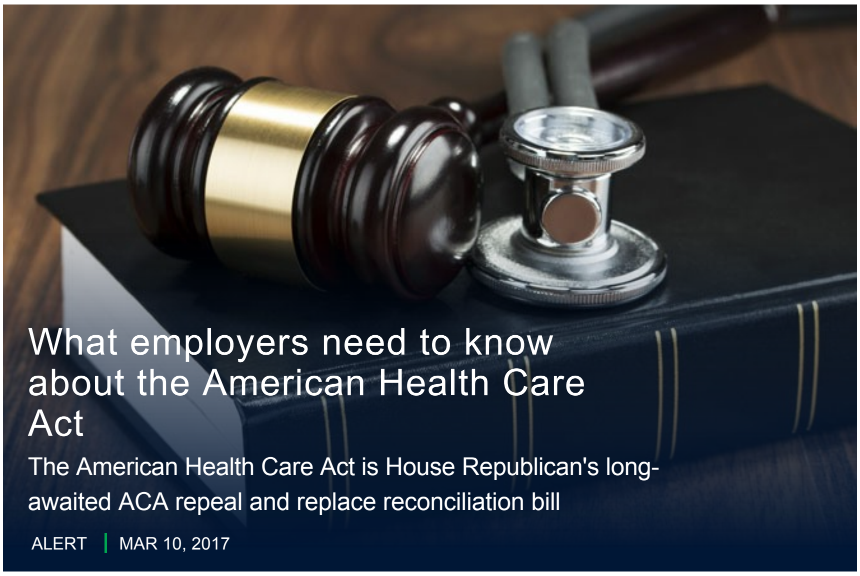


What employers need to know about the American Health Care Act

The American Health Care Act is House Republican's long-awaited ACA repeal and replace reconciliation bill

ALERT | MAR 10, 2017

On Monday, March 6, House Republicans released the American Health Care Act, their long-awaited plan to repeal and replace the Affordable Care Act (ACA), more commonly known as “Obamacare.” While the goal for Republicans over the last eight years has been to repeal the ACA in its entirety, for the most part the new bill leaves much of the existing legislation in place.

The reason why stems from the rules for the process in which Republicans seek to pass the American Health Care Act: budget reconciliation. The advantage of passing the ACA repeal and replace legislation as a reconciliation bill is that only a simple Senate majority is required for passage (some may recall that parts of the ACA were enacted using the same mechanism). The downside to using budget reconciliation is that it must be revenue neutral, meaning that any reduction in the federal revenues (i.e., tax cuts) must be offset by reduction in credits or spending. Additionally, only legislation that is germane to the management of the budget is allowed to be passed using this fast-track method. This explains why the technical components of the ACA, such as its changes to the health care delivery system through quality initiatives and program integrity and the implementation of nondiscrimination provisions have been left in place, and why proposals to allow the sale of insurance across state lines are conspicuously missing.

Below are highlights of the major provisions affecting employer sponsored group health plans. For more information on the provisions affecting Medicaid funding and information for health care providers, please see our alert "What health care providers need to know about the American Health Care Act."

- ### CONTINUES COVERAGE REQUIREMENTS FOR GROUP HEALTH PLANS

  The proposed bill does not change the current group health plan coverage requirements, including requiring coverage for preexisting conditions, guaranteed availability and renewability of coverage, requiring coverage for adult children up to age 26, out-of-pocket expenditure caps, prohibitions against lifetime and annual limits, and requiring coverage for preventive benefits with no cost sharing.

- ### REPEAL OF THE MEDICARE TAX ON HIGH INCOME EARNERS

  The 0.9 percent payroll tax on wage income will be repealed in 2018. This tax only affects taxpayers that make $200,000 or more for single filers and married couples making more than $250,000.

- ### REPEAL OF THE INVESTMENT TAX ON HIGH INCOME EARNERS

  The 3.8 percent tax on capital gain income will be repealed in 2018. This tax only affects taxpayers that make $200,000 or more for single filers and married couples making more than $250,000.

- ### REPEAL OF THE INDIVIDUAL AND EMPLOYER PENALTIES (BUT NOT THE MANDATES)

  Penalties for failing to satisfy the employer responsibility provisions would be eliminated retroactively beginning in 2016. With the repeal of the penalties, and in combination of the IRS stating that it will not systematically reject returns that do not include information about health coverage, it remains unclear how the employer mandates would be enforced, if at all.

- ### EMPLOYER REPORTING REQUIREMENTS REMAIN

  The required annual reporting of health insurance information for employers with 50 employees or more was not repealed. Health insurance coverage reporting from employers enables the IRS to monitor the use of individual tax credits for health insurance premiums.

- ### DELAY OF THE CADILLAC TAX IMPLEMENTATION UNTIL 2025

  The Cadillac tax on high-cost employer sponsored group health plans, implementation of which has already been delayed until 2020, would be suspended for tax years 2020 through 2024 and no revenues will be collected during that time.

- ### EXPANSION OF HEALTH SAVINGS ACCOUNTS (HSA)

  Beginning in 2018, limits on HSA contributions for the year will be increased to equal the maximum on the sum of the annual deductible and out-of-pocket expenses permitted under a high deductible health plan. The House Ways and Means Committee summary report states that the basic limit will be at least $6,550 in the case of self-only coverage and $13,100 in the case of family coverage beginning in 2018. Additionally, penalties on the use of HSA funds for non-medical purposes will be reduced from 20 percent to 10 percent, and on the use of Archer Medical Savings Accounts (MSAs) funds will be reduced from 20 percent to 15 percent. HSA and Archer MSA funds could be used to purchase over-the counter-medication. Spouses may also make catch-up payments for each other’s HSA accounts.

- ### ELIMINATION OF FLEXIBLE SPENDING ACCOUNT (FSA) LIMITS

The $2,600 limitation on contributions to FSAs will be repealed in its entirety beginning in 2018.

- ### IRC SECTION 105(H) NONDISCRIMINATION PROVISIONS REMAIN IN PLACE

  ACA prohibitions against insured employer health plans discriminating in favor of highly-compensated individuals in terms of coverage and benefits have not been changed. But, in accordance with IRS Notice 2011-1, the implementation of this provision has been delayed until the proposal of Treasury regulations, which have yet to materialize. (Similar provisions that applied to self-insured employer health plans prior to enactment of the ACA remain in effect.)

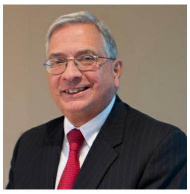
- ### REINSTATEMENT OF THE BUSINESS-EXPENSE DEDUCTION FOR RETIREE PRESCRIPTION DRUG COSTS

  Beginning in 2018, employers will be allowed to once again to deduct expenses relating to the costs of providing prescription drug coverage for retirees under Medicare Part D. This is a reinstatement of a deduction that was eliminated by the ACA.

- ### REPEAL OF THE ACA SMALL BUSINESS TAX CREDIT

  Under the ACA, small employers (up to 25 employees) could receive tax credits for 2 years to cover 50 percent of the employer’s contribution for health care premiums for low-wage workers. This tax credit would be repealed starting in 2020.

We will be monitoring the progress of this bill as it makes its way through the reconciliation process. Since the bill has not yet been scored by the Congressional Budget Office (it has been reported that scoring will be released by March 13), it is likely that this draft bill will change. For more information about how the potential ACA repeal and replace legislation will affect your business, please contact the McDonald Hopkins attorneys listed below.



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