

March 23, 2017

Keeping Up with Changes to Employee Benefits Rules (Part 2)

Presented by Benefit Comply

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- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



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Agenda

- Proposed Health FSA & HSA Expansion
- Individual Mandate
- Employer Mandate
- Tax Credits (Subsidies)
- Employer Reporting
- Cadillac Tax or Tax Exclusion Limits
- Reimbursement of Individual Health Coverage
- Insurance Mandates
- Things to Watch For

Introduced Legislation

- American Health Care Act (AHCA)
 - Budget Reconciliation Process
 - Requires only 51 votes (rather than 60) and avoids Senate filibuster
 - Process allows only for legislation impacting revenues or expenditures
 - Senate parliamentarian must rule on legislation if a Senator questions the use of the reconciliation process
 - Congressional Budget Office (CBO) report
 - Likely to increase the number of uninsured
 - Likely to decrease the federal deficit by \$300+ billion over next 10 years
 - Already passed through two House committees
 - **Manager's Amendment March 20th being voted upon by House Rules Committee today**
 - Has a chance of passing the Senate, however some items may be eliminated due to being inappropriate for budget reconciliation
 - Must ultimately be signed by President Trump
- World's Greatest Healthcare Plan
 - Unlikely to pass, but pieces of it could potentially be incorporated into the AHCA and/or introduced as separate individual legislation

Introduced Legislation

NO CHANGES YET! COMPLIANCE WITH CURRENT REQUIREMENTS IS STILL REQUIRED

What is Obamacare/The ACA?

Employers

- Shared responsibility rules for large employers
- Tax credits for small employers
- Coverage Requirements (Preventive care, age 26, no lifetime or annual max, etc.)
- Small employer modified community rating

Individual Insurance

- No pre-ex or underwriting
- Subsidies to help pay for insurance based on income
- Exchanges to coordinate sales and subsidies

Medicaid and Medicare

- Medicaid expanded to include low wage working adults
- Restructure payments to Medicare Advantage (MA) plans

Healthcare Cost Savings

- Medical Loss Ratio (MLR) requirements for health insurance companies
- Adopt Accountable Care Organization (ACO) payment model for Medicare
- Chronic condition treatment research

Gov. Cost Savings & Revenue

- Cadillac Tax
- Individual mandate tax and employer shared responsibility payments
- Excise tax of 2.3% on medical devices
- Health insurance company tax

PROPOSED HEALTH FSA & HSA EXPANSION

Proposed Health FSA & HSA Expansion

- American Health Care Act
 - **Health FSA**
 - Annual contribution limit on salary reduction (currently \$2600) removed beginning in ~~2018~~ 2017
 - May be used to reimburse over-the-counter (OTC) medications (effective in 2017)
 - **HSA**
 - Changes beginning in 2018
 - Increased annual contribution maximum
 - Self-Only increased from \$3,400 to \$6,550
 - Family increased from \$6,750 to \$13,100
 - Catch-up contributions (\$1000 for those age 55 or older) for both spouses may be made to the same HSA
 - If HSA is established within 60 days after HDHP coverage date, expenses incurred during that period are eligible expenses
 - HSA funds used for non-qualified medical expenses subject to a 10% penalty rather than 20% (effective in 2017)
 - May be used to reimburse OTC medications (effective in 2017)

Proposed Health FSA & HSA Expansion

- World's Greatest Healthcare Plan
 - Standard HSA contributions discontinued beginning in 2017
 - Replaced with a Roth HSA
 - Available to those with “creditable coverage”
 - Minimum essential coverage as defined under the ACA
 - Not available to those entitled to (enrolled in) Medicare
 - Annual contribution maximums
 - \$5000 for self-only
 - \$5000 x number of individuals enrolled for family
 - Catch-up contributions for those age 55 or older
 - Reimbursements available for concierge services
 - Payment of a monthly or other prepaid amount for medical treatment (or access to treatment)

