Are We There Yet?
The Never Ending Legal Compliance Road Trip

Sally Wineman, JD
Area Senior Vice President, Compliance Counsel
Are we there yet?

- Public Marketplace Opens
- Subsidies
- Medicaid Expansion
- Individual Mandate
- Large Employer Mandate
- Ongoing Reporting
- New SBC template
- Cadillac Tax
- Midsize Employer Mandate
  - §6055 & §6056 Reporting
- Public Marketplace Opens
  - Subsidies
  - Medicaid Expansion
  - Individual Mandate
- New SBC template
- Cadillac Tax
Healthcare Reform
Healthcare Challenges

- Cost of Coverage Increases
- Number of Individuals Covered
- Benefits Provided
- Cost of Coverage Decreases
- Cost of Coverage Increases
- Cost of Coverage Decreases
Where are we now?

Congress passed RAHFRA to repeal ACA

President Obama vetoed

Republicans campaigned on repealing ACA

President Trump issued Executive Order

House passed AHCA

Senate failed to pass BCRA, ORRA or HCFA

Bipartisan Bill??
House Approach

• The American Health Care Act would repeal and replace parts of the ACA
• House passed the bill on May 4, 2017 (217-213 w/ no Democratic support)
• AHCA bill then moved to Senate
• Senate reconciliation process only requires 51 votes to pass, but only allows provisions that impact spending
Senate Approach

• Senate drafted the Better Care Reconciliation Act of 2017 (BCRA), which differed from the AHCA
  ✓ BCRA was defeated in Senate on July 26 (49-51)
• Senate also defeated 2 other ACA repeal bills:
  ✓ Repeal-only bill (ORRA): President Obama vetoed in 2016 (July 26)
  ✓ “Skinny Repeal”: Health Care Freedom Act (July 28)
• If Senate passes a bill that is not identical to the House version, then must go to Conference Committee for consensus
• Both House and Senate would need to vote again
Post-Recess Approach

- Senate HELP
  - Bipartisan Approach

- Medicare for All
  - Democratic Approach

- Graham-Cassidy-Heller-Johnson
  - Republican Approach
Bi-Partisan Approach: Cost-Sharing Reduction Payments

• Government provides insurance companies subsidies to cover costs (deductibles, copays) for individuals with incomes under 250% FPL
  ✓ $10 billion in 2018

• If removed, estimated to:
  ✓ Increase premiums by 20%
  ✓ Increase federal deficit by $194 billion over next decade
Graham-Cassidy Bill

- U.S. Senators Lindsey Graham (R-SC), Bill Cassidy (R-LA), Dean Heller (R-NV), and Ron Johnson (R-WI) proposed legislation on Sep. 13, 2017
  - Previously proposed similar concept
  - Trying to pass using reconciliation by Sep. 30th
- President Trump, Senator John McCain, and Speaker of the House Paul Ryan announced support for the approach
Post-Recess Republican Approach

Graham-Cassidy Bill

• Would eliminate:
  ✓ ACA subsidies and cost-sharing reductions
  ✓ Individual mandate retro to 2016
  ✓ Employer mandate retro to 2016

• Would change:
  ✓ Age-Ratios: Insurers could use a 5:1 ratio instead of ACA’s 3:1 ratio
  ✓ HSAs: Limits would be increased
  ✓ Insurer Risks: Would create temporary fund to reimburse insurers for large losses

“If you like Obamacare, you can keep it. If you want to replace it, you can.”
- Sen. Lindsey Graham (R-SC)
Graham-Cassidy Bill

- Reduced Medicaid funding to states could impact their options
  - Medicaid block grants to states beginning in 2020
  - Could be used to develop any health care system they want
  - However, funding would likely be temporary and lower than under ACA

- Would allow Small Business Association Health Plans

- Many ACA revenue provisions would remain, including Cadillac tax, health insurer tax, and additional Medicare tax for high-earners

- Would repeal HSA excise tax increase, medical device tax, and tax on OTC items
Bipartisan Approach

Senate HELP Committee - Stabilizing Premiums and Helping Individuals in the Individual Insurance Market for 2018

- Committee plans to draft a bipartisan bill to stabilize the insurance markets
  - Plan to pass bill by end of September
- Bill would:
  - Fund cost-sharing reduction payments
  - Expand “copper plans” to those 30 and over
    - Would allow catastrophic plans with lower premiums and higher deductibles
  - 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

