A NEW FRONTIER:

The American Health Care Act AND BEYOND

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The Trump Administration and Republican-controlled Congress have begun an attempt to advance certain objectives that have become dogmas during the election.

One such objective is to repeal and/or replace the Affordable Care Act (ACA). Unlike prior GOP efforts related to funding restrictions and legal challenges that were met with little success under President Obama, the pieces have potentially begun to fall in place for a substantive legislative action to meet its goals. However, with the passage of the American Health Care Act (AHCA) in the U.S. House of Representatives, plan sponsors should continue to monitor future health care reform legislation and looming tax reform policy that many believe could impact the tax deductibility of employee benefits.

While the AHCA may undergo significant changes or stall in the Senate, it is beneficial to understand the components of the bill and identify key elements. The AHCA was drafted to repeal and replace portions of the ACA and was introduced in the House on March 20, 2017. Following disagreement within the GOP, the bill was withdrawn on March 24, 2017. Specific points of contention were raised by the House Freedom Caucus, a group of conservative Republican members, rejecting any legislation that did not repeal insurance market reforms and mandates. The bill was amended to include a "Federal Invisible Risk-Sharing Program" and allow states to waive certain ACA market reform requirements. On May 4, 2017, the House voted to approve the AHCA with these changes.

AHCA Reform of Coverage Provisions

AHCA changes to the current regulatory environment can be broken into two primary focus areas – reform of coverage provisions and tax/revenue based changes. From a coverage perspective, there were a variety of changes, but select provisions include:

- immediately eliminating penalties associated with the requirements that most taxpayers obtain health insurance coverage and that large employers offer their employees coverage that meets specific standards and
- reducing the federal matching rate for adults made eligible for Medicaid through the ACA to equal the rate for other enrollees in the state.

Other coverage-related provisions included revising the rules for subsidies and tax credits for the nongroup market, appropriating funding for grants to states to reimburse insurers for certain high-cost claimants. The AHCA also seeks to relax the ACA's prohibitions on underwriting based on age and curtail some market reforms for the nongroup and small-group market related to minimum actuarial value.

AHCA Tax/Revenue Based Changes

Other components of the legislation would repeal or delay many of the changes the ACA made to the Internal Revenue Code. Notable changes include:

- repealing the surtax on certain high-income taxpayers' net investment income and
- repealing the annual fee on health insurance providers and further delaying the Cadillac Tax until 2026

Such changes run contrary to existing provisions of the ACA and are not compatible with continued operation. As originally proposed, some changes would reduce deficits by $935 billion. Other provisions, including the reduction in tax revenue, would increase deficits by $599 billion. Thus, the Congressional Budget

Office (CBO) estimated the net impact of the legislation would be the reduction in deficits by $337 billion from 2017-2026.

AHCA Provisions of Interest

Some provisions will likely be included in any successful GOP-backed legislation, so plan sponsors should take note. These themes include repeal of the:

- employer and individual mandates and
- rollback of Medicaid expansion.

AHCA Removal of Coverage Mandates

The repeal of the employer and individual mandates likely has the most direct impact on plan sponsors. Specifically, elimination of the individual mandate will impact the risk profile of the plan. If individuals are no longer required to purchase coverage, there is the potential for young and healthy plan members to forgo participation in an employer-sponsored plan. Under the AHCA, as originally drafted, the CBO asserted that approximately 2 million fewer people, as compared to projections with the ACA in place, would be enrolled in employment-based coverage in 2020, and that number would grow to roughly 7 million in 2026.

The potential for employees to forgo or seek coverage in the nongroup market will be impacted by an employer's ability to effectively communicate its benefit plan and demonstrate the value of the plan within the employer's total compensation package. More than ever, it would be important for employers to leverage resources to communicate with plan participants and facilitate informed decision-making. Participants would likely be flooded by information surrounding proposed legislation and the related changes to tax credit availability. Interestingly, the CBO believes that tax credits will be available to people with a broader range of incomes than the current tax credits under the ACA, albeit the total subsidy available per individual is likely reduced.

