News Alert: American Health Care Act passes the House, aims to eliminate Employer Mandate and other Affordable Care Act Requirements

On May 4th, 2017 the American Health Care Act ("AHCA") passed in the US House of Representatives by a vote of 217 to 213 and will now travel to the Senate for discussion and vote. The AHCA aims to repeal and replace certain provisions of the Affordable Care Act. Among the provisions in the bill is the elimination of penalties, but not the reporting requirements, for the employer mandate, applying retroactively to the 2016 tax year. Below is an outline of the provisions of this bill that could affect employers and plan sponsors.

This legislation is not final, and employers should not make any changes based on this announcement. While no one can predict the final outcome of this legislation, the United States Senate will have a look at it next. We will be closely monitoring the situation and will announce important updates that affect employers and Plan Sponsors. Please stay tuned for more on this issue, and please contact your client services team with questions.

<u>Provisions Affecting Employers</u>

First, it is important to note a major tax implication that would remain the **same**:

- Employer sponsored group health coverage would continue to be purchased using pre-tax dollars.
- Wellness incentives (e.g. premium incentive for biometric screenings, tobacco surcharge) remain unchanged.

Some big **changes** for employers are proposed in the American Health Care Act, including:

- **Eliminate Employer Mandate**
    - Penalties for Applicable Large Employers (50+ FTE) who do not provide full-time equivalent employees with affordable health coverage would be eliminated beginning with the 2016 tax year. The reporting requirements would still be in place, unless and until further regulatory guidance is issued for the reporting.
- **Delay Cadillac Tax**
    - **Affecting 1 in 4 employers** the so-called "Cadillac Tax" is a 40% excise tax to be imposed on high-cost employer-sponsored group health plans. This bill proposes to delay the Cadillac tax until 2025.
- **Eliminate Small Employer Tax Credit, beginning in 2020**
- **New Reporting**
    - Employers would be obligated to provide government with statements regarding whether specific employees are eligible for employer sponsored health coverage.
    - W-2 Reporting would be modified to reflect new health coverage requirements.

<u>Provisions Affecting Plan Sponsors</u>

It is important to note that most of the insurance reform under the Affordable Care Act would stay the **same**, including:

- Requirement to cover pre-existing conditions
- Requirement to cover dependents until age 26
- Out-of-pocket Maximums
- Lifetime and Annual Limits
- Preventative Benefits Must be covered with no Cost-Sharing
- Nondiscrimination
- Essential Health Benefits Requirements

Under the proposed American Health Care Act, some obligations would **change**, including:

- **Flexible Spending Account Limit Repealed Entirely** – No limit to FSA contribution
    - Qualified expenditures to include over-the-counter medications.
- **Health Savings Account Limits** – Increase the tax-free limit.
    - The new limit would equal the limit on out-of-pocket cost sharing under qualified high deductible health plans (Current 2017 limits: $6,550 for self only coverage, $13,100 for family coverage)
    - Additional catch up contribution of up to $1,000 may be made by persons over age 55. Both spouses can make catch up contributions to the same HSA.
    - Qualified medical expense definition expanded to include over-the-counter medications and expenses incurred up to 60 days prior to date HSA was established.
    - Tax penalty for HSA withdrawals used for non-qualified expenses is reduced from 20% to 10%.
- **Eliminate Individual Mandate/Increased Premium for Coverage Lapse**
    - Penalties for individuals who do not maintain health insurance coverage for themselves would be eliminated, beginning with the 2016 tax year.
    - However, the individual mandate would be replaced by an increase in insurance premiums, up to 30%, for an individual who has a lapse in health coverage.
- **Provide Certificate of Creditable Coverage**
    - The Certificate of Creditable Coverage was officially eliminated by an ACA Final Rule. However, with the removal of the individual mandate, and the requirement to show continuous coverage to avoid 30% premium increase under AHCA, the Certificate of Creditable Coverage would be required once more.
- **Creditable Coverage Tax Deduction Reinstated** - Reinstates the tax deduction for employers who receive Part D retiree drug subsidy (RDS) payments to provide creditable prescription drug coverage to Medicare beneficiaries, starting 2018.

- Originally repealed by ACA in 2013, tax deduction would be brought back under AHCA. Would increase tax deductions for Employer Plan Sponsors who provide prescription drug coverage to Medicare enrollees.
- When Employer Plan Sponsors receive subsidy for providing prescription drugs to retirees who receive Medicare Part D, the employer plan sponsors may disregard the subsidy payments for purposes of determining the deductibility of their retiree prescription drug costs for the plan year for which they received the subsidy.

Again, this legislation is not final and employers should not make any changes based on this announcement. We will continue to closely monitor this issue and alert you with any important changes. Please contact your client services team with questions.