since the new administration took office in January, there have been numerous competing proposals with respect to the country’s healthcare laws. That makes it a challenging season for any organization that offers health insurance to its employees. Employers must plan benefits programs for the near- and long-term and also give their employees guidance. But even the most basic rules about who is entitled to what sort of health coverage are up in the air.

And yet, despite the uncertainty, employers must start preparing for the most likely changes in policy.

At a recent seminar hosted by Crystal & Company (“Exploring Health Care Reform & Voluntary Employee Benefits” held on June 15th in New York City), Alan Hahn, co-chair of the Benefits & Compensation Practice Group of the law firm Davis & Gilbert, spoke about developments in healthcare reform and the implications for employers.

In this article I address key considerations relating to the state of health care reform, leveraging insights from Hahn’s presentation.

Prepare for ambiguity when trying to comply with healthcare regulations

Shortly after his inauguration, President Trump signed an executive order directing federal agencies to use discretion in enforcing mandates in the Affordable Care Act, a.k.a. the ACA or Obamacare. While this was an effort to ease the burden on employers, the effect has been to create an environment of uncertainty because government regulators have stopped issuing guidance on how to comply with the current law, leaving many ambiguities in place.
As Hahn stated: “It’s been almost radio silence from a regulatory perspective. There is a chill in both formal and informal guidance coming out of the government.”

One particular area of concern is the enforcement of the ACA’s core requirement that companies offer health insurance to employees working more than 30 hours a week or, if they don’t, that they pay a tax. Still unclear is whether the Internal Revenue Service (IRS) will be enforcing the law as it is written today.

While the Department of Health and Human Services has sent notices to some employers about such cases, the IRS has yet to send related tax bills. Indeed, the IRS was having technical difficulties in calculating ACA taxes even before the Trump administration came to power, and it is now unclear if the tax bills will ever be sent.

Employers, in effect, are going to need to decide whether to comply with tax laws and other rules that are on the books but that the government may not to be enforcing. Hahn’s advice: employers should continue to comply and file all ACA-related paperwork until the government explicitly says otherwise.

**Expect part-time workers to press for employer-sponsored health insurance**

As the government cuts spending on healthcare, employers should expect that part-time employees who have been receiving subsidies for buying health insurance on exchanges may ask for coverage through their workplace.

A central goal of both Republican bills—the American Health Care Act (AHCA) passed by the House in May and the Better Care Reconciliation Act of 2017 (BCRA) proposed by the Senate in June—was to cut back the tax breaks and other payments that have reduced the effective cost for low-income people to purchase health insurance on the insurance exchanges. Indeed, even though it’s evident that neither of these bills will ever come to a vote, the administration can reduce some of those subsidies by withholding a class of payments to insurance companies called cost-sharing reductions (CSRs), a move that many experts suggest will destabilize the individual insurance market.

By publicly stating a preference for the failure of the ACA on its own terms, President Trump seems to be suggesting a reduction or elimination of CSRs. “You can have a lot of your part-timers today that are actually on the exchange,” Hahn explained, “and they’re actually getting pretty decent healthcare coverage. Now, if the ACA Marketplace collapses, a lot of your part-time and temporary staff is going to be interested in getting alternative coverage because the discounted insurance on the exchanges is no longer there.”
Consider how your benefits will change if the employer mandate is repealed

Both the AHCA and the BCRA bills would have repealed the requirement that employers with more than 50 employees must offer health insurance to full-time employees. They would also have allowed states to eliminate some of the essential benefits that the ACA required corporate-sponsored insurance to cover.

Although both bills appear to be dead at the moment, Hahn suggests that companies begin to consider how they would react if the employer mandate were repealed and other reforms are implemented. It will be possible to reduce expenses by offering insurance to fewer employees or switching to less generous plan structures. Alternatively, employers may offer employees an array of plans, from skinny to comprehensive.

If the employer mandate were to go away, while some organizations that employ a large number of low-wage workers may consider dropping insurance on the assumption that their employees will be able to buy subsidized policies on the exchanges, Hahn thinks most would likely keep their current insurance programs in place, at least in the short term. “Employers will continue to offer coverage because . . . coverage offered on the exchange won’t be the same as what’s offered in the group health market.”

Evaluate high-deductible plan options

Many aspects of the Republican bills encouraged health insurance policies that have more limited benefits and higher deductibles than typically offered under current law. Said Hahn: “The Republican philosophical approach is that skinnier health plans and higher deductible health plans—especially when coupled with HSAs—lead to lower premiums.”

If this approach is adopted, employers may want to leverage their newfound flexibility to offer lower-cost plans. Additionally, a popular sentiment (included in the failed GOP proposals) is to raise the contribution limits for Health Savings Accounts (HSAs), which are often combined with high-deductible insurance, to give participants a way to cover their out-of-pocket expenses, although it is unclear if this will happen.

Employers may well decide that they don’t want to adopt these lower-cost plans because they want to keep their workforce healthy and retain employees who might otherwise move to other companies with richer benefits. Nonetheless, benefit managers should prepare to discuss whether to cut benefits if changes to the ACA materialize.

Understanding the tradeoffs between keeping your current benefit design and moving to a plan that offers less coverage or...
higher deductibles can mean staying ahead of the curve. Indeed, as Hahn stressed, "You don’t want to be in a position six months from now where finance discovers that there are scenarios in which you could save the company money, and they say, 'You never told me.'"

A possible repeal of subsidies and penalties, but what’s the replacement plan?

Shortly after pulling the BCRA, the Senate released a new bill: the Obamacare Repeal Reconciliation Act (ORRA) of 2017. This legislation promises to repeal the penalties of the individual and employer mandates and end premium tax credits and cost-sharing reduction payments. It doesn’t include provisions to defray consumer costs or change ACA provisions.

If this third legislation survives—which is mainly a repeal of the ACA—it will be interesting to see what replacement plan is adopted and if it will look anything like those proposed by the two previous bills that were laid to rest.

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