

HEALTH CARE REFORM: U.S. HOUSE NARROWLY PASSES ACA REPEAL & REPLACE

On May 4, 2017, the U.S. House of Representatives passed the American Health Care Act (AHCA) to repeal and replace parts of the Affordable Care Act (ACA). The AHCA passed by a narrow margin with 217 Republicans voting in favor and all Democrats plus 20 Republicans voting against the bill. Amendments were introduced after the bill was withdrawn from consideration in March 2017 and those changes managed to garner enough votes to pass the bill on May 4th. The amendments included the following:

- Establishes a federal “invisible risk sharing” program to supplement the AHCA’s Patient Stability Fund with \$15 billion in funding over nine years to cover high-cost individuals.
- The AHCA permits states to modify their age rating from 3:1 up to 5:1 in the individual and small group markets. Under the MacArthur amendment, states can apply for a waiver to increase the age rating ratio beyond 5:1 for plan years beginning on or after January 1, 2018.
- States can seek a waiver to define their own essential health benefit requirements in the individual and small group market for plan years beginning on or after January 1, 2020.
- The AHCA allows insurers to charge those in the individual market a 30% late enrollment penalty if they have a lapse of coverage for 63 or more days during the prior 12 months. As amended, states with a high-risk pool program can apply for a waiver that instead allows insurers to use health status as a factor in setting premiums for individuals who failed to maintain continuous coverage.
- Provides an additional \$8 billion in funding for state high-risk pools in states allowing medical underwriting.

WHAT DOES THIS MEAN FOR EMPLOYERS?

Until the AHCA is passed by the Senate and signed into law by the President, all statutory and regulatory provisions of the ACA remain in full force. Employers should continue to administer their plans in full compliance with existing law. As detailed in our March 2017 *Briefing*, most of the changes under the AHCA are directed at the individual insurance market and Medicaid. There are some provisions that would affect employer-sponsored group health plans.

- Reduces the Employer Mandate penalty 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.
- Reduces the Individual Mandate penalty to \$0 as of January 1, 2016. Plans would need to provide notices similar to the Health Insurance Portability and Accountability Certificates of Creditable Coverage to administer the continuous coverage requirement.

- The Cadillac Tax remains in place with a delayed effective date of January 1, 2026.
- Removes limits on salary reduction contributions into health flexible spending accounts for plan years beginning on or after January 1, 2017.
- Changes certain rules for health savings accounts, including raising contribution limits effective January 1, 2018, allowing for reimbursement of over-the-counter medications without a prescription and reducing the penalty for non-qualified expenses from 20% to 10%.
- Phases out premium tax credits and replaces them with an advance payable, refundable flat-tax credit starting January 1, 2020. The age adjusted credits can be used to buy individual coverage on or off an Exchange, excluding grandfathered or grandmothers 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).

The AHCA does not repeal the ACA's coverage and benefit mandates, such as coverage of dependent children to age 26 and no annual or lifetime dollar limits on essential health benefits. However, if a state is granted a waiver to redefine essential health benefits, it is possible that annual or lifetime dollar limits could be placed on benefits that are no longer deemed essential health benefits. For example, if a state excludes maternity services from the definition of essential health benefits, then insurers could reintroduce annual or lifetime dollar limits on maternity services. It is unlikely California would request a waiver.

WHAT'S NEXT?

The bill now moves to the U.S. Senate where it faces a rocky road. Under the budget reconciliation rules, only 51 votes are needed for passage. Republicans currently hold 52 seats in the Senate and it is expected all Democrats will oppose the bill. With Republicans needing to thread a needle to get the AHCA passed, it will likely be amended before a vote takes place. Possible amendments include providing additional assistance to low-income individuals, softening the phase-out of Medicaid expansion and providing additional high risk pool funding. If the bill gets through the Senate, any differences between the House and Senate versions will need to be ironed out with a single version sent back to the House and Senate for passage before going to the President for signature.

Potentially complicating the situation is the Senate Parliamentarian who could determine that some of the provisions, such as the MacArthur amendment allowing states to redefine essential health benefits or permitting the use of medical underwriting, were improperly included in a budget reconciliation bill that is limited to addressing provisions related only to revenue. The amendment was instrumental in getting support from many conservative House members and it is not clear if that support would remain if the provisions were removed.

With the next phase of the legislative process beginning, Keenan continues to monitor ongoing developments and will update you throughout the process.

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

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