Update: Affordable Care Act (ACA)

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ACA's a Moving Target

Time Flies When You're Having Fun…

March 23, 2017 was the 7th anniversary of the Affordable Care Act

How did we get here?

- Increasing costs, the uninsured, and reduced access to health insurance created a focus on the Health Insurance Industry
- Health Care became a focus during the 2008 election with promised reform
- President Obama intended to fulfill his campaign promises
- Health care reform was introduced, stalled, passed, challenged, and implemented in 2010 through the current day
- Costs, access, and the uninsured continue to be a challenge
- Health care continued to be a focus during the 2016 election
- President Trump intends to fulfill his campaign promises
- Health Care Reform has been introduced…
- What's next?

Affordable Care Act (ACA)

- The **Patient Protection and Affordable Care Act**, often shortened to the Affordable Care Act (ACA), is commonly called **Obamacare**
  - This U. S. federal law was signed by President Obama on March 23, 2010
- **ACA was designed to:**
  1. **Increase health insurance quality and affordability**
  2. **Lower the number of uninsured Americans, and**
  3. **Reduce health care costs**

Before ACA, roughly 50 million Americans were without health insurance

- As of January 2017, 12.2 million Americans elected Marketplace insurance, plus Medicaid has expanded to cover about 15 million
- Still leaves about 28 million Americans without health coverage, including people:
  - with incomes below the federal poverty level
  - live in states that have not expanded Medicaid
  - healthy young adults who can't afford coverage, and
  - people who choose not to buy insurance

ACA Memory Lane

- **March 23, 2010 —** President Obama **signed** the Affordable Care Act (ACA)
- **In 2012 — States began to expand Medicaid eligibility allowing more people to have medical plan coverage.** Today 32 states have expanded Medicaid eligibility from 100% to 138% of the federal poverty level
- **October 1, 2013 — Health Insurance Marketplaces Opened**
  - There are **13 state-run Marketplaces.** Other states use the **federal Marketplace** at healthcare.gov.
  - **Advance premium assistance tax credits and cost-sharing subsidies** are provided for certain lower income individuals to help them buy individual insurance policies in the Marketplace
  - Insurers selling on the Marketplace must sell comprehensive medical plan coverage and are held to minimal underwriting options requiring them to accept/enroll high cost people without applying pre-existing condition limitations or premium adjustments
  - Prior to the Marketplace, millions of Americans with pre-existing health conditions had no access to health care unless they were continuously insured or qualified for Medicaid, Medicare or group coverage

ACA Memory Lane

- **January 1, 2014 — Individual Mandate penalty** began where most Americans are required to have health insurance or pay a personal income tax penalty (currently at the greater of $695 or 2.5% of income).

- **January 1, 2015 — Employer Shared Responsibility Mandate penalty** began for applicable large employers with 50 or more full-time employees

  - Financial penalties on large employers if employee can get a subsidy to buy Marketplace coverage because employer failed to offer medical plan coverage to an adequate percent of its full-time employees or, the full-time employee is offered coverage but the coverage is not of a minimum value (60%) or not affordable (for 2018, affordable means premium does not exceed $96.08/month)

To enforce the penalties, **REQUIRED IRS Reporting Began** (to employees & IRS)

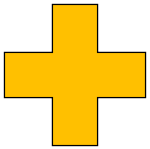
Multiemployer Plan Relief from the Employer Penalty

An employer will not be subject to the Employer Shared Responsibility Mandate penalty for those employees for whom it is contributing to a multiemployer plan pursuant to a collective bargaining agreement, provided the multiemployer plan is minimum value, is affordable and offers coverage to children through the end of the month in which the child turns age 26

ACA Memory Lane

- **Other notable ACA changes have included:**
  - Eligibility for **Dependent children to age 26** whether married or unmarried
  - **Removal of Lifetime and Annual dollar limits** on essential health benefits
  - Removal of **Pre-existing condition limitations**
  - No **Waiting period** for coverage longer than 90 days
  - **Fees**: PCORI (Patient-Centered Outcomes Research Institute) fee, Transitional Reinsurance Fee, Health Insurer Fee, 40% excise tax (Cadillac tax) on high cost medical plans (proposed for 2020)
  - State **Medicaid expansion occurred in 32 out of 50 states**
  - **Medicare Part D donut hole is gradually closing** (for drug costs exceeding $3,700 up to $4,700 beneficiary pays 40% for brand and 51% for generic)
  - Concept of **Grandfathered and Non-grandfathered** medical plans and associated coverage requirements

ACA Pros and Cons



➢ Under the ACA, more Americans gained health coverage

(12 million in Marketplace and 15 million under Medicaid)

WHY?

