Keenan & Associates

BRIEFING

MARCH | 2017

HEALTH CARE REFORM: THE AMERICAN HEALTH CARE ACT AND EMPLOYER-SPONSORED GROUP HEALTH PLANS

On March 6, 2017, the U.S. House of Representatives' Ways and Means and the Energy and Commerce Committees released their proposed bills for repealing and replacing the Affordable Care Act (ACA). The combined proposals are collectively referred to as the American Health Care Act (AHCA) and draw heavily on prior Republican repeal and replace proposals, including House Speaker Paul Ryan's "A Better Way" and the Department of Health and Human Services Secretary Tom Price's "Empowering Patients First Act."

The majority of changes under the AHCA are directed at the individual insurance market and Medicaid but there are some provisions that would affect employer-sponsored group health plans. The key provisions that would impact employer plans are as follows:

EMPLOYER MANDATE

- The tax penalty would be reduced to $0 as of January 1, 2016. However, the reporting requirements under Internal Revenue Code Sections 6055 and 6056 on Forms 1094-C and 1095-C would remain in place but could change in future years.

INDIVIDUAL MANDATE

- The tax penalty would be reduced to $0 as of January 1, 2016 and the mandate would be replaced with a continuous coverage incentive.

- Insurers would be able to charge individuals buying individual policies a 30 percent late enrollment penalty if they have a lapse of coverage for 63 or more days during the prior 12 months.

- In order for insurers to administer the continuous coverage requirement and assess late enrollment penalties, plans would be required to provide notices similar to the Health Insurance Portability and Accountability Certificates of Creditable Coverage that ceased being necessary under the ACA.

CADILLAC TAX

- The Cadillac Tax would remain in place but the effective date would be delayed until January 1, 2025.

FLEXIBLE SPENDING ACCOUNTS (FSA) AND HEALTH SAVINGS ACCOUNTS (HSA)

- Limits on salary reduction contributions into health FSAs would be removed for plan years beginning on or after January 1, 2018.

- HSA contribution limits would be increased to $6,500 for self-only and $13,100 for family coverage effective January 1, 2018.

- Each spouse over age 55 would be allowed to make catch-up contributions of up to $1,000 to the same HSA effective January 1, 2018.

- The penalty for non-qualified expenses paid from a HSA would be reduced from 20% to 10% as of January 1, 2018.

- Reimbursement for over-the-counter medications without a prescription would be allowed starting January 1, 2018.

Premium Tax Credits

- Premium tax credits would be phased out and replaced as of January 1, 2020 with an advance payable, refundable flat-tax credit that is adjusted for age.

- To be eligible for the credit, an individual must not have an offer of employer-sponsored coverage or be eligible for government sponsored coverage, such as Medicare or TRICARE.

- Credits can be used to purchase individual coverage on or off an Exchange, excluding grandfathered or grandmothered plans, or to pay for unsubsidized COBRA premiums (i.e., not paid by the employer). However, the credits cannot be used for plans, including COBRA, that cover elective abortions.

- In order to administer the new tax credits, plan sponsors would be required to certify whether COBRA coverage is eligible for the credit (i.e., that it does not cover elective abortions).

Coverage and Benefit Mandates

- The AHCA would not repeal the ACA's coverage and benefit mandates, such as coverage of dependent children to age 26, no annual or lifetime dollar limits on essential health benefits and the prohibition against pre-existing condition exclusions.

What's Next?

The AHCA is working its way through the legislative process. The Ways and Means and the Energy and Commerce Committees advanced the bills on March 9, 2017 to the House Budget Committee. Additional committee hearings will take place before the bill is presented to the full House for a vote. On March 13, 2017, the Congressional Budget Office released its cost estimate. It is estimated that enacting the AHCA would reduce the federal deficit by $337 billion over the next decade and increase the number of uninsured by 14 million in 2018, climbing to 24 million in 2026 relative to current law.

Given the opposition the AHCA is facing, it is possible that changes could be made as the legislation makes its way through Congress. Keenan continues to monitor ongoing developments and will update you throughout the process. In the meantime, employers should continue to administer their plans in full compliance with existing law.

