The Future of American Health Care Reform

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Agenda

Recent legislative developments
Future possibilities
Steps you can take
The Latest News
In the Senate

• Passed motion to proceed
• Failed to pass Better Care Reconciliation Act (BCRA)
• Failed to pass repeal-only bill from 2016, the Obamacare Repeal Reconciliation Act (ORRA)
• Failed to pass so-called “skinny repeal” bill, the Health Care Freedom Act
Why?

“What we need to do in the Senate is figure out what the lowest common denominator is — what gets us to 50 votes so that we can move forward on a health care reform legislation.”

HHS Secretary Tom Price
Why is this relevant?

Possible new attempts at health care reform

Potential impacts of tax reform
ACA Remains Law

House passage of the American Health Care Act was only the first step in the effort to repeal and replace

Employers must remain compliant with current law for the time being
How Did We Get Here?
The 115th Congress
House

Simple majority (218) to pass a bill
Simple majority (51) to pass a budget
Super majority (60) to prevent filibuster
Repeal Options

Bipartisan repeal

Budget reconciliation
A Limitation

Budget measures: items that address taxing or spending
What was passed? The House
American Health Care Act (AHCA)

- Budget resolution passed by both House and Senate
- Bill introduced, then pulled from consideration
- AHCA passed a vote in the House after amendments
Meadows-MacArthur Amendment

• Set higher ratios for premiums charged to older enrollees;
• States may specify their own list of services that are required to be covered;
• In some states, would allow increased premiums based on health status; resulting in potentially higher premiums for sicker people.
Upton Amendment

• $8 billion over five years to help cover insurance costs for those with pre-existing conditions

• Helped develop support among moderate Republicans
Impact on Coverage

• First House bill: 24 million more uninsured

• Second House bill: 23 million more uninsured

• Senate bill: 22 million more uninsured
What was passed? The Senate
Senate Approach

• Formed working group to write a health care bill

• Small group represents diverse views across GOP
Better Care Reconciliation Act of 2017 (BCRA)

- Similar to AHCA
- Cruz Amendment
- Byrd Rule
What Was Proposed?
ACA provisions that would be repealed
Mandates

Would have immediately repealed individual and employer mandate penalties
OTC Reimbursement

Would have repealed requirement to have a prescription to receive FSA/HSA reimbursement of over-the-counter items
Health FSA Limits

Would have repealed contribution limits so employers may return to setting their own
Other Tax Repeals

Health insurers
Prescription drugs
Medical devices
And more
Cost-Sharing Subsidies

Would have repealed subsidies to assist with out-of-pocket expenses under Public Exchange (Marketplace) coverage
Medicaid Expansion

Would have phased out federal funding for ACA Medicaid expansion
ACA provisions that would stay
Cadillac Tax

Delay (but not repeal) the Excise Tax on High Cost Plans (Cadillac Tax) from 2020 to 2026
Employee Exclusion

Would have left untouched the provision that makes employer-provided health coverage not subject to income or employment tax.
IRS Reporting

Would continue Forms 1094/1095 reporting until 2020, then migrate to Form W-2 reporting and verification of plan eligibility
Market Reforms

Would have maintained ACA plan design mandates

• States could define their own essential health benefits

• Exception for lower-premium catastrophic plans
Changes to ACA provisions
HSA Expansion

Increased contributions
Catch-up by spouse
Establishing the HSA
Reduced excise tax
Use HSA funds to pay premiums
Individual Tax Credits

Advanceable, refundable individual tax credit to purchase insurance

Available to income-qualified individuals without access to government or employer coverage
Continuous Coverage

30% premium surcharge for 12 months following 63 day lapse in coverage under AHCA

No surcharge in Senate plan; six month waiting period
Age-Based Premiums

Permits states to set their own ratios for the amounts insurers can charge older compared to younger individuals
Stability Funds

Provided funding for states to pursue various market stabilization activities
What could happen next?
Public Exchanges (Marketplaces)

Will the last insurers withdraw for next year?

