Revisiting the Affordable Care Act

Dale R. Vlasek, Antoinette M. Pilzner | Thursday, March 30, 2017

Over 150 million Americans currently receive their health care coverage through employer sponsored health plans. For as much as the Affordable Care Act (ACA) focused on expanding coverage for the previously uninsured and underinsured, it also extended protections to employees receiving health insurance through their employer.

After last week's cancellation of the vote on the American Health Care Act (AHCA), the House Republican plan to repeal the ACA, it is important to take a step back and revisit some of the major ACA employer provisions that remain intact for now.

The Employer Shared Responsibility Payment (ESRP)

One of the main components of the ACA is the ESRP, commonly known as the "employer mandate." The employer mandate requires that employers offer affordable minimum essential health care coverage that provides minimum value or face penalties. The penalties generally applied beginning in 2016, but would have been eliminated retroactively to the beginning in 2016 had the AHCA become law. The ESRP does not apply to employers with fewer than 50 full-time employees (including full-time equivalents).

The 2017 ESRPs are as follows:

- **PENALTY FOR NOT OFFERING COVERAGE**

If the employer does not offer minimum essential health coverage that is affordable and provides minimum value to at least 95 percent of its full-time employees (and their dependents), and at least one employee receives a federal premium subsidy for marketplace coverage, then the employer must pay $2,260 per full-time employee (minus the first 30).

For example, if an employer with 60 full-time employees does not offer qualifying coverage to at least 95 percent of such employees, the 2017 penalty would equal $67,800. Note that while the penalty amount is listed as an annual amount, the penalty is computed on a monthly basis. Thus if the employer sufficiently offered coverage for half the year, the penalty would be half that amount, at $33,900.

- **PENALTY FOR OFFERING COVERAGE THAT DOES NOT MEET THE MINIMUM VALUE AND AFFORDABLE COVERAGE REQUIREMENTS.**

If the employer offers coverage to at least 95 percent of its full-time employees (and their dependents), but at least one full-time employee receives a premium tax credit to help pay for coverage through a Marketplace, which may occur because the employer did not offer coverage to that particular employee or because the coverage the employer offered that employee was either unaffordable or did not provide minimum value, then the employer must pay $3,390 per full-time employee that receives a federal subsidy for marketplace coverage. However, this penalty will be capped at the amount the employer would have paid if it was required to pay the $2,260 per full-time employee (minus first 30). The cap ensures that the payment for an employer that offers coverage can never exceed the payment that employer would owe if it did not offer coverage.

For example, if the employer offers noncomplying coverage, and 10 full-time employees purchase coverage on the marketplace, then the fine would be $33,900. But if an employer offering noncomplying coverage has 60 full-time employees that purchase coverage from the marketplace, instead of the $101,700 that would be owed here, the fine would be as if the employer provided no insurance at all, which would be $67,800. This annual penalty is also actually computed on a monthly basis.

- **THE “MINIMUM VALUE” AND “AFFORDABLE COVERAGE” REQUIREMENTS.**

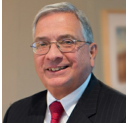
In order to avoid the ESRP, not only must employers provide coverage for their employees, the coverage must provide “minimum value” and “affordable coverage.” An employer-sponsored plan provides “minimum value” if it covers at least 60 percent of the benefits that are expected to be incurred under the plan. In addition, the health plan must be “affordable” meaning that for plan years starting in 2017, the employee does not have to contribute more than 9.69 percent of his or her household income.

The Cadillac Tax

In 2015, Congress delayed implementation of the 40 percent excise tax on high-cost employer-sponsored health coverage, also known as the “Cadillac Tax,” until 2020. The AHCA would have delayed the effective date of the Cadillac Tax until 2025. The 40 percent excise tax would apply to premium costs exceeding $10,900 for single coverage and $29,400 for family coverage, starting in 2020. For example, if individual coverage costs $11,000, the tax is calculated on the excess amount ($800). The tax would be $320 per person having such individual coverage ($800 x 40 percent).

It remains to be seen whether Congress will decide to try to repeal or alter the Affordable Care Act. In the

meantime, there are hefty penalties for failing to comply with the current law. We recommend that you review your current health care plan to ensure that it is ACA compliant. For more information, please feel free to reach out to the McDonald Hopkins attorneys listed below.



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