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### Today's Presenter



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Natalie is the Compliance Consultant at Paradigm Group. She advises clients on their internal policies and procedures to prevent and detect compliance deficiencies. Natalie has more than eight years of experience working closely with benefits teams and clients to navigate health care reform. Prior to working in the insurance industry, Natalie served at the U.S. Department of Justice as a litigation specialist managing litigation teams for multi-regional, multi-agency cases that fell under CERCLA.

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### Agenda

- Health Care Reform Background
  - Market Reforms
- Progress of ACA Repeal and Replace
  - Previously Proposed Market Reforms
  - Executive Orders
  - Association Health Plans
  - Tax Cuts and Jobs Act
- What Is Next?
  - Market Instability
  - Employer Mandate Enforcement or Repeal?

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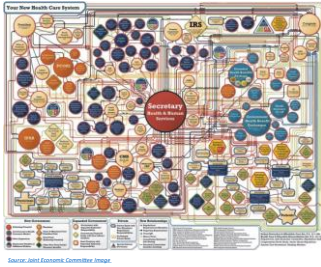
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## Our Health Care System



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## ACA Background

- Signed Into Law March 2010
- Created an Individual Mandate
- Employer Incentives and Penalties
- Market Reform
- Medicaid Expansion

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## ACA Market Reforms

- Dependent Coverage for Children Under 26
- Eliminated Pre-Existing Conditions
- Coverage for Preventive Care Services
- Medical Loss Ratio (MLR) Requirements
- Eliminated Annual Dollar Limits
- Out-of-Network Emergency Coverage Mirrors In-Network
- New Taxes and Fees

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### ACA – Factors Affecting Premiums

- Overall Health of Employees
- Demographics
- Location
- Plan Design
- Essential Health Benefits – affects small employers with fully insured plans and individuals
- Market Reform Changes
- Taxes and Fees




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### ACA – 10 Essential Health Benefits

- Ambulatory Patient Services
- Emergency Services
- Hospitalization
- Laboratory Services
- Maternity and Newborn Care
- Mental Health Services and Addiction Treatment
- Rehabilitative/Habilitative Services
- Pediatric Services
- Prescription Drugs
- Prevention and Wellness Services and Chronic Disease Treatment




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### ACA – Taxes and Fees

#### Patient-Centered Outcomes Research Institute (PCORI) Fee

- \$2 fee per covered life
- This fee began in 2012 and will phase out in 2019
- Funds comparative effectiveness research and evaluates and compares health outcomes and the clinical effectiveness, risks and benefits of medical treatments/services
- Plan sponsors are responsible for paying the fee, which is treated like an excise tax by the IRS (IRS form 720)
- Carriers are rolling this fee into premiums

#### Transitional Reinsurance Fee

- Funded the reinsurance for the government exchange
- Temporary fee: 2014-2016
- \$63 fee per member (\$5.25/month)
- Insurance carriers rolled this fee into premiums for fully-insured plans
- Self-insured plans paid separately
- Intended to bring in \$25 billion




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## ACA – Taxes and Fees

### Health Insurance Industry Tax

- Annual, permanent fee that began in 2014
- Amount determined by the market share of the health insurance carrier
- Estimated 2.5% of the total premium
- Funds premium tax subsidies for low-income individuals and families who purchase through the exchange

### Risk Adjustment Fee

- Permanent fee that began in 2014
- \$1 per member per year
- Rolled into premiums
- Funds the costs of Health and Human Services running the Risk Adjustment Program
  - Program that redistributes premiums from plans with low-risk populations to plans with high-risk populations




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## What Is Next for the ACA?

- The ACA cannot be overturned overnight
- Anything tied to a budget or tax bill can be overturned with a 51 Senate vote majority
  - Ex. Individual mandate, employer mandate, tax credits and cost sharing reductions
- Other aspects of the law require 60 Senate vote majority
  - Ex. Anything relating to discriminating against individuals with pre-existing conditions




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## How Could Repeal and Replace Work?

