ACA COMPLIANCE BULLETIN

HOW REPEALING THE ACA COULD AFFECT EMPLOYER-SPONSORED HEALTH PLANS

HIGHLIGHTS

- A number of ACA provisions have a significant impact on employer-sponsored group health plans.
- If the ACA is repealed, many plan terms currently required by the ACA may no longer be required.
- The ultimate impact of repealing the ACA will depend on the specific details of the repeal, and any replacement, that is enacted.

IMPORTANT DATES

January 13, 2017
Congress approved a budget resolution for fiscal year 2017, which began the process of repealing the ACA.

January 20, 2017
President Trump signed an executive order on the ACA, only hours after his inauguration.

Provided By:
Cathy Merz Insurance, Inc.

OVERVIEW

Since the Affordable Care Act (ACA) was enacted in 2010, employers and health insurance issuers have had to make numerous changes to employer-sponsored group health plans offered to employees. If the ACA is repealed, many plan terms may no longer be required. These changes may be beneficial for employers, but could be confusing or, in some cases, unwelcome for employees.

The ultimate impact of repealing the ACA will depend on the specific details of the repeal, and any replacement, that is enacted. While steps have been made toward repeal, it is unclear what impact those steps may have or what an ACA replacement will look like.

ACTION STEPS

The initial steps, including an executive order issued by President Donald Trump, have no immediate impact on the ACA. No ACA provisions or requirements have been eliminated or delayed at this time. However, employers should be aware of potential changes to their plans if the ACA is repealed.

CATHY MERZ
INSURANCE, INC.

Impact on Employer-sponsored Plans

Listed below are a number of ACA provisions that have a significant impact on employer-sponsored group health plans. Additional requirements apply to plans in the small group market, such as premium rating restrictions and the requirement to offer an essential health benefits package. Although it is unclear which, if any, of these provisions will be affected in the future (and to what degree), it is helpful for employers to be aware of the potential impact on their employer-sponsored coverage.

Prohibition on Lifetime and Annual Limits

The ACA prohibits health plans from imposing lifetime and annual limits on the dollar value of essential health benefits. "Essential health benefits" are a core set of items and services intended to reflect the scope of benefits covered by a typical employer. The ACA's lifetime and annual limit restrictions ensure that coverage for essential health benefits may not be cut off once an enrollee reaches a certain dollar amount for a year or over his or her lifetime. However, plans may impose annual limits on specific covered benefits that are not essential health benefits.

Out-of-pocket Maximum Limit

Under the ACA, non-grandfathered group health plans are subject to an annual limit on total enrollee cost-sharing for essential health benefits, known as an out-of-pocket maximum. For the 2017 plan year, out-of-pocket expenses may not exceed $7,150 for self-only coverage and $14,300 for family coverage. Once an enrollee reaches the out-of-pocket maximum for the year, he or she is not responsible for additional cost-sharing for essential health benefits for the remainder of the year.

At this time, it is unclear which, if any, of these provisions will be affected by any ACA repeal or replacement (and to what degree the impact may be).

Waiting Period Limit

The ACA prohibits group health plans and group health insurance issuers from applying any waiting period that exceeds 90 days. A "waiting period" is the period of time that must pass before coverage for an employee or dependent who is otherwise eligible to enroll in the plan becomes effective. This waiting period limit does not require an employer to offer coverage to any particular employee or class of employees, including part-time employees. It only prevents an otherwise eligible employee (or dependent) from having to wait more than 90 days before coverage under a group health plan becomes effective.

Prohibition on Pre-existing Condition Exclusions

Under the ACA, group health plans and health insurance issuers may not impose pre-existing condition exclusions on any covered individual, regardless of the individual's age. A pre-existing condition exclusion is a limitation or exclusion of benefits related to a condition based on the fact that the condition was present before the individual's date of enrollment in the employer's plan. The prohibition on pre-existing condition exclusions is particularly helpful for individuals who lose employer-sponsored coverage (for example, due to a

job loss or change), to ensure that coverage cannot be denied for an existing health condition once the individual enrolls in a new health plan.