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Democratic Approach

Medicare for All

• Introduced by Sen. Bernie Sanders (I-VT) with 16 Democratic co-sponsors
  ✓ Similar bill in 2013 had 0 co-sponsors
• Single-payer plan with government paying for health expenses
• Would greatly expand Medicare over four years
• Released list of potential funding options
• The bill is not expected to pass Congress
State Legislation

Single Payer Legislation

• Single-payer bills have recently been considered in:
  - California
  - Colorado
  - Massachusetts
  - New Jersey
  - New York
  - Rhode Island

• Vermont passed legislation to establish a publicly financed single-payer health system in 2011
• The program did not progress after the financial analysis was released
Post-ACA Approach

• 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
  ✓ IRS review and assessment of Employer Mandate and Individual Mandate penalties
Agency Actions

IRS Actions

• IRS issued Information Letters indicating that:
  ✓ President Trump’s Executive Order did not change the ACA
  ✓ The ACA remains in force until changed by Congress
  ✓ Waivers are not available under the employer mandate
  ✓ The individual mandate continues to apply

• IRS indicated that it will not reject tax returns without healthcare information, but will request information from those individuals

• Issued RFI for suggestions to modify regulations

• Included Cadillac tax guidance on its regulatory agenda
Potential Agency Actions

- Weaken enforcement of the individual mandate
- 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)
Accomplishments

• 20 million adults gained health insurance due to ACA
• Uninsured rate down to 9% - the lowest level ever
• Open enrollment for 2017 resulted in 12.2 million plan selections; 31% were new to the Marketplace

Challenges

• Premium increases
• Marketing and community outreach funding cuts
• Fewer insurers participating

Open Enrollment Coming!
November 1 – December 15
Insurer Participation

Source: CMS.gov, updated 9/6/17

- 1,487 counties projected to have 1 carrier (47.34%)
- 3 carriers or more in 17 counties
- 0 counties projected to have 0 carriers (0.00%)
- 0 Exchange participants projected without coverage (0.00%)
- 2,668,625 Exchange participants projected without choices (29.00%)
The Marketplace in Oregon

- Average rate increase: 5.6%
- 7 insurance carriers offering plans in 2018
- Over 1.1 million Oregonians insured through Oregon Health Plan or the marketplace
- Average subsidy amount: $349 per month

www.healthcare.gov
The Marketplace in Washington

- Average rate increase: 22.3%
- More than 225,000 individuals used Washington Healthplanfinder to select a plan
  ✓ 13% increase over last year
- Self-sustaining budget challenge

www.wahealthplanfinder.org
The Marketplace in Alaska

- Rate decrease: 21.6%
- Premera is the only insurance carrier
- Reinsurance program waiver approved
  - $332 million from federal government to stabilize marketplace

www.healthcare.gov
Stay on Route

• 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
## Preventive Care (non-GF plans)

<table>
<thead>
<tr>
<th>Preventive Care Measure</th>
<th>Plan Year Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Primary care interventions to support breastfeeding</strong></td>
<td>On or after October 25, 2017</td>
</tr>
<tr>
<td><strong>Women's preventive services – Women’s Preventive Services Initiative</strong></td>
<td></td>
</tr>
<tr>
<td>• Mammography screen for breast cancer in average-risk women</td>
<td></td>
</tr>
<tr>
<td>• Breastfeeding services and supplies</td>
<td></td>
</tr>
<tr>
<td>• Cervical cancer screening</td>
<td></td>
</tr>
<tr>
<td>• Contraception – all 18 FDA approved methods limited to generic versions</td>
<td></td>
</tr>
<tr>
<td>• Gestational diabetes mellitus screening</td>
<td></td>
</tr>
<tr>
<td>• HIV screening</td>
<td></td>
</tr>
<tr>
<td>• Interpersonal and domestic violence screening</td>
<td></td>
</tr>
<tr>
<td>• STI counseling</td>
<td></td>
</tr>
<tr>
<td>• Well-woman preventive visits</td>
<td></td>
</tr>
<tr>
<td><strong>Screening for preeclampsia in pregnant women with certain blood pressure measurements</strong></td>
<td>On or after April 25, 2018</td>
</tr>
<tr>
<td><strong>Screening for obesity in children and adolescents</strong></td>
<td>On or after June 20, 2018</td>
</tr>
<tr>
<td><strong>Vision screening in children aged 6 months to 5 years</strong></td>
<td>On or after September 5, 2018</td>
</tr>
</tbody>
</table>
Final regulations released, “new” SBC template issued

