current form or that new provisions won’t be added or that the bill will make it all the way through the process at all.

AGENDA

- WHAT’S HAPPENED SO FAR?
- WHAT MIGHT HAPPEN IN THE FUTURE?
EMPLOYER MANDATE

ACA
- “Play or pay” penalties
- Full-time = 30 hours per week (ACA-FT); look-back measurement rules
- Affordability calculations

AHCA
- Penalties reduced to $0 effective retroactively to 1/1/2016

Impact
- Mandate effectively repealed retro to 1/1/2016
- In theory, penalties could still be assessed for 2015

ACA REPORTING

Current
- Applicable large employers (ALEs) must report offers of coverage using Forms 1095-C and Form 1094-C
- Self-funded employers must also report enrollment on Forms 1095-C

AHCA
- No change

Impact
- Unclear. IRS might reduce complexity of forms or eliminate requirement altogether.
FSAs / HRAs / HSAs

**ACA**
- Over the counter (OTC) drugs cannot be reimbursed from Health FSAs, HRAs or HSAs

**AHCA**
- OTC drugs are allowed to be reimbursed from Health FSAs, HRAs, and HSAs
- Employers can decide whether to allow reimbursement of OTCs from their Health FSAs and HRAs
- HSAs are employee accounts so employer has no control over what can be reimbursed from

**Impact**
- Maximum annual Health FSA deduction capped by law ($2,600 for 2017)
- Health FSA deduction cap eliminated
- Employers can set maximum contribution limit for their own Health FSAs.
HSAs

**ACA**
- Annual HSA contributions capped (2017: $3,400 single/$6,750 family)
- 20% penalty for using HSA contributions for non-medical expenses
- Spouses must make catch-up contributions into their own HSAs
- Cannot reimburse eligible expenses prior to establishment of HSA

**AHCA**
- Annual HSA contributions capped at same level as HDHP Max OOP Limit (2017: $6,550 single/$13,100 family)
- 10% penalty for using HSA contributions for non-medical expenses
- Spouses can make catch-up contributions into either spouse’s HSA
- Expenses incurred prior to establishment of HSA can be reimbursed as long as HSA is established within 60 days of enrolling in HDHP

**Impact**
- HSAs are individual accounts so employers have no control over these changes.

**CADILLAC TAX**

**ACA**
- “Cadillac tax” delayed until 2020 (originally 2018)

**AHCA**
- “Cadillac tax” delayed until 2025
- No partial taxation of employer coverage

**Effect**
- “Kicks the can” farther down the road
SMALL GROUP MARKET CHANGES

ACA
- Maximum ratio between premiums charged for oldest and youngest participants is 3-to-1.
- Plans must meet actuarial metal levels (platinum, gold, silver, bronze)
- Plans must cover uniform set of Essential Health Benefits (EHBs)

AHCA
- Maximum age-band ratio increased to 5-to-1.
- Metal levels requirement eliminated (2020)
- States may apply for waiver to increase age ratio even further (2018) and/or set their own EHBs (2020)

Impact
- Will likely result in significant premium increase for older employees and spouses.
- If state applies for EHB waiver, may give option of cheaper plans with less coverage

TAXES AND FEES

ACA
- PCORI fee
- Additional Medicare tax on high-income taxpayers
- Health Insurance carrier tax - suspended for 2017
- Medical device and branded Rx taxes

AHCA
- No change to PCORI fee
- Additional Medicare tax on high-income taxpayers repealed effective 1/1/17
- Health Insurance carrier, medical device and branded Rx taxes repealed effective 1/1/17

Impact
- PCORI fees continue through 2018
- Elimination of Medicare tax will require payroll adjustments for high-income employees
- Elimination of health insurance, medical device and branded Rx taxes could reduce premiums
INDIVIDUAL MANDATE

**ACA**
- Individual mandate penalty
- All taxpayers must have health coverage or pay a penalty

**AHCA**
- Eliminates individual mandate
- Continuous coverage incentive: individuals with gaps in coverage in 12 months prior to enrolling in individual market plan pay a 30% higher premium for 12 months

**Impact**
- New administrative requirements to provide certificates of creditable coverage or similar documentation to all covered individuals.

PREMIUM TAX CREDITS

**ACA**
- Premium tax credits based on income available to individuals who purchase individual coverage through a health insurance exchange
- Credits not available if individual has access to affordable employer coverage

**AHCA**
- Premium tax credits based primarily on age available to individuals who purchase individual coverage
- Credits not available if individual has access to employer coverage

**Impact**
- New W-2 reporting requirements for employer to verify whether individuals are eligible for employer coverage to determine eligibility for premium tax credits.
### WHAT STAYS UNDER THE AHCA?

- Prohibition on pre-existing condition exclusions
- Coverage for adult children up to age 26
- Maximum out-of-pocket expenses
- Preventive care mandate
- Prohibition on lifetime/annual limits for EHBs
- Prohibition on underwriting based on health status (small and large group markets)
- Guaranteed availability and guaranteed renewability

### WHAT ELSE IS IN AHCA?

- Significant changes to Medicaid program
- Repeal of small employer tax credit
- New fund to provide money to help offset costs of high-cost claimants without employer coverage
LESSONS

Lessons

1. Don’t assume repeal of ACA means everything is going away immediately – will take time and some parts are likely to stay.

2. You will be faced with many plan design and employee relations choices once we know which parts of the ACA are going away.

3. Conservative approach is to continue to comply, but if cost of continuing compliance is high, you may want to take a strategic risk.

QUESTIONS

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