HEALTH CARE REFORM NEWS

...From the Employer Perspective

Thursday, May 11, 2017

House Republicans Pass American Health Care Act; Bill Heads to Senate for Further Consideration

As we reported last week, the U.S. House of Representatives has passed an amended version of the American Health Care Act (AHCA), which repeals and replaces significant portions of the Affordable Care Act (ACA). The bill came several weeks after House Speaker Paul Ryan pulled the AHCA from the floor because, at that time, it was short on votes to pass due to objections from more conservative House GOP members regarding the bill's preservation of certain ACA provisions. While the legislation still has a long way to go before becoming law, we're issuing this follow-up to our earlier HCR*Alert!* to provide additional details of the AHCA as it stands today.

For employers, the most significant change the AHCA makes to the ACA is to repeal the employer mandate penalties effective January 1, 2016. Other significant changes for employers are unlimited health care flexible spending accounts (HCFSAs) and enhancements to health savings accounts (HSAs).[1] For individuals, the most significant changes include the repeal of the ACA's Medicaid expansion and its premium subsidies and cost-sharing reductions for low-income individuals. Higher-income individuals would see relief from various ACA taxes and fees, including the 0.9% Medicare surtax beginning in 2023 and the 3.8% net investment income tax retroactive to the beginning of this year.

The AHCA has been amended several times since its introduction. There are two Manager's amendments (containing Technical and Policy changes), the MacArthur amendment, and the Upton amendment.

The MacArthur amendment establishes a "Federal Invisible Risk-Sharing Program" and allows states to submit applications to the Secretary of Health and Human Services to modify certain ACA requirements, such as the essential health benefits (EHB) standard and age rating restrictions. States would also be permitted to waive the AHCA's 30% premium surcharge for individuals who seek to re-enroll after failing to maintain continuous coverage, defined as a lapse of 63 days or more over the previous 12 months; however, insurers would be able to underwrite based on health status when there has been such a lapse (generally for up to 12 months). For employers, this may mean again having to issue certificates of creditable coverage. The Upton amendment would add an additional $8 billion to state risk pools, which are intended to help

individuals with pre-existing conditions obtain coverage in states where community rating is not mandatory.

There was also a companion bill (H.R. 2192) that passed the House along with the AHCA, which eliminates the waiver option in the MacArthur amendment for members of Congress. The bill ensures that members of Congress and their staff are treated the same as other individuals in a state that receives a MacArthur amendment waiver.

Summary of Key Changes

The chart below summarizes some of the significant changes made by the AHCA.

	Affordable Care Act (ACA)	American Health Care Act (AHCA)
Mandates	• Individual mandate • Employer mandate on applicable large employers (ALEs)	• No individual or employer mandate effective retroactive to 1/1/16 • Insurers can impose a 1- year 30% surcharge on consumers with a lapse in continuous coverage (individual and small group market)
Assistance	• Income-based premium subsidies that limit after-subsidy cost to a % of income • Cost sharing reductions for out-of-pocket (OOP) expenses	• Age-based refundable premium tax credits, phases out at higher incomes • No cost sharing reductions for OOP expenses • ACA subsidies phased out after 2019; AHCA credits effective in 2020
Medicaid	• Matching federal funds to states for anyone who qualifies • Expanded eligibility to 138% of poverty level income	• Federal funds granted to states on capped, per-capita basis as of 2020 • States can choose to expand Medicaid eligibility, but would receive less federal support for those additional persons
Premium Age Differences	• 3:1	• 5:1 (and the MacArthur amendment would allow a higher ratio)
HSA Limits	• $3,400 / $6,750	• Contribution limits increased to maximum HDHP OOP limit • $6,550 / $13,100 (retroactive to 1/1/17)

"Cadillac" Tax	• Tax on high-cost employer plans implemented in 2020	• Tax on high-cost employer plans delayed until 2026
Other Taxes	• 3.8% tax on net investment income • Limit on HCFSA contributions • Annual health insurance provider tax • OTC medication excluded as qualified medical expense • 0.9% Medicare tax on income >$200K individual / >$250K family	• Repeal of these taxes retroactive to the beginning of 2017 (except for the repeal of the Medicare tax, which would begin in 2023)
Essential Health Benefits	• Individual and small group plans required to offer ten categories of EHB	• Under MacArthur amendment, state waiver option is available • Some Medicaid plans not required to offer mental health and substance abuse benefits
No Change: No Pre-Existing Condition Exclusions, Coverage of Children to Age 26, No Annual or Lifetime Dollar Limits on EHB		

MacArthur Amendment

The following chart summarizes the changes made to the AHCA by the MacArthur amendment.

