CONNER STRONG & BUCKELEW

legislativeUPDATE

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Breaking News: Senate Releases ACA Replacement Discussion Draft

The Republican effort to repeal and replace the Affordable Care Act (ACA) continues with the Senate release of a discussion draft bill, The Better Care Reconciliation Act, which retains much of the framework of the American Health Care Act (AHCA) that was narrowly approved by the US House of Representatives on May 4. See our Update on the House bill. The Senate now begins a period of intense negotiation and formal debate in advance of an expected final vote prior to the July 4 holiday. The bill is expected to be considered under budget reconciliation rules, which allow the Senate to pass the measure with a simple majority rather than the usual 60-vote threshold. Ultimate passage in the Senate is unclear, but if the bill does pass the Senate, the next step will require that both the House and the Senate come together to vote on a joint bill before it would be sent to President Trump for signature. As of now it is entirely unclear whether consensus can or will be reached. So for now nothing changes and the ACA, including penalties for noncompliance and all employer reporting and notice requirements, will stay in place.

Provisions Affecting Employer Plans

The provisions affecting employer plans are largely similar to what the House passed and are summarized below. Importantly, the Senate bill does not include capping or changing the employer tax exclusion for employer provided benefit plans. Given that many of the provisions directly affecting employer plans and employees are in both the House-passed bill and the Senate-proposed bill, it is likely that the provisions listed below will stay in any final compromise bill.

Health Savings Account Enhancements (all beginning in 2018)

- Increases health savings account (HSA) contributions to the out-of-pocket maximums
- Repeals the limits on flexible spending account (FSA) contributions
- Allows both spouses to make catch-up contributions to the same HSA
- Allows for retroactive payment of medical expenses by an HSA up to 60 days when covered by a qualified plan even if the HSA account has not yet been opened
- Repeals the ban on the use of HSAs for over-the-counter medications

ACA Taxes

- Delays the effective date of the 40% excise tax on the value of employer plans above the government-determined amount from 2020 to 2026
- Eliminates penalties associated with the employer and individual mandates to offer/maintain

retroactive to 2016

- Eliminates health industry taxes beginning in 2018
- Reinstates the business expense deduction for the value of the federal subsidy to employers for retiree prescription drug costs beginning in 2018

The ACA employer reporting requirements would remain, since they are not expressly repealed in the bill. In light of President Trump's January 20 executive order directing regulatory agencies to reduce "the economic burden" of the ACA, many are hopeful the White House will issue a statement of non-enforcement of the employer reporting requirements in the event the relevant Internal Revenue Code provisions are not fully repealed.

Provisions Not Directly Affecting Employers Plans

The major differences in the House and Senate bills are in provisions not directly affecting employer plans. Medicaid has been the major concern for many Senators who had concerns about the House bill. Generally, the Senate bill keeps the status quo on Medicaid expansion for states that have done so through 2020, a year longer than the House bill, and then begins reducing the federal share and making other changes to federal funding for Medicaid starting in 2021. The Senate bill also provides $50 billion immediately to stabilize insurance on the exchanges and an additional $62 billion to states over 8 years to states to stabilize the individual market under different conditions and timing than the House bill. Finally, the Senate bill maintains much of the ACA tax credits for coverage on the individual market but would, reduce their overall generosity somewhat, lower the income threshold for eligibility from the current 400% of the poverty level to 350%, and provide more generous credits to older people.

CBO Score

The nonpartisan Congressional Budget Office (CBO) is expected to evaluate the Senate bill next week, so estimates of its impact on government spending and revenue and the number of people who may gain or lose insurance coverage are still forthcoming. It is expected that the CBO score, when released, will reveal that a substantial number of people would be projected to lose coverage under the Senate bill, largely due to significant changes to Medicaid. (The CBO score of the AHCA estimated that the number of uninsured people would increase by 24 million over ten years). These large coverage losses could result in cost-shifting to employer payers.

Republicans in the Senate are not unified in their support of the bill, and it remains to be seen whether the various factions in the Republican party will ultimately come together around a repeal and replace plan they can send to the President for signature. In the meantime, while Congress considers options to repeal and replace the ACA, taxpayers and employers should be prepared to continue to comply with the law through at least 2018. We will continue to monitor developments over the coming weeks, and provide details on new and revised employer obligations as they take shape over time.

Should you have questions about any aspect of federal health insurance reform, please contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online Resource Center.