- ✓ **Penalties motivate individuals to obtain and employers to offer health coverage**
  - However, the individual penalty is still too low to motivate some people to buy coverage. For some it's cheaper to pay a penalty
  - Not enough healthy people buying Marketplace coverage yet
- ✓ for individuals not employed by a large employer, they **have access to buy individual insurance medical plans directly from the Marketplace without fear of their current health conditions (pre-existing conditions),** or they may qualify for expanded Medicaid

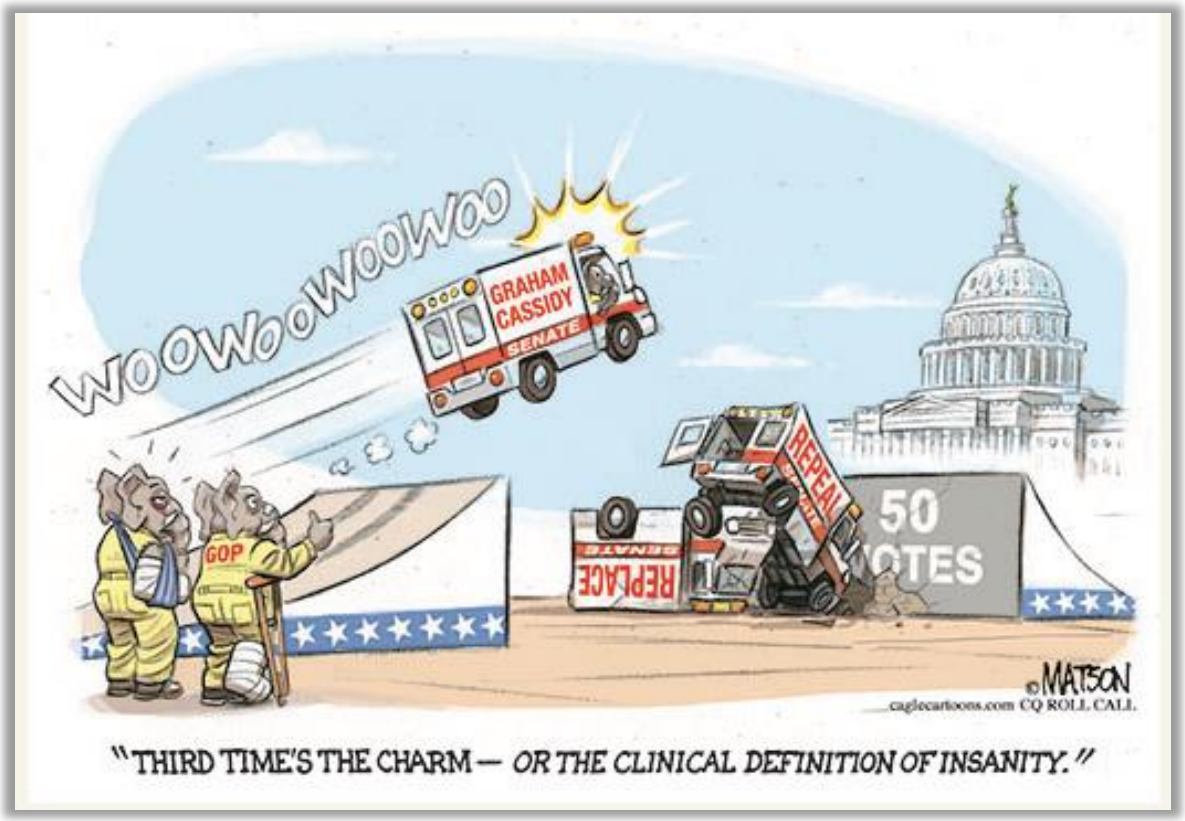
➢ Health care costs continue to increase with trends of 8-12%

- ✓ The Marketplace has reduced availability
- ✓ The cost to the American public even with subsidies, is significant

Now what?

