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.

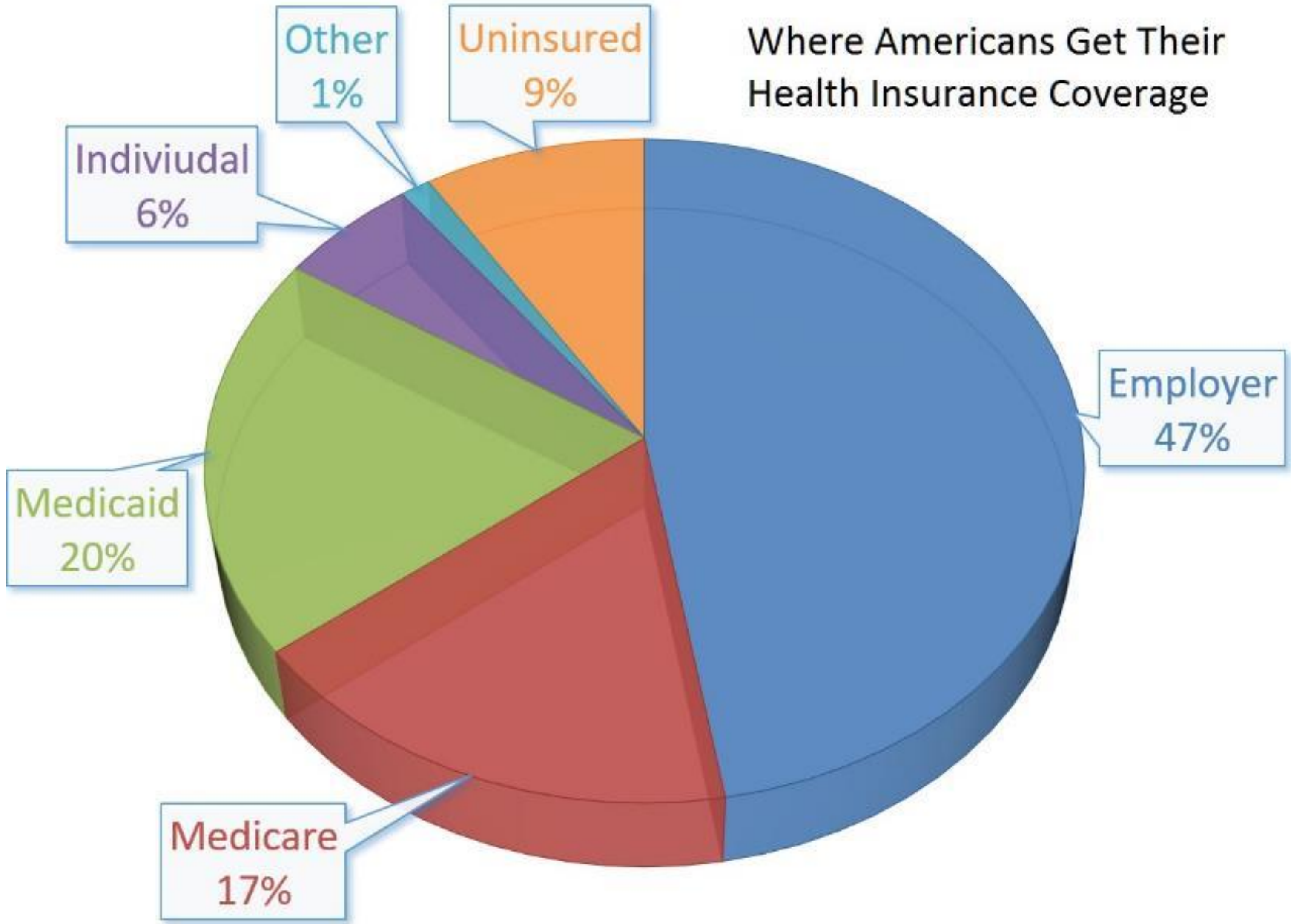
By ALAN RAPPEPORT MAY 6, 2018

RELATED COVER

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 • Subsides 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



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), <u>who do not offer group health insurance</u>, 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 heath 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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