The elimination of some market reforms and actuarial value requirements would likely allow employers to revisit the balance between wages and health benefits. For example, without employer penalties for failure to offer coverage that meets specific affordability and minimum actuarial value requirements, "skinny plans" or stand-alone health reimbursement accounts could again be considered by plan sponsors. The CBO also estimates that fewer employers would offer health insurance because the legislation would change their incentives to do so. Thus, depending on industry and competitive forces, employers may consider eliminating benefits or reconfiguring staffing to allow more 30-hour-plus positions that would currently require an offer of coverage to be made.

Repeal of Medicaid Expansion

Despite its unpopularity with GOP governors whose states expanded Medicaid, the repeal or reduction of Medicaid expansion will likely remain a component of any health care reform proposal supported by the GOP. As introduced, the CBO estimated that the reduction in Medicaid would decrease direct spending by $880 billion over the 2017-2026 period. This reduction would stem primarily from lower enrollment throughout the period, culminating in 14 million fewer Medicaid enrollees by 2026. Thus, for employers with low income employees in states that have expanded Medicaid, it would be important for plan sponsors to anticipate that some employees may lose health care coverage following the state's response to a cutback in federal funding. For states that elect to continue to offer Medicaid at current levels, such states will likely need to locate additional revenue to offset this loss.

Non-AHCA Legislation Necessary to Reach GOP Consensus and Challenges Therein

The passage of this bill in the House is only the first step in the legislative process. GOP establishment leaders were initially unable to reach consensus within the party due, in part, to the failure of the bill to pass muster with the conservative Freedom Caucus. To appease conservative members of the GOP and reach a consensus, a successful GOP bill would likely permit states to eliminate mandates surrounding coverage of mental health, substance abuse, maternity care and prescription drugs. It would also likely remove underwriting restrictions such as excluding consideration of health status and preexisting conditions. The elimination or reduction in requirements for fully insured medical products to offer essential health benefits would also likely be a necessary component. While the existence of such regulations is a driving force behind increasing premiums, the elimination of such regulations and the changes impacting Medicaid expansion contained in the AHCA are generally politically untenable for many Republicans because of the resulting loss of coverage for some constituents.

The loss of constituent coverage creates a serious counterweight to any GOP effort to repeal. Under the AHCA, as originally drafted, the CBO projected a significant net increase in uninsured Americans. The CBO projected such increases will culminate in an additional 24 million uninsured Americans in 2026, as compared to the ACA. This increase is primarily driven by a reduction in Medicaid and employment-based coverage. Thus, any successful overhaul would likely necessitate a mechanism to provide a level of coverage for populations that gained such coverage under the ACA.

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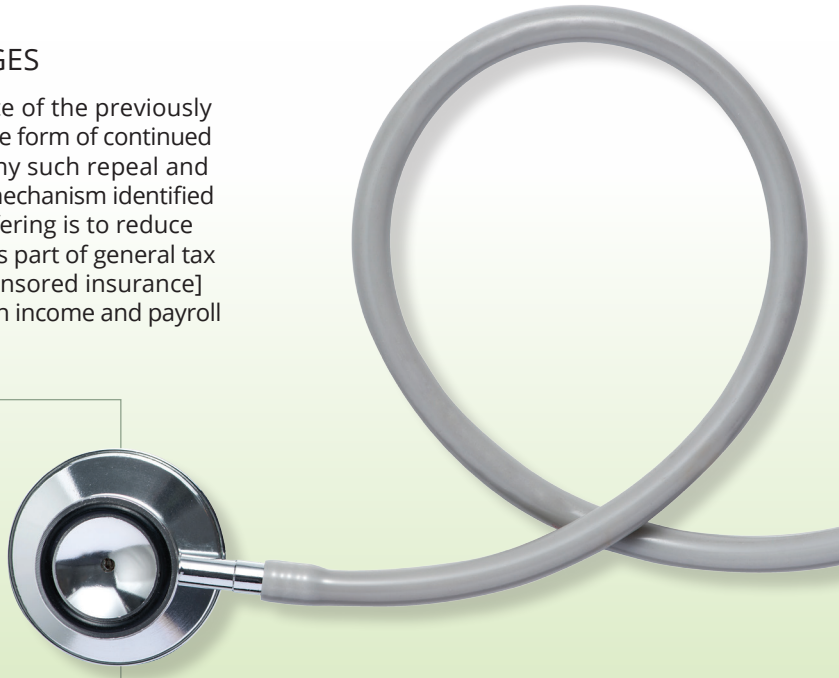
POTENTIAL FOR ADDITIONAL REGULATORY CHANGES

