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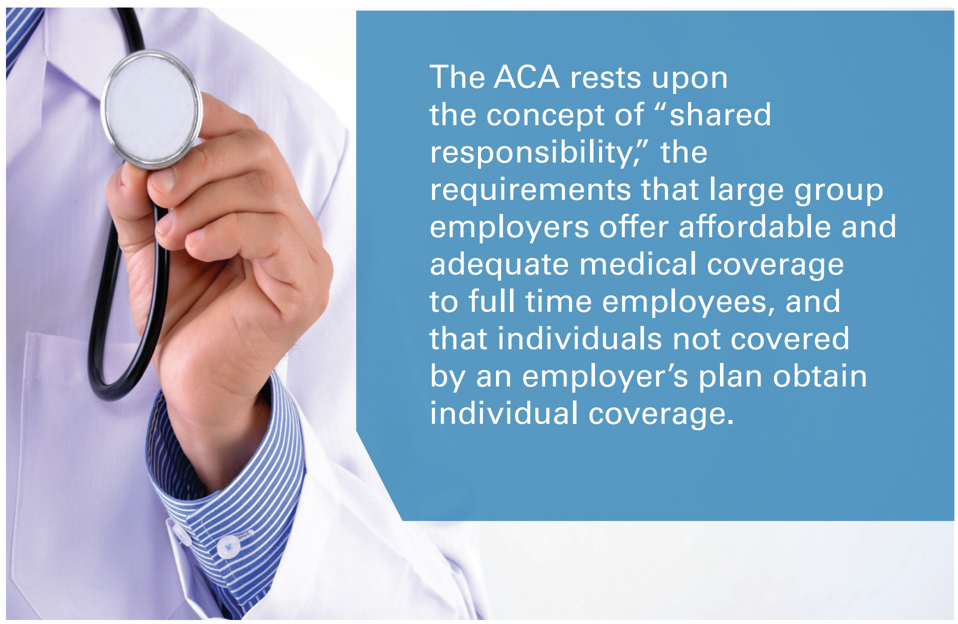
The ObamaCaravan Rolls On:
It's Time to Check Your Ticket for 2016 and Beyond

Businesses are watching the sixth year of the Affordable Care Act ("ACA") unfold. By now, supporters and critics have had a rollercoaster ride of hopes and expectations, most easily seen in the business community. Deadlines for employers have been set, extended and altered as the ACA has been rolled out and the legal challenges defeated. The ACA will continue to create ripples in reporting for all employers and employees, as the mandates continue and the information-gathering intensifies. Here is what we have already seen, and where we are going, as the ObamaCaravan moves forward:

By James H. Culbreth



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The ObamaCaravan Started Moving in 2010

The ACA was signed into law on March 28, 2010, and, although the legal effects were delayed for six months, the impact on individual and employer group health plans was immediate. Early implementation considerations for employers included "grandfathering" group medical plans (or not), dealing with the new benefits required and old restrictions prohibited by the ACA, and the initial review of the "employer mandate" and the "play-or-pay" rules applicable to "large group employers." Even as the ObamaCaravan started, employers had to learn a new lexicon of group medical plan terms that would influence decisions for the next decade.

The Early Stations for the ObamaCaravan

While group health plans were dropping lifetime limits on medical coverage and adding dependent coverage to age 26, employers were aware of the legal challenges to the ACA's funding methods. The ACA rests upon the concept of "shared responsibility," the requirements that large group employers offer affordable and adequate medical coverage to full time employees, and that individuals not covered by an employer's plan obtain individual coverage. In each case, noncompliance by large group employers or individuals result in financial penalties, which were quickly challenged as impermissible *mandates* that Congress could not impose on citizens. The U.S. Supreme Court disagreed with that interpretation on June 28, 2012, finding that the penalties were, in fact, taxes and could be imposed by Congress.

The ObamaCaravan left the most recent station with the Supreme Court's decision on June 25, 2015, upholding another critical funding aspect the ACA. The Supreme Court upheld and affirmed the administration's position that federal subsidies should be available for qualifying individuals purchasing medical insurance through the state insurance exchanges established to help individuals obtain medical insurance.

What's Ahead for the ObamaCaravan, and Will it Stay on Track

Small and mid-sized employers know to carefully monitor the number of full-time employees, and are aware of the penalties that can result if a large group employer fails to offer affordable and adequate coverage to eligible employees. In 2016, the definition of large group employer will revert to the 50+ definition contained in the statute, with implications for employers who have previously avoided the employer mandate. 2015 brought additional reporting and recordkeeping requirements for all employers, with the new IRS Form 1095-C for 2014 requiring covered employers to report monthly information on all employees, even part-time employees whose hours determine full-time equivalent employees. The "Applicable Large Employer" information in Form 1095-C is the backbone of federal oversight, but 2015 presents a challenge for covered employers who must provide additional information to employees and the IRS.

The tax on employer-sponsored high-cost health plans, referred to by its critics as the "Cadillac Tax," begins in 2018. Intended to both limit an employer's use of excessively generous benefits and to generate funds for the subsidies offered to low-income individuals, this 40% excise tax applies to the employer sponsoring the group health plan. An "excess benefit" generally is one where the cost of coverage exceeds annual limits of $10,200 for individual and $27,500 for family coverage. Although the tax was predicted in 2013 to affect 3% of all medical benefit plans, it is budgeted to raise billions in revenue. Opposition from both employers and unions is growing, and this excise tax will become a major obstacle to the ObamaCaravan as 2018 approaches.

As the ObamaCaravan rolls on, significant change is unlikely until after the 2016 election cycle, and then only if the political power shifts significantly towards opposition to the ACA. Many of the ACA reforms are widely popular even as the burden on employers increases and the costs remain a problem. The most likely path for the ObamaCaravan is steady implementation with some funding changes (altering the Cadillac Tax) and relief for smaller employers. The societal forces powering the ObamaCaravan will keep it moving and should keep it in the forefront of business planning.

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