Here We Go Again- The Senate's Health Reform Bill

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Late last week the Senate released its version of a health reform bill (the "Better Care Reconciliation Act of 2017" or the "Senate bill") to fix the Patient Protection and Affordable Care Act (the "PPACA"). The Senate Bill like the House Bill have a very long road ahead and many compromises that will likely need to be made before parts of either becomes law. Both the House and Senate bills "repeal" the individual mandate tax and the employer shared responsibility tax by changing the dollar tax penalty in the statute to "$0", but leaving in place the statutory mechanism and requirements. They both also leave untouched the requirement that the employer report offers of coverage (and for self-insured plans, coverage provided) on Forms 1095-C and that insurers report the insurance coverage provided on Form 1095-B. The coverage or benefit mandates or standards imposed by PPACA are not altered by either bill.

While the Senate bill like the House bill repeals the tax commonly known as the Cadillac tax through 2025, it also eliminates the small business tax credit after 2019. The Senate bill also includes a couple of changes employers should watch carefully because of their proposed effective date and the communications that may be necessitated. The Senate bill proposes to remove the dollar limit on health flexible spending account contributions by employees effective after December 31, 2017, currently many employers are preparing for annual enrollment for the next calendar year and may want to address this limit if it is made unlimited rather than having an unlimited amount.

The Senate bill also proposes to make over the counter medical expenses reimbursable under health savings accounts ("HSAs"), health flexible spending accounts ("HFSAs") and under health reimbursement accounts ("HRAs") effective after December 31, 2016. While HSAs are the responsibility of the individual account owner, the employer administers or retains an administrator generally for HFSAs and HRAs and administrators cannot change their systems immediately. When over the counter medical expenses were previously added as reimbursable with a prescription, this also required changes in pharmacy receipts that do not happen overnight. Employers should watch the effective date of such changes, if enacted, and be prepared to address how those will be handled under the employer's plan for the HFSAs or HRAs.

The Senate bill also proposes to increase the HSA deduction limit to the out of pocket maximum limit under the high deductible health plan which will impact employer's payroll system and communications to employees for the employers facilitating employee pre-tax payroll deductions for HSA contributions. The Senate bill proposes this will be effective after 2017 (this means the fall annual enrollment may need to be modified if this is passed). The Senate bill also includes a mechanism for a small business association type plan that would permit small employers to band together to buy insured health plans if certain organizations meeting the new requirements are formed.

The Senate Bill was scored as resulting in 22,000,000 more persons losing insurance over 10 years if enacted. The bill's limitations on the premium tax credit availability and changes on Medicaid will likely leave some individuals who currently have coverage without coverage. Anytime people lose coverage, more uncompensated care at health care providers will result in increased rates for care charged to those with coverage and that means increased costs for employer sponsored plans The Senate Bill like the House Bill focuses on tax provisions only because of the way in which they are introducing the bill to utilize a mechanism that permits a smaller majority to pass it. The Senate bill like the house bill permits increased premiums for older persons which will impact the affordability of the coverage for older persons. At this point stay tuned, the Senate Bill just made it out of Committee and it has not been passed by the Senate, there is a long legislative journey ahead for a bill to become a law.

Telemedicine in Texas

The Texas legislature passed and the governor signed into law an amendment to the insurance code that permits telemedicine (e.g., video consultations and prescribing by telephone) in Texas beginning in 2018. The penalty for violating the prior statute only impacted the physician providing the telemedicine service.

IRS Finds Some Reimbursement Arrangements too Good to be True

The IRS recently issued a Chief Counsel Advice Memorandum. The first dealt with an arrangement whereby the individual employees were on the average paid more benefits than they had paid in after tax contributions to be able to participate in the “wellness program”. The amounts paid under this program were not excludible from the individual employees’ income. These were being sold as fixed indemnity programs and as wellness programs.

Contacts:

Greta Cowart
214.745.5275
gcowart@winstead.com
Marsha Clarke *(Admitted in MO and IL)*
214.745.5877
mclarke@winstead.com
Nancy Furney
214.745.5228
nfurney@winstead.com
Lori Oliphant
214.745.5643
loliphant@winstead.com