



**CML 96<sup>th</sup> Annual Conference**  
 June 19-22, 2018  
 Vail

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### Health Care: What's Next for the Affordable Care Act?

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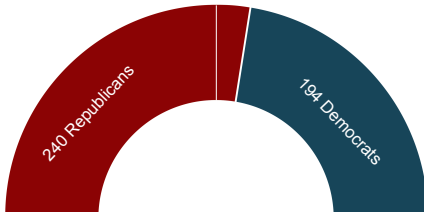
## Agenda

- Congressional Activity
- Changes that Impact Employers
- What's an Employer to Do?
- New Reality of Health Care
- Stay Informed

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## House

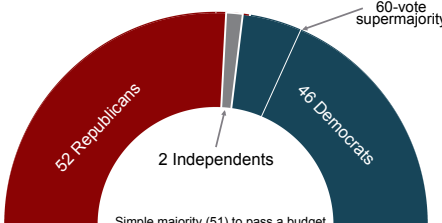


Simple majority (218) to pass a bill

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## Senate



Simple majority (51) to pass a budget  
 Super majority (60) to prevent filibuster


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## Repeal Options

- Bipartisan repeal
- Budget reconciliation
  - Budget measures: items that address taxing or spending

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## House Actions

- American Health Care Act (AHCA) (Failed to pass)
  - Meadows-MacArthur Amendment
  - Upton Amendment

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## Senate Actions

- 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 Graham-Cassidy bill
- Failed to pass Hatch-Brady bill

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## Latest News

Congress passed the Tax Cut and Jobs Act in December, and it was signed into law by President Trump.

The new law essentially eliminates the penalty for failing to comply with the ACA's Individual Mandate, the provision that required individuals to obtain health coverage or pay a tax (effective 2019).

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## Latest News

Congress also passed a spending bill that will further delay the effective date of the ACA's Excise Tax on High Cost Plans (Cadillac Tax) to 2022.

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## ACA Remains Law

- Several attempts to repeal and replace the ACA, and we may see those efforts continue.
- Employers must remain compliant with current law for the time being

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## Individual Mandate

- Reduces to zero penalty for Individual Mandate
- Takes effect in 2019

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## Association Health Plans (AHPs)

- Would allow more employers to form AHPs
- Would relax current rules that make such plans tough to form and administer, to the benefit of small and self-employed employers
- Hope is to lower costs by being able to negotiate large group rates and access more flexible plan designs
- Concern is that AHPs will siphon off less risky participants and reduce overall participation in the individual market, making it more difficult to spread risk

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## Short-term Plan Regulations

- Would allow short-term, limited-duration coverage to be sold for up to 12 months (current regulations limit to 90 days).
- May reapply at the end of the 12-month period, guaranteed renewal not required so new underwriting could apply.
- Not required to comply with ACA consumer protections
- Concern:
  - Individuals who are likely to purchase likely to be relatively young/healthy,
  - Potential weakening of individual market single risk pools,
  - May result in higher premiums for the remaining participants and higher costs to the federal government to fund the advance premium tax credits

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## HSA Expansion

- Increased contributions
- Catch-up by spouse
- Establishing the HSA
- Reduced excise tax
- Use HSA funds to pay premiums

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## Support for Employer Coverage

As a general rule, Republicans are very supportive of employers providing coverage to employees

Unclear how that will play out in enforcement efforts

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## Administration and Compliance Still Required

The ACA remains the law so, compliance needs to continue.

Key provisions:

- Employer mandate
- Form 1094/1095 reporting
- Excise Tax on High Cost Plans

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## ACA-Mandated Reporting

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## Reporting

- Mail to employees by March 2, 2018 (Form 1095)
- File on paper by February 28, 2018 (Form 1094)
- E-file with IRS by Monday, April 2, 2018 (Form 1094)

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## Affordability Thresholds

Calendar Year	Affordability Percentage
2015	9.56%
2016	9.66%
2017	9.69%
2018	9.56%

Source: Rev. Proc. 2014-37, Rev. Proc. 2014-62, Rev. Proc. 2016-24, and Rev. Proc. 2017-36

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## Common Questions

Is it true that President Trump's Executive Order directed the IRS NOT to go after any employers not offering coverage nor individuals for failing to prove they had coverage?

