

Employee Benefits Alert:

House Approves Republican ACA Repeal and Replace Bill

On May 4, 2017, the U.S. House of Representatives voted 217 - 213 to pass an amended version of H.R. 1628 (the American Health Care Act or "AHCA"), a bill designed to repeal and replace various provisions of the Patient Protection and Affordable Care Act ("ACA"). While the bill now faces what is expected to be a contested vote (and likely re-write) in the Senate, which could result in further revisions to the substance of the AHCA, the version passed in the House today contains several provisions that will impact employers and employer-sponsored group health plans if it becomes law as currently drafted.

These include:

- Repeal of the individual mandate and employer shared responsibility penalties, beginning in 2016 (penalties could still apply for 2015)
 - Delaying the Cadillac tax on high-cost employer health plans until 2026 (previously set to take effect in 2020 under the ACA, as amended)
 - Providing new tax credits to individuals who enroll in individual market coverage, even if not exchange coverage, beginning in 2018
 - Providing a new tax credit for individuals who enroll in unsubsidized COBRA coverage, beginning in 2020
 - Imposing a new requirement for employers to report offers of health coverage on employees' Forms W-2, beginning in 2020
- The AHCA does not repeal the ACA's reporting requirements (due to limits of the reconciliation process), but the Ways and Means Committee has indicated that the Treasury could stop enforcing reporting that is not required for purposes of tax enforcement
- Repealing the health care flexible spending account ("FSA") contribution cap of \$2,500 (adjusted for inflation), beginning in 2017
 - Reducing the excise tax on health savings account ("HSA") distributions that are not used for "qualified medical expenses" from 20% to 10%, beginning in 2017
 - Increasing the amount an individual can contribute to an HSA, and allowing spouses age 55 and over to make catch-up contributions to an HSA, beginning in 2018
 - Allowing certain expenses incurred prior to the establishment of an HSA to be "qualified medical expenses," beginning in 2018
 - Permitting over-the-counter drugs without a prescription to qualify as "qualified medical expenses" for purposes of FSA and HRA reimbursement, and for tax-free distributions from an HSA, beginning in 2017
 - Repealing the 0.9% Medicare surtax on individuals earning \$200,000 or more (\$250,000 for families), beginning in 2023

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- Repealing the tax on health insurance carriers based on net premiums written, beginning in 2018
- Repealing the ACA prohibition on employer deductions for expenses reimbursed by the Retiree Drug Subsidy, beginning in 2017
- Repealing the ACA medical device tax, beginning in 2017
- Repealing the annual fee on prescription manufacturers and importers of brand-name drugs, beginning in 2017

The bill also made significant changes to the individual and small group insurance markets, and did not repeal many popular ACA provisions, such as the requirement to provide coverage for dependent children to age 26, and to cover preventive services at no cost sharing. The AHCA retains the ACA preexisting condition exclusion prohibition, but would allow states to apply for a waiver from HHS that would allow insurers in the individual market to impose a premium surcharge on individuals with preexisting conditions if they had a sufficiently long gap in coverage.

If you have any questions regarding this LEGALcurrents, please do not hesitate to contact any member of our group at (585) 232-6500.



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