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**Benefit Comply**  
Employee Benefit Compliance Support Services

# 2018 Employee Benefits Update

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# Agenda

## Regulatory and Legislative Update

- Tax Reform and Jobs Act
- IRS §4980H Collection Efforts
- Extension of Continuing Appropriations Act, 2018
- Trump’s Executive Order
  - Short-term, limited duration insurance, Association Health Plans (AHPs) and Health Reimbursement Arrangements (HRAs)
- Health Savings Accounts (HSAs) – Proposed Legislation
- 2019 Notice of Benefit and Payment Parameters



# Tax Reform and Jobs Act



# Tax Bill – Benefit-Related Provisions

- Individual Mandate is Gone
  - Penalty for violating individual mandate goes to zero beginning in 2019
- Transportation Benefit Changes
  - Employers may no longer deduct the cost of certain employer-provided transportation benefits (e.g. transit passes or parking) effective 2018
  - Reimbursements for bicycle commuting expenses (up to \$20 per month) may no longer be excluded from an employee’s pay beginning in 2018
  - \* Employee exclusion for qualified transportation benefits other than bicycle commuting remains, so salary reductions may continue
- Methodology for Determining Health FSA and HSA Limits
  - Methodology for determining adjustments to contribution caps now uses a “chained CPI,” which may result in slower upward adjustment
  - 2018 HSA Contribution Limits...\$6,900 → \$6,850 → **\$6,900**



# Perspective

HOME SEARCH

The New York Times

Trump Withdraws U.S. From 'One-Sided' Iran Nuclear Deal

2.



OPINION  
Meet the Renegades of the Intellectual Dark Web

3.



9/11 Planner, Tortured by C.I.A., Asks to Tell Senators About Gina Haspel

4.



As Melania Trump Faces Plagiarism Claims, Her Staff Lashes Out at News

BUSINESS DAY

## Trump Says He Got Rid of Obamacare. The I.R.S. Doesn't Agree.

By ALAN RAPPEPORT MAY 6, 2018



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# What is Obamacare/The ACA?

## Employers

- Shared responsibility rules for large employers
- Tax credits for small employers
- Coverage requirements (preventive care, age 26, no lifetime or annual max)
- Small employer essential health benefits and modified community rating

## Individual Insurance

- No pre-ex or underwriting
- Subsidies to help pay for insurance based on income
- Exchanges to coordinate sales and subsidies

## Medicaid and Medicare

- Medicaid expanded to include low wage working adults
- Restructure payments to Medicare Advantage (MA) plans

## Healthcare Cost Savings

- Medical Loss Ratio (MLR) requirements for health insurance companies
- Adopt Accountable Care Organization (ACO) payment model for Medicare
- Chronic condition treatment research

