What Does a Trump Presidency Mean for Employer Sponsored Benefit Plans?

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WELFARE BENEFITS

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KEY PROVISIONS OF THE AFFORDABLE CARE ACT (ACA)

- The individual mandate requires individuals to have qualifying health insurance (or face a penalty)
- Financial assistance available (premium tax credits and cost sharing subsidies)
- The employer mandate requires that employers with 50 or more full-time and/or full-time equivalent employees must offer “affordable” and “minimum value” health coverage to full-time employees and their dependent children, or face penalties
- Variety of market reforms (elimination of preexisting condition exclusions, coverage for children to age 26, elimination of coverage limits)
- Medicaid expansion
- Variety of taxes to fund
- Reporting to determine compliance and penalties

PRESIDENT TRUMP'S AGENDA

- President-Elect Trump pledged during the campaign that he would repeal the ACA and replace it with something great

- "Nobody knew that health care could be so complicated." President Trump

PRESIDENT TRUMP'S AGENDA

- January President Trump Executive Order to "minimize the economic burden" of the ACA:
  - Administration's policy is to seek the prompt repeal of the ACA
  - In the meantime:
    - Agencies will exercise authority and discretion to waive, defer, grant exemptions from, or delay implementation of ACA that impose a cost, fee, tax, penalty or burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance or makers of medical devices
    - Employers not mentioned!

PRESIDENT TRUMP'S AGENDA

- February 28 Trump speech to joint session of Congress:
  - Called on Congress to repeal and replace ACA
  - Five principles to guide Congress:
    - Ensure that Americans with pre-existing conditions have access to coverage
    - Help Americans purchase their own coverage, through the use of tax credits and expanded Health Savings Accounts
    - Give States the resources and flexibility they need with Medicaid to make sure no one is left out
    - Implement legal reforms that protect patients and doctors from unnecessary costs that drive up the price of insurance, and work to bring down the high price of drugs
    - Freedom to purchase health insurance across State lines

AMERICAN HEALTH CARE ACT

- Republican House released the American Health Care Act on March 6, 2017
- Through budget reconciliation

AMERICAN HEALTH CARE ACT

- What it does not do:
  - The bill does not repeal the ACA, but it replaces substantial portions of it
  - Most of the ACA's market reforms remain in place, such as the requirements that health plans:
    - Not impose lifetime or annual limits
    - No health status underwriting
    - Cover adult children up to age 26
    - Not discriminate on the basis of race, nationality, disability or sex
    - Cap annual out-of-pocket expenditures
    - Essential health benefit standards
    - No preexisting condition limitations
    - Preventive services with no cost-sharing
  - Exchanges remain

AMERICAN HEALTH CARE ACT

- Individual mandate
  - Reduces penalty to 0 for violations of the individual mandate after 12/31/2015
- Repeals cost-sharing subsidy in 2020
- Repeals premium tax credit after 12/31/2019

AMERICAN HEALTH CARE ACT

- Premium tax credit replaced with a refundable tax credit
  - For state approved major medical coverage insurance and unsubsidized COBRA
  - Generally, individual must not have access to government health insurance programs or an offer of coverage from an employer, and be a citizen, national or qualified alien, and not incarcerated
  - Credits are adjusted by age
    - Under 30: $2,000
    - Between 30 and 39: $2,500
    - Between 40 and 49: $3,000
    - Between 50 and 59: $3,500
    - Over 60: $4,000
  - Credits are additive for a family and capped at $14,000
  - Available in full to those making up to $75,000 ($150,000 for joint return)
    - The credit phases out by $100 for every $1,000 in income higher than those thresholds

AMERICAN HEALTH CARE ACT

- To limit adverse selection, reinstates HIPAA continuous coverage concepts in 2019
  - 12 month look back period to determine if individual went longer than 63 days without continuous health coverage
  - If individual had lapse of coverage for greater than 63 days, insurer may assess a 30% surcharge on top of base premium
  - Surcharge would be discontinued after 12 months