Failed attempts by Congress to repeal & replace Obamacare:

- **American Health Care Act**
- **Better Care Reconciliation Act**
- **Graham-Cassidy Bill (vote not held)**



Key Provisions in "Repeal and Replace" Bills

- Zero out the **individual and employer mandate penalties** retroactive to start of 2016
- Replace the individual mandate with a **continuous coverage requirement**, with premium surcharge (House) or 6-month waiting period for those who do not meet it (Senate)
- Change the **ACA's premium assistance tax credits** (Senate) or replace the ACA's income-based premium subsidies with age-based tax credits (House bill)
- Delay the **40% Excise tax** on high-cost health plans to 2026
- Repeal nearly all **ACA taxes/fees** (with somewhat different effective dates)
- End the ACA's **Medicaid expansion** and make significant structural changes to Medicaid (e.g. state block grants)

Political Hot Button Issues

- These are some of the hottest issues causing significant disagreement in Congress:
  - **Ways to stabilize the Individual Marketplace**
  - **Restructure of federal Medicaid funding**
  - **Pre-existing Condition Limitations**

"Reconciliation Bill" Process Still an Option

✓ **A Reconciliation Bill (using a simple majority vote) could change tax-related ACA components, like:**

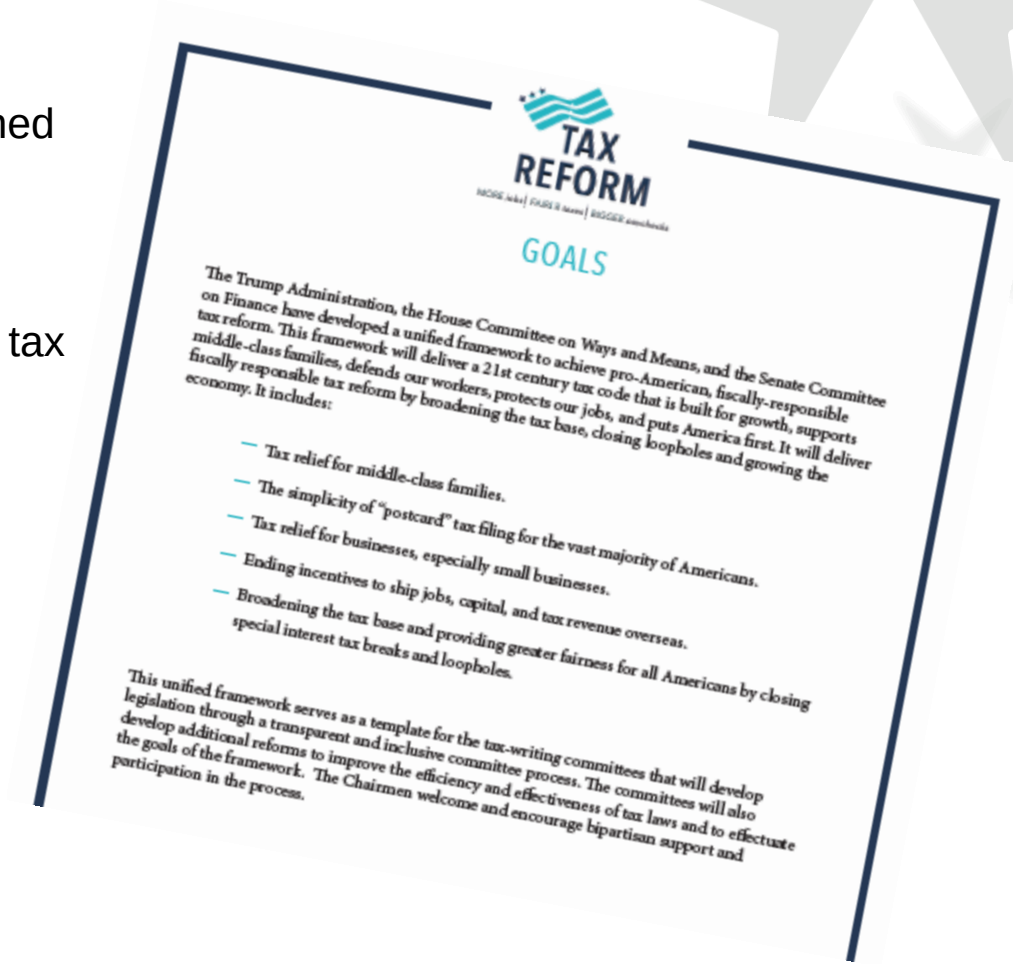
- Individual Mandate Penalty
- Employer Mandate Penalty
  - IRS Reporting
- Federal and State Marketplace structure
  - Subsidies to purchase coverage in the Marketplace
- Taxes like:
  - 40% Excise Tax (Cadillac tax) on high-cost plans effective in 2020
  - Medical device tax
  - Annual insurer tax
  - Medicare payroll tax for high income
  - Small business tax credit
- Expansion of Medicaid eligibility

