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The American Health Care Act

»» Mary Bauman



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Post-Election Activity

Executive Order

Executive Order

- January 20, 2017 Executive Order
 - Section 2 authorizes the Secretary of HHS and heads of other executive departments and agencies
 - To waive, defer, grant exemptions from, or delay the implementation of
 - a cost, fee, tax, penalty or regulatory burden under the ACA
 - which would impact individuals, health insurers, purchasers of health insurance, etc.

Executive Order

- Example of impact: On February 15 the IRS reported on its website that it will not reject individual tax returns failing to indicate whether enrolled in minimum essential health coverage

Executive Order

- Section 2 does not specifically mention employers as beneficiaries of this relief but purchasers of health insurance could include employers
- There is no specific mention of employer-sponsors of self-funded group health plans

Executive Order

- The Executive Order:
 - Conveys the Trump's administration's intent to repeal and replace the ACA as soon as possible
 - Grants discretion to executive departments and agencies to not enforce or delay enforcing the ACA (to the extent permitted by law)
 - Section 4 confirms the Trump administration's goal to allow the sale of health insurance across state lines

Executive Order

- This Executive Order does not:
 - Relieve employers from complying with any of the ACA requirements with respect to employer-sponsored group health plans
 - Waive the excise tax under employer-shared responsibility provisions of the ACA (the pay or play penalty)
 - Relieve employers from the required reporting for 2016 – W-2 and pay or play (generally fulfilled by IRS Forms 1094-C and 1095-C) which were due in the first quarter of 2017

Freeze Order

Freeze Order

- January 20, 2017 Freeze Order
 - Postpones regulations issued but not yet effective for 60 days
 - Withdraws regulations in pipeline but not yet published
 - Directs no new regulations to be sent to Federal Register for publication

Freeze Order

- Examples:
 - Proposed 5500 regulations
 - Project to issue Cadillac Tax regs
 - Nondiscrimination regs for fully-insured health plans

HHS Final Rule to Stabilize Marketplace

HHS Final Rule

- Issued in April 2017
- Changes to shore up individual market pending exchange modification or repeal
- Modifies current exchange rules in response to insurer requests

HHS Final Rule

- Key changes:
 - Shortens annual open enrollment period
 - Tightens up special enrollment period rules
 - Restricts guaranteed availability for individuals with outstanding premium bills

Withdrawal of Support for Exchanges

Withdrawal of Support for Exchanges

- Trump administration pulled millions of advertising dollars to publicize the open enrollment season for exchange coverage

Treasury Inspector General

Treasury Inspector General

- On April 10, 2017, the Treasury Inspector General for Tax Administration issued a report concerning employer ACA reporting
- The report identified major problems in processing forms submitted by paper

Treasury Inspector General

- The report also found that there were error codes generated when no errors were present – employers were then asked to correct errors when none existed which in turn burdened IRS staff with unnecessary inquiries

Treasury Inspector General

- Conversely, error codes were not generated when errors were in fact present
- The Treasury Inspector General offered several recommendations to improve management practices and the IRS has agreed to most of them and is making changes to improve reporting for future years (if applicable)

Assessment of Pay or Play Penalties

Assessment of Pay or Play Penalties

- No IRS pay or play penalties have been assessed to date
- IRS updated its website recently to indicate that it expects to send letters to employers “in 2017” (previously stated “beginning in early 2017”) regarding pay or play penalty liability for 2015

The American Health Care Act

The American Health Care Act

- The AHCA was introduced in early March 2017
- The AHCA passed two committees of the House of Representatives
- The legislation ran into opposition from the Freedom Caucus, a group of conservative GOP representatives

The AHCA

- The AHCA was scheduled for a full House vote on March 24, 2017 but the vote was withdrawn by Speaker Ryan due to a lack of sufficient votes (216 minimum) to pass
- The AHCA, as modified by the MacArthur Amendment and the Upton Amendment, was approved by the House on May 4, 2017 by a vote of 217 to 213

The AHCA

- Summary of key changes
 - Individual mandate penalty reduced to \$0 beginning in 2016
 - Pay or play penalty reduced to \$0 beginning in 2016
 - Threshold for tax-deduction of unreimbursed medical expenses reduced to 5.8% of AGI (currently 10%) beginning in 2017