AMERICAN HEALTH CARE ACT

- Employer mandate
  - Reduces penalty to 0 for violations of the employer mandate after 12/31/2015
- Employers will still have to report an offer of coverage to employees
  - Reconciliation rules limit ability of Congress to repeal current reporting
  - Under House bill, reporting is simplified and done on form W-2
  - When current reporting becomes redundant and replaced by new reporting mechanism, IRS can stop enforcing reporting that is not needed for taxable purposes
- Cadillac tax
  - No tax will be imposed between January 1, 2020 and January 1, 2025
  - Effectively delays implementation of tax until 2025

AMERICAN HEALTH CARE ACT

- Increase use of health savings accounts (HSAs) and health care flexible spending accounts (health FSAs)
  - Over-the-counter drugs may be reimbursed from HSAs, health FSAs after 12/31/2017
  - Reduce tax on distributions from HSA for purposes other than qualified medical expenses from 20% to 10% after 12/31/2017
  - Repeal limit on contributions to health FSAs after 12/31/2017
  - Maximum contribution limit to HSA increased to the maximum of the annual deductible and out-of-pocket expenses permitted under a high deductible health plan (currently $6,650 for single coverage and $13,100 for family coverage) in 2018
  - Both spouses would be permitted to make catch-up contributions to one HSA in 2018

AMERICAN HEALTH CARE ACT

- Increased funding to health centers that provide health services to medically underserved populations
- Rollback Medicaid expansion
- Federal funding to States that may be used for:
  - Providing financial assistance to high-risk individuals who do not have access to employer sponsored coverage
  - Reducing cost of coverage in individual and small group market to individuals who have high rate of utilization
  - Promoting access to preventive services, dental and vision services and mental health/substance abuse services
- Repeals many taxes

WHAT WENT WRONG?

- House of Representatives cancelled vote due to lack of sufficient support
  - Conservatives thought the bill didn't go far enough to repeal ACA
  - Moderates were concerned about the number of people that would lose coverage and that ending the Medicaid expansion would harm low-income people
- Subsequent attempts to revise bill to get the necessary votes
  - Allow states to impose Medicaid work requirements
  - Provide states greater flexibility to define "essential health benefits"
  - Increasing tax credit for individuals ages 50 to 65
  - Adding a $15 billion fund to help insurers pay claims for sickest customers
- House adjourned for recess; return on April 25

WHERE DO WE GO FROM HERE?

- ACA is still in effect
  - Will we see relaxed enforcement?
  - Not clear how and when the IRS and other agencies will act to exercise authority and discretion to reduce the ACA's burden

WHAT CAN BE DONE WITHOUT REPEAL/NEW LAW?

- Individual mandate
  - Add more exceptions
  - Continue accepting tax returns without ACA information
- Subsidies for out or pocket costs
  - Litigation
- Essential health benefits
  - Definition
- Medicaid expansion
  - Allow states to impose work requirements, charge more for Medicaid

WHAT CAN BE DONE WITHOUT REPEAL/NEW LAW?

- IRS announced it will not reject tax returns that are silent on whether the taxpayer complied with the individual mandate
  - However, individual mandate still in force and taxpayers required to follow law and pay what they may owe
- Government expected to continue paying subsidies through at least end of 2017
- Individual and small group market may continue health plans that don't fully comply with ACA during 2018 (grandfathered health plans)

ACA NONDISCRIMINATION RULE

- ACA Section 1557 provides that an individual shall not be excluded from participation in, or denied the benefits of, or be subjected to discrimination, under any health program or activity, any part of which receives federal financial assistance from the HHS
- Required some employer sponsored group health plans to cover benefits to treat gender dysphoria
- In December, a US District Court issued a nationwide preliminary injunction enjoining the federal agencies from enforcing certain provisions of the rule
- Implications for employers:
  - Most plan designs already changed for 2017
  - EEOC continues to interpret Title VII's sex discrimination prohibition to include gender identity

