



Wespath

BENEFITS | INVESTMENTS

Center for Health

OCTOBER 2017

Legal/Regulatory Update

HealthFlex Summit

Agenda



Update on Changes to Affordable Care Act (ACA)



Bipartisan Legislative Possibilities



Regulatory Possibilities



Church Alliance Efforts

Changes to ACA

Current Legal Status



ACA remains the law of the land



Employer reporting due



Individual mandate penalties remain



Exchanges—lots of questions

Exchange Questions

- Insurers dropping out—who is left?
- Why are premiums going up?
- States seeking ACA waivers?
Examples:
 - **Alaska:** Flow-through federal savings to state pool
 - **Iowa:** Cut up the pie differently?



On the Horizon

Wrenches in the Works



Cadillac Tax



End of Medigap Plans

Bipartisan (Legislative) Possibilities

Exchange premium stabilization

**Health Savings Account (HSA)
Changes**

Cadillac Tax Relief



Exchange Premiums

Bipartisan Efforts: Alexander and Murray

- Late to impact 2018 premiums
- Congressional Budget Office reports indicate drivers
 - Subsidies for cost-sharing reductions
 - Individual mandate



HSA's



Why the continued excitement?

Compare HRAs and FSAs

HRAs*

- Employer money only
- No annual “use or lose” problem
- No monetary limit

FSAs*

- Allow employee salary-reduction contributions
- Annual “use or lose” issue (\$500 carryover)
- Annual limit

* **HRA:** Health Reimbursement Account

* **FSA:** Flexible Saving Account

HSA—Triple Tax Advantage



Money can go in tax-free

- Employer contributions
 - Employee contributions; e.g., cafeteria plan
-



Money can come out tax-free

- Employee saves on taxes (payable if spent salary instead of contributing to HSA first)
-



Tax-free interest on investment (with parameters)

More Advantages of HSAs

All contributions are
a savings account for
medical expenses

(Account owned by individual)



Alternative: “Shoebox”

Cadillac Tax



**December
2015**

Postponed to 2020
• Bipartisan support

**June
2017**

Senate bill would have
postponed again

What Executive Branch Can Do



Executive orders

Agencies limited—
prior final regulations

IRS example—
individual mandate

Church Alliance

Church Alliance—37 CEOs

CHURCH ALLIANCE
Acting on Behalf of Church Benefits Programs

Shared goal: Religious freedom

Avoid:

- Choosing penalty or conscience
- Separate plans (church vs. school)

Historical: Help for UMC

- 403(b): Church Plan Clarification Act (CPCA)

Church Alliance Activity

Legal Activity

- Early 2017: Church plan “gap” coverage

Context—House Bill (AHCA*)

- May 4, 2017
- Repealing ACA tax credits
- Creating new tax credits
- Credits for COBRA coverage?

* **AHCA:** American Health Care Act of 2017

Church Alliance Position

- Church plans offer coverage like COBRA
- Adding credit supports church coverage
 - Meets religious and health care needs

CHURCH ALLIANCE
Acting on Behalf of Church Benefits Programs

Church Alliance Efforts

- Broader Options for Americans Act*
- Passed by House June 15, 2017
- Sponsor: Pat Tiberi (R-OH)
- Tax credits for unsubsidized COBRA
- Tax credits for comparable church coverage

* **Broader Options Act**

Prospects

- Broader Options Act got 41 Democratic votes (226–144)
- Contingent on passage of AHCA
- AHCA—dead?
- Broader Options Act—dead?
- Pivot to regulatory openings

Regulatory Openings



January 20, 2017

President Trump signs Executive Orders

Directs heads of agencies to use discretion to waive ACA provisions that create burdens

October 12, 2017

Directs agencies to propose new regulations

2017 Requests for Information

June 12	CMS* issued request for information (RFI)
June 14	Treasury RFI
July 12	Church Alliance letter to CMS*
July 31	Church Alliance letter to treasury

* Centers for Medicare and Medicaid Services

Meetings

- CMS meeting
- Conference call with OMB*
- HHS* meeting: Shannon Royce
 - HHS* Director of Center for Faith Based and Neighborhood Partnerships
 - Request for priorities
 - Response: Matrix of Priorities

* **OMB:** Office of Management and Budget

HHS: U.S. Department of Health and Human Services

What Would Your Priorities Be?

Some Candidates for Relief/Help

- Contraception coverage mandate
- Insurance expense (small employers)
- Cadillac tax
- W-2 reporting cost of coverage
- ALE reporting—large employers
- Nondiscrimination: Code 105(h)—HCEs

ALE: Applicable large employer

HCE: Highly compensated employees

Factors



Need



**Odds of
Success**



Compromise

Some examples follow (may be changed)

HHS

1. Tax credits (small employers)
2. Level playing field for church plans
 - Church plan “Exchange”?
3. Summary of Benefits and Coverage
4. Contraception coverage mandate
5. ACA* 1557 rules (sex discrimination, etc.)
6. Grandfathered plans (contraception)

*ACA: Affordable Care Act

EEOC, DOL and OPM*

1. Wellness rules**

- ADA*
- GINA*

2. Contraception coverage

3. Multi-State Plan Program

* **EEOC:** Equal Employment Opportunity Commission

DOL: Department of Labor

OPM: U.S. Office of Personnel Management

ADA: Americans with Disabilities Act

GINA: Genetic Information Nondiscrimination Act

** Court requires work on EEOC wellness rules



Treasury/IRS

#10: Extra latitude to stay grandfathered

#9: Contraception coverage

#8: Summary of benefits and coverage

Treasury/IRS

#7: “Retiree-only” HRA

- Retired clergy doing some work

#6: Discrimination (highly compensated)

#5: Reporting—ALEs and church plans

#4: Employer mandate

#3: Tax credit—Small Employer

Note: HHS announced intent re: SHOP* Changes

* **SHOP:** Small Business Health Options Program

Treasury/IRS

#2: Continued relief for employers in church plans from W-2 reporting of cost of health coverage

Treasury/IRS

#1: Relief from Cadillac tax

Housing Allowance

Judge Barbara Crabb (W.D., Wisconsin) October 6, 2017 Declaratory Decision

Declares:

- Plaintiffs* have standing to sue
- Exclusion of housing allowance from income tax is unconstitutional (Establishment Clause)

* Including Freedom From Religion Foundation

**Next: Briefing by
Early November**

RE:

- Remedies other than a declaration (i.e. tax refunds, injunction, etc.)
- Stay pending appeal

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