**March 7, 2017**

# House Republicans Release Bill to Repeal PPACA

On January 13, 2017, the United States House of Representatives passed a budget resolution to begin the process of repealing the Patient Protection and Affordable Care Act ("PPACA") through reconciliation, a process that allows legislation to be passed with a simple majority in the Senate without a filibuster. The budget resolution outlined specific instructions for the House Ways and Means and Energy and Commerce Committees - the primary Committees with jurisdiction over health care - to draft legislative recommendations that the Budget Committee could compile into one reconciliation package. On the evening of March 6th, House Republicans unveiled their long-anticipated legislation, named the American Health Care Act ("AHCA").

**Provisions that the AHCA seeks to repeal, modify or delay.**

While the passage of the bill is not assured, its introduction is an important step in the process that could result in dramatically different provisions governing healthcare plans for employers and individuals, and, as such, demands attention. In its current draft, the AHCA:

- Effectively eliminates the Employer Mandate by reducing the penalty to zero for applicable large employers that fail to offer minimum essential coverage to their full-time employees. The effective date of this provision would apply for months beginning after December 31, 2015, providing retroactive relief to those employers impacted by the penalty in 2016.
- Effectively eliminates the Individual Mandate by reducing the penalty to zero for failing to maintain minimum essential coverage. The effective date of this provision would apply for months beginning after December 31, 2015, providing retroactive relief to those impacted by the penalty in 2016.
- Delays the effective date of the 40 percent excise tax (the Cadillac Plan tax) on high cost employer-sponsored health coverage. Under current law, the Cadillac Plan tax is set to go into effect in 2020. However, the AHCA changes the effective date of the tax so that it will not apply for any taxable period beginning after December 31, 2019, and before January 1, 2025. Thus, the tax will apply only for taxable periods beginning after December 31, 2024.
- Increases the basic limit on annual aggregate Health Savings Account ("HSA") contributions to equal the maximum on the sum of the annual deductible and out-of-pocket expenses permitted under a qualifying high deductible health plan. Thus, the basic limit will be at least $6,550 in the case of employee-only coverage and $13,100 in the case of family coverage beginning in 2018.
- Allows both spouses to make catch-up contributions to one HSA beginning in 2018.
- Allows individuals, starting in 2018, to use an HSA for medical expenses incurred up to 60 days before establishing the HSA.
- Repeals the limitation on health Flexible Spending Account ("FSA") contributions ($2,500 indexed for cost-of-living adjustments) for taxable years starting on January 1, 2018.

- Repeals the exclusion of over-the-counter medications from qualified medical expenses under HSAs, health FSAs, and Health Reimbursement Arrangements (“HRAs”) for taxable years starting on January 1, 2018.
- Repeals PPACA’s penalty increase on distributions from an HSA or Archer MSA that are not used for qualified medical expenses. As a result, distributions after December 31, 2017, that are not used for qualified medical expenses will be subject to a penalty of 10 percent, rather than 20 percent.
- Reinstates the business-expense deduction for retiree prescription drug costs without reduction by the amount of any federal subsidy for tax years beginning on January 1, 2018. Prior to PPACA, as an incentive for employers to offer retiree drug coverage, employers who offered sufficient prescription drug coverage to their employees qualified for the Retiree Drug Subsidy to help cover actual spending for prescription drug costs. PPACA eliminated the ability for employers to take a tax deduction on the value of this subsidy.
- Calls for simplified reporting of an offer of coverage on the W-2 by employers. Reconciliation rules limit the ability of Congress to repeal the current reporting, but, when the current reporting becomes redundant and replaced by the reporting mechanism called for in the bill, then the Secretary of the Treasury can stop enforcing reporting that is not needed for taxable purposes.
- Creates an incentive for individuals to remain covered. Beginning in 2019, the AHCA would introduce a 12-month lookback period to determine if an individual went longer than 63 days without continuous health insurance coverage. If an individual participating in the individual or small group market had a lapse in coverage for greater than 63 days, then insurance companies would assess a flat 30 percent late-enrollment surcharge on top of their premiums. This late-enrollment surcharge would be the same for all individuals, regardless of health status, and discontinued after 12 months. This process would begin for special enrollment period applicants in benefit year 2018.
- Repeals the small business tax credit beginning in 2020. Between 2018 and 2020, under the proposal, the small business tax credit generally will not be available for qualified health plans that provide coverage relating to elective abortions.
- Replaces the income-based tax credits provided under PPACA with advanceable and refundable tax credits for the purchase of state-approved, major medical health insurance and unsubsidized COBRA coverage. To be eligible, an individual must not have access to government health insurance programs or an offer of coverage from any employer. The credits are adjusted by age:
    - Under age 30: $2,000
    - Between 30 and 39: $2,500
    - Between 40 and 49: $3,000
    - Between 50 and 59: $3,500
    - Over age 60: $4,000

  The tax credits would be capped at $14,000 for a family and would be adjusted for inflation annually (at CPI+1). In addition, the tax credits would be reduced for individuals with incomes above $75,000 and households earning more than $150,000; and, would disappear completely for individuals making more than $215,000, or joint filers making more than $290,000.
- Loosens the age rating band ratio from 3:1 to 5:1 and gives states the flexibility to set their own ratio. As a result, insurers would be able to charge older consumers up to five times what younger consumers pay in premium value.