While a potential repeal and replace plan that strikes a balance of the previously mentioned considerations may eventually succeed, ensuring some form of continued coverage – especially for high risk individuals – would make any such repeal and replacement costly, but much more politically palatable. A likely mechanism identified by many pundits to generate additional funding for such an offering is to reduce tax-favored treatment of employer-provided health care plans as part of general tax reform. According to the Tax Policy Center, "The [employer-sponsored insurance] exclusion cost the federal government an estimated $260 billion in income and payroll taxes in 2017 making it the single largest tax expenditure."

MECHANISMS TO CAPTURE TAX REVENUE INCLUDE:

- > *taxing the entire cost of such coverage*
- > *limiting the portion of cost that can be excluded, and*
- > *taxing the entire cost of such coverage, providing a refundable tax credit to all taxpayers to offset tax liability arising from the cost of coverage or purchasing coverage elsewhere.*



What Does This All Mean for Plan Sponsors?

Undoubtedly, traditional government policy seeks to facilitate and promote employer-sponsored benefits; the preferred tax treatment of employee benefits is only one such mechanism. However, as the cost of coverage has increased and the efficiency and viability of the current health care market have been called into question, one must consider if such treatment will always exist. Thus, it is important, now more than ever, for employers to become better purchasers of health care. While this may mean different things for different employers, such an approach necessitates purchasing health care in an affordable and sustainable manner.

Questions surrounding affordability and sustainability are what has placed health care, including medical and pharmacy costs, and health insurance in the news as well as in the crosshairs of government regulators. One need not look any further than the Cadillac Tax to note that there is a clear regulatory focus on the cost of coverage. And while the cost of coverage may be an easily identifiable measure to regulate, such total cost is at the center of affordability and sustainability.

To ensure the affordability and sustainability of its benefit plan, a plan must adopt strategies that address the cost of each unit of health care received and the number of health care units consumed. Thus, an improved purchasing strategy must include a focus on prevention, elimination of waste in the health care delivery system, a reduction in pricing variation, emphasis on population health, excellent clinical management, participant engagement and participant advocacy. This strategy must be at the core of all plan sponsor decision making, but the same tactics to affect such a strategy are not the same for all plan sponsors. For example, some opportunities may not be available to plans due to size requirements, and it may be necessary to leverage collective purchasing offerings to access such opportunities. Also, depending on participant demographics and participant education level, an employer may need to evaluate a variety of methods to engage participants. Similarly, such a strategy must be applied to decisions dictated by the changing regulatory environment.

Despite the potential for the elimination of key tenets of the ACA and the return to a pre-ACA regulatory environment, the question remains if such a return is possible considering vendor and provider consolidation. Will stalwart approaches to ACA edicts such as high deductible health plans in response to the Cadillac Tax still retain their prevalence in that environment? Or will the trend to offer high deductibles take a back seat to a more moderate approach focused on the "managed" in managed care and enhanced participant advocacy? The evaluation of such questions through the core tenets of the strategy above will be an employer's first step to ensuring the affordability and sustainability of its benefit offerings.

Sources:
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