A Trump Presidency - Potential Impacts on Employee Benefits Law and Policy

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LORMAN EDUCATION SERVICES
December 2016

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If there is one thing that the Republican Party has promised over the last six years, it has been a repeal and replacement of the Patient Protection and Affordable Care Act ("ACA"). With a Republican majority in congress and Trump as President-Elect, we can certainly expect to learn more about his proposed health care policies, including the repeal of the ACA, in the coming weeks and months. With that said, one point is clear: there is very little certainty about what effect the incoming administration will have on employer-sponsored healthcare benefits.

I. THE FUTURE OF THE AFFORDABLE CARE ACT

Unfortunately, one can only be left to guess what the Trump administration's plans for the future are. President Trump has promised to "repeal and replace" the Affordable Care Act; however, an outright repeal seems unlikely. Repealing the entire law, which has completely reshaped the healthcare system over the last six years, would result in utter chaos. First, a full repeal would eliminate healthcare exchanges, as well as federal subsidies promised to those who purchased health plans on the exchanges. This would result in an estimated 1.7 million Americans losing their insurance overnight. Thus, it is much more likely that a slower, more phased approach will be taken with respect to dismantling the Affordable Care Act.

Trump's plan for health care reform, as outlined on his election website, provides the most insight into the goals of his new administration. However, at just over 1,000 words, there aren't many details as to how the new administration will implement his plan, or how the resulting changes would manifest. Following his first meeting with President Obama, Trump indicated that he would preserve two aspects of the Affordable Care Act: 1) the ban on pre-existing conditions; and 2) the ability of young adults to stay on their parents' insurance plan until they reach the age of 26. According to Trump's campaign website, one of the administration's top priorities will be to repeal the individual mandate that currently requires individuals to pay a penalty if they are without health insurance for more than two months. Without the individual mandate and with the continued pre-existing condition exclusion provision, it is likely that individuals will be inclined to wait until they are sick before acquiring health insurance, causing a rise in premiums and other potential issues for the insurance market.

In addition to repealing the Affordable Care Act, Trump has also promised an full overhaul of current healthcare related policies, and has endorsed the following initiatives:

- Modify existing law that inhibits the sale of health insurance across state lines. Any vendor would be able to offer insurance in any state, provided the plan complies with the state's requirements;

- Allow individuals to deduct health insurance premiums from their tax returns;

- Allow individuals to use health savings accounts in a more robust way than regulation currently allows;

- Require price transparency from all healthcare providers, especially doctors and healthcare organizations like clinics and hospitals; and

- Remove barriers to entry into the free market for the pharmaceutical industry.

Although many portions of Trump's initiative remain unclear, with a Republican-controlled House and Senate, some level of change can be expected.

II. HOW THESE CHANGES MAY AFFECT YOUR BUSINESS

Although many of Trump's policies revolve around either repealing and replacing the Affordable Care Act entirely or keeping portions of the law and improving it, due to the nature of the dynamics in Washington, D.C., we simply cannot know or fully understand the ramifications of some of these policies and how they will affect employer-sponsored plans. It is also unclear if the Trump Administration will drastically overhaul the employer-based health insurance market, where approximately half of Americans get their insurance coverage and which has mostly stayed intact under President Obama. With that said, there are several key provisions of the Trump Administration's plan that employers should keep their eye on.

First, like the individual mandate, the Trump Administration has indicated that there may be a full repeal of the employer mandate which requires organizations with 50 or more full-time or equivalent employees to offer ACA-compliant insurance or pay a steep tax penalty. Repealing the employer mandate will eliminate many of the administrative burdens associated with implementing the ACA coverage in the workplace, which have been enormous and costly for many employers.

In addition, the Trump Administration is also pushing for is a full repeal of the Cadillac Tax. The Cadillac Tax is a 40 % excise tax on employer-sponsored coverage that exceeds certain benefit thresholds, which is set to take effect in 2020. Employers and unions have vehemently opposed the tax, and have seen it as a flawed way to hold down health plan costs. Ultimately, opponents of the tax believe that it will likely raise the cost of employer-sponsored coverage without addressing the real issue: continued growth in health care expenses beyond wage and economy growth. Both Democrats and Republicans have proposed repealing the tax; therefore, the odds are favorable that the tax will never be implemented. With that said, other legislative priorities including tax reform and the impact of the Cadillac Tax on the federal deficit could hinder its repeal.

Another key change that will likely have priority on the Republican agenda is increasing the flexibility and enhancement for health savings accounts, flexible spending accounts, and health reimbursement arrangements, such as allowing higher contribution levels and more options regarding how account funds can be spent. For instance, one proposal would restore the ability to use FSA’s for purchasing over-the-counter medications. Employers should expect to see legal and regulatory changes that encourage the use of these programs.

One thing employers should not expect is a decrease in premiums. Prior to the enactment of the Affordable Health Care Act, insurance premiums on the individual market were rising by about ten percent a year. But, it is important to note that the cost of any given person’s health plan was dependent on how sick they were. Insurance companies could charge people more, or deny them coverage entirely, if they were sick. Insurers were partly able to keep insurance down just by keeping sick people off their plans. However, the pre-existing conditions provision in Affordable Health Care Act which prohibits that practice isn’t going anywhere given the President-Elect Trump plans to leave that portion of the Act intact.

In addition, there is evidence that 17.6 million people in the United States gained medical insurance coverage as a result of the Affordable Health Care Act. As individuals begin to discontinue their coverage, insurance companies will look for ways to regain the loss in revenue they experience. Thus, premiums will likely increase as a result of fewer policy holders. Finally, hospitals will likely press for higher reimbursements to recover uncompensated care loses for uninsured patient care.

IV. TAKEAWAYS FOR EMPLOYERS

The key takeaway here is that while employers will likely see a reduction of the administrative burdens associated with the Affordable Health Care Act, don’t expect premiums to get cheaper anytime soon. In addition, employers should also expect an increase in the desire for and use of health savings accounts, flexible spending accounts, and health reimbursement arrangements. Employers should expect to see legal and regulatory changes that encourage the use of these programs and a good benefit manager should be prepared to meet the demand for such programs.

Remember, these changes likely won’t be immediate, but it is never too soon for employers to start thinking about the implication that repealing and/or replacing the Affordable Health Care Act will have on their benefit strategy. In the meantime, it is important to remember that the Affordable Health Care Act is still the law of the land. Prudent employers will want to continue to comply with the Act until some formal guidance is issued.