Protected: Understanding the Tax Bills That Could Become A Partial Health Law

In the last two weeks, both Houses of Congress passed comprehensive tax reform measures. The reason why these bills aren't law yet is that there are significant differences between the House and Senate plans that still need to be negotiated in a conference committee. Notable provisions in both versions of tax reform could impact health insurance coverage requirements, employee benefit plan options, and health care costs.

Individual Mandate

The Senate bill would zero-out the individual mandate penalty, so that beginning in 2019 Americans could go without minimum essential coverage and not be subject to a fine. For the upcoming 2018 coverage year, individuals would still have to obtain coverage or an individual mandate waiver, or pay a fine of $695 per adult or 2.5% of household income over tax filing thresholds, whichever is higher. The House-passed tax plan does not address waiving the individual mandate penalty, but Congressional negotiators have indicated that they are likely to keep this provision in whatever bill they ultimately send to President Trump.

The Congressional Budget Office estimates that eliminating the individual mandate penalty will save the federal government $300 billion over the next ten years, since they predict 13 million people will drop their current insurance coverage and will not take advantage of either individual market premium tax credit subsidies or the tax benefits associated with employer-sponsored coverage. While they are widely varying opinions about what the market impact of lowering the individual mandate penalty to zero will truly be, any change will have at least some impact on health insurance coverage in the future. The GOP leadership in Congress has stated that they will reinvest the $300 billion of savings into market stabilization measures, but those provisions are not included in either version of the tax bill, so Congress will need to take them up separately.

It is important to note that neither bill addresses the employer mandate or information reporting requirements. So even with the elimination of the individual mandate penalty, applicable large employers will still have to offer compliant plans or face tax penalties, and all reporting requirements for employers, self-funded plans, and health insurance carriers will remain the same. Also, since the Senate bill doesn't repeal the individual mandate's provisions, but merely changes the associated penalty to zero dollars, future legislative action initiated by a different Congress under a different President could put the individual mandate penalty back into place or even increase it.

Employee Benefits

The House-passed legislation would effectively eliminate dependent-care flexible spending accounts (FSA) beginning in 2023, by lowering the amount employees could exclude from their taxable wages from $5000 to $0. The Senate legislation does not include this provision and neither bill makes changes to FSAs for medical care. Beyond the elimination of the benefit, the dependent care FSA change would also increase tax expenses for both employers and employees, since dependent care account contributions exclude Medicare and Social Security contributions. If the change goes into effect, then both employers and employees would have to pay additional taxes on that income.

In addition to the dependent care FSA change, The House bill would eliminate the current income tax exclusions for employer-provided adoption assistance, moving expenses, employee achievement awards and tuition reimbursement. The tax exclusion for employer-provided housing allowances would be capped at$50,000 and phased out for higher earners. The Senate bill would not change the tax exclusions for employer-provided adoption assistance, tuition reimbursement or housing allowances. It would eliminate the moving expense reimbursement exclusion, but only for 2018-2025. Some employee achievement awards couldn't be taxed under the Senate-passed measure, but the value of gift cards, cash awards and other awards of non-tangible personal property would become taxable.

Finally, the Senate-passed bill contains an employer tax credit of up to 25 percent of wages for certain employers that offer paid family medical leave. To qualify, the leave payments to qualified employees would have to be at least 50 percent of normal wages and the employer would have to meet other conditions. The credit would apply to leave payments for workers making less than 60 percent of the income threshold for highly compensated workers (approximately $72,000 annually), and it would only be in effect for two years. This provision would just impact employers and employees subject to the Family and Medical Leave Act. The House-passed legislation does not address paid family leave in any way.

Medical Expense Deduction

The House's tax plan would eliminate medical expenses as a deduction for those who itemize their taxes, but the Senate bill would not only preserve the deduction, it would make it more accessible to people for the next two years. An amendment to the Senate package, advanced by Senator Susan Collins (R-ME) would change the medical expense threshold of 10 percent of adjusted gross income to 7.5 percent in 2017 and 2018, which was the threshold level before passage of the Patient Protection and Affordable Care Act (ACA).

The inclusion or exclusion of this tax deduction in the final bill will have a massive impact on people with high-cost medical conditions, like catastrophic or chronic conditions that require expensive drugs or medical equipment. It would also affect long-term care expenses and qualified long-term care insurance premiums.

Prescription Drugs

The House-passed legislation would eliminate the "Orphan Drug" corporate tax credit, and the Senate tax bill would cut the current credit in half. This tax credit is aimed at drug manufacturers to encourage them to develop medicines to treat rare conditions that impact fewer than 200,000 people a year. Developers of these medicines currently receive a tax credit for up to 50 percent of their clinical trial costs and seven years of exclusive rights to any drugs approved for sale by the Food and Drug Administration (FDA). Before this tax credit was initially created, there were only 10 approved medications for rare diseases, but since 1983, the FDA has approved over 500 "orphan drugs," and 70 percent of those new drugs can also be used to treat more common conditions. Proponents of the cut tout its $54 billion in projected saving over ten years. However, those opposed indicate that cutting the orphan drug credit could both stifle research on new medications and make the cost of prescriptions even more expensive.

Negotiators from both chambers are currently reviewing the differences between the House and Senate legislation. Congressional leaders say their goal is to have a reconciled bill passed by both the House and Senate by Christmas so that President Trump will be able to sign it before the new year. It is an ambitious, but not impossible timeframe.

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