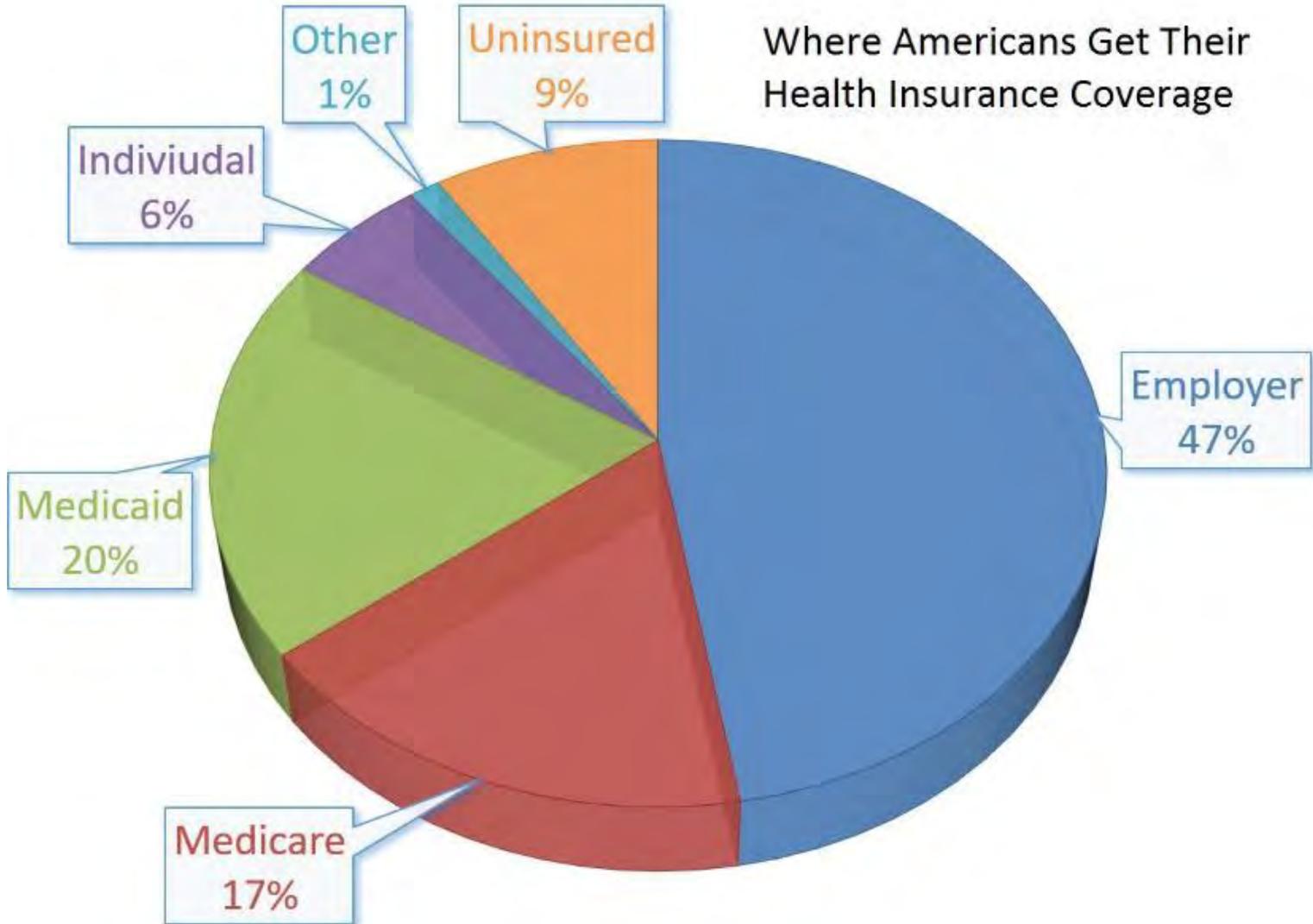
## Gov. Cost Savings & Revenue

- Cadillac Tax
- Individual mandate tax and employer shared responsibility payments
- Excise tax of 2.3% on medical devices
- Health insurance company tax



# Perspective

Where Americans Get Their Health Insurance Coverage



# Perspective

- Impact on Group Health Plans - ???
  - Perhaps less enrollment in group health plans
  - Perhaps less penalty risk because fewer employees will enroll in subsidized coverage through public Exchanges
  - Premium variations due to unstable individual markets, especially in the small group market



# IRS Letter 226J - §4980H Collection Efforts



# IRS Letter 226J - §4980H Collection Efforts

- IRS “Employer Mandate” Penalty Collection
  - In November 2017, the IRS began sending Letter 226Js to employers who failed to meet 2015 §4980H requirements
  - The first letter is a “proposed assessment,” not an actual collection letter
  - Assessment is based on data provided on Forms 1094-C and 1095-C
  - Information included in Letter 226J:
    - Proposed Employer Shared Responsibility Payment (ESRP)
    - Instructions for how to respond within 30 days from the date of the letter
    - Form 14764 – Response to IRS
      - Must sign and return to the IRS to pay or dispute proposed assessment
    - Form 14765 - Employee Premium Tax Credit (PTC) Listing
      - Lists employees who received a premium tax credit and how the employer coded Lines 14 and 16 of the 1095-C for each such employee



