We’ve Come a Long Way…

2010-2012
- Patient Protections
- High Risk Pools
- Coverage Expansion
- Employee Notifications
- W-2 Reporting

2012-2014
- Public Marketplace Opens
- Subsidies
- Medicaid Expansion
- Individual Mandate

2014-2019
- Large Employer Mandate
- §6055 & §6056 Reporting
- New SBC Template
- Ongoing Reporting

2022
- Cadillac Tax
Congressional Approach

Paths to Legislation

Tax reform

Market stability legislation proposed by bipartisan members of the Senate HELP committee

Single-payer bill proposed by Sen. Bernie Sanders and 16 Democratic Senators
Tax Reform

Tax Cuts and Jobs Act

- Elimination of:
  - Individual mandate – 2019
  - Employer deduction for certain transportation benefits – Beginning in 2018
  - Income exclusion for qualified bicycle commuting reimbursement – 2018-2025

No legislative changes to:
- Employer Mandate
- Forms 1094-C and 1095-C Reporting
- Dependent Care FSAs
- Employer Provided Educational Assistance

Continuing Resolution – Jan 22, 2018

- Cadillac Tax delayed until 2022
- Health Insurer tax suspended in 2019
Senate HELP Committee

- Bipartisan approach to stabilize insurance markets
- Considerations
  - Fund cost-sharing reduction payments
  - Expand “copper plans” to those 30 and over
  - Grant states more flexibility to approve health insurance plans and prices in their state
  - Allow states to offer plans with varied benefits if its value is similar to plans in the Marketplace
Potential Agency Actions

• Amend definition of Essential Health Benefits and give states flexibility
• Allow more state waivers
• Stop cost-sharing reduction payments to carriers
• Weaken Marketplace enrollment outreach
• Make subsidies less generous
• Allow states to impose work requirements on Medicaid recipients
• Fail to maintain Marketplace infrastructure

“There are 1,400 references [in the ACA] saying ‘the secretary may’ or ‘the secretary shall,’ so he has great latitude to fix a lot of things on his own,”

- Rep. Bill Flores (R-TX)
Executive Orders

- President Trump signed Executive Orders directing the agencies to explore ways to:
  - Expand rules for Association Health Plans
    » DOL issued proposed rules
    » Would make it easier for unrelated employers to band together to purchase coverage
  - Allow employees to use HRA funds for individual policies
  - Increase the availability of short-term limited duration health insurance (STLDI)
IRS Enforcing Employer Mandate

- Form 226J: *Potential* employer mandate penalties
- 30 days to respond
- Requires review of Forms 2094-C and 1095-C
Applicable Large Employer Reporting

Individualized Statement
Form 1095-C

TO FULL-TIME EMPLOYEES

March 2, 2018

Extended!

Transmittal Report
Form 1094-C

TO IRS

Feb. 28, 2018
(April 2, 2018 if e-file)

Each Employee Statement
Forms 1095-C

Feb. 28, 2018
(April 2, 2018 if e-file)
Allow incentive up to 30% of premium for wellness programs

30% is arbitrary and capricious – try again!

Plan new proposed rules in 2018, but not effective until 2021

Not timely enough – 30% rule vacated as of Jan 1, 2019

Coming Soon! New proposed rules by August 2018
Healthcare Challenges

- Cost of Coverage Increases
- Cost of Coverage Decreases
- Benefits Provided
- Number of Individuals Covered
- Cost of Coverage Decreases
- Cost of Coverage Increases
Employer Mandate

Do you have at least 50 FT and FTE employees?  
- NO: No penalty applies!
- YES: Is coverage offered to 95% of all full-time employees?

Is coverage offered to 95% of all full-time employees?  
- NO: If at least one FT employee receives premium assistance:
  - 2017: $2,260 x (total # of FTs – 30)
  - 2018: $2,320 (estimated)
- YES: Does plan have minimum value?

Does plan have minimum value?  
- NO: Lesser of:
  - 2017: $3,390 for each FT receiving tax credit OR $2,260 x (# of FTs – 30)
  - 2018: $3,480 (estimated)
- YES: Is coverage affordable?

