February 2017

More Affordable Care Act Activity

The following briefly summarizes recent activity that may impact efforts to “repeal and replace” the Affordable Care Act (“ACA”).

On January 30, 2017, President Trump signed an Executive Order *Reducing Regulation and Controlling Regulatory Costs*. For employers and plan sponsors struggling to keep up with the ever-increasing mountain of rules and regulations, this Executive Order signals the desire of the Trump administration to relieve businesses of time consuming and costly regulations. The Executive Order generally calls for federal agencies to identify at least two existing regulations to be eliminated for every new regulation that is issued with the cost associated with the regulatory initiative to be prudently managed and controlled through a budgeting process. The Executive Order directs all agency heads to ensure that the total incremental cost of all new regulations (including repealed regulations), is cost generally neutral, unless otherwise required by law.

This most recent Executive Order builds on an earlier memorandum issued to the heads and acting heads of executive departments and agencies to place a freeze (pending review) on certain regulations that have already been published in the federal register but have not yet taken effect. The freeze basically postpones the effective date of these regulations for 60 days (and beyond, if appropriate), as permitted by applicable law.

While these actions ***do not create or repeal enacted legislation (and implementing regulations) at the present time***, it does set the stage for a less burdensome regulatory environment in which businesses currently find themselves.

In other developments, the Congress has put forth a series of four short Discussion Draft bills to be taken up in Committee that seek to “replace” certain parts of the ACA, primarily as it relates to the individual marketplace as insurers have expressed concerns about the continued viability of this market segment. The discussion draft bills, generally with effective dates of January 1, 2018, address the following:

- Prohibiting the application of pre-existing condition limitation exclusions and guaranteeing that health coverage is available in the individual and group market upon repeal of the ACA.

- Limiting the grace period for non-payment of premiums in the individual market to be based on state law or one month (if no state law provision exists). Currently, individuals who purchase coverage from an ACA exchange and qualify for premium assistance enjoy a 90-day grace period for non-payment of premium. Carriers must pay claims during the initial 30-day grace period and then may pend claims thereafter; leaving the provider without payment for services. Individuals can essentially pay premiums for nine months and receive services for a full year, without repercussion.

- Modifying the limitations put on insurers when rating individual and small group plans by allowing a greater spread between the rates that may be charged to younger and older enrollees. Current underwriting rules place higher costs on younger enrollees and lower costs on older enrollees.

- Implementing stricter verification of special enrollment periods in the exchange when individuals wish to enroll in coverage other than at the annual open enrollment period. Insurance carriers have complained that special enrollment provisions have been quite generous which encourages individuals to wait until they have health issues to sign up for coverage and subsequently drop coverage once care has been accessed. Insurers also have been stating that individuals who enroll during the year under a special enrollment provision cost more and enroll for shorter periods of time than those who enroll at the designated open enrollment period.

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