# IRS Letter 226J - §4980H Collection Efforts

- Reminder of §4980H (Employer Mandate) Requirements
  - Applicable large employers (ALEs) must offer minimum value, affordable coverage to full-time employees and their dependent children
  - ALEs are employers with an average of 50 or more full-time equivalents (FTE) in the prior calendar year
    - Must consider both full-time and part-time employees
    - Must aggregate FTEs for all employers within the same controlled group or affiliated service group (as defined under §414 rules)
  - Full-time employees
    - Employees who average 30 or more hours of service per week
    - Two ways to determine full-time status
      - Monthly measurement period – 130 hours per month
      - Look-back measurement period – e.g. 1560 hours over a 12 month measurement period



# IRS Letter 226J - §4980H Collection Efforts

## Two Separate Employer Mandate Rules and Penalties

### – §4980H(a)

- ALEs must offer minimum essential coverage to 95% (70% in 2015) of full-time employees and their dependent children each month
- Penalty applies if any full-time employee enrolls through a public Exchange and qualifies for a tax subsidy (receives a PTC)
- 2018 Penalty - \$193.33/mo. (\$2,320/yr) times number total number of full-time employees not counting first 30 (first 80 in 2015)

### – §4980H(b)

- ALEs must offer coverage that provides minimum value AND is affordable to all full-time employees each month
- Penalty applies for each full-time employee who enrolls through a public Exchange and qualifies for a tax subsidy (receives a PTC)
- 2018 Penalty - \$290/mo. (\$3,480/yr) for each full-time employee who receives a PTC



# Extension of Continuing Appropriations Act, 2018 – Short-Term Spending Bill



# January Spending Bill – ACA Tax Delays

- **Cadillac Tax**
  - A 40% excise tax on health coverage cost that exceeds “threshold amounts”
    - Threshold amounts, prior to adjustments
      - \$10,200/yr. for self-only coverage
      - \$27,500/yr. for coverage other than self-only
  - Originally effective beginning in 2018, delayed to 2020, and now delayed to 2022
- **Health Insurer Tax (HIT)**
  - Annual tax imposed on health insurers (fully-insured plans) beginning in 2014 based on the insurer’s proportionate share of the aggregate fee set by statute
    - Generally passed along via the rates the insurer charges (estimated 1-3% increase)
  - Suspended for 2017, back in effect for 2018, and now suspended again in 2019
- **Medical Device Tax**
  - Suspended for 2016 and 2017, and then further suspended through 2019



# Executive Order



# Trump's Executive Order

- October Executive Order
  - President Trump issued an executive order instructing the regulatory agencies to draft new rules regarding:
    - Association health plans (AHPs);
    - Expanded flexibility for health reimbursement arrangements (HRAs); and
    - Access to short-term, limited-duration insurance



# Association Health Plans (AHPs)

- AHP Background
  - AHPs are a form of a Multiple Employer Welfare Arrangement (MEWA)
    - A MEWA is generally formed when unrelated employers (as defined by IRC §414 rules) share a single group health plan
    - State Laws
      - Due to ERISA, states generally cannot regulate self-insured health plans
      - In 1983 Congress gave states the right to regulate self-insured MEWAs due to abuses in the industry
  - ACA made it harder for groups of unrelated employers to join together to form an AHP that would be treated as a single large employer
  - Proposed rules were released in January 2017 by the DOL
  - Rules are currently being reviewed by the Office of Management & Budget (OMB)



