

MONTHLY BENEFIT

News and Developments
Employee Benefits

CBO: ACA Repeal's Effects on Coverage and Premiums

The Congressional Budget Office released [How Repealing Portions of the Affordable Care Act Would Affect Health Insurance Coverage and Premiums](#), which estimates changes that would result from leaving the ACA's insurance market reforms in place while repealing the law's mandate penalties (including the employer mandate) and subsidies. The report examines a 2015 bill (H.R.3762), which was vetoed, that called for eliminating the ACA's mandate penalties and subsidies while retaining the insurance market reforms. The CBO said such a proposal would increase the number of people who are uninsured by 18 million and raise premiums in the individual market by 20%-25% in the first year after the bill's enactment.

Upcoming Key Dates

3/2/17 – New deadline to furnish to employees the 2016 forms to employer-provided health insurance offer and coverage.

4/10/17 – Application of the DoL's conflict-of-interest/fiduciary rule other than the "best interest contract" exemption.

4/30/17 – Revised deadline for sponsors of individually designed defined contribution plans to convert the plans into preapproved plans and apply for a determination letter.

6/15/17 (fiscal years beginning after) – Application of GASB Statement 75 by governments, requiring reporting of retiree healthcare liabilities on balance sheets.

7/31/17 (for plan years ending on/after 10/1/16 and on/before 10/1/17) – Fifth reporting and payment of the outcomes research ("PCORI") fee by self-insured group health plan sponsors and insurers.

Legislative Activity on the Benefits Front

Soon after his inauguration, the President signed an Executive Order (EO) aimed at "minimizing the economic burden" of the Affordable Care Act (ACA) pending its repeal. The EO directs the federal agencies to "exercise all authority and discretion" permitted by law to "waive, defer, grant exemptions from, or delay" parts of the ACA that would impose financial or regulatory burdens. Although many of the ACA's provisions require an act of Congress to effect changes or require modifications via the regulatory proposal-and-comment process, the issuance of the EO sends a strong signal that the new Administration intends to move quickly on plans to repeal and replace the law. Among the areas that could be immediately affected are the individual mandate (e.g., via the loosening of rules for a hardship exemption) and the essential benefits requirement (e.g., via modifications to the services that plans must cover without charge).

Congressional Republicans continue to call for repealing and replacing the ACA, approving S.Con.Res.3, a budget reconciliation measure that allows for ACA's provisions with budgetary spending or revenue effects to be repealed by a simple majority. The writing of the specific ACA repeal bill(s) must undergo the normal committee process. But GOP leaders shepherding such bills through Congress face many challenges, including: the President's call for a near-concurrent repeal and replacement and "insurance for everybody" under the new plan; budgetary concerns raised by fiscally conservative Republicans over the cost of a replacement; and the acknowledgement that many ACA replacement provisions cannot be overturned without the support from some Democrats to reach a 60-vote hurdle.

Regulations on Hold/Pending Congressional Action

The President also signed a Memorandum to freeze pending regulations – including final rules that are not yet effective – until the White House can review them. Whether the memo affects the Labor Department's (DoL) conflict-of-interest/fiduciary rule that is scheduled to apply beginning Apr. 10, 2017, remains unclear. Other proposed regulations that might fall under the memo would: modernize the Form 5500 annual filing by benefit plans; modify the "abandoned" retirement plan program; amend the Voluntary Fiduciary Correction Program; change the definitions of qualified matching and nonelective contributions (QMACs and QNECs, respectively); update the mortality tables for defined benefit retirement plans; allow pension plan participants to take both an annuity and a lump-sum distribution upon retirement; expand the "missing participants" program; provide an exemption to the fiduciary rule for sellers of fixed annuity products; or modify the rules governing multiemployer plan mergers.

Separately, House members have introduced a number of bills aimed at repealing or limiting various regulations. One, H.J.Res.37, would repeal an EO issued in 2014 on "fair pay and safe workplaces" that requires federal contractors to disclose their labor law violations. The disclosure requirement is on hold under a court order; the pending House measure would permanently block the DoL's disclosure rule.

GAO Reports on Retirement Security and Health Plans

▪ Government Accountability Office issued [*Retirement Security: Improved Guidance Could Help Account Owners Understand the Risks of Investing in Unconventional Assets*](#), which examined the potential risks and responsibilities associated with investments in unconventional assets in 401(k) and other tax-favored retirement plans. The GAO recommended that the IRS improve guidance for account owners with unconventional assets about monitoring for ongoing federal tax liability and clarify how to determine the fair market value of hard-to-value unconventional assets.

