May 25, 2017

No "Repeal or Replace" "…Maybe “Repeal or Replace”…Maybe Something Else? What Should the Employer Focus on Now?

Presented by Benefit Comply

No "Repeal or Replace" "…Maybe “Repeal or Replace”…Maybe Something Else? What Should the Employer Focus on Now?

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” box located on your webinar control panel.
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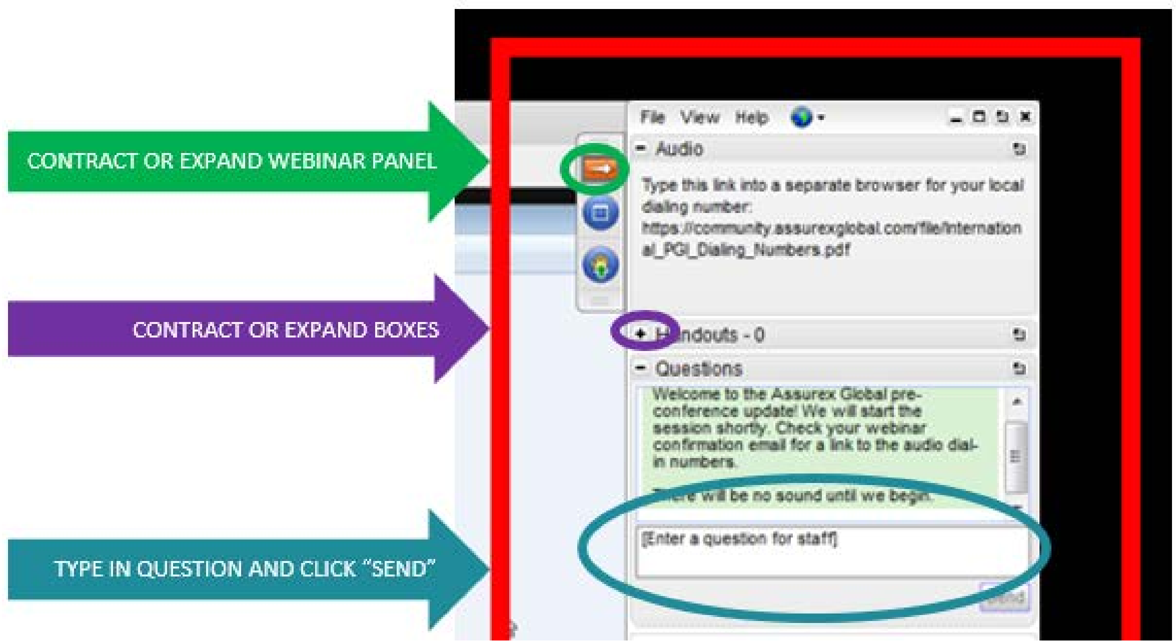

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How Did We Get Where Are We Today

- American Health Care Act (AHCA)
  - March 13th – CBO scores original version of AHCA
  - March 23rd - first attempt to pass fails and bill is pulled
  - April and May – amendments are made to AHCA to attract additional support among Republicans in the House
  - May 4th - House passed American Health Care Act (AHCA)
  - May 24th - CBO scores final version of AHCA
- Regulatory Activity
  - Executive order asking regulatory agencies to find changes that can be made through regulations without congressional action
  - Very little significant regulatory activity to date
    - Some changes by HHS to Exchange/Marketplace rules in attempt to stabilize individual health insurance market

Current Activity in Congress

- Update from Washington D.C.
- All Eyes on the Senate
  - Will they amend the AHCA or draft something new?
  - If Senate bill is significantly different than the AHCA, will they be able to reconcile the bills in a way that could pass both the House and Senate?
- Timing and Procedural Issues
  - Senate can only have one budget reconciliation bill at a time, and Congress also wants to use the budget reconciliation process for tax reform
  - Only 2 months left until summer recess

