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Healthcare Remains a Legislative Priority; New Bill Proposes ACA Employer Mandate Reporting Relief

Republican efforts to pass comprehensive health reform failed last week, but events this week prove healthcare remains a prominent topic in Congress. The most significant development of the week for employers was the introduction in the Senate by Sens. Rob Portman (R-OH) and Mark Warner (D-VA) of the Commonsense Reporting Act of 2017. The intent of the bill is to address some of the burdens of the employer reporting requirement under the Affordable Care Act (ACA).

Lockton comment: Employers subject to the ACA's employer mandate and those providing self-insured coverage are required to issue reports to the IRS, full-time employees and in some cases, covered non-employees. Typically, employers use the IRS Form 1095-C to satisfy the reporting obligation. The reports help the employer show whether it complied with the employer mandate. They also help the IRS determine whether individuals who received advanced subsidies toward the cost of individual policies purchased through an ACA marketplace are able to keep those subsidies.

This week the IRS released final instructions on how to complete and file ACA employer mandate reports for 2017, due in early 2018. We'll have more details on the final instructions in our upcoming alert and our October 19 webcast, "ACA Reporting, Round III: Are You Ready?" which you can register for [here](#).

The most significant feature of the proposed legislation is the creation of a voluntary advance reporting system. In exchange for advance reporting, employers using the system will be required to issue Form 1095-Cs only to individuals for whom an ACA marketplace identifies as having received an advance subsidy.

Use of the program is meant to reduce the number of Form 1095-Cs employers must send out, which may be particularly helpful for employers that have few employees eligible for subsidies and for those with high turnover as seen in the restaurant, staffing, hospitality and retail industries. Advance reporting is also expected to reduce the number of taxpayers who erroneously receive subsidized marketplace coverage, which should limit the number of people

who must repay their subsidies and also cut back on unnecessary inquiries of employers by marketplaces and the IRS.

When reporting, many employers have struggled with error messages that indicate the forms contain incorrect Social Security or Tax Identification Numbers for spouses and dependents. The proposal solves this issue by clarifying that the IRS can accept the full name and dates of birth of spouses and dependents instead.

Extension of CHIP Funding Expected

Most employer health plan sponsors are familiar with the Children’s Health Insurance Program (CHIP), if only because of an annual notice that must be sent alerting employees about it. CHIP provides states with matching federal funds to offset the costs of health insurance for families with children who don’t otherwise qualify for Medicaid. Congress’ last appropriation of money to fund CHIP expired on September 30; however, reports indicate all states have enough reserve funds to continue their state programs at least through the end of the year.

Renewal of CHIP funding received bipartisan support this week, though passage hit a speed bump in the House as lawmakers debated how to pay for the additional funding. Insiders we’ve talked with consider renewal a “must-pass” bill, and a funding gap is not anticipated.

Lockton comment: The current debate in Congress does not change the requirement that employer health plan sponsors provide employees with the CHIP notice, so employers should continue to ensure that CHIP notices are provided. A model notice is available from your Lockton account team.

Tax Reform Efforts Continue

A fiscal year 2018 budget resolution passed the House this week, which is the first step in creating a path forward for possible partisan tax reform. While the House budget leaves the door open on tax reform including some health reform elements, all sources we’ve spoken with find it extremely unlikely that Republican lawmakers will try to combine significant healthcare changes with any forthcoming tax reform legislation.

Lockton comment: Good news for employers and employees! Legislative leaders and administration officials we have spoken with recently have all said they do not expect any changes to the tax-free nature of employer-sponsored health insurance. While thankful, we will remain skeptical until we see actual legislative text. In the meantime, we will continue to encourage decision makers to make it easier, not harder, for employers to continue providing the vast majority of Americans with quality and affordable health coverage.

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