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House Republicans Introduce Health Care Reform Legislation

On Monday, House Republicans unveiled the long-awaited legislation intended to overhaul former President Barack Obama's signature health care legislation, the Patient Protection and Affordable Care Act (ACA). The bill, titled the American Health Care Act (AHCA), would make major changes to the ACA that impact individuals, employers, insurers, and providers in significant ways, as summarized below.

Provisions Impacting Employer-Sponsored Coverage

The most significant development impacting employers under the proposed law is removal of the employer mandate. Large employers would no longer face penalties for failing to offer coverage that meets the minimum value and minimum essential coverage requirements of the ACA. Additionally, the proposed bill would repeal the widely unpopular excise tax on high-cost coverage (the so-called Cadillac Tax) and offer tax credits to small businesses for providing coverage to employees. The law would also require employers to indicate on Form W2 the months of coverage each employee was eligible for coverage. (Note: It appears the legislation is intended also to eliminate the ACA's annual employer 1094/1095 reporting under Section 6056 of the Code. That would be a natural by-product of the employer mandate repeal, but the bill does not appear to eliminate this obligation expressly. This may be addressed in a future amendment to the bill.)

Changes to Account-Based Plans

The AHCA would make some significant changes to the rules governing HSA accounts for the first time since 2004. The bill would increase the annual HSA contribution limit to equal the out-of-pocket maximum amount established for that year under the HSA rules (currently \$6,550 for self-only coverage and \$13,100 for family coverage). The rules would also be modified to allow both spouses (if over 55) to make "catch-up" contributions to the same HSA account. Also, a new special rule would allow HSA account holders to use HSA funds to pay for health care services performed up to 60 days prior to the account being established. The bill would also reduce the excise tax on distributions not used for medical expenses from 20% to 10%. Finally, the AHCA would remove the ACA's cap on contributions to health FSA plans.

Changes to the Individual Market

While leaving in place popular provisions of the ACA such as the requirements that insurers cover dependents up to the age of 26 and pre-existing conditions, the AHCA would otherwise significantly redesign the ACA's changes to the individual market. First, the bill does away with the individual mandate and repeals the cost-sharing subsidies and premium tax credits made available under the ACA to individuals who enroll in coverage on the exchanges. In turn, the AHCA puts in place refundable tax credits that individuals could use to defray the cost of coverage, including coverage outside the exchanges. Like under the ACA, these tax credits are eligible for advance payment. The amount of the credits will vary based on age and income, and excess payments can be deposited directly into an HSA account. Tax credits are not available for any coverage that includes abortion services.

In place of the individual mandate, to incentivize individuals to maintain coverage, the bill provides for increased premiums (30% for 12 months) for individuals who have had a gap in coverage of at least 63 days. The bill also creates the "Patient and State Stability Fund," which provides significant payments to states ($10 to $15 billion per year through 2026) to help stabilize the individual and small group insurance markets and to assist high-risk patients. Also, beginning in 2020, the ACA's requirements around essential health benefits will sunset. Finally, the bill allows carriers greater flexibility to vary premiums based on age by up to a 5:1 ratio, up from 3:1 under the ACA.

Changes in the Medicaid Program

Unsurprisingly, the AHCA would repeal the ACA's expansion of the Medicaid program. It would also put into place a per-capital allotment of federal Medicaid dollars to the states, which is expected to rein in the future federal financial commitment to the program. Similar to other provisions, the bill would bar Medicaid dollars from being used on abortion providers. It would also require states to disenroll high-dollar lottery winners and incentivize states to assess participant eligibility on a more frequent basis. (Note: The bill will also reverse major cuts to the Medicare Disproportionate Share Hospital program, which provides safety net funding to more than 3,000 hospitals that disproportionately treat indigent patients).

Repeal of ACA Taxes

Finally, the AHCA would repeal numerous taxes—in addition to the Cadillac Tax discussed above—that either have gone into effect or are expected to become effective under the ACA. Among those are the insurer tax (effectively a federal insurance premium tax), the prescription medication tax, the tax on over-the-counter medications, and the medical device tax. It would also eliminate taxes on high-income earners that were levied under the ACA to help pay for the law.

Republicans have signaled an aggressive timeline for deliberations on the law. Committee hearings are expected to take place immediately, and the bill could reach the floor of the House in as little as one week. President Trump has forecasted that he would like to sign the bill by Easter. We will continue to monitor developments, including any changes in the bill as it moves through the legislative process.