



## CLIENT ALERT

### WHAT IS THE AMERICAN HEALTH CARE ACT?

MARCH 2017

Late in the evening on March 6, 2017, the House Republican leadership introduced a budget reconciliation bill that repeals certain parts of the Affordable Care Act and offers new provisions that would affect employer sponsored health coverage. The bill, labeled the American Health Care Act (“AHCA”), would repeal the penalties associated with the employer and individual mandates, would eliminate many of the Affordable Care Act’s revenue provisions, and would make many other significant changes to the Affordable Care Act.

Due to a lack of votes in the Senate, the AHCA must be passed through the reconciliation process, meaning that any changes to the Affordable Care Act and new replacement proposals must be limited to provisions that have an impact on the federal budget. Some of the provisions of the Affordable Care Act that would remain unchanged include:

- The requirement to cover adult children up to age 26;
- The limits on how much covered individuals pay out of pocket;
- The requirement that insurers cover individuals with preexisting health conditions;
- The requirement that insurance coverage does not include lifetime or annual limits;

- The requirement that insurance covers certain essential health benefits;
- Wellness incentives that were permitted under the Affordable Care Act;
- The nondiscrimination requirements under Section 1557 of the Affordable Care Act.

The proposed legislation also makes changes to the Affordable Care Act that affect health coverage both in the individual market and coverage that individuals receive from their employers. Some of the changes that were proposed in the AHCA include provisions that:

- Repeal the penalties associated with the individual and employer mandates effective as of January 1, 2016;
- Delay the tax on high cost health coverage (the “Cadillac Tax”) to 2025;
- Retain the Affordable Care Act’s employer information reporting requirements;
- Increase the annual tax free contribution limit to health savings accounts (“HSAs”) to \$6,550 (self-only coverage) and \$13,100 (family coverage);



## CLIENT ALERT

- Repeal the \$2,500 annual limit on contributions to health flexible spending accounts (FSAs);
- Allow insurers selling coverage in the individual market to impose a 30% surcharge on individuals who have a gap in coverage of at least 63 continuous days during the 12 months preceding coverage;
- Repeal most of the Affordable Care Act's revenue provisions including the health insurance tax and the Affordable Care Act's Medicare surcharge on certain high income taxpayers;
- Make major changes to the Medicaid expansion.

### What We Believe May Happen and What We Do Not Know

According to numerous press reports, Republican members in both the Senate and the House are not unified in support of the bill. Some factions in the Republican majority may withhold support because the proposal does not go far enough in repealing the Affordable Care Act; other groups are concerned about the impact that the proposal would have on constituents who have gained coverage through the Affordable Care Act's Medicaid expansion.

Given the controversy it is likely that any final bill that Congress votes on will look significantly different from the original proposal that the Republican leadership

released on March 6th. At this early stage in the legislative process, it is hard to predict the shape of the final bill (if any) that will be presented to President Trump for signature.

In addition, some of the provisions that affect employers that are carried over from the Affordable Care Act are unclear. For example, the AHCA in its current form retains the employer information reporting requirements. Should the legislation pass in a framework that is roughly similar to the March 6th proposal, it is still unclear if and how those information reporting requirements would be relaxed should the final legislation eliminate the penalties associated with the employer mandate.

### What This Means for Employers

As we discussed in our [prior alert](#), the Patient Protection and Affordable Care Act is still in place. Employers should assume that the Affordable Care Act will remain intact for the near term. Large employers and plan sponsors should continue to comply with information reporting requirements until there is further guidance either in the form of a replacement plan that the President signs into law or specific agency guidance is issued that alters existing Affordable Care Act obligations. Employers engaged in collective bargaining should think strategically about provisions in their agreements that specifically address the likelihood of major legislation that may go into effect at some unknown future date.