INDIVIDUAL MANDATE

Current Individual Mandate

- Individuals required to have minimum essential coverage
 - Individuals who do not have minimum essential coverage for all 12 months may face potential penalties
 - Penalty is the greater of 2.5% of household income or \$695 (for the year)
 - Penalty is calculated on a monthly basis
 - Exemptions from penalty:
 - Cannot afford coverage (contribution exceeds 8% of household income);
 - Household income below threshold required for a federal income tax return;
 - Members of certain Indian tribes;
 - Members of a religious sect that is recognized as conscientiously opposed to accepting any insurance benefits (religious conscience);
 - Members of a recognized health care sharing ministry;
 - Individuals who are incarcerated;
 - Individuals who are not lawfully present in the U.S.;
 - Gap in coverage for less than a continuous 3-month period; and
 - Hardship exemption as determined by Health and Human Services (HHS)

Proposed Individual Mandate

- American Health Care Act
 - \$0 penalty retroactive to beginning of 2016 for failure to have minimum essential coverage
 - Beginning in 2019, premium penalty of 30% for a break in coverage of more than 63 days
 - Applies only in the individual market
 - May require employers to provide certificates of creditable coverage, similar to the old HIPAA rules that existed prior to the ACA
- World's Greatest Healthcare Plan
 - Individual mandate repealed
 - Premium penalty of 20% for failure to maintain creditable coverage in previous 12 months

EMPLOYER MANDATE

Current Employer Mandate (§4980H)

- Applies to applicable large employers (50 or more FTEs)
- To avoid potential penalties:
 - Must offer coverage to full-time employees and their dependents (not spouses)
 - Coverage must provide minimum value and must be affordable
- Definitions specific to the employer mandate:
 - Full-time status = average of 30 or more hours of service per week
 - Minimum value = 60% or better actuarial value
 - Affordability = 9.5% (indexed) or less of household income

Proposed Employer Mandate

- American Health Care Act
 - §4980H not repealed, but the employer “shared responsibility payments” (or penalties) are reduced to \$0.00 retroactive to beginning of 2016
 - Applicable large employers who choose not to offer minimum value, affordable coverage to full-time employees and dependents would incur \$0 in penalties
- World’s Greatest Healthcare Plan
 - Employer mandate repealed

TAX CREDITS (SUBSIDIES)

Current Tax Credits (Subsidies)

- **ACA Subsidy Eligibility**
 - Subsidy available only for individual coverage through a public Exchange
 - Not eligible for subsidy if there is other disqualifying coverage
 - Enrolled in any other minimum essential coverage
 - Eligible for minimum value, affordable employer-sponsored coverage
 - Amount of subsidy varies by income (available between 100-400% of FPL)
 - Determined based on final yearly income on personal tax returns
 - Advance payments in excess of what should have been received may have to be paid back (income-based repayment)
- **Cost-Sharing Reductions**
 - Cost-sharing reduction available only for individual coverage through a public Exchange
 - Lower deductible, copay/coinsurance and out-of-pocket
 - Amount of cost-sharing reduction dependent upon income
 - Available in addition to subsidy

Proposed Tax Credits

- American Health Care Act
 - Advance subsidy payments in excess of what should have been received must be repaid
 - Proposed subsidy eligibility modification for 2018-2019
 - Also available for catastrophic coverage and off-Exchange coverage
 - Subsidy amount determined by adjusting for household income and age
 - ACA subsidy repealed and replaced in 2020
 - Available for state-approved individual coverage ~~and unsubsidized COBRA coverage~~
 - Not available for those with access to government or employer-sponsored coverage
 - Available to veterans only if they are enrolled in VA coverage
 - Subsidies range from \$2000 to \$4000 per person per year, capped at \$14,000 for families
 - Subsidy amount based on age not income – but phased out beginning at household income of \$75,000
 - ~~Excess above cost of coverage may be put into an HSA~~
 - Not adjusted by geographical differences in cost of coverage

Proposed Tax Credits

- World's Greatest Healthcare Plan
 - ACA subsidy repealed and replaced
 - \$2500 annually per adult, \$1500 annually per child for those with creditable coverage
 - Adjustments for limited coverage (annual limit on the amounts payable with respect to medical expenses incurred)
 - Adjustments based on age and geographical differences
 - Reduced by any amounts excluded from taxable income due to employer-sponsored coverage

