



Health Care: What we know, what we expect, and what keeps us up at night.

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First thing's first: Nobody knows anything.

- Neither Congress, President Trump, academia, industry leaders, nor I.
- On Monday, 2/27, Trump said:
 - 1) Repeal and Replace.
 - 2) Nobody knew that healthcare could be so complicated.



Where does that leave us?

What have people put on paper?



If nobody knows anything, what do people think?

- February 22nd Politico Poll:
 - 45% approve overall of the ACA
 - 45% disapprove overall of the ACA
 - Note – First of the year, 41% approved and 52% did not
 - 12% want no change
 - 24% want it repealed entirely
 - 27% want a partial repeal
 - 26% would like to see it expanded

**POLL
RESULTS**



If nobody knows anything, what do people think?

- Among employers:
 - 39% say a repeal would not change their decisions about medical insurance.
 - 34% say repeal would make them more likely to make changes.
 - ESPECIALLY for grandfathered plans!



The ACA and Small Business



- Many think small business was ignored by the ACA
 - The focus was on uniform benefits across large-employer plans and individual market, expanding quality of care in individual policies.
 - All “large employers” (over 50 FTEs) had to provide the type of plan actual large employers traditionally offered.
 - The Employer Mandate

The ACA and Small Business



- The majority of small businesses still offer health coverage
 - 53% of employers with fewer than 50 employees
 - 89% of employers with 50-99 employees



So what is going to happen?

- Regardless of what Trump or Congress does, it seems unlikely that employers will have to make changes this year or next.
- The operative word is HAVE.
 - Loosening restrictions will likely result in more flexibility for employers.
 - More options and fewer restrictions seem likely.

So, what is cooking in Washington?

- President Trump's original published plan was boilerplate with little hard answers.
- Let's examine a few of the things that have been published to see specifics.



January 20 – Executive Order

- First priority is repeal, but in the meantime minimize economic and regulatory burdens.
- Executive agencies use discretion to waive, exempt, or delay requirements that impose fiscal or regulatory burdens on states, individuals, families, providers, insurers, patients, purchasers of health insurance, or makers of medical devices.

February 1 – Changing Federal Websites

- Various federal websites started removing information about the ACA, deleting positive reviews and case studies, and replacing synopsis with full-text law.



February 15 – Market Stabilization Rule

- Not much interest to employers; intended to entice insurers to remain in exchanges.
- 5 main changes:
 1. Shorten 2018 open enrollment period to 6 weeks
 2. Increase pre-enrollment verification of eligibility
 3. Allow issuers to apply current premiums to past-year debts
 4. Increase variation in actuarial values of metal levels of coverage for 2018
 5. Allow states to require fewer essential community providers



February 24 – Leaked Discussion Draft from House Republican Leadership

- Three Main Takeaways for Employers:
 - Funding mechanism is a cap on the tax exclusion for employer sponsored healthcare
 - Employers with ACA non-compliant coverage can keep it, and insurers can offer it to new enrollees
 - Repeals the Employer Mandate and Cadillac Tax

Cap on the tax exclusion for employer sponsored healthcare

- Deductibility capped at 90th percentile of single premiums.
 - Adjusted for inflation via CPI plus 2%
 - Will cause significant tax where health costs outpace inflation
 - Employer contributions to HSAs, MSAs, LTC, and dental/vision would not be subject to tax
 - Coverage for first responders would not be subject to the tax
- Intent is replace funding from Cadillac tax.
 - Rather than employers paying the tax, likely lowering employee pay, taxing everyone at income tax levels spreads burden



March 6 – American Health Care Act

- Main Takeaways for Employers:
 - Employers with ACA non-compliant coverage can keep it, and insurers can offer it to new enrollees
 - Repeals the Employer Mandate (effective 12/31/15) and Cadillac Tax
 - Increases emphasis on HSAs as a health care payment system
- Note: lacks any sort of funding mechanism

Employers with ACA non-compliant coverage can keep it

- Employers offering non-compliant plans that were purchased between 2010 and 2013.
- Renewals have been allowed through 2018.
- AHCA allows employers to maintain them and insurers to offer them to new enrollees.