For reference, we have included a side-by-side comparison chart detailing the key provisions of the ACA and the AHCA.

Please contact your Keenan Account Manager for questions regarding this Briefing.

Affordable Care Act & American Health Care Act Comparison

Topic	Affordable Care Act Current Law	American Health Care Act House GOP Proposal
Employer Mandate	As of January 1, 2015, an employer with 50 or more ACA defined FT employees may be subject to a penalty if it does not offer those FT employees, and their dependents, minimum essential coverage that is affordable and provides minimum value.	***Repeal*** • Tax penalty under Employer Mandate reduced to $0 as of January 1, 2016.
Individual Mandate	As of January 1, 2014, individuals must have minimum essential coverage for themselves and their dependents or otherwise pay a tax. For 2017, the tax is $695 per year or 2.5% of household income. Exemptions may apply due to financial hardship, religious objections, etc.	***Repeal and Replace*** • Tax penalty under Individual Mandate reduced to $0 as of January 1, 2016. • Replaces Individual Mandate with continuous coverage incentive. – Insurers may charge individuals buying individual policies a 30% late enrollment penalty if they have a lapse of coverage for 63 or more days during the prior 12 months. – Penalty applicable for the first plan year of enrollment only. – Effective for special enrollments during the 2018 plan year and all other enrollments starting with the 2019 plan year. – Health plans will be required to provide certificates of creditable coverage.
6055 & 6056 Reporting	Internal Revenue Code (IRC) section 6055 requires health insurance issuers, employers providing self-insured group health coverage and others providing minimum essential coverage to report on the type and period of coverage. IRC section 6056 requires each employer subject to the Employer Mandate to report on their ACA defined FT employees and offers of coverage. Reporting is done using Forms 1094-B/C & 1095-B/C.	***Keep*** • Rules limit Congress' ability to repeal reporting through the budget reconciliation process; however, the reporting requirements may be changed in future years.

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<table>
<tr><th>Topic</th><th>Affordable Care Act
Current Law</th><th>American Health Care Act
House GOP Proposal</th></tr>
<tr><td>Exchanges</td><td>The ACA established Health Insurance Marketplaces (also called Exchanges) that are operated in each state and designed to create a more organized, competitive market for health insurance. Individuals and families purchasing coverage through an Exchange may be eligible for premium tax credits and cost-sharing subsidies.</td><td>Keep
Exchanges continue but with premium tax credits available for coverage purchased outside of an Exchange. However, advanced payment of premium tax credits will continue to be available only for Exchange coverage.</td></tr>
<tr><td>Premium Tax Credits</td><td>Premium tax credits are available for individuals and families who meet certain income requirements and who do not have access to affordable, minimum value health insurance through their employer. Eligibility is based on the federal poverty level and the size of the credit is based on a sliding scale so that those making less money may get more financial assistance. Individuals and families making between 133% and 400% of the federal poverty level may be eligible for a premium tax credit.</td><td>Repeal and Replace
For 2018-2019, premium tax credits will still be available but modified as follows:
Amount increased for young adults with incomes above 150% of the federal poverty line.
Amount decreased for adults 50 and older with incomes above 150% of the federal poverty line.
Credits can be used to purchase catastrophic plans.
Credits can be used to purchase qualified health plans sold outside an Exchange, excluding grandfathered or grandmothered individual plans.
Credits are not advance-payable for plans purchased outside an Exchange.
Credits cannot be used for plans that cover elective abortions.
Allows for collection of all overpaid advanced payments of credits paid after December 31, 2017 but before January 1, 2020.
Starting January 1, 2020, premium tax credits would be replaced with an advanceable, refundable flat-tax credit.
The credit is adjusted for age:
Under age 30: $2,000
Age 30 – 39: $2,500</td></tr>
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Premium Tax Credits		▪ Age 40 – 49: $3,000 ▪ Age 50 – 59: $3,500 ▪ Over age 60: $4,000 – Credits for a family capped at $14,000. – Credits indexed to increase annually based on CPI plus 1% point. – To be eligible for the credit, an individual must not have an offer of employer-sponsored coverage or be eligible for government sponsored coverage, such as Medicare, TRICARE, etc. – Credits phased out at incomes above $75,000 (e.g., a 29 year-old making $95,000 or a 60 year-old making $115,000 would not get a credit). – Credits can be used to purchase individual coverage on or off an Exchange, excluding grandfathered or grandmothered plans, or to pay for unsubsidized COBRA premiums (i.e., not paid by the employer). – Credits cannot be used for plans, including COBRA, that cover elective abortions. States and plan sponsors will be required to certify whether COBRA coverage is eligible for the credit. – Excess credits can be deposited into an HSA.
Cost-Sharing Subsidies	Cost-sharing subsidies reduce the amount of out-of-pocket expenses an individual or family must pay. Individuals and families who are eligible for premium tax credits and whose household income is not more than 250% of the federal poverty level may receive cost-sharing subsidies if they enroll in a Silver plan.	***Repeal*** • Effective for plan years beginning on or after January 1, 2020.