- Repeals the Medicare Hospital Insurance (HI) surtax based on income at a rate equal to 0.9 percent of an employee's wages or a self-employed individual's self-employment income beginning in 2018.
- Repeals the 2.3 percent excise tax on the sale of certain medical devices for taxable years starting on January 1, 2018.
- Repeals the 3.8 percent surtax on investment income for individuals with more than $200,000 in modified adjusted gross income, and married couples filing jointly with more than $250,000 of modified adjusted gross income.
- Repeals the annual fee on health insurers beginning in 2018. As a result of separate legislation, the fee is not being collected in 2017.
- Repeals the annual tax on branded pharmaceutical manufacturers beginning in 2018.
- Repeals the 10 percent sales tax on indoor tanning services beginning in 2018.
- Invests $100 billion over 10 years into a Patient and State Stability Fund that states can use to build high-risk pools for individuals with costly medical conditions, increase the amount of the tax credits in the individual market, or subsidize insurers that cover especially costly individuals.
- Rolls back the PPACA expansion of Medicaid effective January 2020. In the interim, states will be able to continue to enroll people eligible under the PPACA expansion in Medicaid, while states that haven't expanded their Medicaid program would be permitted to expand their Medicaid program. However, in 2020, enrollment in the Medicaid expansion would freeze and states would no longer be allowed to sign new enrollees up for the program. Thereafter, House Republicans expect that enrollment would slowly decline, as enrollees' incomes change and they shift off the program.
- Converts Medicaid to a per capita system, where states would get a lump sum from the federal government for each enrollee (rather than guaranteed federal funding based on eligible individuals), starting in 2020.

**Provisions of PPACA that the AHCA will not impact.**

The following popular provisions of PPACA will not be impacted by the AHCA:

- Prohibition on pre-existing condition exclusions,
- Coverage for children until age 26, and
- Prohibition on lifetime or annual limits.

**Next steps.**

House Republicans hope that the House Ways and Means and Energy and Commerce Committees will approve the measure this week, clearing the way for the full House to act on it before a spring break scheduled to begin on April 7. However, as of the publication of this article, House Republicans have not provided an estimate of how much the AHCA will cost. This unknown is important because to be eligible for passage through the reconciliation process, legislation cannot increase the deficit after its first 10 years in effect.

Although House Republicans seek to move quickly on the AHCA, passage is not guaranteed. On Monday - the day of the bill's release - four Republican senators (Rob Portman of Ohio, Shelley Moore Capito of West Virginia, Cory Gardner of Colorado, and Lisa Murkowski of Alaska) signed a letter stating that the draft of the bill that they had reviewed did not adequately protect the people of their states (and other states), which had expanded Medicaid under the PPACA. In addition, three conservative Republicans in the Senate (Mike Lee of Utah, Rand Paul of Kentucky, and Ted Cruz of Texas) had already expressed reservations about the House's approach. As such, with only 52 Republican Senators, Senator Majority Leader Mitch McConnell would not have enough votes to pass the repeal legislation if his caucus losses three or more members.

Even before the bill reaches the Senate, House Republican leaders will likely have to contend with conservative members who have already been vocal about their misgivings about the legislation. Representative Mark Meadows, Republican of North Carolina and the chairman of the conservative House Freedom Caucus, offered a warning on Monday and urged Republican leaders to pursue a "clean repeal" of PPACA, as these members view the AHCA as a new entitlement program. In fact, some House Republicans have referred to the AHCA as "Obamacare Lite."

Those of us old enough to remember the Schoolhouse Rock! segment "I'm Just a Bill" understand that the process from bill to law can be long, arduous, and involve numerous roadblocks. As such, we caution you stay tuned for more as the flurry of activity surrounding healthcare reform continues.

Gallagher Benefit Services, through its compliance experts and consultants, will continue to monitor developments on healthcare reform legislation and regulation and will provide you with relevant updated information as it becomes available. In the interim, please contact your Gallagher Benefit Services representative with any questions that you may have.

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