

What Does a Trump Administration Mean for the ACA and Employers?

President-elect Donald Trump and many Republicans vowed to “repeal and replace” the Affordable Care Act (“ACA”) during the 2016 presidential campaign. And now that they have control of the White House and Congress, they have the votes to do it.

Where will that leave employers as they compare and prepare benefit plans for their people?

The ACA is one of the most complex pieces of legislation ever enacted (not to mention the thousands of pages of implementing regulations that go along with it). The ACA’s impact is far-reaching, affecting businesses and individuals, as well as every component and stakeholder in the healthcare system. Will Trump’s administration uphold their campaign promise to repeal the ACA? If so, how will “repeal and replace” unfold? **For now, the ACA is still the law of the land, and employers should continue to comply with all enacted provisions for the time being.**

ACA specifics employers should be looking at this time of year include:

- Employers with self-funded plans should complete the Reinsurance Form by November 15, 2016, and schedule the reinsurance payments for the 2016 plan year. At the present time, we do not anticipate that payments due in 2017 (applicable for the 2016 calendar year) will be impacted by any repeal and replace action the new administration might implement in 2017. However, we’ll have to wait and see what the current administration does before we can get more specific information.
- Applicable Large Employers (“ALEs”) should prepare the required 2016 ACA reporting forms 1095-C, which must be issued to full-time employees and covered individuals under a self-funded plan by January 31, 2017. Forms must be filed with the IRS no later than February 28, 2017 (paper filers), or March 31, 2017 (electronic filers). Currently, we do not anticipate that the 2016 issuance and filing requirements (as well as the employer mandate applicable for the 2016 calendar year) will be impacted by any repeal and replace action the new administration might implement in 2017. However, we’ll have to wait and see what direction the government gives.
- Employers who filed 250 or more Forms W-2 in calendar 2015 must continue to report the cost of healthcare coverage on the 2016 Form W-2 in Box 12 using Code DD. For now, we do not anticipate that the addition of healthcare costs on the 2016 W-2 would be impacted by any repeal and replace action the new administration might implement in 2017.
- Continue to issue the ACA notice **New Health Insurance Marketplace Coverage Options and Your Health Coverage** to new hires to inform employees about their healthcare options until further notice.
- Review and respond as necessary to any Marketplace Notice you may receive regarding an employee who has purchased a Marketplace plan and qualified for a premium subsidy.
- Review and respond to any IRS assessment you may receive regarding an employer penalty payment for 2015.

The ACA’s Fate

There are some significant changes that we probably can expect, such as the elimination of the individual and employer mandates, as well as ACA industry taxes and the Cadillac Tax. How the Trump administration deconstructs the ACA provisions could be accomplished in a variety of ways, such as the use of executive order, legislation, and Congressional budget actions. However, we expect the Democratic legislators will continue to advocate for maintaining the ACA while also recognizing the need for change. Certain consumer-focused benefits are expected to remain, including allowing dependents to remain on a parent’s plan until age 26, protecting people with pre-existing condition limitations, and potentially the concept of shopping for a robust selection of healthcare plans on state-based exchanges.

But what will ACA “replacement” look like? The Trump healthcare agenda does not currently appear to directly address the employer-sponsored market, although repeal of current mandates, plan design restrictions and other related regulations may allow employers more flexibility to design a benefits program that’s less burdensome to administer. In addition to repealing and replacing the ACA, the Trump healthcare agenda includes the following:

- Allowing customers (and possibly group health plans as well) to purchase insurance across state lines
- Making the premiums for the purchase of individual policies tax deductible
- Expanding the use of Health Savings Accounts, presumably by making these more attractive with less rules and restrictions
- Implementing price transparency to understand healthcare costs prior to the receipt of services
- Eliminating fraud, waste and abuse in the system
- Protecting healthcare for the most vulnerable individuals

Other Republican ideas that may find their way into an ACA replacement agenda include tort reform to address runaway costs caused by frivolous lawsuits, as well as redesigning Medicare to combine Parts A and B. This last action could create a regulated Exchange to select and buy approved plans and adjust eligibility to align with Social Security eligibility.

As the new administration transitions and takes office, we will continue to keep you apprised of the changes that impact your healthcare benefits as they unfold.

ADDITIONAL INFORMATION

Information contained in this Update is not intended to render tax or legal advice. Employers should consult with qualified legal and/or tax counsel for guidance with respect to matters of law, tax and related regulation. Cherry Bekaert Benefits Consulting, LLC provides comprehensive consulting and administrative services with respect to all forms of employee benefits, risk management, qualified and non-qualified retirement plans, private client services, transaction services, and compensation and human resources.

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