Healthcare Reform:
Version ???

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Last week, the House of Representatives passed yet another version of healthcare reform legislation (yawn!) to which their colleagues in the U.S. Senate responded, “No thank you, we’ll start from scratch with our own reform package!” And so the saga continues: to reform or not to reform, that is the question. But on the off-chance that this latest version of reform ever sees the light of day, here is a short summary of the provisions of the American Health Care Act (AHCA).

Note: if this summary bears a striking resemblance to our February 2017 Bulletin entitled, “‘Repeal and Reform’ Beginning to Take Shape,” you are not seeing double!

Individual and Employer Mandate Penalties Reduced to Zero – Though not being repealed in their entirety, the AHCA would reduce the penalty to zero, retroactively applying as of December 31, 2015, removing the financial sanctions behind the mandate.

While it is not specifically stated, it would appear that plans will still be required to report offers of coverage to full-time employees, as defined in 4980(H), in Part II of the 1095-C through 2019 in accordance with Code section 6056. Section 6056 reporting, as manifested in Part II of the 1095-C, remains relevant not only to the 4980(H) excise tax, but also for confirming eligibility for premium tax credits / advance subsidies for coverage in the Exchange. Since the credit / subsidy will not go away immediately, Code Section 6056 reporting is still viable and necessary.

Reducing the individual mandate penalty to zero could eliminate the reporting that plans currently do in Part III of the 1095-C with respect to individuals enrolled in plans that provide Minimum Essential Coverage (MEC). However, there is no apparent short-term relief.

Delay of Cadillac Tax – The effective date of the 40% excise (or “Cadillac”) tax most recently slated to take effect in 2020 will be pushed back to January 1, 2026.

Flexible Spending Account (FSA) and Health Savings Account (HSA) Regulation Changes

Elimination of Health FSA Contribution Limits – Up to this point, the maximum anyone could contribute to a Health FSA for 2017 was $2,600. With the passage of the AHCA, there will no longer be a required contribution limit for the Health FSA. Employers will be free to set their own limits within their plan document. This will be retroactively effective as of December 31, 2016.

Increased HSA Contribution Limits – Effective immediately, HSA contribution limits for 2017 will be increased to equal the maximum annual deductibles plus out-of-pocket expenses under a high-deductible plan. The new limits would be:

- $6,550 for individual coverage under a high deductible health plan (HDHP)
- $13,100 for family coverage under an HDHP
Allowance of Spousal HSA Catch-Up Contributions – While HSA account holders over the age of 55 were previously able to make catch-up contributions to their own HSAs, the AHCA will expand these permissions to allow both spouses to make catch-up contributions to one HSA beginning in 2017.

Repeal of the Tax on Over-the-Counter Medications – While the ACA only considered over-the-counter medications eligible for reimbursement from a tax-advantaged savings account (FSA or HSA) with a prescription, the AHCA would eliminate the prescription requirement for over-the-counter medications, adding these medications to the list of qualified eligible medical expenses that may be reimbursed under Section 213(d).

Reduction of the Tax Penalty for Non-Medical HSA Distributions – The AHCA will reduce the penalty for HSA distributions for non-qualified expenses from 20% to 10%.

Addition of Special Rule for HSA Distributions Prior to Account Establishment – Beginning in 2018, the AHCA would implement a rule that will allow an individual to make a withdrawal from the HSA for a qualified expense prior to the account being established, as long as the HSA is established within 60 days from the start of coverage under an HDHP.

Action Plan
Enjoy your summer and turn off the news apps as they apply to healthcare reform. Nothing to see here, just keep moving!