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Health Care Reform Bill Would Change Many ACA Provisions and Expand HSAs

On Monday, two House committees released legislation that would repeal many of the Affordable Care Act taxes and modify the rules for health savings accounts and flexible spending arrangements. The bill does not include a cap on the tax exclusion for employer-sponsored health care coverage. Moreover, although the bill would delay the Cadillac tax, it does not permanently repeal the tax.

Background

The Affordable Care Act (ACA) has been on the Republicans' chopping block for many years. On Monday, with the introduction of the American Health Care Act (Act) by two House committees – Ways and Means, led by Chairman Kevin Brady (R-TX) and Energy and Commerce, led by Chairman Greg Walden (R-OR) – Republican lawmakers are one step closer to achieving their goal and helping President Trump fulfill his campaign promise to repeal and replace the ACA.

The House committees have posted the following materials about the Act on their websites. Importantly, the work done by the two committees complement each other, with one focusing on health-related tax policy and the other on public health programs.

- Ways and Means: press release, legislative text, two-page summary and section-by-section analysis
- Energy and Commerce: press release, legislative text, and section-by-section analysis

Legislative Proposal

The Act would not completely repeal and replace the ACA. However, if enacted in its current form, it would bring about significant changes for employer-sponsored health care plans. Key elements affecting employers are discussed below.

Next Steps

Both the Ways and Means Committee and the Energy and Commerce Committee have scheduled a markup of this legislation for today – March 8. Thus, amendments to the legislative text may follow shortly thereafter.

Effective for 2016

The individual and employer shared responsibility provisions – the mandates – are changed by reducing the applicable penalties to $0. As this change would apply for 2016, individuals and employers who fail to satisfy the mandates in 2016 would not be subject to penalties.

> **Comment.** Importantly, the Act does not eliminate the individual or employer mandate, thus leaving in place employers' ACA reporting requirements. Also, the current premium tax credit to purchase individual coverage would remain in place through 2019. Therefore, the current ACA reporting requirements may need to be continued through 2019 to administer the credits.

Effective for 2018

Many ACA tax-related provisions, including those designed to help fund the ACA, would be repealed, including:

- The exclusion of over-the-counter medications obtained without a prescription from the definition of qualified medical expenses, including under health flexible spending arrangements (health FSAs)
- The cap on health FSA contributions – currently $2,600 for 2017
- The additional 0.9% Medicare tax on high earners
- The increase in the income threshold for the medical expense deduction from 7.5% to 10%
- The medical device tax
- The pharmaceutical manufacturer tax
- The health insurer tax
- The elimination of the deduction for expenses allocable to the Medicare Part D retiree drug subsidy

> **Comment.** The PCORI fee is not repealed by the legislation and would remain in place until it expires in 2018 for calendar year plans (payable in 2019). The legislation also does not impact the transitional reinsurance program, which ended in 2016 with employer payments generally being made in 2017.

The Act also includes several other changes effective in 2018 for health savings accounts (HSAs) that are discussed further below.

Effective for 2019

A new continuous health insurance coverage incentive would be effective for individuals. If an individual goes more than 63 days without continuous health insurance coverage, a 30% late enrollment surcharge would apply to the health plan premium for 12 months. The surcharge would be paid to the insurer. This provision serves a purpose similar to the ACA individual mandate. The imposition of the late fee would encourage individuals to enroll in coverage.

Effective for 2020

Previously, the tax on high cost plans (also known as the Cadillac tax) was delayed to 2020. This Act would further defer the tax to 2025. Importantly, the legislation does not include any limit on the exclusion for employer-provided health coverage, which was under consideration. It is possible that efforts to permanently repeal the Cadillac tax and cap the tax exclusion for employer-provided health coverage will be addressed in a subsequent bill or during a markup of the Act.

The current individual premium tax credit and the small business tax credits would be repealed in 2020. A new refundable tax credit would be effective in 2020. Other changes would be effective in 2020 that would significantly alter the current ACA marketplace for individuals and small employers.

> **Comment.** While the legislation includes several changes to the current ACA marketplace, it largely assumes that the current ACA marketplaces and tax premium tax credits would remain in place through 2019. Insurance carriers' reaction to the proposals and whether the current marketplaces will remain viable until 2020 remain to be seen.

Other Provisions

While the Act imposes changes to the ACA's Medicaid expansion (as well as other provisions not discussed in this *FYI Alert*), the Act does not affect the ACA insurance market reforms – such as those that provide protections for individuals with pre-existing conditions, the limitations on annual and lifetime dollar limits, and the ability for adult children up to age 26 to remain on parents' plans.

HSAs

The legislative proposal includes numerous provisions aimed at enhancing HSAs starting in 2018. Among other things, the Act would:

- Increase the permitted maximum monthly contribution to an HSA. For determining the maximum contribution that an HSA-eligible individual could make for a given year, the legislation would refer to the statutory annual deductible and out-of-pocket expense limitation (commonly referred to as the annual out-of-pocket limit). For 2017, that limitation for self-only HDHP coverage is $6,550 and $13,100 for family coverage. This would be a significant increase from the current contribution maximums (for 2017, $3,400 for self-only coverage and $6,750 for family coverage).

> **HSA: National Webinar**
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> Please join us on March 8 for a national webinar**: The New Administration and HSAs: What Happens Next?** or, after today, review this and other recorded webinars **here**.

- Permit HSA funds to be used for:
  - Over-the-counter medications obtained without a prescription
  - Qualified expenses incurred while the individual is covered under a qualified HDHP, but within 60 days of establishing an HSA
- Reduce the penalty from 20% to 10% for non-qualified HSA distributions
- Permit married individuals 55 and older to both contribute the $1,000 catch-up contributions to the same HSA
- Starting in 2020, allows unused tax credits to be deposited in an HSA

In Closing

Reforming the health care landscape, including repealing and replacing portions of the ACA, is expected to occur piecemeal over a long period. Importantly, although Republican lawmakers are aiming to dismantle the ACA, they are also trying to ensure the viability of the ACA marketplaces during any transition and to preserve employer-sponsored health care.

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