Applies beginning on:

✓ With respect to open enrollments for plan years that start on or after April 1, 2017

✓ Can coordinate with insurer, if applicable

Shorter template

Adds questions about services (if any) covered before the deductible is met

Adds another coverage example, for a simple fracture

Deletes Questions and Answers About the Coverage Examples
# 2018 Limits

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Out-of-Pocket (OOP) Maximum</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(single/family)</td>
<td>$7,150 / $14,300</td>
<td>$7,350 / $14,700</td>
</tr>
<tr>
<td><strong>FSA Maximum</strong></td>
<td>$2,600</td>
<td>TBD</td>
</tr>
<tr>
<td><strong>Qualified HSA HDHP</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum deductible</td>
<td>$1,300 / $2,600</td>
<td>$1,350 / $2,700</td>
</tr>
<tr>
<td>Maximum OOP</td>
<td>$6,550 / $13,100</td>
<td>$6,650 / $13,300</td>
</tr>
<tr>
<td>Maximum HSA contribution</td>
<td>$3,400 / $6,750</td>
<td>$3,450 / $6,900</td>
</tr>
<tr>
<td>Catch-up HSA contribution</td>
<td>$1,000</td>
<td>$1,000</td>
</tr>
<tr>
<td><strong>Transit</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mass transit/van pooling</td>
<td>$255</td>
<td>$255</td>
</tr>
<tr>
<td>Parking</td>
<td>$255</td>
<td>$255</td>
</tr>
<tr>
<td>Bicycle commuter</td>
<td>$20 per month</td>
<td>$20 per month</td>
</tr>
</tbody>
</table>
## Employer Mandate

<table>
<thead>
<tr>
<th>Condition</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Do you have at least 50 FT and FTE employees?</td>
<td>No penalty applies!</td>
<td><strong>YES</strong></td>
</tr>
<tr>
<td>Is coverage offered to 95% of all full-time employees?</td>
<td>No penalty applies!</td>
<td><strong>YES</strong></td>
</tr>
<tr>
<td>Does plan have minimum value?</td>
<td>If at least one FT employee receives premium assistance:</td>
<td><strong>Yes</strong></td>
</tr>
<tr>
<td></td>
<td>2017: $2,260 x (total # of FTs – 30)</td>
<td><strong>Pending</strong></td>
</tr>
<tr>
<td></td>
<td>2018: <strong>Pending</strong></td>
<td><strong>Pending</strong></td>
</tr>
<tr>
<td>Is coverage affordable?</td>
<td>Lesser of:</td>
<td><strong>Yes</strong></td>
</tr>
<tr>
<td></td>
<td>2017: $3,390 for each FT receiving tax credit</td>
<td><strong>NO</strong></td>
</tr>
<tr>
<td></td>
<td>OR $2,260 x (# of FTs – 30)</td>
<td><strong>NO</strong></td>
</tr>
<tr>
<td></td>
<td>2018: <strong>Pending</strong></td>
<td><strong>Pending</strong></td>
</tr>
<tr>
<td>Is at least one FT employee receives premium assistance?</td>
<td><strong>NO</strong></td>
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<td><strong>YES</strong></td>
</tr>
<tr>
<td>No penalty applies!</td>
<td><strong>NO</strong></td>
<td><strong>NO</strong></td>
</tr>
</tbody>
</table>

**Summary:**
- **2017:** For FT employees receiving tax credits, the lesser of $3,390 or $2,260 x (total # of FTs – 30).
- **2018:** Pending.
Affordability