The AHCA

- Repeal the 3.8% tax on net investment income beginning in 2017
- Repeal the .09% additional Medicare tax on high-wage earners beginning in 2023
- Repeal the ACA's limitation on tax-deductible retiree drug expenses reimbursed through the federal retiree drug subsidy program beginning in 2017
- Repeal the small employer health insurance tax credit beginning in 2020

The AHCA

- Replace the ACA's current income-adjusted premium tax credits with age-adjusted tax credits
 - Also based on family size
 - Unavailable if eligible for employer health coverage or government health coverage
 - Credit phases out for higher income individuals

The AHCA

- **Simplified reporting method using Form W-2**
 - Using the reconciliation process, Congress can't repeal the reporting requirements under Section 6056 of the Internal Revenue Code (Forms 1094-C and 1095-C)
 - However, latest House summary states:

“The [AHCA] also calls for simplified reporting of an offer of coverage on the W-2 by employers. Reconciliation rules limit the ability of Congress to repeal the current reporting, but, when the current reporting becomes redundant and replaced by the reporting mechanism called for in the [AHCA], then the Secretary of Treasury can stop enforcing reporting that is not needed for taxable purposes.”

The AHCA

- Remove the limitation on employee contributions to medical FSAs (currently \$2,600) beginning in 2017
- Permit OTC drugs to be reimbursed tax-free under an FSA or HSA beginning in 2017
- Reduce the additional tax on “unqualified” distributions from HSAs to pre-ACA level of 10% (currently 20%) beginning in 2017

The AHCA

- Increase HSA contribution limits to correlate with the maximum HDHP out-of-pocket limits beginning in 2017
 - Individual: \$3,400 to \$6,550
 - Family: \$6,750 to \$13,100
- Both older spouses can make age 55 catch-up contributions to same HSA beginning in 2018
- Uninsured health expenses incurred within 60 days of HSA establishment can be reimbursed tax-free beginning in 2018

The AHCA

- Delay the Cadillac tax until 2026
- Replace the current Medicaid funding formula based on a federal match with a per-cap or block-grant formula

The AHCA

- Impose a temporary (one year) 30% premium penalty for the failure to maintain “continuous coverage” (to replace the individual mandate) beginning in 2019
 - A break in coverage of more than 63 days triggers the premium penalty
- Increase the ratio of premiums charged to older individuals vs. younger individuals from 3:1 to 5:1
- Create state high-risk pools

The AHCA

- What ACA provisions were not affected:
 - Prohibition of pre-existing condition exclusions
 - Prohibition of medical underwriting
 - Prohibition of annual and lifetime limits
 - Discrimination on the basis of race, nationality, disability, age, or sex (Section 1557 of the ACA)
 - Guaranteed availability/renewability (fully insured plans)
 - Requirement to offer coverage to children up to age 26
 - Limitation on out-of-pocket maximums

The MacArthur Amendment

The MacArthur Amendment

- Proposes revisions by moderate GOP and Freedom Caucus
 - Each state could apply for a waiver of the following provisions:
 - For plan years beginning in 2018, to set a higher age ratio in establishing exchange premiums
 - For plan years beginning in 2020, to set state-specific definition of “essential health benefits”

The MacArthur Amendment

- For plan years beginning in 2019, to allow an individual's health status to be considered in underwriting for one year where the individual has had a gap in coverage of more than 63 days
 - State must offer financial assistance to affected individuals
 - The Upton Amendment would further increase funding for this state financial assistance by \$8 billion

The MacArthur Amendment

- Waiver process on fast track, with decision within 60 days
- Waiver application must show proposal is designed to reduce premiums, increase enrollment, stabilize market, stabilize premiums for individuals with pre-existing conditions and/or increase the choice of health plans

Future Developments

Future Developments

- *House v. Price* – elimination of cost-sharing reduction reimbursements from HHS
 - Status report from parties set for August 20, 2017
 - Insurers have until June 21, 2017 to withdraw from exchanges for 2018

Future Developments

- Executive Action (or Inaction). Examples:
 - Delay of the pay or play penalty (and reporting)
 - If reporting, extension of good faith effort relief
 - Delay of nondiscrimination requirements for non-grandfathered fully insured plans
 - Delay to not issue regulations to implement Cadillac tax
 - Modify list of required preventive care to exclude contraceptives (or at least emergency contraceptives)



