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# Legislation Would Suspend ACA Individual and Employer Mandates

While the big news in Congress last week was the release of the House tax reform bill (see our November 3, 2017 *FYI Alert*), House GOP lawmakers also introduced legislation that would provide funding for ACA cost-sharing reduction payments and suspend the individual and employer mandates.



## Week in Review

House Ways and Means Chairman Kevin Brady, R-Texas, and Senate Finance Chairman Orrin Hatch, R-Utah, introduced the "Healthcare Market Certainty and Mandate Relief Act" in the Senate and the House. The legislation would provide funding for the cost-sharing reduction (CSR) payments through 2019, as well as suspend the ACA individual and employer mandates.

### The Healthcare Market Certainty and Mandate Relief Act

Last month, the administration announced that it would no longer fund the ACA cost-sharing reduction payments. Generally, under the ACA, insurers are required to reduce certain out-of-pocket costs (e.g., deductibles, coinsurance) for low-income individuals enrolled in ACA marketplace coverage. This legislation would:

- Provide appropriations to fund the ACA cost-sharing reduction payments for 2017 through 2019. However, no payments would be made to insurers for qualified health plans that include abortion coverage, other than when necessary to save the life of the mother, or pregnancy that is the result of rape or incest.

**Cost-Sharing Reduction Subsidies and the Courts**

As discussed in our **October 20, 2017** *Legislate*, the attorneys general of 18 states and the District of Columbia, asked a California district court to issue a temporary restraining order, and preliminary injunction to compel the administration to continue the CSR payments. However, in a **ruling** late last month, the district court denied this request. The decision allows the administration to stop the CSR payments.

- Suspend the ACA individual mandate for 2017 through 2021.
- Suspend the ACA employer mandate for 2015 through 2017.
- Increase the health savings account (HSA) maximum contribution limit to mirror the maximum out-of-pocket limit, starting in 2018 and through 2022. (For example, under current law the maximum contribution an individual can make in 2018 is $3,450 for self-only coverage and $6,900 for family, plus a $1,000 catch-up contribution for individuals 55 and older. This legislation would increase those contribution limits in 2018 to $6,650 and $13,300, respectively. See our May 9, 2017 *For Your Information*.)

**Future of the Cadillac Tax?**

Neither this ACA legislation nor the House tax reform bill introduced last week include any provisions that would further delay or repeal the ACA's 40% excise tax on high-cost health care plans. Under current law, the tax is effective in 2020. The IRS is expected to release guidance on the tax as soon as early 2018.

**Comment**. With the changes in the ACA mandates and abortion limitations included in the legislation, Democratic support for this bill is unlikely. Even sufficient Republican support in Congress, or by the Trump administration, is uncertain because funding the cost-sharing reduction payments could be viewed as helping to save the ACA.

### IRS Enforcement of the Individual and Employer Mandates

While Congress considers legislation to suspend the individual and employer mandates, the IRS has issued new guidance on its enforcement efforts. First, on November 2, the IRS issued long anticipated guidance on the process it will use to assess employers with payments under the ACA employer shared responsibility provision. The IRS says that it will start sending notices to employers for the 2015 calendar year "in late 2017." Importantly, employers will only have 30 days from the date of the IRS notice to respond. We will cover this guidance in more detail in a future *For Your Information* release.

Also, late last month, the IRS announced that in enforcing the individual mandate it will no longer "…accept electronically filed tax returns where the taxpayer does not address the health coverage requirements of the Affordable Care Act. In addition, returns filed on paper that do not address the health coverage requirements may be suspended pending the receipt of additional information and any refunds may be delayed." The IRS said that it won't accept the return until the taxpayer indicates whether he or she had coverage, had an exemption, or will make a shared responsibility payment.

## Week Ahead

With the objective of passing tax reform legislation in the House before Thanksgiving and the Senate by Christmas, a major focus of the House this week will be tax reform.

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