1. **Complete Repeal and Replace:** House and Senate would need to pass a bill and President Trump would have to sign it. *Republicans need at least 9 Democrats in the Senate*
2. **Amend the Current Law:** Everyone “plays nice” and comes up with a bipartisan appeal to change the components of the law. *Republicans need at least 9 Democrats in the Senate*
3. **Partial Repeal through Reconciliation:** Republicans pass a budget bill that would repeal parts of the law that are relevant to the budget. *House requires 217 votes; Senate requires 51*




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## What Is Reconciliation?

It's a process to pass legislation in the Senate with only 51 votes, instead of 60.

- Components **MUST** have a budgetary impact
- Can repeal cost drivers, but many market reforms can't be repealed
  - Premium tax credits, cost-sharing subsidies, small-business tax credit, individual and employer mandates, tax on OTC medicine, Medical Loss Ratio, Health Insurance Tax, etc.




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## Previously Proposed Market Reforms

### Under the American Health Care Act (AHCA) of 2017:

- Sought to delay Cadillac Tax until 2025
- AHCA tried to repeal the following:
  - Health insurance tax, medical device tax, small-business tax credit, prescription drug tax, OTC medication tax, repeals the tax increase on HSA non-qualified expenses, FSA contribution limits, indoor tanning tax, Medicare wage surtax increase
- Replace existing tax credit structure to be adjusted by age and income
  - Tax credits ranging from \$2k to \$4k for incomes under \$75k for individuals and \$150k for families




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## Previously Proposed Market Reforms

- Establish high-risk pools: \$100 billion for "patient and state stability fund"
- Continuous coverage requirement: 30% premium surcharge for any lapse in coverage over 63 days
- Repeal the actuarial value standard
- Loosen age rating bands to 5:1 from 3:1 (Pre-ACA age bands 7:1)
- Tax credits for catastrophic and off-exchange products
- Eliminate the individual and employer mandates
- Repeal cost-sharing subsidies in 2020




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## 2017 Executive Orders

October 2017: President Trump signed an Executive Order on Health care titled, "Promoting Healthcare Choice and Competition Across the United States"

- The Executive Order (EO) did not implement any new laws or regulations, but directed the DOL, Treasury, HHS and the Trade Commission to explore options relating to association health plans (AHPs), health reimbursement arrangements (HRAs) and short-term limited-duration coverage (STLDI) within 60-120 days.




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## 2017 Executive Orders

### Short-Term Limited-Duration Coverage (STLDI):

- Often less expensive than Marketplace plans or employer plans
- Exempt from ACA mandates
- Limited to 3 months, then consumer needs to renew
- Popular among individuals who are in and outside the country or between jobs
- Treasury, DOL and HHS had 60 days to consider proposing new regulations or to revisit guidance




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## 2017 Executive Orders

### Health Reimbursement Arrangements (HRAs):

- EO directs same three agencies to review current regulations for HRAs for more flexibility
  - Could lead to an expanded use of HRA dollars for employees (i.e., premiums)
  - Could allow HRAs to be used in conjunction with nongroup coverage
- The agencies have 120 days to consider revising guidance or to propose new regulations




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## 2017 Executive Orders

### Association Health Plans (AHPs):

- DOL has been ordered to explore the expansion of AHPs by broadening the scope of ERISA
- EO noted employers will not be permitted to exclude employees from AHP or to rate employees based on health conditions
- DOL had 60 days to consider proposing new regulations or revisit guidance




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## Association Health Plans (AHPs)

### Background:

- Title I of ERISA covers most private-sector employee benefits plans
- ERISA currently defines an "employer" as "any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity"
- Employer groups or associations that can act as an ERISA employer and sponsor a multiple employer plan, DOL analyzes three sets of issues:
  1. Whether the group or association is a bona fide organization with business/organizational purposes and functions unrelated to the provision of benefits;
  2. Whether the employers share some commonality and genuine organizational relationship unrelated to the provision of benefits; and
  3. Whether the employers that participate in a benefit program, either directly or indirectly, exercise control over the program both in form and substance