	AHCA MacArthur Amendment
Insurance Market Provisions	• Reinstates EHB as federal standard (removes ability of states to define EHB, but see waiver option) • Maintains the following provisions of the AHCA: — Prohibition on pre-existing condition exclusions — Prohibition on discrimination based on gender — Guaranteed availability and renewability of coverage — Coverage of adult children to age 26 — Community rating rules (but see *waiver option*)
Limited Waiver Option	In the interest of lowering premiums and expanding number of enrollees, states may obtain waivers from: • EHB (states could set their own definition of EHB for the individual and small group markets starting in 2020, and increase the age rating ratio above 5:1 starting in 2018)

	• Community rating rules, except for the following categories, which are not waivable: — Gender — Health status (unless the state has established a high-risk pool or is participating in a federal high risk pool)
Limited Waiver Requirements	States must explain how the waiver will benefit the insurance market in their state, such as reducing average premiums, increasing enrollment, stabilizing premiums for individuals with pre-existing conditions, or increasing the choice of health plans. Applications are automatically approved within 60 days unless denied by HHS.

Limited Waiver Option

The limited waiver option in the MacArthur amendment was necessary to secure the votes of the GOP Freedom Caucus. It has been criticized as potentially allowing states to waive out of the prohibition on pre-existing condition exclusions by allowing underwriting based on health status for those who experience a gap in continuous coverage, which in effect temporarily raises the cost of coverage for individuals with pre-existing conditions. It remains to be seen whether the AHCA's high risk pools and invisible risk-sharing program contain enough funding to offset these potential premium increases.

Next Steps

AHCA has yet to be scored by the Congressional Budget Office. It will now go to the Senate where significant changes are expected in order to secure passage (and it is possible that it may not garner enough votes there to pass at all). In addition, it is not clear that as currently drafted it will meet the requirements to qualify for a simple majority vote under the Senate's budget reconciliation rules. Provisions that have no budgetary impact may be removed and AHCA's tax policies may be required to have sunset dates so that they do not increase deficits outside of the budget window (typically, 10 years). It may take months before any final legislation is passed and the AHCA may get stalled again as changes will have to go back to the House for approval. Employers and other stakeholders should stay the course on ACA compliance at this time. Trion will continue to monitor and update you as the AHCA continues to make its way through the legislative process.

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Your Trion Strategic Account Managers are here to answer any questions you might have as you prepare to comply with upcoming ACA requirements. If you are not currently a Trion client and

would like assistance navigating the changes required by health care reform, please contact us today by emailing trionsales@trion-mma.com.

ACA Regulations & Guidance Issued In the Last Two Months

May 2017:	IRS Issues Rev. Proc. 2017-36, 2018 Affordability Threshold & Marketplace Required Contribution Percentages
May 2017:	President Issues Executive Order Regarding Addressing Contraceptive Coverage
May 2017:	House Passes American Health Care Act (AHCA)
Apr. 2017:	HHS Issues Final Market Stabilization Rule
Apr. 2017:	HHS Issues FAQ on QHP Good Faith Compliance Policy
Apr. 2017:	HHS Issues Guidance on State Review of QHP Certification Standards

[1]Enhancements include an increase in the HSA contribution limits so that they are the same as the out-of-pocket maximums that apply to HSAs (for 2018, $6,650 for self-only coverage and $13,300 for family coverage), allowing the reimbursement of otherwise eligible expenses incurred up to 60 days before an HSA is established, and allowing both spouses to make HSA catch-up contributions to the same HSA. The reduction in the HSA penalty for non-qualified expenses distributions in HSAs was increased to 20% under the ACA; under the AHCA it will go back to 10% retroactive to the beginning of this year.

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