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GOP Unveils Its Obamacare Repeal and Replace Legislation

Article Highlights:

- Repeal of Individual Mandate
- Repeal of Employer Mandate
- Recapture and Repeal of the Premium Tax Credit
- Catastrophic Insurance
- Refundable Tax Credit for Health Insurance
- Health Savings Accounts
- Medical Deduction Income Limitation
- Repeal of Net Investment Income Tax
- Repeal of FSA Contribution Limits
- Repeal of Increased Medicare Tax
- Other Provisions

On March 6, the House Republicans unveiled their draft legislation that would repeal and replace the Affordable Care Act (ACA). In general, the GOP's plan would continue the ACA's premium tax credit through 2019 and then replace it in 2020 with a new credit for individuals without government insurance and those who are not offered insurance by their employer. However, most of the ACA's insurance mandates and penalties would be repealed after 2015. Other provisions will be overturned periodically through 2019.

Additional details are provided below, but keep in mind the legislation is draft legislation and is subject to changes before coming up for vote.

Repeal of the Individual Mandate

Background: Under the ACA, individuals are generally required to have ACA-compliant health insurance or face a "shared responsibility payment" (penalty for not being insured). For 2016, the annual penalty was $695 per uninsured individual ($347.50 per child), with a maximum penalty of $2,085 per family.

GOP Legislation: Under the new legislation, this penalty would be repealed after 2015.

Repeal of the Employer Mandate

Background: Under the ACA, large employers, generally those with 50 or more equivalent full-time employees, were subject to penalties that could reach thousands of dollars per employee for not offering their full-time employees affordable health insurance. These employers were also subject to some very complicated reporting requirements.

GOP Legislation: Under the new legislation, this penalty would be repealed after 2015.

Recapture and Repeal of the Premium Tax Credit

Background: The premium tax credit (PTC) is a health insurance subsidy for lower-income individuals, and it is based on their household income for the year. Since the household income can only be estimated at the beginning of the year, the insurance subsidy, known as the advance premium tax credit (APTC), must also be estimated at the beginning of the year. Then, when the tax return for the year is prepared, the difference between the estimated amount of the subsidy (APTC) and the actual subsidy allowed (PTC) is determined based on the actual household income for the year. If the subsidy paid was less than what the individual was entitled to, the excess is credited to the individual's tax return. If the subsidy paid was more than what the individual was entitled to, the difference is repaid on the tax return. However, for lower-income taxpayers there is a cap on the amount that needs to repaid, and this is also based on household income.

GOP Legislation: For tax years 2018 and 2019, the GOP legislation would require the repayment of the entire difference regardless of income. In addition, the PTC would be repealed after 2019.

Catastrophic Insurance

Background: The current law does not allow the PTC to be used for the purchase of catastrophic health insurance.

GOP Legislation: The new legislation would allow premium tax credits to be used for the purchase of qualified "catastrophic-only" health plans and certain qualified plans not offered through an Exchange.

Refundable Tax Credit for Health Insurance

Beginning in 2020, as a replacement for the current ACA insurance subsidies (PTC), the GOP Legislation would create a universal refundable tax credit for the purchase of state-approved major medical health insurance and unsubsidized COBRA coverage. Generally eligible individuals are those who do not have access to government health insurance programs or an offer of insurance from any employer.

The credit is determined monthly and ranges from $2,000 for those under age 30 to $4,000 for those over 60. The credit is additive for a family and capped at $14,000. The credit phases out for individuals who make more than $75,000 and for couples who file jointly and make more than $150,000.

Health Savings Accounts

Background: Individuals covered by high-deductible health plans can generally make tax-deductible contributions to a health savings account (HSA). Currently (2017), the maximum that can be contributed is $3,400 for self-only coverage and $6,750 for family coverage. Distributions from an HSA to pay qualified medical expenses are tax-free. However, nonqualified distributions are taxable and generally subject to a 20% penalty.

GOP Legislation: Beginning in 2018, the HSA contribution limit would be increased to at least $6,550 for those with self-only coverage and to $13,100 for those with family coverage. In addition, the new legislation would do the following:

- Allow both spouses to make catch-up contributions (applies to those age 55 through 64) beginning in 2018.
- Allow medical expenses to be reimbursed if they were incurred 60 days prior to the establishment of the HSA (whereas currently only expenses incurred after the HSA is established qualify).
- Lower the penalty for nonqualified distributions from the current 20% to 10% (the amount of the penalty prior to 2011).

Medical Deduction Income Limitation

Background: As part of the ACA, the income threshold for itemizing and deducting medical expenses was increased from 7.5% to 10% of the taxpayer's AGI.

GOP Legislation: Under the new legislation, the threshold would be returned to 7.5% beginning in 2018 (2017 for taxpayers age 65 or older).

Repeal of Net Investment Income Tax

Background: The ACA imposed a 3.8% surtax on net investment income for higher-income taxpayers, generally single individuals with incomes above $200,000 and $250,000 for married taxpayers filing jointly.

GOP Legislation: The new legislation would repeal this tax after 2017.

Repeal on FSA Contribution Limits

Background: Flexible spending accounts (FSAs) generally allow employees to designate pre-tax funds that can be deposited in the employer's FSA, which the employee can then use to pay for medical and other qualified expenses. Effective beginning in 2013, annual contributions to health FSAs (also referred to as cafeteria plans) were limited to an inflation-adjusted $2,500. For 2017, the inflation limitation is $2,550.

GOP Legislation: The new legislation would remove the health FSA contribution limit, effective starting in 2017.

Repeal of Increased Medicare Tax

Background: Beginning in 2013, the ACA imposed an additional Medicare Hospital Insurance (HI) surtax of 0.9% on individuals with wage or self-employed income in excess of $200,000 or $250,000 for married couples filing jointly.

GOP Legislation: The new legislation would repeal this surtax beginning in 2018.

Other Provisions

- **Preexisting Conditions** – Prohibits health insurers from denying coverage or charging more for preexisting conditions. However, to discourage people from waiting to buy health insurance until they are sick, individuals will need to maintain "continuous" coverage. Those who go uninsured for longer than a set period will be subject to 30% higher premiums as a penalty.
- **Children Under Age 26** – Allows children under age 26 to remain on their parents' health plan until they are 26.
- **Small Business Health Insurance Tax Credit** – Repealed after 2019
- **Medical Device Tax** – Repealed after 2017
- **Tanning Tax** – Repealed after 2018
- **Over-the-Counter Medication Tax** – Repealed after 2017

This is a proposed law change, and it may not ultimately turn out as described here. If you have any questions, please give this office a call.

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