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Small Business Tax Credit	Employers with less than 25 FT equivalent employees and an average annual wage of less than $50,000 per employee may be eligible for tax credits to purchase Exchange coverage through the Small Business Health Options (SHOP) Program.	***Repeal*** • Starting January 1, 2018, the tax credits will still be available but they cannot be used to purchase plans that cover elective abortions. • Tax credits will no longer be available starting January 1, 2020.
Insurance Market Rules and Benefit Mandates	The ACA introduced or modified several insurance market rules, including certain coverage and benefit mandates. For example: • Dependent children to age 26 • Essential health benefits • No annual or lifetime dollar limits on essential health benefits • Pre-existing condition exclusions • Preventive services with no cost-sharing • Rescission permissible only for fraud or intentional misrepresentation • Guaranteed issue & renewability • Premium rating rules • Excessive waiting periods • Out-of-pocket limits on costs for in-network benefits • Metal tiers with specified actuarial values	***Keep but Modify*** • Most of the insurance market rules and the coverage and benefit mandates remain unchanged; however, there are some changes: – Permits states to modify their age rating from 3:1 up to 5:1 in the individual and small group markets. – Prohibits elective abortion coverage from being a required benefit. – Permits insurers to offer separate policies for elective abortion coverage but no tax credits can be used to cover the cost. – Removes the requirement that plans be offered as metal tiers with specified actuarial values as of January 1, 2020.
Taxes, Fees & Deductions	Several taxes, fees and deductions were introduced or modified to help fund various aspects of the ACA. For example: • Cadillac Tax • Health Insurance Provider's Fee • Fee on importers & manufacturers of branded Rx drugs.	***Repeal*** • The following taxes, fees and deductions would be changed effective January 1, 2018: – Repeals the Health Insurance Provider's Fee – Repeals the fee on importers & manufacturers of branded Rx drugs.

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	• 2.3% Medical Device Tax. • 0.9% Additional Medicare Tax on high-income individuals. • 3.8% Net Investment Income Tax on high-income individuals. • 10% Tanning Tax • Eliminated employers' ability to claim tax deductions for retiree Rx costs reimbursed under the Retiree Drug Subsidy (RDS) program. • Increased the income threshold from 7.5% to 10% of adjusted gross income for individuals 65 or over to deduct qualifying medical expenses. • Limited business deduction for compensation in excess of $500,000 paid to health insurance officers, directors and employees.	– Repeals the Medical Device Tax. – Repeals the Additional Medicare Tax – Repeals the Net Investment Income Tax – Repeals the Tanning Tax – Reinstates the tax deduction for reimbursements under the RDS program – Reduces the income threshold to 7.5% of adjusted gross income to deduct qualifying medical expenses. – Removes the limit on the amount of business expense deductions for compensation paid to health insurance officers, directors and employees. ***Keep*** • The Cadillac Tax remains but the effective date is delayed until January 1, 2025.
Health FSAs & HSAs	The ACA modified certain requirements for health FSAs and HSAs. For example: • Limited the amount of salary reduction contributions into health FSAs. • The tax penalty for non-qualified expenses paid from an HSA was increased from 10% to 20%. • Prohibited reimbursement for OTC medications without a prescription.	***Repeal*** • Health FSA contribution limit removed for plan years beginning on or after January 1, 2018. • Reduces penalty to 10% for non-qualified expenses paid from an HSA as of January 1, 2018. • Allows for reimbursement of OTC medications without a prescription starting January 1, 2018. • Additional changes to HSAs effective January 1, 2018: – Increase contribution limit to $6,500 for self-only and $13,100 for family coverage. – Allow each spouse over age 55 to make catch-up contributions of up to $1,000 to the same HSA. – Expenses within 60 days of enrolling in HDHP can be reimbursed if HSA opened within those 60 days.