American Health Care Act (AHCA) Overview

American Health Care Act

- Changes Subsidies for Purchase of Individual Health Insurance from Income Based to Age Based System
  - Current ACA Subsidies
    - Tax credit available to individuals with income of 100% - 400% FPL
    - Cost of individual health insurance equals a % of household income, not the actual plan premium
    - Cost sharing reductions - lower deductibles & OOP costs for individuals with incomes less than 300% FPL
  - AHCA Subsidy Model
    - Continue current subsidy eligibility (with modifications) 2018-2019
    - Age-based tax credit beginning on 2020
      - $2000 to $4000 annual tax credit per person, $14,000 cap per family
      - Not available for those with access to employer-sponsored coverage

American Health Care Act

- Maintains Many Insurance Requirements
  - Preventive coverage requirements
  - Cost-sharing limitations (out-of-pocket maximums)
  - Essential health benefits (EHB) for individual and small fully-insured plans
    - However states could apply for waiver to change EHB requirements
  - Coverage through age 26
  - No pre-existing condition limitations
  - No annual or lifetime limits
- Some Changes to Insurance Requirements
  - Age rating ratio increased from 3:1 to 5:1 in the individual & small group market
  - 30% premium surcharge in individual & small group market for those who had a break in service of more than 63 days
  - Allows states to apply for waivers for certain rules (more later)

American Health Care Act

- Repeals Most ACA Taxes
  - Individual mandate (tax)
    - Individual mandate is not actually repealed, but the tax for not having insurance is reduced to $0.00
  - ACA taxes on individuals with income over $200,000 ($250,000 if filing jointly)
    - 0.9% additional Medicare tax
    - Medicare tax on unearned income
  - Health insurance tax applicable to insurance companies
  - Medical device excise tax
  - Reduces medical expenses tax deduction threshold (from 10% to 7.5%)
- Cadillac Tax
  - Delayed until 2026
- PCORI Fee is Unchanged

American Health Care Act

- Significant Cuts to Federal Medicaid Payments
  - Rolls back ACA Medicaid expansion
  - Converts Medicaid payments to state block grants and per enrollee fixed payments
- Changes to HSA and Health FSA Rules
  - Health FSA annual limit on salary reduction (currently $2600) removed
  - HSAs significantly expanded
    - Increased annual contribution maximum
      - Self-only increased from $3,400 to $6,550
      - Family increased from $6,750 to $13,100
    - Penalty for using HSA funds used for non-qualified medical expenses reduced from 20% to 10%
  - FSA and HSA funds can be used to reimburse OTC medications

Last Minute Amendments to AHCA

- The MacArthur Amendments
  - Allows state waivers from some requirements
    - Small group and individual market
      - Essential health benefits could be limited and additional age rating changes – (e.g. more than 5:1 ratio possible)
    - Individual market only
      - Additional underwriting and rating allowed for breaks in coverage
- The Upton Amendment
  - Creates an $8 billion fund to provide financial assistance from 2018-2023 to individuals who are subject to higher premiums due to the state waivers

“Repeal” of §4980H Employer Mandate

- §4980H Reminder
  - Applicable Large Employers (ALE) (those with 50+ FTEs) must offer coverage to 95% of full-time employees and children to avoid §4980H(a) payment
  - ALEs must offer affordable minimum value coverage to avoid §4980H(b) payment
- AHCA Changes “Penalty” for Violation of §4980H to $0.00
  - Full repeal would probably not make it through the budget reconciliation process
    - Law would still define full-time as 30 hours and state that employers must offer coverage to 95% of full-time employees
  - AHCA changes payment for violation to $0.00 retroactive to beginning of 2016
- What Would Employers Do?
  - Would some employers revert to eligibility rules in force prior to ACA?
    - “Pay” the penalty ($0.00) for not offering coverage to ACA full-time employees