▪ In [*Patient Protection and Affordable Care Act: Concentration, Plan Availability and Premiums, and Enrollee Experiences in Health Insurance Markets Since 2014*](#), the GAO's testimony before a congressional panel describes: private health insurance market concentration and issuer participation in the individual and small- and large-group markets from 2011 through 2014; the numbers of health plans and ranges of health plan premiums available to individuals in the first two years of exchange operation; and enrollee experiences with qualified health plans in the first three years of exchange operation.

Cadillac Tax's Effects

The Congressional Research Service's [*The Excise Tax on High-Cost Employer-Sponsored Health Insurance – Estimated Economic Effects*](#) discusses: the potential effects of the Cadillac tax on coverage and the healthcare market; the expected burden of the tax on different group's incomes; and implications for economic efficiency in the context of tax administration. Separately, the CRS released: [*Use of the Annual Appropriations Process to Block Implementation of the ACA \(FY 2011-2017\)*](#); and [*Resources for Frequently Asked Questions about the Affordable Care Act*](#).

Treasury's Financial Report

According to the Treasury Department's [*2016 Financial Report of the U.S. Government*](#), the government took potentially significant steps towards a sustainable fiscal policy by enacting the ACA, the Budget Control Act, and the American Taxpayer Relief Act, with the ACA holding the prospect of lowering long-term per-beneficiary spending growth for Medicare and Medicaid, the BCA curtailing discretionary spending, and ATRA increasing federal revenues.

Regulatory Roundup

Jointly from Treasury, Labor, and Health and Human Services:

- [*Affordable Care Act Implementation Frequently Asked Questions \(Part 37\)*](#) that discusses, among other things, integration of health reimbursement arrangements (HRAs) with group health plans and non-HRA group health plans sponsored by an employer of a spouse of an employee.
- [*FAQs \(Part 36\)*](#) on religious accommodation for coverage of preventive services.

From the Department of Treasury/IRS:

- [*Proposed rule*](#) to amend the definitions of qualified matching contributions (QMACs) and qualified non-elective contributions (QNECs).
- [*Revenue Procedure \(Rev.Proc.\) 2017-18*](#), stating that the last day of the remedial amendment period for 403(b) plans is March 31, 2020.
- [*Rev. Procs. 2017-01 through 2017-08*](#), providing the 2017 procedures for IRS issuance of letters, rulings, determination letters, and technical advice on employee benefits.
- [*Notice 2017-09*](#) providing guidance on electing not to have the "safe harbor" apply regarding penalties for a failure to file correct information returns or to furnish correct payee statements for de minimis errors.
- A [*letter*](#) authorizing the first multiemployer pension plan to suspend benefits and certifying the election results favoring the benefits suspension.
- [*Audit Techniques Guide*](#) on "golden parachute" payments.
- A [*web update*](#) on the "universal availability" requirement for 403(b) plans.
- [*Chief Counsel Memorandum \(CCM\) 201703013*](#) on the tax treatment of benefits paid by fixed-indemnity health plans.
- [*CCM 201645012*](#) on matching contributions in section 409A nonqualified deferred compensation plans.

From the Department of Labor:

- [*Final rule*](#) adjusting the civil monetary penalties under ERISA for 2017.
- [*Conflict of Interest FAQs \(Part II-Rule\)*](#) and [*Consumer Protections for Retirement Investors—FAQs on Your Rights and Financial Advisers*](#).
- A [*chart*](#) showing that 74% of defined contribution retirement plan participants had saving and thrift plans in 2015.
- [*FY 2016 MHPAEA Enforcement Fact Sheet*](#), summarizing the agency's activities relating to the Mental Health Parity and Addiction Equity Act.
- ERISA Advisory Council reports: [*Cybersecurity Considerations for Benefit Plans*](#) and [*Participant Plan Transfers and Account Consolidation for the Advancement of Lifetime Plan Participation*](#).

From the Pension Benefit Guaranty Corporation:

- [*Final rule*](#) adjusting the agency's civil monetary penalties for 2017 for a failure to provide certain required information (e.g., reportable event filings, 4010 filings).
- [*Request for Information*](#) on an alternative "two-pool" withdrawal liability method.
- [*Comprehensive Premium Filing Instructions*](#) for the 2017 plan year.
- A [*web update*](#) about changes to the 4010 E-filing portal.

From the Department of Health and Human Services:

- Updated [*poverty guidelines*](#) for 2017 to account for the 2016 inflation increase in prices.
- [*Technical Guidance*](#) with requirements for self-insured non-federal governmental health plans and insurers offering coverage using the federal external review process.

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