MARCH 8, 2017

An Employer-Centric Summary of the American Health Care Act

Updated on March 13, 2016

Unless you recently were stranded on an uninhabited island, or do not own a mobile phone, computer or television, you likely have not heard that the House released the Affordable Care Act repeal and replace bill. This new bill is referred to as the American Health Care Act ("AHCA"). While there is much to discuss, at this point, we are only focusing on those provisions that affect employers. Further, we know that this draft will not be the final legislation, and so overly debating its pros and cons is not practical at this point.

In general, employer sponsored health plans and employers are treated quite nicely under the AHCA. Prior to the release of the AHCA, some speculated that the tax-free exclusion for employer health plans would be limited for high earners. As of now, such limitation is not included in the AHCA.

While there are numerous other changes that could be discussed with respect to the AHCA, the following are those changes which employers will find most applicable to them.

Employer Mandate

Under current law, large employers are required to provide health coverage to full-time employees or pay a penalty. The AHCA reduces the penalty to zero dollars, effective as of December 31, 2015. If adopted, employers could discard its administration of measurement and stability periods. In regards to reporting, the current reporting rules would remain, but because there is no employer or individual mandate, they would become effectively redundant. The AHCA also establishes a new reporting mechanism by using the Form W-2 to indicate if employer coverage is offered.

Cadillac Tax

Currently, the Cadillac tax goes into effect in 2020. The AHCA changes the effective date of the Cadillac tax to 2025. Many have wondered why it was not repealed outright. The problem lies in the budgetary score given to the Cadillac tax under the ACA. When the ACA was passed, this tax was scored to bring in billions of dollars in revenue. Many have said the score was incorrect, with some saying it was purposefully incorrect to make the ACA easier to pass. But, leaving those arguments alone for the time being, this is likely the reason for the delay, rather than outright repeal.

Health Flexible Spending Accounts

The AHCA repeals the dollar limit on health FSA contributions starting in 2018. The AHCA also allows health FSAs to reimburse over-the-counter medications also beginning in 2018. In effect, both of these changes mean that health FSAs could operate under pre-ACA rules.

Part D Subsidy Tax

The ACA eliminated the employer deduction for prescription drug costs to the extent that the employer also received the Part D retiree drug subsidy for sponsoring and providing prescription drug coverage for retirees. Effective in 2018, the AHCA eliminates this limitation, putting employers back to the same position they were prior to the ACA.

Health Savings Accounts

The AHCA also makes a number of attractive changes for HSAs all effective as of 2018 –

- The AHCA increases the limit on HSA contributions to equal the sum of the annual deductible and out-of-pocket maximum permitted for a high deductible health plan. This means that HSA contributions would increase to at least $6,550 for self-only and $13,100 for family coverage using the limits in effect for 2017.
- Both spouses would be allowed to make a catch-up contribution.
- If an individual establishes an HSA within 60 days after high deductible health plan coverage begins, then the HSA is treated as established on the date coverage began under the high deductible health plan. This new rule would effectively eliminate some of the problems associated with new HDHP enrollees opening their HSA late.
- Individuals could use HSA funds for over-the-counter medical items as noted above under the health FSA changes.

Moving Forward

Stay tuned as this wild ride is just beginning. Recently, the White House posted a document indicating that the AHCA is the first step in a three-step plan to repeal and replace the Affordable Care Act. This document is posted here.

For those who would like to review a complete copy of the AHCA bill (which is considerable smaller than the Affordable Care Act), it is posted here.