CBO Score of AHCA

- CBO Released New Score of AHCA May 24th
  - Estimates AHCA would reduce spending by $1.111 trillion and reduce revenues by $992 billion, for a net reduction of $119 billion over 10 years (down from previous estimate of $150.3 billion)
- Significant Spending Reductions & Revenue Increases
  - Spending Reductions
    - $834 billion reduction in Federal Medicaid spending
    - $290 billion savings from replacing ACA's tax credits and cost-sharing reduction system with AHCA tax credits
  - Revenue Increases
    - Increase revenue of $23 billion due to shifts in the mix of taxable and nontaxable compensation resulting from net decreases in number of people estimated to enroll in employment-based health insurance coverage
    - $6 billion from the repeal of the small employer tax credit

CBO Score of AHCA

- CBO Released New Score of AHCA May 24th (cont.)
- Significant Spending Increases and Revenue Losses
  - Spending Increases
    - $117 billion increase for the Patient and State Stability Fund
    - $43 billion increase in Medicare payment to hospitals for uninsured care
  - Revenue Losses
    - $171 billion from loss of employer mandate payments
    - $38 billion revenue from loss from individual mandate tax
    - $125 billion revenue from changing medical expense deduction rules
    - $58.6 billion from repeal of Medicare tax on high income earners
    - $172.2 billion from repeal of tax on unearned income for high income earners
    - $600 million from repeal of the indoor tanning tax!

CBO Score of AHCA

- Slight Decrease in Individual Health Insurance Premiums
  - Principally due to the ability of states to reduce essential health benefits (EHB requirements and increase in enrollment of younger participants due to changes to age rating)
- Increase in Uninsured
  - Uninsured increased by 14 million by 2018
    - 8 million dropped coverage in the nongroup market
    - 4 million losing Medicaid coverage
    - 2 million fewer people with employer coverage
  - 23 million increase in uninsured by 2026
    - 18%-19% of nonelderly population uninsured compared to 9-10% today
    - Includes 14 million fewer covered by Medicaid

Cadillac Tax vs Tax Exclusion Limits

Tax Exclusion Limit

- Background
  - Current federal tax system provides preferential treatment for employer provided health insurance - employers' payments for employees' health insurance premiums are excluded from income and payroll taxes
  - Cost the federal government about $275 billion in lost revenues in 2016
- Recent Proposals to Limit Tax Exclusion
  - McCain Proposal in 2008 Presidential race
  - 2010 Republican Patient Choice Act (Single - $12,000/yr. Family - $30,000/yr.)
  - 2015 HR 3762 (Single - $8,000/yr. Family - $20,000/yr.)
  - Rep. Paul Ryan's "A Better Way" Plan
- 2017 Leaked AHCA Draft
  - Would have limited tax exclusion to 90% of national average health insurance premiums
  - Was not included in final draft of AHCA

Tax Exclusion Limit

- 2016 CBO Revenue Estimate
  - Exclusion limit set at 75% of average premiums would generate $174 billion over 10 year period
- Tax Exclusion Limit Planning Thoughts
  - Kaiser Family Foundation 2016 Employer Health Benefits Survey
    - Average family health insurance premium = $18,142
  - How would average be calculated?
    - Devil is in the details – what would be included in calculating “average health premiums”??
      - Health FSA, HSA, HRA, dental, vision, etc.
    - What about geographic differences?
    - What about group demographic differences?

Current Employer Compliance Issues

§4980H Employer Shared Responsibility Rules

- Applicable Large Employers (ALEs) – 50 or more FTEs
  - §4980H(a) Shared Assessment (Penalty)
    - Applies if employer does not offer minimum essential coverage (MEC) to 95% of full-time employees and children, and at least one full-time employee purchases subsidized coverage through a public Exchange
    - 2017 = $188.33/mo. ($2260/yr) times total full-time employees not counting first 30
  - §4980H(b) Shared Assessment (Penalty)
    - Applies if employer offers coverage to 95% of full-time employees but:
      - Coverage is not offered to some full-time employees; or
      - Coverage is “unaffordable” or not “minimum value”
    - 2017 = $282.50/mo. ($3390/yr) for each full-time employee who purchases subsidized coverage through a public Exchange

