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ACA

Sponsors Shouldn't Wait to Find Answers To Challenges of Unwinding the ACA

A great deal has already been written about how easy or difficult it would be to eliminate the Affordable Care Act, but what would the elimination of President Barack Obama's hallmark health legislation mean for employee benefit plan sponsors?

Plan sponsors shouldn't wait to find answers, Kim Buckey, vice president for client services at DirectPath LLC, at the company's Detroit office, told Bloomberg BNA. DirectPath provides strategic employee engagement, compliance management and benefits plan management services for Fortune 1000 employers and brokers.

"It's certainly not too soon" for employers to start talking to their consultants, legal counsel and other parties about future benefits strategy, not the least of which is tax treatment of employee benefits, Buckey said.

Plan sponsors may want to look to high deductible health plans and health savings accounts, which President-elect Donald Trump and Republicans lawmakers favor, Buckey said. Employers that choose this route will have to boost their education efforts for employees regarding basic health literacy concepts, such as copayments, coinsurance and deductibles, she said.

Besides those basics, plan participants also need to be aware of cost-comparison tools, such as those for prescription drugs, Buckey said. "There are all sorts of comparison sites, but they're not effective if people don't know to look for them."

Flat-Rate Deductions. Republicans also have rallied around providing individuals with a flat-rate deduction for coverage as an alternative to tax preferences for employer-sponsored insurance, such as the proposal that President George W. Bush included in his final budget, Thomas Barker, partner in the Washington office of Foley Hoag and co-chairman of the firm's health-care practice, told Bloomberg BNA. Barker previously served as acting general counsel at the Department of Health and Human Services and general counsel of the Centers for Medicare & Medicaid Services during the Bush administration.

"I can see how that would appeal to" House Speaker Paul Ryan (R-Wis.), he said.

With or without the ACA, employer-sponsored health plans aren't likely to go away anytime soon, because they're still a valuable recruitment and retention tool, Barker said.

Unwinding the ACA. Businesses may actually be unhappy in a couple of ways if the ACA were repealed, Greta E. Cowart, a shareholder at Winstead PC, in Dallas, told Bloomberg BNA. Cowart advises employers on ACA compliance issues.

The federal government has expended significant funds under the ACA, such as in the early retiree reinsurance program, so "a full unwind would mean asking for the businesses who received these to pay them back and that would not be popular," Cowart said. The ERRP, included in the ACA, provided financial assistance to employment-based health plan sponsors.

Other aspects of a repeal would also be difficult for employers to implement into their plans, Cowart said. For example, many of the marketplace mandates regarding what was required to be included in qualified health plans and in employer-provided coverage that weren't exempt and not grandfathered won't "be easily taken out of the employer plans because it will be reviewed as a reduction in benefits," she said. Grandfathered health plans are those that existed without major changes after the ACA was passed.

And changes in benefits for members of collectively bargained plans would have to wait until the next round of negotiations, Cowart said. Insurers, on the other hand, won't have the same limitations on what they can offer in their policies, she said.

But because lawmakers have a number of concerns to wrestle with, such as how to pay for the reduced tax revenues that were expected to be generated by the ACA, employers may not have to overhaul their plans overnight, Cowart said. "There is no easy or quick on/off switch to make the ACA go away," she said.

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