EMPLOYER REPORTING

Current Employer Reporting

- **Employers Required to Report**
 - Applicable large employers (50 or more FTEs) required to report offer of coverage information]
 - Employers who offer self-funded plans, regardless of size, required to report coverage information
- **Employer Reporting Serves Three Separate Purposes:**
 1. Enforcement of the employer mandate
 2. Enforcement of the individual mandate
 3. Reconciliation of subsidy eligibility

Employer Reporting

- American Health Care Act
 - No mention of any definite changes to employer reporting
 - IRS may no longer need data for employer mandate and individual mandate
 - Change in subsidy eligibility rules will still require employer reporting
 - Likely that reporting coverage information could be handled on Form W-2 and possibly also on employers' websites
- World's Greatest Healthcare Plan
 - Elimination of employer reporting
 - Reporting required to enforce individual tax credits and use of HSAs

CADILLAC TAX OR TAX EXCLUSION LIMIT

Cadillac Tax

- Cadillac Tax
 - 40% excise tax on health coverage cost that exceeds “threshold amounts”
 - Threshold amounts
 - \$10,200/yr. for self-only coverage
 - \$27,500/yr. for coverage other than self-only
 - Effective in 2018, but delayed until 2020
- American Health Care Act
 - Cadillac tax delayed until ~~2025~~ 2026
 - To preserve budget reconciliation approach
- World’s Greatest Healthcare Plan
 - Cadillac tax repealed

Tax Exclusion Limit

- Several Republican Proposals to Limit Tax Exclusion for Employer Provided Health Benefits
 - 2010 Republican Patient Choice Act
 - Single - \$12,000/yr. Family - \$30,000/yr.
 - 2015 HR 3762
 - Single - \$8,000/yr. Family - \$20,000/yr.
 - Rep. Paul Ryan's "A Better Way" Plan
 - 2017 leaked house bill - 90% of average health insurance premiums
 - Based on the CBO estimates, 90% = approximately \$12,300 single & \$33,200 family
 - Very likely it could appear again in tax reform legislation
- Context
 - U.S. average annual family health insurance premium in 2015 was \$17,322
 - 2016 CBO Revenue Estimate
 - Exclusion limit set at 75% of average premiums would generate \$174 Billion for 10 year period 2017 – 2026

www.cbo.gov/budget-options/2016/52246

REIMBURSEMENT OF INDIVIDUAL HEALTH INSURANCE

Reimbursement of Individual Health Insurance

- Qualified Small Employer HRA (QSEHRA)
 - Contained in “21st Century Cures Act” signed into law Dec. 2016
 - Allows small employers who do not offer a group health plan to contribute tax-free to the cost of employees’ individual health insurance plans
 - Annual maximum tax-free reimbursement - Single = \$4,950, Family = \$10,000
- American Health Care Act
 - No mention of reimbursement of individual health insurance (not likely appropriate in a budget reconciliation bill)

INSURANCE MANDATES

Insurance Mandates

- American Health Care Act
 - Maintains:
 - Preventive coverage requirements
 - Cost-sharing limitations (out-of-pocket maximums)
 - Essential health benefits for individual and small fully-insured plans
 - Coverage through age 26
 - No pre-existing condition limitations
 - No annual or lifetime limits on essential health benefits
- World's Greatest Healthcare Plan
 - Eliminates:
 - Preventive coverage requirements
 - Essential health benefits for individual and small fully-insured plans

THINGS TO WATCH FOR

Things to Watch For...

- Movement of the American Health Care Act (AHCA) through the House and Senate
 - Watch likely changes as it moves through the Senate
 - Any changes would then have to be approved by the House
 - Nothing changes until the bill is passed by the House and Senate (and House again, if there are changes) and then signed by President Trump
- Additional Legislation Introduced as Single Items
 - May serve as a back-up to the AHCA if it does not pass
 - May be easier to pass smaller bills rather than a comprehensive package
 - For example – repeal of Cadillac Tax, HSA expansion, repeal of individual and employer mandate
- Additional Changes as Part of a Larger Tax Reform Effort
 - Especially tax exclusion limit

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