Are we there yet?

2010-2012
- Patient Protections
- High Risk Pools
- Coverage Expansion
- Employee Notifications
- W-2 Reporting

2012-2014
- Public Marketplace Opens
- Subsidies
- Medicaid Expansion
- Individual Mandate

2014-2019
- Large Employer Mandate
- Ongoing Reporting
- Midsize Employer Mandate
- §6055 & §6056 Reporting
- New SBC Template

2020
- Cadillac Tax
Healthcare Challenges

Cost of Coverage Increases  Cost of Coverage Decreases

Benefits Provided  Number of Individuals Covered

Cost of Coverage Decreases  Cost of Coverage Increases

Where are we now?

Congress passed RAHRA to repeal ACA
President Trump issued Executive Order
Republicans campaigned on repealing ACA

President Obama vetoed
House passed AHCA
Senate failed to pass BCRA, ORRA or HCFA

Bipartisan Bill??
House Approach

• The American Health Care Act would repeal and replace parts of the ACA
• House passed the bill on May 4, 2017 (217-213 w/no Democratic support)
• AHCA bill then moved to Senate
• Senate reconciliation process only requires 51 votes to pass, but only allows provisions that impact spending

Senate Approach

• Senate drafted the Better Care Reconciliation Act of 2017 (BCRA), which differed from the AHCA
  – BCRA was defeated in Senate on July 26 (49-51)
• Senate also defeated 2 other ACA repeal bills:
  – Repeal-only bill (ORRA): President Obama vetoed in 2016 (July 26)
  – “Skinny Repeal”: Health Care Freedom Act (July 28)
• If Senate passes a bill that is not identical to the House version, then must go to Conference Committee for consensus
• Both House and Senate would need to vote again
Post-Recess Approach

Paths to Legislation

- GCHJ
- ACA replacement proposed by certain Republican Senators
- Market stability legislation proposed by bipartisan members of the Senate HELP committee
- Medicare for All
- Single-payer bill proposed by Sen. Bernie Sanders and 16 Democratic Senators

Cost Sharing Reduction Payments

Background

- ACA provides for cost-sharing reduction (CSR) payments for lower income Americans
- House Republicans sued Obama Administration
  - Court ruled that payments were unconstitutional because Congress had not appropriated the funds
  - Case was appealed
Cost-Sharing Reduction Payments

- Government provides insurance companies subsidies to cover costs (deductibles, copays) for individuals with incomes under 250% FPL
  - $10 billion in 2018
- If removed, estimated to:
  - Increase premiums by 20%
  - Increase federal deficit by $194 billion over next decade

Cost Sharing Reduction Payments

**Current Status**

- On Oct. 12th, the White House announced immediate end to Cost Sharing Reduction payments, absent Congressional action
- State Attorney Generals filed suit to compel payment of CSRs
  - On Oct. 25th, the Court denied the AGs’ request for preliminary injunction that would have restored the CSR payments
- Impact
  - Some insurers raise rates for Nov. 1 open enrollment on Marketplace
  - Some insurers may decide not to participate
Post-Recess Republican Approach

Graham-Cassidy Bill

- U.S. Senators Lindsey Graham (R-SC), Bill Cassidy (R-LA), Dean Heller (R-NV), and Ron Johnson (R-WI) proposed legislation on Sep. 13, 2017
  - Previously proposed similar concept
- Tried to pass using reconciliation by Sep. 30th
- Did not have enough support in the Senate to bring to a vote

• Would have eliminated:
  - ACA subsidies and cost-sharing reductions
  - Individual mandate retro to 2016
  - Employer mandate retro to 2016

• Would change:
  - Age-Ratios: Insurers could use a 5:1 ratio instead of ACA's 3:1 ratio
  - HSAs: Limits would be increased
  - Insurer Risks: Would create temporary fund to reimburse insurers for large losses
  - Medicaid block grants to states in 2020

“If you like Obamacare, you can keep it. If you want to replace it, you can.”
- Sen. Lindsey Graham (R-SC)
Bi-Partisan Approach

Senate HELP Committee – Stabilizing Premiums and Helping Individuals in the Individual Market for 2018

• Bi-partisan plans to stabilize the insurance markets
  – Appears to be enough votes to pass from Senate
  – President Trump has not said he would sign it

• Bill would:
  – Fund cost-sharing reduction payments
  – Expand “copper plans” to those 30 and over
    • Would allow catastrophic plans with lower premiums and higher deductibles
  – Grant states more flexibility to approve health insurance plans and prices in their state
  – Allow states to offer plans with varied benefits if its value is similar to plans in the Marketplace

Bi-Cameral Approach

Hatch-Brady Plan

• Committee plans to draft a bipartisan bill to stabilize the insurance markets

• Bill would:
  – Fund cost-sharing reduction payments for 2 years
  – Provide Individual Mandate penalty relief until 2021
  – Provide Employer Mandate penalty relief from 2015-2017
  – Expand HSA limits

• President Trump has not provided support yet. Focus is on tax reform, then try health reform again
Democratic Approach

