



COMPLIANCE UPDATE, MARCH 2017

And So it Begins

Repealing and replacing Obamacare is priority number one for the Trump administration. It will not be an easy or simple process but it has to start somewhere. The House Republicans have taken the first step.

[Health Affairs Blog: Repeal and Replace](#)

[Repeal Bill's Potential Impact](#)

[Health Care Proposals Key Takeaway](#)

[Five Things to Know](#)

[Proposal's Significant Changes](#)

These articles outline the main points of the proposed law. Not surprisingly there are many who opposed the statute, and time will tell what the final legislation will look like and if it is ultimately enacted. This effort will impact millions so the main news outlets are covering this and will continue to update the public.

Congress Has a Full Plate

Repealing and replacing Obamacare is going to be an extremely complicated process because the Republicans do not have 60 votes in the Senate and it is very doubtful the Democrats will agree to dismantle Obamacare. So the Republicans are forced to introduce a number of different bills to get the job done. This article talks about the three other bills that have been introduced to modify the current law.

[Reform-related Legislative Proposals](#)

The topics are not as sexy as outright health care reform but the three topics certainly impact health care in America. They are (1) wellness programs (2) self-funded health plans and (3) associate health plans where small employers can band together to buy

health coverage. All three topics are important but do not receive much “ink” compared to the major legislative effort discussed in the previous article.

Updated SBC

Even though the repeal-and-replace debate continues, employers still are required to prepare and distribute SBCs.

[Preparing for New SBC Template](#)

The government updated the template last year and the effective date of the revised form is for open enrollment periods that begin on or after April 1, 2017. Note the triggering date is the date the open enrollment period begins, not the first day of the plan year. So if your group health plan is on a calendar year basis, you should start using the revised template for the open enrollment period for next year.

CBO and Repeal and Replace

The Congressional Budget Office or CBO dealt a strong blow against the Republican’s proposal to replace the Affordable Care Act aka Obamacare. According to the CBO 14 million people will lose coverage next year and up to 24 million people would lose coverage by 2026.

[CBO Says Millions Will Lose Coverage](#)

President Obama was criticized by saying you could keep your health plan if you like it, and that turned out not to be the case for most people. President Trump and Health and Human Services Secretary Dr. Tom Price stated that “they would not pull the rug out from anyone.” However, the CBO suggests otherwise.

IRS Clamps Down on Sham Programs

The old adage says if it sounds too good to be true, chances are it is too good to be true. Some people are trying to promote programs that they say save the employer substantial money. However, the IRS continues to issue rulings aimed to shut down these programs.

[IRS Takes Aim at Wellness Tax Schemes](#)

The latest twist is that wellness programs can be designed to shirk the rules, but the IRS says the programs fail to comply with the Internal Revenue Code and that the benefits are taxable income.

HIPAA Privacy Good News

HIPAA has been around for some time and it has gotten a lot of attention from some vendors. Basically, HIPAA requires covered entities and business associates to secure protected health information or PHI. This article does a nice job of explaining how many employers do not, for the most part, need to worry about the rules.

[Many Employers Aren't HIPAA 'Covered Entities'](#)

For most small employers with fully insured health plans, the employer never gets PHI so the HIPAA rules do not even apply. Nevertheless, common sense dictates that employers should protect personal confidential information like Social Security numbers, etc.

Grandmothered Plans Alive and Well for Another Year

Health care reform imposes all kinds of requirements on nongrandfathered health plans. For example, small employer health plans are subject to community rating, etc. The rules were supposed to go into effect January 1, 2014. However, the Obama administration postponed the effective date several times. The noncompliant plans came to be known as “grandmothered” plans. The Trump administration just postponed the effective date until January 1, 2019.

[Health Affairs Blog: Transitional Policies](#)

This delayed effective date might be an indication that President Trump might believe health care reform will take some time. In other words, if Obamacare is going to be replaced, why is there a need to delay the rules until January 1, 2019?

Selling Across State Lines

President Trump has indicated he wants health care reform to allow carriers to sell health insurance across state lines. According to Trump this will increase competition among the carriers, which, in turn, will reduce premiums.

[Selling Across State Lines](#)

This article talks about some of the issues involved with that concept. One point to remember is that the main component of the costs is the amount the carrier pays the providers. If the carrier does not have strong discounts with the local providers, the fact the carrier can sell across state lines will probably not result in huge savings.

ACA Enforcement Slipping

Repealing the Affordable Care Act is one of the top priorities of the Trump administration and the IRS has taken a big step in that direction. One of most controversial provisions of the ACA is the individual mandate, which requires individuals

have health coverage or pay a penalty. Obviously the government has to know if the person had coverage to enforce the penalty.

[IRS Won't Require Coverage Information](#)

[Employer Reporting Mandate Still Stands](#)

There is a question on the individual federal tax return asking the taxpayer if he or she had health coverage. The IRS just indicated that it will process the return even if the person fails to answer that question. How can the government assess the individual mandate penalty if the government does not know if the person had health coverage? As a practical matter, this is a strong signal the government will not assess the individual mandate. Note, however, the employer's reporting obligations are still in effect.