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Medicare	The ACA made several changes to Medicare, including but not limited to: • Phased in coverage for the Part D "donut hole" • Expanded coverage of preventive services • Established the Independent Payment Advisory Board • Provider payment, including Medicare Advantage, and delivery system reforms • Expanded use of income-related premiums for Parts B & D • Increased Part A payroll tax for high-income taxpayers • Eliminated ability of employers to claim tax deductions for retiree Rx costs that are reimbursed under the Retiree Drug Subsidy (RDS) program.	***Keep but Modify*** • Most of the provisions related to Medicare remain, but, there are some changes: – The Additional Medicare Tax on high-income individuals would be repealed effective January 1, 2018. – Reinstates the tax deduction for reimbursements under the RDS program.
Medicaid	Under the ACA, states have the option to expand their Medicaid programs to cover all people with household incomes below a certain level.	***Repeal and Modify*** • Eliminates option for states to expand coverage to adults above 133% of the federal poverty line as of January 1, 2020. • Eliminates enhanced Federal Medical Assistance Percentage (FMAP) as of January 1, 2020 except for individuals enrolled as of December 31, 2019 and who have not had a break in eligibility for more than one month. • For the period between January 1, 2017 and December 31, 2019, enhanced FMAP capped at the rate for the 2017 calendar year. • Eliminates Medicaid Disproportionate Share Hospital (DSH) cuts for non-expansion states starting January 1, 2018 and January 1, 2020 for expansion states. • Eliminates the essential health benefits requirements as of December 31, 2019.

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Medicaid		• Provides $10 billion over five years to non-expansion states for safety-net funding. • Changes overall federal financing for the Medicaid program by establishing per capita caps starting in fiscal year 2020. States exceeding their targeted allotment for a fiscal year will have next year's payments reduced by any excess payments. • Removes authority for hospitals to make presumptive eligibility determinations starting January 1, 2020. • Reduces eligibility for children ages 6-19 from 138% to 100% of the federal poverty level starting January 1, 2020. • Removes presumptive eligibility for expansion adults, including former foster care youth, as of January 1, 2020. • Eliminates enhanced FMAP for home and community-based attendant services as of January 1, 2020. • Requires states to consider lottery winnings and limit home equity to federal limits when determining eligibility. • Require states to make eligibility redeterminations every 6 months for expansion enrollees starting October 1, 2017.
Other	The ACA established the Prevention and Public Health Fund to provide expanded and sustained national investments in prevention and public health, to improve health outcomes, and to enhance health care quality. The ACA also established a Community Health Center Fund to provide for expanded and sustained national investment in community health centers under section 330 of the Public Health Service Act and the National Health Service Corps.	• Eliminates funding for the Prevention and Public Health Fund after 2018 fiscal year and rescinds unobligated funds. • Provides additional $422 million in funding for the Community Health Center Fund for 2017 only. • Prohibits federal funding for Planned Parenthood for one year. • Establishes a Patient and State Stability Fund to provide $100 billion in funds over 9 years to states for high-risk pools, stabilizing individual market premiums, promoting access to preventive services and other purposes.