✓ **Takes Congress (with a 60-vote majority) to change the ACA law:**

- Coverage mandates
  - Pre-existing condition exclusions (guarantee issue)
  - Annual or lifetime dollar maximums
  - Preventive services
  - Out-of-pocket maximums, and other non-grandfathered plan changes
  - Summary of Benefits & Coverage
- Extension of coverage to dependent children to age 26
- 90-day waiting period
- Section 1557 nondiscrimination rules

Options Still Exist for Repeal and Replace

- With health care reform efforts currently sidelined, the Trump administration and Republican leaders in Congress have turned their attention to reforming the tax code
- But there is still the possibility of including changes to ACA as part of the budget reconciliation process attached to various tax reform efforts



TAX REFORM

GOALS

The Trump Administration, the House Committee on Ways and Means, and the Senate Committee on Finance have developed a unified framework to achieve pro-American, fiscally-responsible tax reform. This framework will deliver a 21st century tax code that is built for growth, supports middle-class families, defends our workers, protects our jobs, and puts America first. It will deliver fiscally responsible tax reform by broadening the tax base, closing loopholes and growing the economy. It includes:

- Tax relief for middle-class families.
- The simplicity of "postcard" tax filing for the vast majority of Americans.
- Tax relief for businesses, especially small businesses.
- Ending incentives to ship jobs, capital, and tax revenue overseas.
- Broadening the tax base and providing greater fairness for all Americans by closing special interest tax breaks and loopholes.

This unified framework serves as a template for the tax-writing committees that will develop legislation through a transparent and inclusive committee process. The committees will also develop additional reforms to improve the efficiency and effectiveness of tax laws and to effectuate the goals of the framework. The Chairmen welcome and encourage bipartisan support and participation in the process.

We're in Limbo, so it's ACA for now

Because Congress has not yet acted on a bill to repeal some or all of the Affordable Care Act, it means the ACA law and its regulations remain in force, for now

- It's no secret that the US has long-standing challenges facing our health care system related to access, affordability and quality of care
- **What IS the game plan?**
  - Is health care:
    - a basic right or
    - a privilege?
  - Is Congress trying to:
    - lower health care costs or
    - increase coverage?

Possible 4980H penalties

Grandfathered plan or Non-grandfathered plan

Monthly and Look Back Measurement Method

IRS Reporting Obligations 6055/6056

Break in service

Pay Health Insurance Tax

Individual Mandate Penalty

No pre-existing condition limitations

Excepted Benefits/Limited Scope

New preventive services to cover

Common law employees

SBC: Summary of Benefits & Coverage

Child to age 26 married or unmarried

Distribute Marketplace Notice

No rescission of benefits

40% Excise "Cadillac" Tax

Waiting period cannot exceed 90 days

Full-time Employees = 130 or more hours of service/month

Assure medical plans affordable and minimum value

No dollar limits on essential benefits

Pay PCORI fees

ACA is Still Law

ACA continues to be the law of the land so we need to continue compliance with ACA requirements, like...

