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ACA Status Update

It appears that the Affordable Care Act (ACA) will live on as the “law of the land,” in the words of Speaker Ryan. Last week left many heads spinning as voting on the American Health Care Act (AHCA) was first delayed and then called off entirely. Employers must continue to administer their plans in compliance with existing ACA rules and regulations, including the employer mandate and employer reporting requirements, for the foreseeable future. The only thing that has actually changed is that the IRS is accepting 2016 tax returns with no proof that individuals obtained minimum essential coverage. So now the question is...what’s next?

LEGISLATIVE ACTION

It is extremely unlikely that comprehensive legislation making significant changes to the ACA will pass this year. New comprehensive legislation is still possible, but it will take significant time to develop it and obtain more support. However, there is still the possibility of legislation being introduced to address particular issues, which could happen more quickly. For example, we could see stand-alone bills to address the Cadillac Tax, employer and individual mandates, and employer reporting. As part of tax reform efforts, we may see further attempts to cap tax exclusions for employer-provided healthcare, expanded availability and contribution limits for health savings accounts (HSAs), and perhaps some adjustments with other ACA provisions.

REGULATORY ACTION

In addition, even without congressional action, it is still possible for regulatory agencies (e.g., IRS, CMS, HHS, DOL) to make significant changes to employer-related

rules and regulations. Although regulatory agencies are not allowed to make changes to existing laws, they could make changes to the interpretation and enforcement of such laws. For example:

- Changes in how to track hours of service for full-time status, including use of the monthly or look-back measurement method and break in service rules, changes in how to determine affordability (e.g., safe harbors, wellness incentives, opt-out credits), changes to employer reporting requirements, and changes to the definition of essential health benefits;
- Granting waivers to states allowing more flexibility in state rules related to small group insurance;
- Changes in existing guidance prohibiting employers from paying for individual health insurance policies; and/or
- The adoption of “non-enforcement” policies applicable to many parts of the ACA. Remember that the IRS still has a non-enforcement policy that has been in effect for years regarding the ACA non-discrimination rules for fully-insured plans, and has previously delayed effective dates for things such as the Cadillac Tax and expanded Form 5500 reporting requirements pending additional guidance.

LEGAL ACTION

One other thing to watch is whether the Trump Administration will continue to defend a lawsuit, brought by House Republicans, that challenges the federal government’s authority to pay subsidies to lower- and middle-income people who obtain coverage in the Marketplace. We expect this to play out, perhaps quietly, in the coming weeks and months.



SUMMARY

While we wish we could tell you that based on last week's activity employers now know what to expect, unfortunately that is not the case. There is still time, even yet this year, for legislation to be passed that addresses particular issues and for the agencies to release significant regulatory changes and even non-enforcement policies. In the meantime, it is extremely important for employers to understand that there are no real changes yet, and therefore it is necessary to continue efforts to comply with existing ACA requirements. Until we see something more than proposed changes, employers who choose not to move forward with efforts to comply with things such as the employer mandate and employer reporting requirements risk penalties for noncompliance. At the same time, it is important for employers to be alert and watching for likely changes, both big and small. It may be a very "interesting" year for healthcare reform.

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