Will the administration enact provisions to entice them to stay?
Cost Subsidies

Will Republicans continue to contest payments to insurers in the Public Exchanges (Marketplaces)?

Will Congress pay the subsidies due to insurers under the ACA?
Apply Trump’s Executive Order?

Will the agencies repeal burdensome regulations?

Or will they seek to help the ACA fail?
Implement Open ACA Provisions?

Will the administration finally implement ACA provisions currently without regulations?

- Nondiscrimination by insured plans
- Quality reporting
- Transparency disclosures
Future Legislation?

Health care reform or tax reform?
Repeal only?
Bipartisan legislation or another pass at budget reconciliation?
If Not Now, When?

Best chance for the President to promote his agenda: 1st 100 days

Second best chance: 1st 15 months

Becomes much more difficult after that as Congress starts running for reelection
Who gets the blame if the system fails?

Republicans will point to ACA as Democrat-established

Democrats will point to Republican failure to replace it with better
What This Means for Employers
Sources of Tension

Most of the tension with the AHCA is related to the Public Exchanges (Marketplaces) and Medicaid

Such parts of the ACA have little impact on employers
Connection to the Employer Mandate

Employer Mandate penalties are not triggered unless a full-time employee enrolls in Public Exchange (Marketplace) coverage and qualifies for a tax credit.
Continue ACA Compliance Efforts

The ACA remains the law so compliance needs to continue

Key provisions:

• Employer mandate
• Form 1094/1095 reporting
Support for Employer Coverage

As a general rule, Republicans are very supportive of employers providing coverage to employees.

Unclear how that will play out in enforcement efforts.
Cost Management

- Consumer driven plans with HSAs or HRAs
- Value based benefit design for members with specific conditions or disease (e.g. diabetes)
- Wellness programs
- Health promotion
- Telemedicine
Cost Management

• Increased cost-sharing through higher deductibles

• Narrow network of providers

• Specialty drug management
  • Prior authorization
  • Step therapy
  • Limited networks
  • Preferred treatment within disease categories

• Provider reimbursement changes (ACOs, bundled payments, etc.)

• Price and quality transparency tools
What does this mean for my district?
Agenda

What employers should be doing now:

Common questions
Potential pitfalls
Common Questions
Common Questions

Is it true that President Trump’s Executive Order directed the IRS NOT to go after any employers not offering coverage nor individuals for failing to prove they had coverage?
Common Questions

IRS Office of Chief Counsel

Letters 2017-0010 and 2017-0013

No waivers available to large employers under IRC 4980H
Common Questions

IRS Office of Chief Counsel

Letters 2017-0011 and 2017-0017

Individuals must maintain minimum essential coverage for each month, qualify for a coverage exemption, or pay a penalty when filing their federal income tax return.
Common Questions

Do employers still have to comply with the IRC 6055 and 6056 information reporting requirements?
Common Questions

Mail to employees by January 31, 2018

File on paper by February 28, 2018

E-file with IRS by Monday, April 2, 2018
Changes for 2017

• No more transition relief

• No special code for waivers

• Safe harbor for incorrect Line 15 contribution info
Changes for 2017

Affordability thresholds:

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<th>Affordability Percentage</th>
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<td>9.69%</td>
</tr>
<tr>
<td>2018</td>
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Common Questions

Does a large employer have to make a formal offer of coverage every year?
Common Questions

Type of offer (adequate? affordable? dependents?)
Time period during which offer was effective
Notice to employee that offer was available
Common Questions

How do HIPAA privacy rules impact large employers with self-insured plans who must report to the IRS under IRC Sections 6055 and 6056?
Common Questions

Review plan documents and privacy policies
Do not use or disclose PHI for employment-related actions or any other purpose
Third party vendors are likely business associates
Final Thoughts
More Questions than Answers

A lot of this is speculative

Unclear exactly what will happen next

• Often hard to predict because Trump presidency has not been following the normal rules
What We Do Know

ACA remains the law
Repealing it is not as easy as it first appeared
Stay Informed

Find a trusted source of news

Get regular updates

We’re here to help
Thank you!

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