Mary Bauman

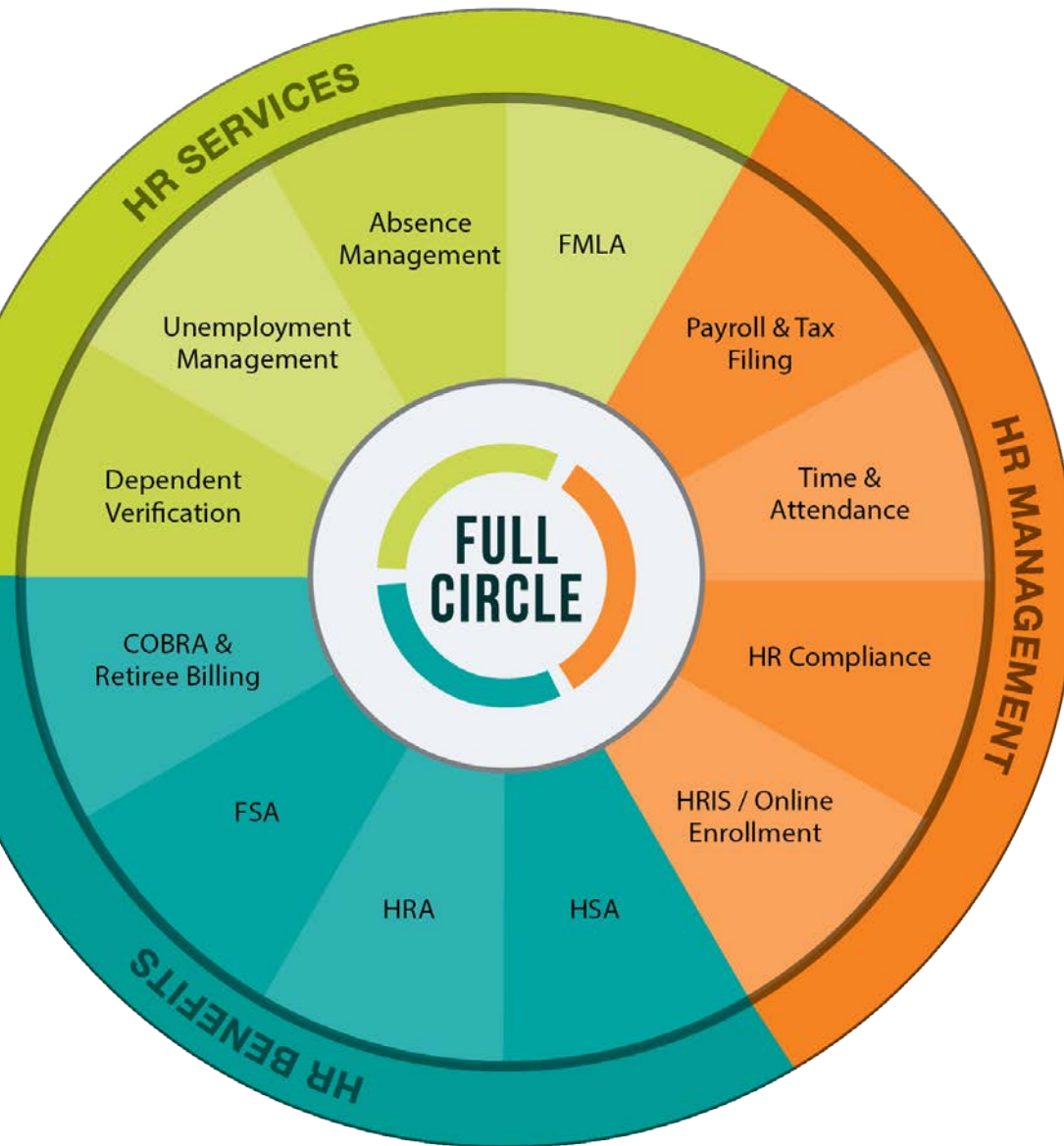
616.831.1704

baumanm@millerjohnson.com

millerjohnson.com

45 Ottawa Ave SW
Suite 1100
Grand Rapids, MI 49503

100 W Michigan Ave
Suite 200
Kalamazoo, MI 49007



HR solutions should be simple.
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800.444.1922

sales@basiconline.com

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