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## Common Questions

IRS Office of Chief Counsel:

Letters 2017-0010 and 2017-0013

No waivers available to large employers under IRC 4980H

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## Employer Mandate Penalties

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## IRS Enforcement

Penalties apply when:

- A large employer fails to offer coverage to at least 95% (70% for 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 for 2015), indexed annually.

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## IRS Enforcement

- A large employer offers coverage to at least 95% (70% for 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.

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## IRS Enforcement

- 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)
- Step 3:**  
IRS responds using Letter 227

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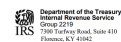
## IRS Enforcement

- 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

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**Letter 226J**

To: you

Letter date

Employer ID number

Employer name

Employer ID number

Letter disposition number

Contact ID 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, Employee-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 (including those from 1095-Cs) an affordable premium tax credit (PTC) was made available to them as their first offer of health care from the employer. 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 eligible for the PTC; or

Letter 226J (10-2017)  
Case 1585 02-000

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**ESRP Summary Table**

Month	a	b	c	d	e	f	g
	Does 1095-C, Part II, CA(1) Minimum essential coverage after reduction reflect to at least 95% or 70%?	Form 1095-C, Part II, CA(1) Full-time employee count for each month	Affordable reduction of full-time employees with PTC for the month (1095-C Form 14764-CA(1))	Count of monthly full-time employees with PTC for the month (1095-C Form 14764-CA(1))	Count of monthly full-time employees with PTC for the month (1095-C Form 14764-CA(1))	Applicable MEC Section 4980H premium	Monthly ESRP amount
Jan	[Yes/No]	[xxx]	[x]	[#]	[#]	[(980)to(4800)h]	[(x)(xx)]
Feb	[Yes/No]	[xxx]	[x]	[#]	[#]	[(980)to(4800)h]	[(x)(xx)]
March	[Yes/No]	[xxx]	[x]	[#]	[#]	[(980)to(4800)h]	[(x)(xx)]
Apr	[Yes/No]	[xxx]	[x]	[#]	[#]	[(980)to(4800)h]	[(x)(xx)]
May	[Yes/No]	[xxx]	[x]	[#]	[#]	[(980)to(4800)h]	[(x)(xx)]
June	[Yes/No]	[xxx]	[x]	[#]	[#]	[(980)to(4800)h]	[(x)(xx)]
July	[Yes/No]	[xxx]	[x]	[#]	[#]	[(980)to(4800)h]	[(x)(xx)]
Aug	[Yes/No]	[xxx]	[x]	[#]	[#]	[(980)to(4800)h]	[(x)(xx)]
Sept	[Yes/No]	[xxx]	[x]	[#]	[#]	[(980)to(4800)h]	[(x)(xx)]
Oct	[Yes/No]	[xxx]	[x]	[#]	[#]	[(980)to(4800)h]	[(x)(xx)]
Nov	[Yes/No]	[xxx]	[x]	[#]	[#]	[(980)to(4800)h]	[(x)(xx)]
Dec	[Yes/No]	[xxx]	[x]	[#]	[#]	[(980)to(4800)h]	[(x)(xx)]
						Total Proposed ESRP	[(xxxxxx)]

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Available at <https://www.irs.gov/pub/irs-soi/1703-4821019.pdf>



### Form 14765 (Part 2017) Employee Premium Tax Credit (PTC) Listing

Department of the Treasury Internal Revenue Service

This month or highlight to a month that the employee received a PTC and no safe harbor or other relief from the ESRP was applicable. The employee is an applicable full-time employee for that month.

Employer name \_\_\_\_\_ Employer ID number \_\_\_\_\_ Tax year \_\_\_\_\_

Employee name and TIN	ESRP amount (if 12 months of coverage was provided)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Additional information

Listing Number 0800V www.irs.gov Form 14765 (9-2017)

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Available at <https://www.irs.gov/pub/irs-soi/1703-4821019.pdf>



## Tips


- Engage qualified tax and legal counsel
- Request an extension if necessary
- Respond timely to all correspondence

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## