November 18, 2016

The Future of the ACA and Employee Benefit Plans

It's been over a week since the election results came in and since then, you have likely been inundated with emails, seen many television interviews, and heard other news sources espousing predictions of what is on the horizon for employee benefit plans, and specifically, the future of the Affordable Care Act ("ACA"). Indeed, the Trump administration and the Republican-dominated Congress will likely come out swinging, raring to take down the ACA as one of its top priorities in an effort to show supporters that President Trump is fulfilling one of his campaign promises immediately.

Since almost no one predicted this outcome, almost all assumptions regarding the future of the ACA were based on a Democratic President and Senate. Since Republicans are now just beginning to develop and flesh out their strategies, many theories are still conjecture at this point; however, there are some consistent themes and predictions upon which industry leaders all agree. "Reconciliation" and "Repeal and Replace" are going to be terms we hear on repeat over the next few months. Congress will likely begin the "Repeal and Replace" process by looking again at the Reconciliation legislation it passed in 2015 (which was subsequently vetoed by President Obama) that would have repealed the spending and tax revenue provisions of the ACA. Since this legislation was already passed, Congress may just take it "off the shelf" and vote again to pass it.

If the prior or a similar version of the Reconciliation legislation is passed, it is expected that the following provisions of the ACA will be repealed: Federal Exchanges (which may include a transition period or "off-ramp" of one, two, or more years so millions of people are not left without coverage) and Federal Subsidies, the Employer Mandate, the Individual Mandate (also possibly with a transition period to effectively resolve the issue of needing this mandate to retain the guaranteed issue provision), Employer Reporting Requirements, the Cadillac Tax, and all other taxes (e.g. medical device tax, health insurance tax, etc.). Though these provisions are likely on the chopping block early on, other provisions of the ACA may remain. Many insiders believe, and President-elect Trump has stated on a few occasions, that some of the popular provisions in the "Market Reform" section of the ACA should not and will not be repealed. Some of these provisions include Coverage of Pre-Existing Conditions, Dependent Coverage to Age 26, Preventive Care Coverage, and No Rescission of Coverage, among a few others.

If the above theories on which ACA provisions will be repealed and which will remain are correct, we are left with one important question: if all of the ACA tax provisions are repealed, how will the government pay for the Market Reform provisions, which are some of the most expensive pieces of the ACA to implement? In other words, what will "Replace" the tax provisions to raise the necessary funds for the remaining provisions? Speaker Paul Ryan and House Republicans' "Better Way" proposal issued in June 2016, which sets forth a number of replacements to overhaul the ACA, may be the starting point. (Click HERE to read the proposal in full.) Though this proposal was never introduced to Congress as legislation and needs to be reworked in many areas, it will likely serve as a blueprint for some of the ACA replacement provisions. Some of the replacement concepts discussed in the proposal include the ability to purchase insurance across state lines, expanding the market for Health Savings Accounts and Consumer Driven Healthcare, the use of High-Risk Pools, and Medicaid Reform.

What Should You do Now?

Though it looks like many of the most controversial parts of the ACA may be repealed after January 20, 2017, at this point, the ACA in its entirety is still the law of the land. Until certain provisions have been officially repealed and/or replaced we recommend that all employers continue to strive to comply with the law. It is the commitment of AssuredPartners that we will remain at the forefront of these discussions and changes and communicate them to our clients in a timely manner as they unfold over the next few months.

Please contact your local member of the AssuredPartners benefit team if you have questions or need assistance with this or other compliance matters.

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