Implications of "Repeal and Replace" for Group Health Plans

- **Since there has been no law to change ACA yet, there are NO CHANGES TO GROUP HEALTH PLAN BENEFIT MANDATES OR GRANDFATHERED RULES,** including:
  - Prohibition against dollar annual/lifetime limits
  - Prohibition against pre-existing condition exclusions
  - Emergency room coverage parity
  - Rescission rules
  - External appeal requirements
  - Preventive benefits at no cost-sharing
  - Clinical trial routine costs for approved trials
  - Provider nondiscrimination
  - 90-day waiting period rule
  - No changes to Medicare Advantage plans and Medicare Prescription Drug Plans

NON-GF Plans: New Mandated Preventive Services

Service	Must be Added By:	The free service means:
Low Dose Aspirin	Plan year on or after April 2017	**free aspirin as prevention of cardiovascular disease and colorectal cancer in adults age 50-59** who have a 10% or greater 10-year cardiovascular risk
Low-Moderate Dose Statin Drugs	Plan years on or after Dec. 2017	**free low-moderate dose statin medication**. For adults ages 40–75 years with no history of cardiovascular disease (CVD), 1 or more CVD risk factors, and a calculated 10-year CVD event risk of 10% or greater
Amblyopia (lazy eye) screening in children	Plan years on or after Sept 2018	The USPSTF recommends **vision screening at least once in children ages 3 to 5 years** to detect amblyopia or its risk factors

- **Only need to provide free preventive services from in-network providers**
- **You can add reasonable medical management techniques to preventive care, like precertification or add age and frequency limits, if not otherwise mandated by law**
- **Expect continual revisions to preventive services over time**

More details on preventive services, visit:
http://www.uspreventiveservicestaskforce.org/BrowseRec/Index

Health Insurance Tax Reinstated

- **The Health Insurance Tax or "HIT" is an ACA-mandated fee on the premium for INSURED health products.** The tax is allocated among insurers based on their share of total health insurance premiums collected each year. **This tax adds about 2-3% to the cost of the health premium.**
  - This fee (started in 2014) is paid by the insurance company to the IRS, but the cost of the tax is **passed through to employers** in the form of higher premiums
  - **Congress placed a one year "pause" (a moratorium) on the tax for 2017 but that "time-out" expires starting in 2018**
  - Self-funded health plans are not subject to this health insurance tax

Health Insurance Tax

Insurance premiums are expected to rise an average 2.6% in 2018 with rate increases of 2.5% - 2.7% in subsequent years

Premium increases will impact these types of insured products:
Employer-sponsored policies, Marketplace individual policies, Medicare Advantage, Medicaid managed care policies and Individually purchased coverage.

Continue to Pay PCORI Fees

Feds announce new fee amount annually

Plan Year	Year One Fee	Year Two Fee	Year Three Fee	Year Four Fee	Year Five Fee	Year Six Fee	Year Seven Fee
	for Plan years ENDING on or after 10-1-12 and BEFORE 10-1-13	for Plan years ENDING on or after 10-1-13 and BEFORE 10-1-14	for Plan years ENDING on or after 10-1-14 and BEFORE 10-1-15	for Plan years ENDING on or after 10-1-15 and BEFORE 10-1-16	for Plan years ENDING on or after 10-1-16 and BEFORE 10-1-17	for Plan years ENDING on or after 10-1-17 and BEFORE 10-1-18	for Plan years ENDING on or after 10-1-18 and BEFORE 10-1-19
January Plan Year	$1.00/average covered life due for 2012 plan year. Pay by July 31, 2013	$2.00/average covered life due for 2013 plan year. Pay by July 31, 2014	$2.08/average covered life due for 2014 plan year. Pay by July 31, 2015	$2.17/average covered life due for 2015 plan year. Pay by July 31, 2016*	$2.26/average covered life due for 2016 plan year. Pay by July 31, 2017	$***/average covered life due for 2017 plan year. Pay by July 31, 2018	$***/average covered life due for 2018 plan year. Pay by July 31, 2019
July Plan Year	$1.00/average covered life due for 2012 plan year. Pay by July 31, 2014	$2.00/average covered life due for 2013 plan year. Pay by July 31, 2015	$2.08/average covered life due for 2014 plan year. Pay by July 31, 2016	$2.17/average covered life due for 2015 plan year. Pay by July 31, 2017	$2.26/average covered life due for 2016 plan year. Pay by July 31, 2018	$***/average covered life due for 2017 plan year. Pay by July 31, 2019	$***/average covered life due for 2018 plan year. Pay by July 31, 2020
October Plan Year	$1.00/average covered life due for 2012 plan year. Pay by July 31, 2014	$2.00/average covered life due for 2013 plan year. Pay by July 31, 2015	$2.08/average covered life due for 2014 plan year. Pay by July 31, 2016	$2.17/average covered life due for 2015 plan year. Pay by July 31, 2017	$2.26/average covered life due for 2016 plan year. Pay by July 31, 2018	$***/average covered life due for 2017 plan year. Pay by July 31, 2019	$***/average covered life due for 2018 plan year. Pay by July 31, 2020

