Senate Tries to Repeal the ACA One More Time

Issue Date: September 2017

On September 13, 2017, Senate Republicans introduced a bill (referred to as The Graham-Cassidy bill) to try, one more time, to repeal and replace portions of the ACA. The bill contains many of the provisions included in legislation proposed earlier this year. In fact, it was originally designed to be an amendment to prior legislation that was proposed in the Senate. New to this bill is a system that changes current federal spending on a number of ACA programs into block grants to states. Beginning in 2019, federal expenditures for ACA premium tax credits, cost-sharing reductions, Medicaid expansion, and the Basic Health Plan Program would be redirected to states through a funding formula based principally on state demographics.

As in earlier summaries, we will focus primarily on issues that affect employer-sponsored benefits. However, we have provided an overview of the bill's principal non-employer related provisions below.

Employer Plan-Related Provisions

Of great interest to applicable large employers is that the Graham-Cassidy bill effectively repeals the employer mandate and associated penalties retroactive to 2016. This has been a provision that has been included in almost all the legislation proposed this year.

Other Employer-Related Changes

- The bill eliminates ACA small business tax credits.
- It includes a significant expansion of, and other changes to, HSAs, including the following:
    - Over-the-counter medications would be treated as an eligible expense.
    - The penalty for HSA withdrawals used for ineligible expenses is reduced from 20% to 10%.
    - HSA contribution limits would be raised to the maximum HDHP out-of-pocket amount ($6,550 for self-only and $13,100 for family plans in 2017).
    - HSA funds could be used to pay for high-deductible health insurance plans.
    - Both spouses could make catch-up contributions to the same HSA.
    - HSA funds could be used for medical expenses incurred up to 60 days before an HSA was established.

Additional Flexibility for States to Make Changes to Individual and Small Group Rules

The bill provides a path for states to obtain waivers that could allow for significant changes to insurance rules. These state insurance rules would principally affect individual and small group health insurance plans.

- Insurers could be allowed to charge different premiums based on health status, age, or other factors, and to exclude coverage for certain medial conditions.
- States could eliminate or make changes to the ACA's essential health benefit requirements.
- States could eliminate or change the medical loss ratio (MLR) rules, which currently require insurance companies to spend a minimum percentage of premiums on healthcare costs.

Other Important Changes Less Related to Employer Plans

The bill also includes the following provisions:

- Repeals the ACA's Medicaid expansions.
- Imposes per capita caps on all federal Medicaid funding.
- Repeals the individual mandate penalties retroactive to 2016.
- Terminates the premium tax credits and cost-sharing reduction payments for individuals purchasing individual health insurance policies and converts this federal spending to state block grants.
- Cancels the ACA Basic Health Program.
- Allows individuals to purchase catastrophic coverage with high out-of-pocket maximums and limited coverage.
- Repeals the medical device tax but leaves other ACA taxes in place.

Not Much Time Left to Pass the Legislation

Notably, this legislation must be passed by the Senate no later than September 30. That is the date on which the current budget reconciliation authority expires. The budget reconciliation process allows Republicans to pass legislation with only 51 votes instead of the 60 that are normally required to move legislation forward in the Senate. If the bill passes the Senate, it will then need to be reconciled with the American Health Care Act (ACHA) passed by the House earlier this year before it can be signed into law.