The Senate Releases the Better Care Reconciliation Act of 2017

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Introduction

On Thursday, June 22nd, the Senate released the Better Care Reconciliation Act of 2017 (BCRA), its version of a bill designed to make significant changes to the Affordable Care Act (ACA). The Senate bill is very similar to the American Health Care Act (AHCA), passed by the House in May. Like the AHCA, much of the BCRA is focused on reductions in federal Medicaid spending and on a repeal (or delay) of most taxes included in the ACA. Both bills eliminate the individual and employer "mandate" and make changes to the small group and individual health insurance markets. Like the AHCA, the BCRA leaves many other existing ACA insurance rules in place.

Much has already been written about various aspects of this legislation. This issue brief will focus on the specific elements of the Senate bill that most directly affect employers and the health benefits offered to employees. When it comes to the employer-related provisions, the BCRA is almost identical to the AHCA.

Applicable Large-Employer "Penalties" Under §4980H Reduced to $0

Most importantly for larger employers, both the BCRA and the AHCA eliminate the penalty that applies to Applicable Large Employers (ALEs) for violating the ACA §4980H employer shared responsibility rules. The ACA requires ALEs to offer affordable health insurance to full-time employees or pay a penalty (the shared responsibity payment). The BCRA does not repeal the §4980H rules, but it reduces employer penalties to $0. This is as good as a full repeal for employers. If this legislation becomes law, employers will not need to worry about the "look-back measurement period" or any other ACA rules related to full-time employee eligibility requirements. Employers will be able to define group health plan eligibility in ways similar to ways they did prior to the ACA.

Employer Reporting

Neither the AHCA nor the BCRA directly addresses employer reporting requirements. However, both bills continue to make some sort of tax credits available to those who purchase individual health insurance. Eligibility for these tax credits will be dependent to some extent on whether the individual has employer-sponsored health insurance available, so the IRS will continue to need some kind of employer reporting. The hope is that the reporting could be much simpler in the future.

Other Employer-Related Provisions

The BCRA repeals the medical loss ratio (MLR) rules that require insurance companies to spend a specific percentage of premiums on claims, and it lets state set their own low ratio rules. It also includes a provision to encourage association health plans that would offer coverage to small employers.

Both the AHCA and the BCRA include several other provisions of interest to employers:
- The Cadillac tax remains, but is delayed until 2026.
- States will have flexibility to make additional changes to insurance rules, such as those regarding essential health benefit requirements.
- The limit on contributions to Health Flexible Spending Accounts (currently $2,600) would be repealed.
- Both bills would repeal the Health Insurance Tax (HIT). This tax applies to health insurance companies, but is reflected in rates charged to employers.
- Over-the-counter medications would be treated as an eligible expense in HSA and HFSA.The penalty for HSA withdrawals used for ineligible expenses would be reduced from 20% to 10%.

- HSA contribution limits would be raised to the current maximum out-of-pocket that applies to a High Deductible Health Plan (currently $6,550 for self-only and $13,100 for family).

What's Next

House bill introduced [March 6] → First House amendments [March 20] → First House vote canceled [March 24] → Passes House [May 4] → Senate bill introduced [June 22] → Passes Senate → House and Senate negotiate and revise bill → House and Senate pass final bill → President signs, becomes law

The Senate leadership wants to hold a vote on the BCRA before the Senate takes their Fourth of July break. However, the Congressional Budget Office (CBO) has not scored the bill yet, and the Senate will not vote until that has been done. If the Senate does pass the bill, the House and the Senate will need to work out the differences between the BCRA and the AHCA before it can become law.

One key aspect of the process is that, under current congressional rules, the Senate bill must save the federal government about $130 billion dollars to move forward. The majority of the savings in the legislation comes from two areas: significant changes to Medicaid, and a reduction of the tax credits available to people purchasing individual health insurance policies. Like the AHCA, the Senate bill rolls back the ACA Medicaid expansion, but it also changes how Medicaid is funded by putting additional caps on future federal Medicaid spending. The CBO is expected to predict that the Medicaid changes in the Senate bill will reduce federal Medicaid spending by more than $750 billion over 10 years. Both the AHCA and the BCRA need the savings from the reductions in spending on Medicaid and health insurance subsidies to pay for the elimination of and reductions in ACA-related taxes contained in both bills.

The debate over Medicaid and subsidies for individual health insurance is not directly related to employer benefits issues, but it is important because the changes to employer plans contained in both bills is dependent on Congress's coming to some agreement on these larger issues. The employer changes outlined above are not controversial and will likely be included in any legislation passed, if Congress is able to pass anything. It is also likely that additional changes will be made to the BCRA before a final vote is taken in the Senate. Importantly, under the budget reconciliation rules being used, Congress must pass current health legislation under consideration by the end of September. Given that Congress will be on summer recess for most of August, the legislation must be moved forward quickly.