* pay by Monday if IRS filing due date falls on a weekend.

Covered lives for non-insured plans can be determined according to these safe harbors: **Actual Count Method, Snapshot Method or Form 5500 Method.**

*** is to be the prior year fee plus the percentage increase in the projected per capita amount of national health expenditures as determined by the Secretary of Treasury.

Final PCORI regulations at: http://www.gpo.gov/fdsys/pkg/FR-2012-12-06/pdf/2012-29325.pdf

Annual reporting & payment using IRS Form 720 "Quarterly Federal Excise Tax Return" is required by July 31 of the calendar year immediately following the last day of the policy or plan year.

Form 720 and instructions are here: http://www.irs.gov/pub/irs-pdf/f720.pdf and http://www.irs.gov/pub/irs-pdf/i720.pdf

IRS websites on PCORI fees: http://www.irs.gov/uac/Newsroom/Patient-Centered-Outcomes-Research-Institute-Fee

•http://www.irs.gov/uac/Application-of-the-Patient-Centered-Outcomes-Research-Trust-Fund-Fee-to-Common-Types-of-Health-Coverage-or-Arrangements

2020: 40% Excise Tax (the "Cadillac Tax")

- **No final regulations yet and several unsuccessful votes in Congress to try to repeal the Excise tax but here's what we know at this time**

  The 40% Excise tax is a **permanent, non-deductible, ANNUAL TAX** on insured and self-funded medical plan sponsors **beginning in 2020**, aimed at:

  - raising revenue to fund the cost of coverage expansion under the ACA
  - discouraging employers from offering overly-generous benefit plans and
  - helping to contain US health care spending

- The amount of the tax is **40% of the difference** between the total cost* of health benefits in a year and the threshold amount for that year.

  *Cost includes total contributions paid by both the employer and the employee.

- Starting with the 2020 tax year, both insured & self-funded plans are subject to a **40% excise tax on the total cost of premiums** for health coverage **that exceeds this threshold: $10,200/year/individual and $27,500/year/family** *(this 2010 regulatory amount may be higher by the time tax takes effect in order to address age/gender and inflation adjustments)*

  Higher threshold amount permitted for an individual who is a **"qualified retiree"** or who participates in an employer's plan where the majority of employees are engaged in a **high-risk profession** (e.g. firefighter) or employed to repair/install **electrical or telecommunication lines**. Higher threshold amounts are $11,850 for individual coverage and $30,950 for family coverage.

Will Congress repeal this tax with their other tax reform issues?

Our Individual Mandate Tax

Individuals must have *minimum essential coverage* (which generally includes employer-sponsored medical plan coverage) or pay a penalty when they file their personal income tax return. Penalty increases over time.

Formula	2014	2015	2016	2017 and beyond
The greater of a flat amount or a % of income[1]	The greater of: $95 or 1% of income	The greater of: $325 or 2% of income	The greater of: $695 or 2.5% of income	Flat amount will be indexed for inflation each year; % stays at 2.5%
Examples:	**The greater of …**	**The greater of …**	**The greater of …**	
Single adult	$95 or 1% of income	$325 or 2% of income	$695 or 2.5% of income	
Married couple	$190 or 1% of income	$650 or 2% of income	$1,390 or 2.5% of income	
One adult, one young child[2]	$142.50 or 1% of income	$487.50 or 2% of income	$1,042.50 or 2.5% of income	
Married couple, three young children[3]	$285 or 1% of income	$975 or 2% of income	$2,085 or 2.5% of income	

For a **child under the age 18**, the penalty is one half of the adult amount. **Maximum Penalty** is capped at the national average premium for a bronze level plan in an exchange, based on family size.