Medicare for All

• Introduced by Sen. Bernie Sanders (I-VT) with 16 Democratic co-sponsors
  – Similar bill in 2013 had 0 co-sponsors
• Single-payer plan with government paying for health expenses
• Would greatly expand Medicare over four years
• Released list of potential funding options
• The bill is not expected to pass Congress

State Legislation

Single Payer Legislation

• Single-payer bills have recently been considered in:
  • California
  • Colorado
  • Massachusetts
  • New Jersey
  • New York
  • Rhode Island
• Vermont passed legislation to establish a publicly financed single-payer health system in 2011
• The program did not progress after the financial analysis was released
Post-ACA Approach

Executive Action – October 12th

• Executive Order directs agencies to consider/reconsider rulemaking for:
  – **HRAs:** To allow HRAs for purchase of individual coverage *(within 120 days)*
  – **Association Health Plans (AHPs):** Propose regulations or revise guidance to expand AHPs, specifically across state lines *(within 60 days)*
  – **Short-term, Limited Duration Insurance (STLDI):** Expand availability with exemption from many ACA market reforms, expansion of allowed time period, allow renewals, reduce or eliminate notice, and classify as Minimum Essential Coverage *(within 60 days)*

• Watch for regulatory adjustments by IRS and HHS
  – The agencies have discretion in many aspects of ACA implementation and interpretation

• Watch for State action

• Watch for Agency action
  – HHS has finalized market stabilization rules for insurers
  – IRS review and assessment of Employer Mandate and Individual Mandate penalties
Agency Actions

IRS Actions

• IRS issued Information Letters indicating that:
  – President Trump’s Executive Order did not change the ACA
  – The ACA remains in force until changed by Congress
  – Waivers are not available under the employer mandate
  – The individual mandate continues to apply

• IRS indicated that it will not accept tax returns without healthcare information for 2017 tax years (filed in 2018)

• Issued RFI for suggestions to modify regulations

• Included Cadillac tax guidance on its regulatory agenda

Potential Agency Actions

• Weaken enforcement of the individual mandate
• Amend definition of Essential Health Benefits and give states flexibility
• Allow more state waivers
• Stop cost-sharing reduction payments to carriers
• Weaken Marketplace enrollment outreach
• Make subsidies less generous
• Allow states to impose work requirements on Medicaid recipients
• Fail to maintain Marketplace infrastructure

“There are 1,400 references [in the ACA] saying ‘the secretary may’ or ‘the secretary shall,’ so he has great latitude to fix a lot of things on his own,”
- Rep. Bill Flores (R-TX)
Affordable Care Act

Accomplishments
• 20 million adults gained health insurance due to ACA
• Uninsured rate down to 9% - the lowest level ever
• Open enrollment for 2017 resulted in 12.2 million plan selections; 31% were new to the Marketplace

Challenges
• Premium increases
• Marketing and community outreach funding cuts for upcoming open enrollment
• Fewer insurers participating

Open Enrollment Coming! November 1 – December 15
The Marketplace in Colorado

- Average rate increase: 27%
- 17 participating carriers
- More than 175,000 individuals selected a Marketplace plan during the 2017 open enrollment
  - 12% increase over last year
  - 62% qualified for a subsidy
- More than 93% of Coloradans have health insurance

Stay Focused

- Innovation is more important than ever
- You may have more flexibility
  - Employer-sponsored plans will continue to provide coverage for workers
  - The ACA-replacement proposals are likely to provide more flexibility to plans
  - Innovations can help to reduce costs and increase quality for employer-sponsored plans
# Preventive Care (non-GF plans)

<table>
<thead>
<tr>
<th>Preventive Care Measure</th>
<th>Plan Year Effective Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary care interventions to support breastfeeding</td>
<td>On or after October 25, 2017</td>
</tr>
<tr>
<td>Women’s preventive services – Women’s Preventive Services Initiative</td>
<td>On or after December 20, 2017</td>
</tr>
<tr>
<td>• Mammography screen for breast cancer in average-risk women</td>
<td></td>
</tr>
<tr>
<td>• Breastfeeding services and supplies</td>
<td></td>
</tr>
<tr>
<td>• Cervical cancer screening</td>
<td></td>
</tr>
<tr>
<td>• Contraception – all 18 FDA approved methods limited to generic versions</td>
<td></td>
</tr>
<tr>
<td>• Gestational diabetes mellitus screening</td>
<td></td>
</tr>
<tr>
<td>• HIV screening</td>
<td></td>
</tr>
<tr>
<td>• Interpersonal and domestic violence screening</td>
<td></td>
</tr>
<tr>
<td>• STI counseling</td>
<td></td>
</tr>
<tr>
<td>• Well-woman preventive visits</td>
<td></td>
</tr>
<tr>
<td>Screening for preeclampsia in pregnant women with certain blood pressure measurements throughout pregnancy</td>
<td>On or after April 25, 2018</td>
</tr>
<tr>
<td>Screening for obesity in children and adolescents</td>
<td>On or after June 20, 2018</td>
</tr>
<tr>
<td>Vision screening in children aged 6 months to 5 years</td>
<td>On or after September 5, 2018</td>
</tr>
</tbody>
</table>