# Association Health Plans (AHPs)

- What We Know from the Proposed Rules
  - Who will be able to form an AHP?
    - Employers who are:
      - in the same trade, industry, or profession; or
      - located in the same state or a common metropolitan area
    - Working owners (e.g. sole proprietors or independent contractors)
  - Not subject to most small group rules even if small employers participate
    - Most AHPs would be treated as large group health plans, allowing them to avoid essential health benefits and modified community rating requirements
  - New associations can be formed solely for the purpose of providing health benefits to member employers
    - Current rules require that an association already exists for other purposes before it can sponsor a health plan



# Association Health Plans (AHPs)

- What We Don't Know Yet
  - How liberal will rules be in regard to which employers can combine into an AHP?
  - How will rating and underwriting rules be handled?
  - Will self-insured AHPs be subject to state MEWA regulations?



# Health Reimbursement Arrangements (HRAs)

- Executive Order
  - Requires regulatory agencies to develop new regulations to expand Health Reimbursement Arrangements (HRAs)
  - No issued rules yet for HRAs, but they are expected soon
    - The order does not contain details, but suggests making changes *“to increase the usability of HRAs, to expand employers’ ability to offer HRAs to their employees, and to allow HRAs to be used in conjunction with nongroup coverage”*



# Health Reimbursement Arrangements (HRAs)

- HRAs and Current Regulatory Guidance
  - Current regulatory guidance prohibits employers from offering stand-alone HRAs or using HRA to pay for individual health insurance coverage
    - HRAs that cover 2 or more employees must be integrated with a group health plan to avoid violating health care reform rules (e.g. no annual/lifetime limits)
  - HRA coverage coordination rule
    - An HRA may only reimburse qualifying medical expenses of individuals that are also enrolled in a group health plan (e.g. self-only coverage HRA may only reimburse the employee's expenses)



# Health Reimbursement Arrangements (HRAs)

- Qualified Small Employer HRA (QSEHRA)
  - Passed by Congress in 2016 – not considered employer-sponsored health plans and not subject to ERISA or PHSA
  - Allows small employers (less than 50 FTEs), who do not offer group health insurance, to provide tax-free money to employees used to pay for individual health insurance and other §213(d) medical expenses
  - Maximum tax-free reimbursement is \$4,950 per year for employee-only coverage, or \$10,000 per year for family coverage



# Health Reimbursement Arrangements (HRAs)

- What Could Be in New HRA Regulations?
  - Likely to make it easier for employers to use an HRA to pay for individual health insurance premiums
  - Possible that plan integration requirements will be removed or relaxed
  - Regulatory questions raised by this approach
    - Will it be considered an employer-sponsored health plan subject to ERISA, PHSA, HIPAA, COBRA, etc.?
    - Will offering this coverage satisfy “employer mandate” obligations under §4980(H)?
    - Will §105(h) or §125 nondiscrimination rules apply to these plans?



# Health Savings Accounts (HSAs)



# Health Savings Accounts (HSAs)

- Proposed Legislation
  - Increased HSA annual contribution limits
  - Expand HSA-eligibility
    - Onsite medical clinics, telemedicine
    - Spouse's health FSA coverage
  - Expand HSA reimbursement capabilities
    - Reimbursement available for dependents until age 26



# 2019 Notice of Benefit and Payment Parameters



# Essential Health Benefits (EHBs)

- Essential Health Benefits (EHBs)
  - The ACA requires individual and small, fully-insured plans to provide coverage in 10 categories considered to be EHBs
  - Each state must choose a state benchmark plan identifying EHBs
  - Large or self-funded plans do not have to provide coverage for all EHBs, but if offering coverage:
    - Cannot place annual or lifetime limits on such coverage
    - Must include costs in the out-of-pocket (OOP) maximum
- Guidance provided more flexibility for states in defining their benchmark plan beginning in 2020
  - Biggest impact will be on small, fully-insured plans required to offer EHB coverage
  - Smaller impact on large or self-funded plans which may then have annual or lifetime limits for more benefits and/or exclude more benefits from counting toward the OOP maximum





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