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Legislate®

Key Legislative Developments Affecting Your Human Resources

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Review of Healthcare Legislation and ACA Report Card

With Congress on recess until Monday, April 13, this week's *Legislate* reviews bills introduced in the 114th Congress that impact employer-provided healthcare and HSAs — other than bills that would entirely or partially repeal the Affordable Care Act. We also review a recent report issued by the Government Accountability Office on the impact of the reform law's premium tax credits on increasing health insurance coverage.

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Chances for enactment?

With a few exceptions noted below, the outlook for enactment of the bills is not good in the near term. The ACA, and bills that fully or partially repeal the law, are likely to dominate Congress' interest in the months ahead — particularly as June nears and members unveil proposals designed to respond to a possible adverse decision to the government in *King v. Burwell*. (See our *FYI Alert* from **March 5, 2015** for more on the *King* case.)

- H.R. 943 (repeal of employer information reporting) may be enacted in the next several weeks as part of H.R. 2 — the Medicare Access and CHIP Reauthorization Act (which includes H.R. 943). H.R. 2 passed the House several weeks ago and is likely to be taken up by the Senate in April. (Please see our **March 27, 2015** *Legislate* for more on proposed changes in H.R. 2 that impact Medicare beneficiaries.)
- Proposals to revive the lapsed Health Coverage Tax Credit (HCTC) — such as H.R. 1088 — may also receive attention in the months ahead as Congress debates the merits of entering into new trade agreements with foreign countries.
- Further activity on wellness program legislation is not likely until after the EEOC issues guidance on such programs. (Please see our **March 23, 2015** *FYI Alert* on the EEOC's announcement that it will issue guidance.)

Healthcare Legislation

The following bills have been introduced since January, would have an impact on employer-provided health coverage or HSAs, and do not repeal or modify the Affordable Care Act (ACA):

Governmental plans. Introduced by Rep. Dave Reichert (R-WA), H.R. 869 would modify a special rule that applies to governmental group health plans. Under the tax code, certain governmental HRAs are currently permitted to provide tax-free reimbursements for the healthcare expenses of a deceased participant's beneficiaries (which can include those other than a spouse and dependents). The legislation would expand the special rule to apply to plans maintained by political subdivisions of a state and to plans structured as a Section 501(c)(9) tax exempt VEBA.

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Employer information reporting for Medicare compliance. Introduced by Reps. John Lewis (D-GA) and Reichert, H.R. 943—the Medicare Employer Relief Act — would repeal information reporting that was originally designed to enforce Medicare's secondary payor rules. Under the reporting rules, employers are required to respond to questionnaires from the government seeking identification of Medicare beneficiaries with group health coverage. This reporting is no longer necessary since group health plans now directly report beneficiary payments to Medicare.

Rollover of required minimum distributions into HSAs. Introduced by Rep. Bill Huizenga (R-MI), H.R. 975 — the Health Freedom for Seniors Act — would permit required minimum distributions from tax-qualified retirement plans and IRAs to be contributed on a tax-free basis to HSAs.

Health care tax credit (HCTC). Introduced by Rep. Adam Smith (D-WA), H.R. 1088—the Trade Adjustment Assistance Act—would reinstate the HCTC, which lapsed at the end of 2013. The credit is available to assist certain taxpayers with paying for their health coverage. Eligible taxpayers include workers eligible for trade adjustment assistance benefits and individuals whose pensions have been taken over by the PBGC. For HIPAA's creditable coverage rules, the legislation would disregard the period between a loss of coverage for a worker that is trade-related and seven days after the date the worker is notified by the Treasury department that he or she is eligible for the HCTC. The legislation would also extend COBRA coverage maximum eligibility periods for HCTC eligible workers — until the date of death for taxpayers eligible because the PBGC has taken over their pension, or for trade affected workers, until the date the taxpayer is no longer eligible for trade adjustment assistance benefits. The HCTC and the revisions to the HIPAA and COBRA rules would expire January 1, 2021. Similar legislation to H.R. 1088 was introduced in the Senate (S. 505) by Sen. Rob Portman (R-OH). Rep. Michael Turner (R-OH) has also introduced legislation (H.R. 1143) that would restore the HCTC for PBGC eligible taxpayers.

Wellness programs. H.R. 1189 and S. 620 would clarify how the ADA and GINA apply to employer wellness programs. Please see our March 6 and March 27, 2015 editions of *Legislate* for more information on the bills and a recent hearing on H.R. 1189 that featured testimony from Buck Consultants — a Xerox Company.

HSAs. Introduced by Michael Burgess (R-TX), H.R. 1196 — the Health Savings Act — would make a number of changes to HSAs, including: new rules that would allow parents and grandparents to establish HSAs for their children and grandchildren; increasing the contribution limit so it equals the out-of-pocket maximum for high-deductible health plans; treating HSAs the same as an IRA in bankruptcy proceedings; and treating taxpayers who select silver or bronze level coverage in the public marketplaces as HSA eligible taxpayers.

GAO Report

The Government Accountability Office (GAO) — Congress' nonpartisan, investigative agency — recently released a report on the ACA's impact on improving health insurance coverage — specifically focusing on the advance payment feature of the reform law's premium tax credits. The credits are available to middle- and moderate-income individuals to reduce the cost of premiums for coverage in the public marketplaces. The credits may be claimed on a tax return — or, the taxpayer may elect advance payment of the credits so that they provide real-time assistance during the taxable year for the purchase of coverage. The availability of the credits in states that did not establish their own marketplaces is the subject of a lawsuit pending before the Supreme Court. (For more information on the *King v. Burwell* case, please see our March 5, 2015 *FYI Alert*.)

Highlights of the report include:

- There are limitations to measuring the effect of the premium tax credits, but surveys suggest that the number of uninsured declined significantly for those households with incomes that qualify for the credits — generally, between 100 and 400% of the federal poverty line. One survey found a 5.2% reduction between September 2013 and September 2014.
- HHS reports that the premium tax credits reduced premiums on the public marketplaces in 2014 by 76% on average.
- The report speculates that while most non-elderly adults had access to affordable health benefits, some may face challenges maintaining coverage. The report estimates that 16% of non-elderly adults remain uninsured. GAO observes that this might be the result of several factors, including uneven Medicaid expansion among the states and lack of access to affordable coverage. Premiums in the public marketplaces vary depending on household income and size, geography, age, and tobacco use. As an example, the report notes that a 60-year-old with income at 450% of the federal poverty line would pay more than 8% of his or her income for the lowest cost plan in 84% of US insurance markets.
- The report warns that the findings from the first year of the public marketplaces cannot be generalized to future years due to many factors, including additional data (data from 2014 is incomplete) and changes in trends in health care costs, which could affect the affordability of health insurance going forward.

Authors
Drew Crouch, JD, LLM
Sharon Cohen, JD

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