On December 22nd, President Trump signed the Tax Cuts and Jobs Act (H.R.1), into law with the majority of new provisions effective in the 2018 tax year. For the first time in 30 years, comprehensive tax reform is in place. Within the new legislation, the Affordable Care Act (ACA) individual health insurance coverage mandate is effectively repealed because the penalty is $0.

However, it is essential that employers understand the ACA employer coverage mandate and all associated penalties remain in place. The ACA employer reporting requirements also remain in place.

Of note, on December 22, 2017, the IRS also issued a 30-day extension for employers to supply employees with Forms 1095-C (1095-B, as applicable), under the ACA employer reporting requirements. The date is extended from January 31, 2018, to March 2, 2018. The date to provide the IRS with the same information was not extended; and remains due as of April 2, 2018.

Impact to Group Health Plans

- 2020 tax on high-value plans ("the Cadillac Tax") is not impacted.
- Health Flexible Spending Accounts (FSAs) are not impacted.
- Health Savings Accounts (HSAs) are not impacted.
- Child and dependent care tax credits to assist families are not impacted.
- Business deductions for qualified mass transit plans are eliminated.
- Unreimbursed medical expenses are deductible to the extent they exceed 7.5 percent of adjusted gross income (lowered from the current 10 percent established by the ACA).

There is no change to the current rules for Dependent Care Accounts. Although changes were proposed in the House bill to eliminate this benefit, a change is not included in the final bill. Further, the House proposed a tax on employer-paid tuition benefits, but this change is not included in the final bill.

What has changed for Group Health Plans?

**Individual Health Insurance Coverage Mandate & Penalty Exposure** (Effective in 2019): The ACA requires all Americans obtain qualifying health coverage or pay a penalty when filing their tax return. The most significant health care news within the legislation is the “zeroing out” of these individual coverage mandate penalties.

**Employer Deduction for Transportation Benefits** (Effective in 2018): The employer deduction, which allows employers to deduct the cost of certain employer-provided transportation benefits (e.g., transit passes or parking), is repealed.
Qualified Bicycle Reimbursements Exclusion (Effective in 2018): Under the current tax law, reimbursements for bicycle commuting expenses (up to $20 per month) are excluded from an employee's pay.

Employer Credit for Paid FMLA Leave (Effective in 2018 and 2019 only): Employers will be eligible for a tax credit (dollar-for-dollar reduction in tax liability) when they provide certain paid FMLA leave to employees. Additional regulatory guidance is anticipated, but as of now, the maximum credit will be 25% of wages paid. The credit is scheduled to sunset at the end of 2019.

Methodology for Determining Health FSA and HSA Limits: The current tax law caps contributions to a Health FSA at $2,650 for 2018 and caps contributions to a family HSA at $6,900 for 2018. Both amounts were increased from the 2017 amounts. This methodology for determining adjustments to these limits is likely to result in slower upward caps in the future.

Tax Rate Changes: The final bill creates a brand new corporate tax deduction for certain pass through entities such as LLCs or partnerships. This may create a wave of new tax planning. As regulatory guidance is issued, it will be important to consider the impact of new corporate forms on employee benefit plans.

What has not changed for Group Health Plans?

Employer Coverage Mandate & Employer Reporting Requirements: There are no changes in the employer coverage mandate (known as “shared responsibility “ requirements or “pay-or-play”), and also no changes to the employer reporting requirements.

Dependent Care Assistance: The exclusion for employer-provided dependent care assistance up to $5,000 per year remains in place (this is exclusion that supports dependent care assistance within cafeteria plans).

Employer-Provided Child Care: Currently, employers are able to claim a tax credit for certain qualified employer-provided child care. This credit is left unchanged by the final bill.

Adoption Assistance: Employees will continue to be allowed to exclude reimbursements from employer-sponsored adoption assistance programs.

Takeaways

As the legislative process continues, we will remain vigilant in monitoring all regulatory actions, and through our relationships with industry experts in Washington, DC, we will continue to anticipate change and keep you informed.