

## Five Provisions of New Healthcare Legislation that Affect Employee Benefit Plans

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Early on Thursday morning, March 9, the Committee on Ways and Means of the U.S. House of Representatives passed legislation that would fundamentally restructure the Affordable Care Act (or, as it is sometimes colloquially known, “Obamacare”). Although much press attention on the legislation has focused on the changes to Medicaid and the individual health insurance market, the legislation reported by the Committee on March 9 makes changes to employer-based insurance coverage as well. This Client Alert focuses on those changes.

There are five provisions of the legislation that will affect employee benefit plans that employers should be aware of:

- First, the legislation effectively repeals the employer mandate, retroactively effective as of the end of 2015. It accomplishes this by reducing both penalties that apply when an employee purchases a plan on an Exchange (the penalty for failure to offer coverage at all, and the penalty for failing to offer affordable coverage) to \$0. Therefore, an employer that chooses not to offer health coverage to employees is not subject to a penalty. As an aside the legislation also repeals the individual mandate in the same manner.
- Second, the legislation modifies the refundable tax credit that subsidizes the cost of a health plan that an individual purchases in the individual health insurance market beginning in 2020. This matters to employers because the revised credit is not available to a taxpayer who is eligible for “other specified coverage.” Under the draft legislation, “other specified coverage” includes coverage under a group health plan. Thus, although there is no longer a penalty if an employer fails to offer coverage under a health plan, an employee cannot choose to purchase a health plan in the individual market and claim the credit if they have an offer of employer-sponsored insurance.
- Third, to ensure that individuals with an offer of employer-sponsored coverage do not claim the credit, individuals who are employed and who claim the revised credit must submit a “written statement” from the individual’s employer that states whether the individual is eligible for employer-sponsored coverage. Employers must provide the statement whenever an employee requests one under procedures specified by the IRS, and employers that fail to provide the statement can be subject to penalties.
- Fourth, repeal of the employer mandate likely will **not** translate into elimination of the requirement that employers complete the 1094 and 1095 forms. The draft legislation imposes new reporting requirements on employers who must inform the IRS if any employee is eligible for employer-sponsored insurance. Both of the new reporting provisions would be effective for tax years beginning after December 31, 2019.
- Finally, it is notable what the legislation does **not** do. The legislation does not address the concepts of “large employer” and “full-time employment” (because those terms are no longer relevant in the absence of the employer mandate). Additionally, although the legislation does not alter the concept of “minimum essential coverage” or “essential health benefits,” those terms are no longer significant because an individual claiming the revised health credit may claim that credit **regardless** of whether they purchase a plan on an Exchange and regardless of whether the plan contains the essential health benefits package. Furthermore, the legislation does not alter the requirement that insured individuals are entitled to receive a Summary of Benefits and Coverage (SBC), whether from their insurer or their employer.

It is important to emphasize that none of these changes to the Affordable Care Act have taken effect yet. The House of Representatives must pass this legislation, it must be vetted by the Senate Finance Committee, and be passed by the Senate. Any differences between the two bills must be reconciled in a conference between the House and Senate and the reconciled version passed again by both Houses of Congress. It will be then sent to President Trump for his expected signature. That said, the legislation does appear to be on a fast track and may be enacted before the summer. Foley Hoag attorneys will continue to monitor the legislation as it moves through this process.

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