Dependent Coverage to Age 26

The ACA requires group health plans and health insurance issuers that provide dependent coverage to children on their parents' plans to make coverage available until the adult child reaches age 26. This provision does not require plans and issuers to offer dependent coverage at all. It only requires plans that otherwise offer dependent coverage to make that coverage available until the adult child reaches age 26. This requirement is intended to ensure that young adults have health insurance coverage until they can transition to their own health plan.

Preventive Care Coverage Requirement

The ACA requires non-grandfathered health plans to cover certain preventive health services (including additional preventive health services for women) without imposing cost-sharing requirements for the services. In general, this means that plans are required to cover services such as immunizations, annual checkups, and regular health and cancer screenings without charging a copayment or applying an annual deductible. For women, the ACA also requires coverage of additional services, such as well-women visits and contraceptives.

Prohibition on Rescissions

The ACA prohibits group health plans and health insurance issuers from rescinding coverage for covered individuals, except in the case of fraud or intentional misrepresentation of a material fact. A "rescission" is a cancellation or discontinuance of coverage that has a retroactive effect (such as one that treats a policy as void from the time of enrollment). When a coverage rescission occurs, the insurance company is no longer responsible for medical care claims that they had previously accepted and paid.

Patient Protections

The ACA imposes the following three "patient protection" requirements on group health plans related to the choice of a health care professional and requirements relating to benefits for emergency services:

- ✓ Plans and issuers that require designation of a participating primary care provider must permit each participant, beneficiary and enrollee to designate any available participating primary care provider (including a pediatrician for children).
- ✓ Plans and issuers that provide obstetrical/gynecological (OB/GYN) care and require a designation of a participating primary care provider may not require preauthorization or referral for OB/GYN care.
- ✓ Plans and issuers that provide hospital emergency room benefits must provide those benefits without requiring prior authorization, and without regard to whether the provider is an in-network provider.

The Process for Repeal

The steps that have already been taken to begin the process of repealing the ACA include a **budget resolution** and an **executive order**. However, there are certain legal and practical limitations on what can be accomplished through budget reconciliation and executive orders.

Budget Reconciliation Process

On Jan. 13, 2017, the U.S. Congress passed a budget resolution for fiscal year 2017 that will be used to draft legislation to repeal certain ACA provisions. This budget resolution is a nonbinding spending blueprint that is used to create federal budget legislation through a process called "reconciliation." House and Senate committees targeted Jan. 27, 2017, to draft a budget reconciliation bill following the budget resolution, but recognized that the process will likely take longer. Once drafted, a reconciliation bill can be passed by both houses with a simple majority vote.

However, a full repeal of the ACA cannot be accomplished through the budget reconciliation process. **A budget reconciliation bill can only address ACA provisions that directly relate to budgetary issues—specifically, federal spending and taxation.** A full ACA repeal must be introduced as a separate bill that would require 60 votes in the Senate to pass.

Executive Order

On Jan. 20, 2017, President Trump signed an executive order directing federal agencies to waive, delay or grant exemptions from ACA requirements that may impose a financial burden. The executive order on the ACA is a broad policy directive that gives federal agencies authority to eliminate or fail to enforce any number of ACA requirements, as permitted by law. It does not include specific guidance regarding any particular ACA requirement or provision, and does not change any existing regulations. **An executive order cannot, itself, repeal the ACA or any ACA provisions**.

Until the new heads of federal agencies are in place, it is difficult to know how the ACA will be impacted. As a result, the executive order's specific impact will remain largely unclear until the new administration is fully in place and can begin implementing these changes. In any case, the immediate impact of the executive order will likely be small, since it will take time to implement policies, regulations and other subregulatory guidance to carry out the directives. In addition, health insurance policies for 2017 are already in place, and state law, in many cases, prohibits significant changes from being made midyear.