Is coverage affordable?  
- NO: No penalty applies!
- YES: No penalty applies!
Affordability

- Affordability is based on whether employee’s required contribution for lowest-cost, employee-only coverage exceeds 9.56% of household income for 2018

**2017**

$200 <br> monthly contribution

$2,062.98 <br> monthly wages

= 9.69% <br>

2017 affordability threshold is 9.69%, so coverage is deemed affordable

**2018 – NO CONTRIBUTION CHANGE**

$200 <br> monthly contribution

$2,062.98 <br> monthly wages

= 9.69% <br>

2018 affordability threshold is 9.55%, so coverage is deemed NOT affordable, and may trigger up to $3,480 penalty per affected employee

**2018 – EMPLOYEE CONTRIBUTION DECREASE**

$194.74 <br> monthly contribution

$2,062.98 <br> monthly wages

= 9.56% <br>

2018 affordability threshold is 9.56%, so coverage is deemed affordable; employer contribution is $5.26 more per month per affected employee
Cost Pressures

- **Consideration:** Elimination of individual mandate
  - Impact: Likely will drive costs higher
- **Consideration:** Focus on “welfare” programs – Medicare, Medicaid
  - Impact: Increase in Medicare supplement program costs
  - Impact: Reversal of Medicaid expansion will increase uncompensated care, driving costs of insurance (individual and employer-based) up
Other Considerations

- Consideration: Shift from GASB 45 to GASB 75
  - Impact: All things being equal, OPEBs will increase
  - Impact: Compounded by considerations just covered
  - Impact: Continued pressure to reduce retiree costs, liabilities
  - Impact: Increased prevalence of retiree Health Reimbursement Arrangements (HRAs) – not affected by tax reform (yet!)?
Cadillac Tax

Delayed until 2022!

COBRA Rate ≥ $10,200 for self-only or $27,500 for family (other than self-only)

Excise Tax

$ = 40% of plan value that exceeds threshold

Special Provisions

• High risk professions
• Early retirees
• Age & gender
Looking Ahead

Cadillac Tax

• Inevitable, given convergence of indexation based on general CPI and requirement for minimum value
  – Impact: Additional cost for the tax
  – Impact: Ongoing focus on plan design to avoid thresholds
  – Impact: Continued pressure to reduce retiree costs, liabilities
  – Impact: Employers exiting retiree health coverage (where permitted) and moving to Retiree Health Reimbursement Arrangements (HRAs) only?
Moving Forward

• Watch for regulatory adjustments by IRS and HHS
  – The agencies have discretion in many aspects of ACA implementation and interpretation
• Watch for State action
• Watch for Agency action
  – HHS has finalized market stabilization rules for insurers
  – Employer Mandate and Individual Mandate penalties
Stay on Target

• Innovation is more important than ever
• You may have more flexibility
  – Employer-sponsored plans will continue to provide coverage for workers
  – The ACA-replacement proposals are likely to provide more flexibility to plans
  – Innovations can help to reduce costs and increase quality for employer-sponsored plans
Questions?

ajghealthcarereform.com

Are you overwhelmed by ever-evolving regulations? You aren’t alone.

Healthcare reform legislation is complex, and employer mandates are continually changing. It’s time to work with a partner who can help shoulder your compliance burden, reduce the paperwork load, and reduce the risk of noncompliance.

The dramatic change to the healthcare landscape ushered in by the passage of the Patient Protection and Affordable Care Act (PPACA) presents a daunting challenge in understanding the myriad of potential impacts on you and your employees, while achieving your business objectives. As with most major legislation, the interpretation and implementation of the regulations may bring legal challenges that can result in new or modified requirements.

Arthur J. Gallagher & Co.'s Benefits & Human Resources Consulting team approaches market-leading financial and analytical modeling tools to guide you through the healthcare reform labyrinth. As your guide and advisor, we will work with you to understand the strategic, financial and operational impacts today and in the future.

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