Essential Health Benefits on the Bubble

Health care reform requires individual health policies and small employer group health plans to cover 10 broad categories of services. Many people say this requirement is driving up premiums. So it is no surprise the Trump administration wants to strip this requirement from the law.

[Future of Essential Health Benefits](#)

There is no free lunch when it comes to health care so requiring health plans to pay for certain benefits is going to cost money. On the other hand, if the plan provides few benefits the providers will end up losing. For example, say the health plan does not cover dialysis; the person still will need the treatment but the plan will not pay and chances are the person cannot afford the cost so the provider ends up not getting paid.

Government Tries to Stabilize Health Care Exchanges

The Federal government wants to completely revamp the health care system but that is going to take some time. In the meantime the insurance companies are pulling out of the health care exchanges or marketplaces. The government recently issued rules in an attempt to convince the insurance companies to continue offering coverage through the exchanges and marketplaces.

[Market Stabilization Guidance](#)

[Why Stabilization is Unlikely](#)

The first article talks about the steps the government is taking to stabilize the markets but the article says the current Republican proposal probably will not get the job done. Keeping the carriers in the exchanges and marketplaces until a new system is developed is critical. Therefore, the government is trying to make the rules more

palatable for the carriers so that they will continue to participate in the exchanges and marketplaces.

How to Prepare for a FMLA Audit

The Department of Labor is charged with enforcing the FMLA and as part of that responsibility the agency conducts audits. This article talks about what to expect if the government comes knocking on your door to conduct an FMLA audit.

[Managing FMLA Investigations](#)

No one wants to get audited by the government but it can happen. Another consideration is that the statute provides a private cause of action, which means an employee or former employee can file suit and the court has the authority to award attorney fees, which can often be more than the damages. So you need to pay attention to the FMLA if it applies.

Health Insurance in the Future

This is an in-depth article about the role insurance companies will play in the future. It does not focus on the legislation but more on the role carriers will have in reducing costs.

[Health Insurance in the Future](#)

It was written by PricewaterhouseCoopers. The ones made famous by this year's Oscars ceremony. Someone said there is no such thing as bad press but I am not sure these accountants would agree.

Status Report on Wellness Programs

With all the focus on repealing and replacing the Affordable Care Act aka Obamacare it is easy to forget about where we are today with wellness programs. This article discusses the current state of affairs for wellness programs.

[The State of Wellnes Programs](#)

There are two sets of rules that currently do not mesh wellness together. The Trump administration has "bigger fish to fry" currently but hopefully the government will focus on this area and remove some of the confusion.

New Claims Procedures for Disability Plans

The Department of Labor issued proposed rules changing the claim procedures applicable to disability plans. The rules are somewhat similar to those applicable to health plans. In short, they give the employees more rights when filing a claim.

[New Regulations for Disability Benefit Claims](#)

We have mentioned these rules in previous newsletters. One thing to remember is that they do not become effective until next year but you should at least be familiar with the changes now.

Capping Tax Deductibility

There is no free lunch when it comes to health care and the government will have to raise money to pay for whatever we end up with when it comes to health care reform. One of the proposals being batted around is putting a cap on the employer's tax deductibility of health plan premiums.

[Taxing Benefits: Myths and Realities](#)

[Impact of Cap on Tax Breaks](#)

These articles talk about the pros and cons of this approach. It is worth noting the proposals as of this date do not cap the tax deductibility of health plan premiums but there is a chance the provision still may find its way into the final bill.

Small Employer HRA Notices Extension

President Obama loosened the rules for small employers (i.e. those with fewer than 50 employees) by allowing them to establish HRAs that can be used to reimburse individual health policies. This is a 180-degree turnaround under the previous rules, which strictly prohibited employers from paying for the employees' individual health policies.

[Small Employer HRA Notices](#)

One of the requirements under the new rules is that the employer provides a special notice to the employees. This was supposed to be provided to employees at least 90 days prior to the first day of the plan year but provided a one-time exception that listed the drop-dead date of March 13, 2017. However, the government recently extended the notification deadline to 90 days after the IRS issues additional guidance on the notification rules. This really helps small employers that want to sponsor HRAs that pay for individual health policies. Note that the article referenced above has a link to the rules governing these HRAs so you need to read both articles to fully understand how these HRAs work.

Request Extension to File IRS Forms 1094 and 1095

There is a lot of talk about the employer and individual mandates going away. However, it appears that whatever happens, there will be some form, albeit perhaps more simplified, of employer reporting. Even taking that into account, the current

deadlines for submitting the forms to the government is fast approaching and, in fact, has passed for those submitting the forms in paper format.

[How to File for an Extension](#)

If you are submitting the forms electronically, you have until the end of this month. However, you can request a 30-day extension by filing IRS Form 8809. This article explains the process.

Federal Contractors and Paid Leave

If you do work for the federal government you should be aware of the requirement to provide up to seven days of paid leave to certain employees.

[Mandatory Paid Leave for Federal Contractors](#)

The rules apply to contracts awarded on or after January 1, 2017, unless it falls under one of the exceptions.