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Affordability Threshold</th>
<th>Employee Contribution</th>
<th>Monthly Wages</th>
<th>Affordability Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>$200 monthly contribution¹</td>
<td>$2,062.98</td>
<td>= 9.69%</td>
<td></td>
</tr>
<tr>
<td>2018 – NO CONTRIBUTION CHANGE</td>
<td>$200 monthly contribution¹</td>
<td>$2,062.98</td>
<td>= 9.69%</td>
<td></td>
</tr>
<tr>
<td>2018 – EMPLOYEE CONTRIBUTION DECREASE</td>
<td>$194.74 monthly contribution¹</td>
<td>$2,062.98</td>
<td>= 9.56%</td>
<td></td>
</tr>
</tbody>
</table>

¹ Employee self-only coverage  ² Employee only wages

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Reporting by Health Insurance Carriers

To IRS

To Enrolled Employees

Individualized Statement
Form 1095-B

January 31, 2018

Transmittal Report
Form 1094-B

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

Each Employee Statement
Forms 1095-B

Feb. 28, 2018
(April 2, 2018 if e-file)
Applicable Large Employer Reporting

To Full-Time Employees

- **Individualized Statement**
  - Form 1095-C
  - January 31, 2018

To IRS

- **Transmittal Report**
  - Form 1094-C
  - Feb. 28, 2018
  - (April 2, 2018 if e-file)

- **Each Employee Statement**
  - Forms 1095-C
  - Feb. 28, 2018
  - (April 2, 2018 if e-file)
Distribution & Penalties

• Employers that file at least 250 Forms 1095-B or 1095-C in a calendar year are required to file electronically with IRS

• Employee Statements
  ✓ Mail
  ✓ Electronically (if employee has consented to electronic)
  ✓ Posting to a website (if employee consents and employer must separately notify employee)
  ✓ Employee can also request a paper copy

• Penalties
  ✓ $260 per return with a maximum of $3,218,500 for a calendar year
Check Your Mirrors

- Nondiscrimination in fully insured plans – pending guidance
- Quality care reporting – pending guidance
- Transparency reporting requirement – pending guidance
Cadillac Tax

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

UNDER CONSTRUCTION!
Delayed until 2020
Disaster Response

The Essentials

- Plan in advance
- Temporary contact list
- Remote access
- Continuation of health coverage & special enrollments
- FMLA
- EAP reminders
- Retirement hardship loans
- Leave-based donation programs

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Don’t become a headline!

• Employer’s Guide to HIPAA
• HIPAA Audit Survival 101 webcast
• Decision trees
Washington

Washington Paid Family and Medical Leave

• Benefits available in 2020
  ✓ Maximum weekly benefit is $1,000
  ✓ Eligible for leave after working 820 hours in first four of the last five completed calendar quarters
  ✓ Leave runs concurrently with any FMLA leave
  ✓ Health benefits continued only as required by FMLA

• Funded with premiums paid by employers and employees
  ✓ Employers with 50 or fewer employees are exempt from paying the employer share, but may voluntarily elect to do so
  ✓ Indian Tribes and self-employed individuals may opt-in to the program
  ✓ Employers may opt-out if have voluntary plan that meets certain standards

• Leave not to exceed 12 weeks (may be extended to 18 months)
State-provided School Employee Benefits (SEHB 2242)

- Establishes a School Employees Benefits Board to procure health care and other benefits for school district employees
- All school districts in WA must participate beginning January 1, 2020
California

CA Balance-Billing Law

- Prohibits balance billing for non-emergency care obtained in an in-network facility
  - Pay the same cost-sharing for an out-of-network provider as for an in-network provider when services are provided at an in-network facility
  - Already applied to HMOs and emergency care
  - Exception for plans with out-of-network benefits (PPO) if written consent under certain criteria
- Effective July 1, 2017
- Impacts only fully-insured plans issued in CA
  - No impact on self-insured plans
New York State Paid Family Leave (NYPFL)

• Out-of-state employers with employees in NY state are subject to the law for their NY employees effective January 1, 2018.

• Employees on NYPFL who participate in the employer's health plan are entitled to continue health benefits on the same basis as if actively working

• Update plan documents to include

• Employers can comply by:
  ✓ Adding a NYPFL rider to their current NY-mandated temporary disability policy
  ✓ A separate NYPFL policy may be available if the current disability carrier does not offer the PFL rider; or
  ✓ Self-funding their NYPFL
Questions?

ajghealthcarereform.com

Healthcare Reform

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 burdens, sift the paperwork tide 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 approach and market-leading financial and analytical modeling tools will 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.
Thank you!

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