## New SBC

- Applies beginning on:
  - With respect to open enrollments for plan years on or after April 1, 2017
  - Can coordinate with insurer, if applicable
- Shorter template
- Adds questions about services (if any) covered before the deductible is met
- Adds another coverage example, for a simple fracture
- Deletes Questions and Answers About the Coverage Examples
2018 Limits

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Out-of-Pocket (OOP) Maximum</strong></td>
<td>$7,150 / $14,300</td>
<td>$7,350 / $14,700</td>
</tr>
<tr>
<td>(single/family)</td>
<td>$2,600</td>
<td>$2,650</td>
</tr>
<tr>
<td><strong>FSA Maximum</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Qualified HSA HDHP</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum deductible</td>
<td>$1,300 / $2,600</td>
<td>$1,350 / $2,700</td>
</tr>
<tr>
<td>Maximum OOP</td>
<td>$6,550 / $13,100</td>
<td>$6,650 / $13,300</td>
</tr>
<tr>
<td>Maximum HSA contribution</td>
<td>$3,400 / $6,750</td>
<td>$3,450 / $6,900</td>
</tr>
<tr>
<td>Catch-up HSA contribution</td>
<td>$1,000</td>
<td>$1,000</td>
</tr>
<tr>
<td><strong>Transit</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mass transit/van pooling</td>
<td>$255</td>
<td>$260</td>
</tr>
<tr>
<td>Parking</td>
<td>$255</td>
<td>$260</td>
</tr>
<tr>
<td>Bicycle commuter</td>
<td>$20 per month</td>
<td>$20 per month</td>
</tr>
</tbody>
</table>

Employer Mandate

**Do you have at least 50 FT and FTE employees?**

NO: No penalty applies!

YES: If at least one FT employee receives premium assistance:

2017: $2,260 x (total # of FTs – 30)
2018: Pending

**Is coverage offered to 95% of all full-time employees?**

NO: Lesser of:

2017: $3,390 for each FT receiving tax credit OR $2,260 x (# of FTs – 30)
2018: Pending

YES: No penalty applies!

**Does plan have minimum value?**

NO: No penalty applies!

**Is coverage affordable?**

NO: No penalty applies!

YES: If at least one FT employee receives premium assistance:

2017: $2,260 x (total # of FTs – 30)
2018: Pending
Affordability

- Affordability is based on whether employee’s required contribution for lowest-cost, employee-only coverage exceeds 9.56% of household income for 2018

<table>
<thead>
<tr>
<th>Year</th>
<th>Monthly Contribution</th>
<th>Monthly Wages</th>
<th>Affordability</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>$200</td>
<td>$2,062.98</td>
<td>= 9.69%</td>
</tr>
<tr>
<td>2018 - No Contribution Change</td>
<td>$200</td>
<td>$2,062.98</td>
<td>= 9.69%</td>
</tr>
<tr>
<td>2018 - Employee Contribution Decrease</td>
<td>$194.74</td>
<td>$2,062.98</td>
<td>= 9.56%</td>
</tr>
</tbody>
</table>

1 Employee self-only coverage 2 Employee only wages

Reporting by Health Insurance Carriers

<table>
<thead>
<tr>
<th>Statement Type</th>
<th>Form</th>
<th>Transmittal Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individualized Statement</td>
<td>1095-B</td>
<td>Jan. 31, 2018</td>
</tr>
<tr>
<td>Transmittal Report</td>
<td>1094-B</td>
<td>Feb. 28, 2018 (April 2, 2018 if e-file)</td>
</tr>
<tr>
<td>Each Employee Statement</td>
<td>1095-B</td>
<td>Feb. 28, 2018 (April 2, 2018 if e-file)</td>
</tr>
</tbody>
</table>
Applicable Large Employer Reporting

Distribution & Penalties

- Employers that file at least 250 Forms 1095-B or 1095-C in a calendar year are required to file electronically with IRS
- Employee Statements
  - Mail
  - Electronically (if employee has consented to electronic)
  - Posting to a website (if employee consents and employer must separately notify employee)
  - Employee can also request a paper copy
- Penalties
  - $260 per return with a maximum of $3,218,500 for a calendar year
Cadillac Tax

COBRA Rate ≥ $10,200 for self-only or $27,500 for family (other than self-only)

Excise Tax

= 40% of plan value that exceeds threshold

Special Provisions

- High risk professions
- Early retirees
- Age & gender

Delayed until 2020!

Disaster Response

- The Essentials
  - Plan in advance
  - Temporary contact list
  - Remote access
  - Continuation of health coverage & special enrollments
  - FMLA
  - EAP reminders
  - Retirement hardship loans
  - Leave-based donation programs
HIPAA

- Don’t become a headline!
  - Employer’s Guide to HIPAA
  - HIPAA Audit Survival 101 webcast
  - Decision trees

Questions?

ajghealthcarereform.com
Thank you!