Repeals most taxes associated with ACA.

- Repeals the Employer Mandate
 - Shared responsibility payments if not minimum essential coverage that is affordable and offers minimum value.



Repeals most taxes associated with ACA.

- Allows purchase of OTC medication through HSA (with pre-tax money)
- Also repeals:
 - Cadillac tax
 - Individual mandate
 - Taxes on prescription drug manufacturers and health insurers
 - Medical device tax



Individual Tax Credits

- Repeals income-based premium tax credit
- Replaces with refundable tax credit based on age
 - For low- and middle-income earners
 - \$2k - \$14k in credit
 - Only for those without access to employer or government insurance

MUCH less expensive than

ACA premium tax credit



Account-Based Plans

- Widely loved in various Republican proposals.
- Best guess: Whatever we see will include some type(s) of HSA/HRA/FSA basis.
- Examples

Roth HSA (Proposed)

- Senator Cassidy (R-LA) and Collins (R-ME).
- As opposed to HSA – with its 3 tax advantages:
 - Deductible contributions
 - Tax-free growth
 - Tax-free if spent on qualified purchase
- Not deductible up front, but not tied to HDHP.

So what are the AHCA's chances?



This may go without saying, but...

- The Democrats hate it.
- The Freedom Caucus hates it.
- The House Conservative Caucus does not want it to crash and burn. (Maybe just a little fender bender.)



House Freedom Caucus



- Three dozen Republicans who can block bill's passage
- Nope because
 - Allows Medicaid expansion for four more years
 - Does not immediately and totally repeal all ACA
 - Refundable tax credits are “new entitlement”

House Conservative Caucus

- Much larger group
- Has not endorsed AHCA, but thinks it moves in the right direction
- Wants to ensure
 - Medicaid expansion eliminated
 - “Protections for the unborn”
 - Tax credits are fiscally responsible

So what is actually effective right now?



Do I still need to offer insurance as an Applicable Large Employer in 2017?

- At this point, yes.
- The Executive Order grants exemptions from provisions affecting “purchasers of insurance.”
- AHCA repeals the employer mandate entirely, effective **12/31/15**.
- To our knowledge, no employer shared responsibility excise taxes have been assessed yet.
 - Some employers got notice of employees with premium subsidies last summer.

Do I still need to report offers of coverage on 1095-C's for 2016? 2017?

- At this point, yes. AHCA requires them through 2018 plan year (filing in early 2019).
- “C” forms report whether or not employers met their responsibilities under the Employer Mandate.
 - No Employer Mandate, no reason for 1095-C's.
- 2015 IRS guidance: an employer's best effort to complete forms shielded them from penalty.
 - In light of Executive Order, good advice going forward.

Qualified Small Employer Health Reimbursement Arrangement

- Signed into law in December by President Obama.
- Only for non-Applicable Large Employers.
- Cannot sponsor ANY other group health care plan (including dental or vision).
- Allows employers to fund an HRA for employees with up to \$4,950 single/\$10,000 family to purchase health care, including premiums.
- Tax-free benefit so long as employee has individual coverage and uses money for qualified health expenses.

Cafeteria Plans

- Internal Revenue Service has issued two recent memoranda from Office of Chief Counsel regarding the use of cafeteria plans related to wellness plans and indemnity contracts.
 - OCC No. 201622031 – May 27, 2016
 - OCC No. 201703013 – December 12, 2016

Wellness Programs

- EEOC has issued Final Regulations effective January 1, 2017.
- Some conflicts with existing ACA wellness programs.
- EEOC max reward is 30% of the self-only cost of coverage and contains no provision allowing an additional 20% reward increase for tobacco cessation.
- Heavy litigation on the EEOC position.

Clarifying Questions for Going Forward

- Do you need to offer health insurance to attract and retain key employees for your business?
- What level of health insurance do you feel obligated to provide, if any?
- Do you have any religious objections to any type of health plan coverage?

Nobody knew that health insurance
could be so complicated!

Questions?
Thank you!



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