
What's Next For American Health Care Reform?
American Fidelity
Administrative Services


Our Agenda
• Remember this?
• Myth vs. Fact
• Chipping Away
• New Reality
• Tracking Accurately
• Reporting Accurately
• Looking Ahead


Remember this?

The Promise:

A sweeping wave of change

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The Reality:

- Failed to pass Better Care Reconciliation Act (BCRA)
- Failed to pass repeal-only bill from 2016, the Obamacare Repeal Reconciliation Act (ORRA)
- Failed to pass so-called “skinny repeal” bill, the Health Care Freedom Act
- Failed to pass the Graham-Cassidy bill
- Failed to pass the Hatch-Brady bill

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“So that’s why we’ve turned to these lesser things to try to see, OK, if we can’t do the whole thing, can we at least **chip away at it**?”

-- Mac Thornberry, R-TX

Source: Wichita Falls Times Record News article by Trish Choate, published August 3, 2018
https://www.timesrecordnews.com/story/news/local/2018/08/03/thornberry-no-repeal-obamacare-year-chipping-away-possible/899540002/

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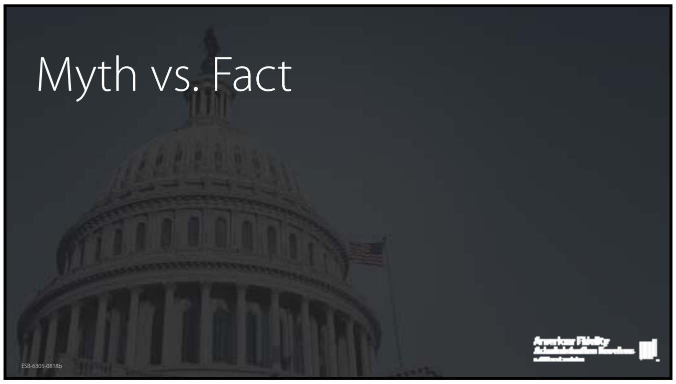

Myth vs. Fact


Individual Mandate
Myth
Fact
Repealed
Not repealed
Penalty reduced to zero
Effective January 1, 2019


Employer Mandate
Myth
Fact
No enforcement/Repealed
Not repealed
Enforcement continues

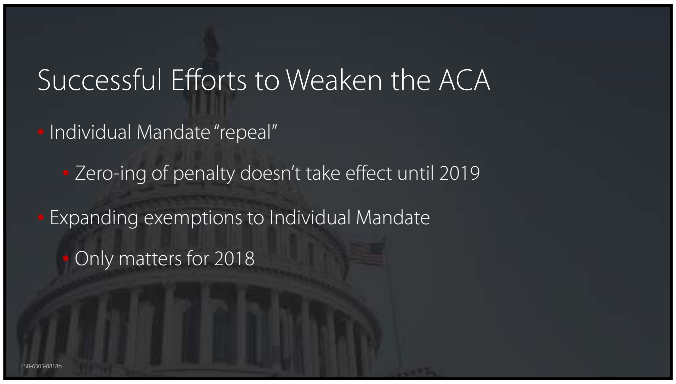
Employer Reporting

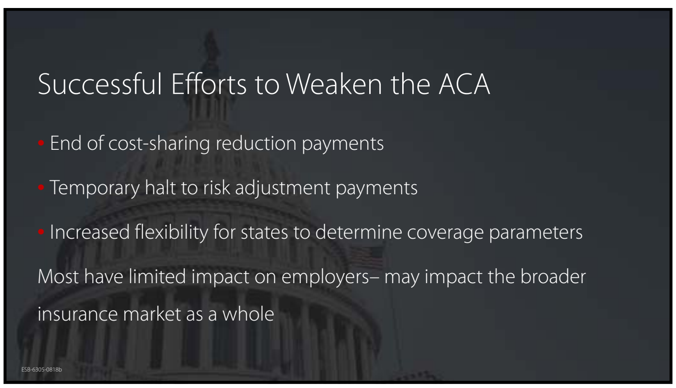
Myth	Fact
Coming to an end	• No changes • Remains mandatory • More employers receiving penalty notifications

ACA Marketplaces

Myth	Fact
"Spectacular failure" Inevitable implosion Declining enrollment Skyrocketing rates	• Steady enrollment • Rate increases less dramatic than projected • Some markets saw rate reductions

Chipping Away


Successful Efforts to Weaken the ACA
• Individual Mandate "repeal"
• Zero-ing of penalty doesn't take effect until 2019
• Expanding exemptions to Individual Mandate
• Only matters for 2018


Successful Efforts to Weaken the ACA
• End of cost-sharing reduction payments
• Temporary halt to risk adjustment payments
• Increased flexibility for states to determine coverage parameters
Most have limited impact on employers– may impact the broader insurance market as a whole


Successful Efforts to Weaken the ACA
Association Health Plans
• What are they?
• Why are we hearing about them?
• Why do employers care?

Successful Efforts to Weaken the ACA

Short-term, limited-duration coverage

- What is it?
- Why are we hearing about it?
- Why do employers care?

