

Health Care Reform Implementation

Overlap of Tax Code & ACA Reform Efforts

April 26, 2017

In the News

On March 6, 2017, the House Republicans released the **American Health Care Act (AHCA)** to repeal and replace the Affordable Care Act (ACA). In the weeks since the 123 page proposed legislation was pulled from the House floor on March 24th, Speaker Ryan, along with other GOP leaders, are continuing to keep ACA reform efforts in the news.

Mixed messages by way of press releases, speeches and tweets flow from the Republican members of the House and Senate, as well as from the White House. Approaching the end of the frequently mentioned “100 days” in office on Saturday, April 29th, tax reform or health care reform are expected to move forward. President Trump stated, “we get hundreds of millions of dollars in savings that goes into the taxes. Could we do it without health care? Absolutely but it’s a cleaner package if we get health care done.” In short, an initial health care package and a follow up tax reform package are interrelated because the health bill would eliminate certain ACA-specific taxes, and therefore, smooth the process to tax reform. As of April 26th, indications are that tax reform will come first, yet, given the mixed messages, the process and timeline remain in flux.

New Regulations: Individual Market Stabilization

On April 13, 2017, the Department of HHS issued regulations to assist in stabilizing the individual and small group markets. Of note, these regulations do not directly impact large group health plans. The regulations offer greater state-by state flexibility and additional coverage options with the most significant immediate change being a shortened open enrollment period.

The 2018 open enrollment period for the individual market will run from **November 1, 2017**, through **December 15, 2017**, which closely aligns with open enrollment for Medicare. Additionally, regulations expand the open enrollment verification windows in the Exchanges as well as limit the ability of enrollees to change plan levels (Bronze, Silver, Gold) during the coverage year. Lastly, insurers may collect premiums for unpaid coverage before re-enrolling individuals for the next year to promote the continuation of coverage.

Implications for Insurers & Employers

Insurers are struggling to issue 2018 exchange offerings amidst mixed signals from the GOP Congressional leadership and the White House. Insurance companies currently receive federal payments to cover the cost of care for lower-income exchange enrollees, and without these payments, exchanges will experience significant rate increases and adverse selection.

Background Information

If the AHCA is resurrected, in one form or another, the GOP proposes two additional phases of the repeal and replace process.

Repealing & Replacing the ACA – Three Phases

1) **Budgetary Reconciliation Bill** -- The American Health Care Act (AHCA)

Within a budget reconciliation bill, the legislative scope is limited to **budget-specific provisions**. Importantly, a reconciliation bill requires a simple majority vote in the Senate, rather than the typical 60-vote requirement to avoid a filibuster.

2) **HHS Department** – Regulatory Directives, as instructed by President Trump’s Executive Order and by the AHCA.

Similarly to the ACA, the language “*HHS Shall...*” appears in the AHCA for the Department of HHS to direct additional government agencies to execute the law’s intent. Of note, when the ACA first passed in March 2010, the ACA language authorized HHS to issue regulatory directives over 900 times.

3) **Future Bi-Partisan Legislation** -- Requiring 60 Senate Votes

Outside of these initial reconciliation budget-focused legislative efforts, bipartisan support is required and the Senate will need at least eight Democrats to support any changes. As of April 19, 2017, a handful of centrist Democrats, including Jeanne Shaheen (D-N.H), Heidi Hietkamp (D-N.D), Mark Warner (D-VA) and Joe Manchin (D-WV), have expressed a willingness to modify the ACA, yet retain the overall framework.

Discussion, debate and rhetoric are anticipated to fill the airwaves in the coming months and the GOP is facing a significant challenge as the current uncertainty is not only influencing insurance underwriters in setting rates, but also influencing business decisions. Regarding their political future, the Republican leadership must regroup in the coming months if intending to keep GOP campaign promises to repeal and replace the ACA.

As new legislation is proposed and assessed, Oswald will continue to provide timely updates and strategic guidance for employers. We will remain vigilant in monitoring all legislative and regulatory actions, and through our relationships with **industry experts in Washington, DC**, we will continue our proactive communication efforts to anticipate change. Importantly, the Affordable Care Act (ACA) remains the law; therefore, all current compliance requirements remain in place today.