Income means the excess of the person's "household income" over the tax return filing thresholds set out in section 6012(a)(1) of IRC. Household income generally means modified adjusted gross income of the taxpayer and all other individuals for whom the taxpayer is allowed a deduction under section 151 of the IRC who were required to file a tax return for the taxable year.

The flat dollar amount for an individual under age 18 is one-half of the amount applicable to an adult.

The flat dollar amount for a family is capped at 300% of the dollar amount applicable to one adult (without the one-half reduction applicable to individuals under 18).

IRS Reporting Continues with New Deadlines

FILING 2017 FORMS	NEW DEADLINE!!!
Send applicable forms (1095-B or 1095-C) to Employee	**Wednesday January 31, 2018**
If LESS THAN 250 forms to file with the IRS: ✓ File paper copies of the 1095-B and 1095-C forms with IRS	**Wednesday February 28, 2018**
If 250 OR MORE forms to file with the IRS: ✓ File electronically for the 1095-B and 1095-C forms using IRS's AIR system	*Saturday March 31, 2018, so you will have till* **Monday April 2, 2018**

Penalty For Failure to File:

IRS instructions note a penalty of **$260 per return** for failure to file or failure to provide corrected form, unless you establish reasonable cause.

Health Insurance Marketplace (www.healthcare.gov)

This year the Federal Marketplace Open Enrollment is the short period of November 1, 2017 through December 15, 2017

If not enrolled at open enrollment time you would have to qualify for the Marketplace's mid-year Special Enrollment opportunity or qualify for Medicaid or CHIP.

See https://www.healthcare.gov/coverage-outside-open-enrollment/special-enrollment-period/

Plan Selection Date	Coverage Effective Date
November 1, 2017 through December 15, 2017	January 1, 2018

- ✓ **About 11 million Americans get their medical coverage through the Marketplace.**
- ✓ **MARKETPLACE WOES CONTINUE:**
  - ✓ **limited plan options**
  - ✓ **narrow network plans**
  - ✓ **steep monthly premiums (expect 15%+ rate increase in 2018 over 2017)**
  - ✓ **uncertainty about insurer cost-sharing subsidies (government only approving the payment of these insurer subsidies on a month to month basis)**

What May Keep You Up At Night?

- Insurance Carriers pull out of the Marketplace
- Marketplace Collapsing (cost-sharing subsidies not paid to insurers so insurers pull out of the Marketplace)
- Individual subsidy for Marketplace coverage rescinded (so people stop paying premiums for Marketplace coverage)
- States who expanded Medicaid could reduce or rescind that expansion
- Congress imposing a tax affecting Plan Sponsors
- Plan Sponsors Restructure what they offer and pay towards Employee benefits
- Fraudulent Health Care Practices
- Manipulation of pricing models, leveraging limited cost-effective alternatives to offset environmental dynamics

Future Plan Sponsor Choices

While we await news of potential changes to ACA, Plan sponsors who choose to continue to offer health benefit plans to retain and recruit talent may want to consider NEW RESOURCES AND TOOLS including:

- Provider Access
- Network Pricing
- Non-Network Expense Management
- Utilization Management
- Eligibility Management
- Expert Review and Advice Programs
- Reference Based Pricing
- Contribution Strategy
- Medical Tourism
- Medical Patient Advocacy
- Transparency Tools
- Pharmacy Management
- Big Data (Data Analytics)
- Onsite or Near-site Clinics
- Telemedicine visits
- Member Communications
- Navigation Patient Advocacy (Hub)
- Rewarding Behavior

Thank you!

As always, plan sponsors should rely on legal counsel for authoritative advice on the interpretations and application of federal laws and regulations.