QUALIFIED SMALL EMPLOYER HRA'S (QSEHRA)

- Prohibition on reimbursing employees for premium expenses for individual health insurance policy or directly pay such premiums
- Position was reversed in the 21st Century Cures Act
  - Starting January 1, 2017
  - Employers with fewer than 50 full-time and full-time equivalent employees that do not offer group health insurance to any employees
  - May reimburse on a pre-tax basis premiums paid for individual health coverage and eligible unreimbursed medical expenses
  - Generally, must provide on the same terms to all employees
  - The maximum amount of reimbursement
    - $4,950 for employee coverage
    - $10,000 for family coverage
    - Pro-rated for an employee who is not covered for the entire year

QUALIFIED SMALL EMPLOYER HRA'S (QSEHRA)

- Required to verify other covered
- Notice required
- Starting in 2018 for the 2017 tax year, benefits must be reported on Form W-2

MARKETPLACE

- CMS final rule issued on April 13, 2017
  - Intended to reform and stabilize the marketplace
  - In response to the recent exit of several issuers from the healthcare marketplace and the increasing rates
  - The proposed changes include the following:
    - *Shortening of Open Enrollment Period* – for 2016 and 2016, open enrollment period of November to January 31; beginning in 2018, November 1 to December 15
    - *Changes to Special Enrollment Pre-Enrollment Verification Process* – expands the pre-enrollment verification of eligibility process for individuals who newly enroll through special enrollment periods in an effort to prevent potential abuse by individuals who seek to enroll in coverage through a special enrollment period only after realizing a need for healthcare services
    - *Changes to Guaranteed Availability Requirements* – allow issuers to collect premiums for prior unpaid coverage before enrolling individual in the next year's plan to discourage individuals from only paying premiums when in need of healthcare services

RETIREMENT BENEFITS

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RETIREMENT BENEFITS UNDER THE TRUMP ADMINISTRATION

- What do we know?
- What can we expect?

FIDUCIARY RULE

- Regulations issued by the Obama administration with the intent to expand fiduciary protection on behalf of participants in retirement plans and IRAs
- Originally set to take effect in April of 2017
- The DOL has extended the effective date of this rule by 60 days until June 9, 2017
- We anticipate additional changes to the rule, or that it will simply be revoked

401(K) PLANS

- Retirement Enhancement and Savings Act (RESA)
  - Died at end of 114th Congress (but items may be reintroduced)
  - Biggest impact would be to allow unrelated employers to enter into "pooled employer plans" (PEPs)
    - Economies of scale (reduce costs for smaller employers)
    - More bang for the buck
    - Eliminate "one bad apple" rule
  - Also includes technical changes to safe harbor plans, hardship distribution rules, etc.
  - Provides a plan fiduciary safe harbor for "lifetime income investment options"
- Recently proposed Lifetime Income Disclosure Act (S.868) would require employees to provide 401(k) plan participants with a projection of monthly income at retirement based on current account balance
  - Similar legislation proposed in House
  - RESA contains a similar provision

DEFINED BENEFIT PENSION PLAN

- In large part due to continued low interest rate environment, many pension plans are underfunded
- The Trump administration has promised to cut corporate tax rates
- It is anticipated that many employers may accelerate pension plan funding to lock in higher deductions before new, lower rates kick in
- Could substantially improve pension funding

PENSION PLAN LUMP SUM WINDOWS TO DE-RISK PLANS

- New mortality tables set to go into effect in 2018 will likely adversely affect plan funding levels
- PBGC premiums continue to increase
- Accordingly, we continue to see pension plans offering lump sum windows to their terminated vested populations in order to “de-risk” their plan
- Removing those liabilities from the plan via cashout:
  - Reduces future PBGC premiums
  - Avoids liability hit for increased mortality

QUESTIONS?

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THANK YOU

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