The Legislative Update

Jeff Devine, Legislative Chair

March 15, 2017

Obamacare Repeal Update, taken from the SHRM Website………..The long-awaited proposed legislation to repeal and replace the Affordable Care Act (ACA), backed by the House Republican leadership, would not cap the tax exclusion on employer-provided health care but would leave in place the "Cadillac tax" on high-valued workplace health plans.

The American Health Care Act, released late on March 6, would repeal key portions of the ACA through the budget reconciliation process, which requires only a simple majority to pass in the Senate. Portions of the bill were scheduled to be marked up on March 8 by the House Ways and Means Committee and Energy and Commerce Committee.

The measure "delivers relief from Obamacare's taxes and mandates and advances policies proposed by President Trump to enhance and expand health savings accounts and provide tax credits to help Americans access quality, affordable health care," according to a statement by Ways and Means Committee Chairman Rep. Kevin Brady, R-Texas.

Among its major provisions, the bill would end the ACA mandate that businesses with 50 or more full-time equivalent employees offer insurance to their full-time workers and the requirement that individuals buy insurance or pay a penalty.

But significantly, and unlike the preliminary draft that began circulating last week, the proposed legislation would not cap the tax exclusion for employer-provided health plans. Instead, the measure would be funded by allowing the ACA's taxes to remain in place until the start of 2018, and would allow the "Cadillac tax"—the controversial 40 percent excise tax on high-cost employer-provided health coverage—to take effect on Jan. 1, 2025, instead of being repealed. Congress already had voted to delay the tax until 2020.

Opposition to Cadillac Tax Continues

"The Society for Human Resource Management is pleased that the American Health Care Act recognizes the importance of preserving the system of employer-provided health care benefits on which 177 million American employees and their families rely," said Chatrane Birbal, SHRM's senior advisor for government relations. "SHRM has long-advocated for full repeal of the Cadillac excise tax and applauds the delay of the tax until 2025."

But while a delay in the implementation of the ACA excise tax "will provide much needed relief to employers and employees, SHRM will continue to support and encourage Congress to fully repeal the excise tax," Birbal said. "Furthermore, SHRM will continue to urge Congress to avoid any future changes to the tax treatment of employer-sponsored health coverage that would result in raising taxes on employers or employees or that would increase the cost of health care for employees and their families."

On employer-provided health benefits, "We are grateful the bill does not impose a new tax on this stable, affordable source of coverage," said Brian Marcotte, president and CEO of the National Business Group on Health (NBGH), representing employers. While praising the bill's delay of the Cadillac tax, he, too, called for its permanent repeal. "We also welcome the changes that allow individuals to save more to pay for their health care expenses through health savings accounts," Marcotte said.

Added Steve Wojcik, NBGH's vice president, public policy, "We believe Congress should continue to support payment and delivery reforms and other measures to eliminate supply-side drivers of unnecessary health spending and to reduce growth in health expenditures rather than taxing employers and employees on their health benefits."

"It's sort of pick your poison as to which one is worse—a cap on the exclusion for employer-sponsored coverage or the Cadillac tax," said Garrett Fenton, an employee benefits attorney with Miller & Chevalier in Washington, D.C.

"It's a political minefield that they're trying to navigate right now, to figure out a way to get some sort of ACA replacement in place," Fenton said, "and then doing it in a way that will keep the conservative Republicans on board because it won't increase the deficit. But finding a way to pay for it without having too much blowback from the public is a very tough thing to do."

On the House GOP leadership's decision to put forth a bill that keeps the Cadillac tax, "It's too early to call this backpedaling," said James Gelfand, senior vice president of health policy at the ERISA Industry Committee in Washington, D.C., a group that represents large U.S. employers. He noted that when the 114th Congress passed a measure to repeal the ACA's taxes and penalties using the reconciliation process—a bill that was vetoed by President Barack Obama—it had passed the House with the Cadillac tax in place but the Senate then added in full Cadillac tax repeal. "We are committed to ensuring that this happens again," Gelfand said.

Tax Credits Replace Subsidies

According to a fact sheet released with the draft bill, the legislation would provide tax credits to people who don't get coverage through their job, replacing the subsidies the ACA gave to those with lower incomes to help them afford insurance policies. The refundable tax credits (those who are unemployed and don't pay income taxes would receive a direct payment instead of a deduction) would be tied to age, with people under 30 eligible for a credit of $2,000 per year, increasing steadily to $4,000 for those over 60.

The size of a tax credit would grow with the size of a family, but would be capped at $14,000. The tax credits would start to shrink for individuals making more than $75,000 or households making more than $150,000. For every $1,000 in income over $75,000, the tax credit would be reduced by $100.

Expanded HSAs, Uncapped FSAs

Promoting cost-conscious consumer-directed health care spending is a key aim of the American Health Care Act. It would, for example, expand health savings accounts (HSAs) intended to help people save money for health costs, nearly doubling the amount of money that individuals can contribute.

Annual contribution limits, currently set at $3,400 for HSAs linked to high-deductible health plans for self-only coverage and $6,750 for those linked to family coverage, would increase to equal the maximum on the sum of the annual deductible and out-of-pocket expenses permitted under a high-deductible health plan. Thus, the basic limit would be at least $6,550 in the case of self-only coverage and $13,100 in the case of family coverage beginning in 2018.

The bill would also broaden how HSA funds may be used, allowing for the purchase of over-the-counter medications, for instance.

The act would also repeal the ACA's limits on the amount an employee may contribute to a health flexible spending account (FSA) for taxable years beginning in 2018. The ACA limited employees' annual FSA contributions, currently capped at $2,600 and indexed for inflation going forward.

Other Provisions

Among its other significant provisions, the bill would:

- Repeal most of the health law's other taxes starting in 2018.
- Repeal penalties on individuals who don't have health coverage. But insurers could impose a 30 percent price increase on people who go uninsured for more than two months and then buy coverage.
- Eliminate the ACA's federal-government run exchanges where people can obtain insurance.
- Freeze funding in 2020 for the 31 states that expanded Medicaid under the law. Beginning in January 2020, the federal government would transition into a system in which a set amount of funding would be sent to the states each year.

The measure would keep in place a number of the ACA's marketplace reforms and consumer protections, including:

- Prohibiting health insurers from denying coverage or charging more money to patients based on pre-existing conditions.
- Helping young adults access health insurance and stabilize the marketplace by allowing dependents to continue staying on their parents' plan until they are 26.