§4980H Employer Shared Responsibility Rules

- Solve for (a) First:
  - Must be able to answer the question "Has the employer set eligibility rules so that there will never be more than 5% of full-time employees not offered coverage in a given month?"
- §4980H(a) Payment Examples –
  - 250 full-time employees
  - Margin of error – 12.5 full-time employees (5% of 250)
    - Offers coverage to less than 95% of full-time for one month
      - 220 X $188.33 = $41,133.33
    - Offers coverage to less than 95% of full-time for entire year
      - 220 X $2260.00 = $497,200.00

§4980H Employer Shared Responsibility Rules

- §4980H(a) Risk Areas
  - Incorrect employee classification
    - Classifying employees as independent contractors
      - Employees incorrectly classified as contractors and not offered coverage could easily cause an employer to fail the 95% coverage requirement
  - Incorrectly identifying employees as not full-time
    - Common example of missing a full-time employee
      - Short-term hires who do not qualify as seasonal
      - Employees who took an FMLA or USERRA leave and did not earn 1560 hours during a measurement period
        - Hours must be pro-rated for FMLA and USERRA leave
      - Improperly applying break in service rules and limited non-assessment periods
      - Changes in status (full-time to part-time/variable hour and vice versa)

§4980H Employer Shared Responsibility Rules

- §4980H(a) Risk Areas
  - §414 controlled group and affiliated service groups
    - Small employers who are part of an aggregated group are subject to §4980H
    - Rules are very complex, but here are a couple high level things to watch for:
      - Does one company own 80% or more of another company?
      - Do 5 or few individuals own 80% or more of two companies?
    - If you have related and/or affiliated entities, you need to have this analysis done
  - Mistakes on employer reporting
    - Providing a 1095-C to the IRS for a part-time employee with incorrect coding
      - IRS may think it is a full-time employee forcing employer to reconcile with the IRS
        - Good record-keeping will be critical

Employer Reporting

- IRS is Still Processing 1094s and 1095s
  - April 7th Inspector General report on IRS efforts to process employer reporting filings
- American Health Care Act
  - No mention of any definite changes to employer reporting
  - Current ACA subsides are continued until 2019
  - AHCA tax credits would not be available to those eligible for employer sponsored health insurance
    - Some type of employer reporting would still be necessary
  - Possible regulatory changes
    - IRS may no longer need data for employer and individual mandate

ACA Fees

- Reinsurance Contribution No Longer Required (2016 was the last year)
- Patient-Centered Outcomes Research (PCORI) Fees
  - ACA created the Patient-Centered Outcomes Research Institute to support clinical effectiveness research (funded in part by fees paid by health insurers and sponsors of self-funded health plans)
  - Fees apply to all group health plans, but not to excepted benefits
  - PCORI fee effective until 2019
  - Amount of the fee is equal to the average number of lives covered multiplied by the annual rate
- Employer Responsibility
  - Self-insured employer must pay fee directly to the IRS
  - Carrier pays the fee for fully-insured plans
    - If a fully-insured employer sponsors a health reimbursement arrangement (HRA) the HRA based fee must be paid by employer

PCORI Fee Payment

- 2017 PCORI Fee
  - Self-funded plans with a plan year ending in 2016 must pay PCORI fee no later than July 31, 2017 using IRS excise tax Form 720
  - 2017 fee =
    - $2.17 for plan year ending on or after 1/01/16 – 09/30/16
    - $2.26 for plan year ending on or after 10/01/16 – 12/31/16
  - Different ways to calculate average membership to determine fee
    - Actual Count Method
    - Snapshot Method
    - Form 5500 Method
- Special HRA Rules
  - If self-insured employer also sponsors an HRA, only one fee needs to be paid per employee
  - Fully-insured employer must pay separate fee for HRA covered individuals
    - Fee is based on only on number of employees (or COBRA QBs) on the HRA
      - Spouses and dependents do not need to be counted

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