What's Next For American Health Care Reform?

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ESB-6305-0818b

Our Agenda

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

Remember this?

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The Promise:

A sweeping wave of change

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

"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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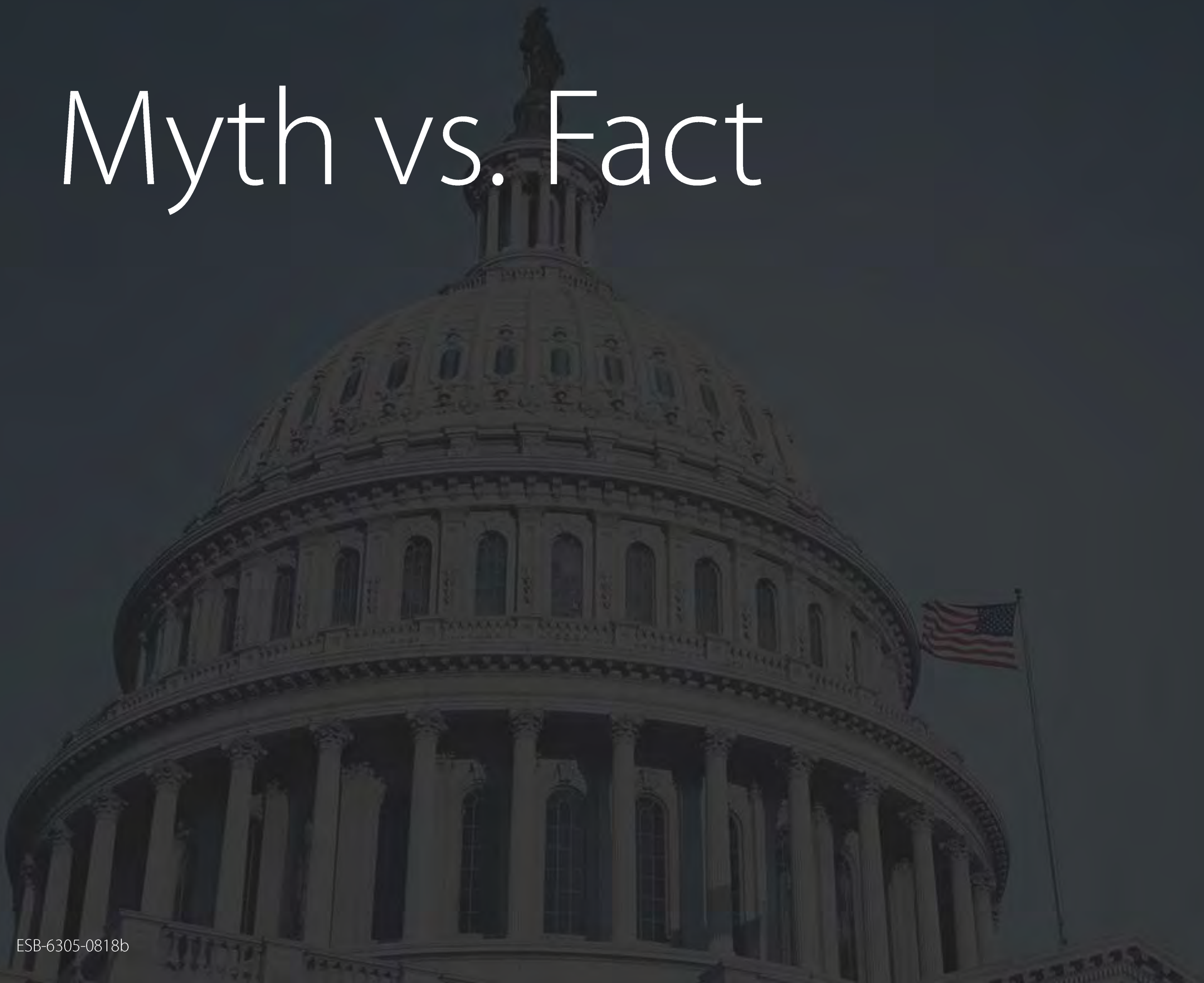
Myth vs. Fact



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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Repealed	• Not repealed • Penalty reduced to zero • Effective January 1, 2019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No enforcement/Repealed	• Not repealed • Enforcement continues

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Employer Reporting

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

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ACA Marketplaces

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

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Chipping Away

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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? Was 90 days up to 365. Now can be 36 months
- Why are we hearing about it?
  - Very limited. May not cover EHB, out-patient prescriptions, mental health, etc.
- Why do employers care?
  - Potentially, younger, healthier, "good risk" vs. "bad risk"

Current Reality

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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

Department of the Treasury
Internal Revenue Service
Group 2219
7300 Turfway Road, Suite 410
Florence, KY 41042

Tax year:

Letter date:

Employer ID number:

Contact name:

Contact ID number:

Contact telephone number:

Contact e-fax number:

Response date:

Dear

We have made a preliminary calculation of the Employer Shared Responsibility Payment (ESRP) that you owe.

Proposed ESRP $ [XXXXXX]

Our records show that you filed one or more Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage, and one or more Forms 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, with the IRS. Our records also show that for one or more months of the year at least one of the full-time employees you identified on Form 1095-C was allowed the premium tax credit (PTC) on his or her individual income tax return filed with the IRS. Based on this information, we are proposing that you owe an ESRP for one or more months of the year.

You generally owe an ESRP for a month if either:

- You did not offer minimum essential coverage (MEC) to at least [ ]% of your full-time employees (and their dependents) and at least one of your full-time employees was certified as being allowed the PTC; or

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

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

Reporting Accurately

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

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

Questions?

Thank you!

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