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## Association Health Plans (AHPs)

### Proposed Regulations:

- Commonality of interest of employer members of a group or association would be based on:
  1. Employers being in the same trade, industry, line of business or profession; or
  2. Employers having a principal place of business in a region that does not exceed the boundaries of the same state or the same metropolitan area
- Bona fide organization test would be removed under proposed rules
- Allow employers to join together for the sole purpose of offering benefits
- Association will need to have an organizational structure with a governing body and by-laws, and the association members must control its functions and activities of the health plan




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## Association Health Plans (AHPs)

### Proposed Regulations:

- Employees and former employees of employer members would be able to participate
  - AHPs may permit working owners, sole proprietors and other self-employed individuals to be treated as employer members in the AHP, even if they had no other common law employee
- AHPs would be subject to nondiscrimination provisions under the ACA and Health Insurance Portability and Accountability Act of 1996 (HIPAA)
 

• Health status	• Medical history
• Medical condition	• Genetic information
• Claims experience	• Evidence of insurability
• Receipt of health care	• Disability




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## Tax Cuts and Jobs Act

December 22, 2017: President Trump signed the Tax Cuts and Jobs Act.

- Eliminates the individual mandate effective in 2019
- Eliminates the business deduction for qualified mass transit and parking benefits in January 2018
- Eliminates the exclusion for bicycle commuting expenses for tax years 2018 through 2025




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## Tax Cuts and Jobs Act

Includes a new federal tax credit for employers providing paid family and medical leave (FML) to their employees

- Does not require employers to provide paid leave
- Tax credit based on wages paid to employees on FML
- Must have a written policy providing:
  - Qualifying full-time employees with a minimum of two weeks of annual paid FML;
  - Qualifying part-time employees with an annual paid FML amount that is at least proportionate to FT annual paid FML amounts;
  - Rate of pay not less than 50 percent of wages normally paid
- Qualifying employees are:
  - Employees defined under Section 3(e) of the FLSA;
  - Employed for at least one year; and
  - Not compensated more than 60 percent of the amount for highly compensated employees for the preceding year




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## Continuing Resolution

January 22, 2018: President Trump signed a continuing resolution into law

- Delayed the Cadillac Tax until January 2022
- Gave a one-year moratorium of the Health Insurance Tax for the 2019 calendar year
- Delayed the Medical Device Tax until 2020
- Extended CHIP funding for six years




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## Where Are We Now?

Health care reform debate has sparked discussion over giving states more power:

- Some states will propose individual mandates (CA, CT, DC, HI, MD, MN, NJ, RI, VT, WA)
- Section 1332 Waivers: allows states to waive certain provisions of the ACA as long as they are covering the same number of people at the same cost
  - Pay close attention to what states do
  - Could impose penalties to pay for expansion of other provisions




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## Market Instability

- Over half of the counties in the country have only one carrier option in the individual market
- Uncertainty in the individual market for 2018 due to the cost-sharing reduction funding debate

### Tennessee:

- BCBS: 14% added to overall rate increase (Silver plans, both on and off exchange)
- Cigna: 17.4% to 21.4% added to Silver plans (both on and off exchange)
- Oscar: 17% to Silver plans (exchange plans only)



<https://www.kff.org/health-reform/news-brief/how-the-loss-of-cost-sharing-rebate-payments-is-affecting-2018-premiums/>

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## Enforcement of Employer Mandate

- IRS Commissioner under President Obama stated that the agency is expected to enforce the policy
- IRS Letter 226J includes:
  - A brief explanation of Section 4980H
    - ESRP summary table: monthly itemization of the proposed payment and which type of penalty
    - Response form
    - Required action by employer
    - Actions IRS will take if you do not respond in a timely manner
    - Date due and contact information




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## What's Next?

### Trump Budget Requests

- Significant cuts to health care spending
- Temporary funding for CSRs
- Medicare beneficiaries to contribute to HSAs
- COBRA as creditable coverage: allows for transition to Part B without penalty

GOP: Repeal employer mandate




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## Thank You



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