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What Is The Future of ObamaCare?

A new Administration and Congress are going to make some changes to the ACA (ObamaCare)

It will be difficult to know how the ACA is going to impact our client's health plans. However, we need to help our local representatives make well informed decisions as they tinker with the current plan. The following thoughts are some common sense ideas along with some not so common recommendations. Please feel free to use any ideas that you may agree with and that could help you better educate your local congressmen.

EMPOWER WHAT WORKS

Preserve and Protect Employer-Sponsored Health Coverage

Do not cap or eliminate the employee exclusion or the employer deduction for health benefits. Preserve the Flexibility of Self-Funding for All Size Employers

Strengthen ERISA

Clarify that ERISA prevents a state from regulating self-funded plan design, from taxing self-funded plans and compelling burdensome data production. ERISA was designed as a nationwide consumer protection law with prohibitions even stronger than those in insurance law or business practice. ERISA preserves the ability for employers to offer consistent benefits across state lines.

Strengthen and Enforce ACA Transparency

Provisions Develop meaningful guidance for §2718(e) of Title XXVII Public Health Service Act, Standard Hospital Charges, and enforce this transparency provision. Expand and strengthen requirements for price and quality information transparency for physicians, hospitals and pharmaceutical companies.

Health Insurance Issuers Must Share Actionable Data

Employers should have the right to access accurate, de-identified claim information about the performance of their plans over the current and prior three-year period to obtain the most competitive health plan quotes for employee's health coverage. Nondiscrimination Rules for Fully Insured Plans ACA includes prohibitions on offering different levels of health coverage to employees based on compensation, similar to those currently in existence for self-funded plans. Retain this ACA provision and develop guidance for its application to fully insured plans.

Continue the Implementation of Value Based Payment Strategies

ACA created a value-based payment program for hospitals participating in Medicare. This free market payment program links a percentage of payments to hospital performance on quality measures related to certain high-cost conditions. This type of program is already saving Medicare substantial amounts for these conditions while improving outcomes.

Invest and Enhance Health Literacy

According to the National Institute of Health (NIH), the lack of health literacy is estimated to

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cost the nation \$106-\$236 billion annually. All Americans should have access to person-centered, culturally appropriate, understandable, accurate, and actionable health information and services.

National Safe Haven for High-Cost Conditions

Establish a national fund where every American with ongoing high-cost conditions can be protected while also protecting the claim experience of a sponsored health plan for a set period. This national safe haven promotes free market options by reinsuring catastrophic risks and stabilizing plan costs and rates in every segment of the market.

Wellness

Allow more flexibility with rewards/penalties for employer wellness programs, permitting employers to more effectively encourage healthier employee outcomes.

Reduce the Burdens

These provisions should be eliminated, as they do not contribute to individual health or employer financial health.

Eliminate Employer and Individual Mandate and Associated Reporting

Forcing additional cost on an employer hurts hiring.

Eliminate Prohibitions on Annual and Lifetime Limits

These provisions should be replaced with a national high-risk pool (see national safe haven above). These provisions have led to significant medical price inflation.

Eliminate Cadillac Tax

No replacements that cap or eliminate the employee exclusion or employer deduction for health benefits.

Eliminate Proposed Reporting

Burdensome Schedule J requirements that significantly expand annual reporting for plans and HIPAA EDI certification, requiring a report that data and information systems are in compliance with electronic operating rules.

Eliminate Section 1557 Regulations

Extensive and burdensome regulations regarding gender identity and language provisions and other provisions. (see last page for the updated status of this provision)

Eliminate Preventive Services ongoing expansion through Tri-Agency interpretations

Too many "Chiefs" creates ongoing compliance problems. Compliance failure is inevitable.

Eliminate SBC

ACA requires plans to provide a Summary of Benefits and Coverage to participants. The SBC reports are a step backwards from the explanations many plans have provided and consequently confuse rather than enlighten participants.

Please use any of the above points in your correspondence to your local congressman. They will make your Plan and your Business stronger and your employees happier and healthier!

See next page for a recent legal issue related to Section 1557 of the ACA.

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Transgender Antidiscrimination Protection Preliminary injunction

District Court Injunction on ACA Section 1557

A U.S. District Court on Dec. 31, 2016 issued a preliminary injunction that have the effect of staying parts of a federal rule that would extend antidiscrimination protections for transgender individuals and pregnancy terminations under ACA Section 1557. The case, *Franciscan Alliance et al v. Burwell*, was brought by five states and three religiously-affiliated health care providers who argue that the rule could force them to provide services, such as gender reassignment procedures, that conflict with their personal beliefs.

The court decision, while broadly written basically says that HHS exceeded its authority regarding its regulations prohibiting sex discrimination and abortion services. This decision is of main interest to church plan clients interested in compliance with ACA Section 1557. The case is complex, and by all means does not mean that all clients should put Section 1557 on the back burner. First, remember that it is a preliminary injunction. There is still an opportunity for HHS to appeal the decision to the Fifth Circuit or re-write the regulations. We will have to wait until later in January to find out whether the Trump administration will move to file an appeal or not. Keep in mind that this opinion is not necessarily the last word. There is a case before the U.S. Supreme Court that will decide the definition of sex for purposes of Title IX. Until then, caution is the best course to take.

Provisions That May Still Be Applicable

Employer plans may still have to comply with the disability, language assistance and notice requirements. It's important to recognize that this injunction does nothing to limit other aspects of Section 1557, such as the Limited English Proficiency rules, which are a much bigger compliance challenge for some covered

employers and health plans than the rules on gender identity and abortion. Figuring out how to incorporate all those taglines into every significant plan communication can be burdensome and they were not part of the decision. Also, remember that the EEOC still has its position under Title VII that specifically refers to a risk in treating gender identity differently in a health and welfare benefit plan.

If we receive any further information regarding the above injunction, I'll let you know.

Enjoy the rest of your day!

*Thank you,
Paul Kelly, President*