Current Reality

ACA Remains the Law

Part of the reason ACA remains law is that removing certain provisions would be difficult, both politically and from a plan administration perspective:

- Prohibition on lifetime and annual dollar limits
- Protection of coverage for pre-existing conditions
- Requirement to cover preventive care without cost-sharing

ACA Remains the Law

Large employers must still comply with:

- Employer Mandate
  - Offer coverage to 95% of full-time employees, or face a potential assessment
  - Ensure that coverage offered is affordable and meets minimum value standards, or face a potential assessment
- IRS Reporting Requirement
  - Form 1094-C – employer-level information
  - Form 1095-C – employee by employee information

Enforcement is Real

Employer Mandate Penalties

- 4980H(a) Penalty
- 4980H(b) Penalty

IRS Enforcement – 4980H(a) Penalty

Penalty applies when:

- A large employer fails to offer coverage to at least 95% (70% in 2015) of full-time employees and their dependent children, and at least one full-time employee receives a premium tax credit to help with the cost of coverage.
- The annual penalty for failing to meet this target is $2,000 per full-time employee, less the first 30 (first 80 in 2015), indexed annually.

IRS Enforcement – 4980H(b) Penalty

Penalty applies when:

- A large employer offers coverage to at least 95% (70% in 2015) of full-time employees and their dependent children, but at least one full-time employee receives a premium tax credit to help with the cost of coverage that was not offered, was inadequate, or was unaffordable.
- The penalty for failing to meet this target is $3,000 per full-time employee who receives a premium tax credit and no safe harbor applies.

IRS Enforcement

4980H(a) Penalty	4980H(b) Penalty
2015 $2,080 annually or $173.33/mo.	2015 $3,120 annually or $260.00/mo.
2016 $2,160 annually or $180.00/mo.	2016 $3,240 annually or $270.00/mo.
2017 $2,260 annually or $188.33/mo.	2017 $3,390 annually or $282.50/mo.
2018 $2,320 annually or $193.33/mo.	2018 $3,480 annually or $290.00/mo.
2019 $2,500 annually or $208.33/mo.	2019 $3,750 annually or $312.50/mo.

Enforcement is Real?

Exchange/Marketplace letters

- What are they
- How do we respond

Enforcement is Real?

Employer Shared Responsibility Payment ("ESRP") letters

- What are they
- How do we respond

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Available at https://www.irs.gov/pub/notices/226-J_letter.pdf

Steps to Respond

Step 1:
Employer receives IRS Letter 226-J and Form 14765 (Employee Premium Tax Credit Listing)

Step 2:
Employer responds using IRS Form 14764 (Employer Response); makes corrections on Form 14765 and attaches additional documentation (as necessary)

Step 3:
IRS responds using Letter 227

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Steps to Respond
Step 4:
Optional pre-assessment conference w/ IRS Office of Appeals
Step 5:
Notice CP 220J issued if IRS determines an assessment will be made
Step 6:
Employer can submit questions, request abatement, or challenge the assessment in court


Tracking Accurately


Tracking Accurately
Who is actually an employee?
Contractors?
Temps?
Joint employers?
Veterans?

Tracking Accurately

- Who is actually full-time?
  - The 30-hour rule
- What is actually an hour of service?
  - Paid or entitled to pay
  - Special unpaid leave
- Hours that are difficult to track

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Reporting Accurately

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Reporting Accurately

Requirements

- All large employers must report employer-level info using Form 1094-C, give each full-time employee a Form 1095-C, and file copies of the Form 1095-C with the IRS
- For 250+ information returns (Form 1095-C), electronic filing is mandatory
- Self-insured large employers report enrollment on Part III of Form 1095-C
- Self-insured small employers report using Form 1095-B

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What causes mistakes?

- Brand new law required employers to develop new processes to comply
- Complexity of IRS guidance
- Technology and/or software snafus

Areas to Review

Did you enter the correct offer code on Line 14 of the Form 1095-C?

Verify accuracy carefully. Certain codes are automatic penalty triggers if a full-time employee receives a Premium Tax Credit:

- Code 1H (no offer of coverage)
- Codes 1B, 1D, and 1J (offer that did not include dependent children)
- Code 1F (offer of coverage that did not meet the ACA's "minimum value" adequacy standard)

Areas to Review

Missing Line 16 Safe Harbor Codes:

- Code 2A (not employed)
- Code 2B (not full-time)
- Code 2C (enrolled in the coverage offered)
- Code 2D (permissible waiting period or initial measurement period for a new part-time, seasonal or variable hour employee)
- Code 2E (multiemployer interim rule relief for certain union plans)
- Codes 2F, 2G, and 2H (affordability safe harbors)
- Code 2I (2015 non-calendar plan year transition relief)
- For more information: https://www.irs.gov/pub/irs-prior/i109495c--2015.pdf

What Will the Future Bring?

HSAs and HRAs

Health Savings Accounts (HSAs) and Health Reimbursement Arrangements (HRAs

- For 2018, family contribution limit remains $6,900, after the IRS announced and then retracted a reduction to $6,850
- Still awaiting standalone HRA relief
  - Subject of executive order
  - Regulatory changes expected

H.R. 6199 and H.R. 6311

- Passed by House of Representatives; less likely to pass Senate
- Expands use of HSAs and Health Flexible Spending Accounts (FSAs). Changes include:
  - Reimbursement for OTC medical products
  - Inclusion of certain menstrual care, sports and fitness expenses
  - Up to $500 for pre-deductible, non-preventive medical expenses
  - Use of employment-related health services including employer sponsored onsite medical clinics

Cadillac Tax

- Scheduled to take effect January 1, 2022
- 40% excise tax would apply to cost of coverage in excess of statutory thresholds
- Currently, $10,200 for individual coverage and $27,500 for family coverage.
- Thresholds will be updated before the tax takes effect and indexed for inflation in future years

Cadillac Tax Planning

Better Safe Than Sorry?

- Target of repeal efforts; bipartisan opposition to the tax may make a repeal or further delay more likely
- If the Cadillac Tax falls, the employer exclusion is next target, so planning is still a good idea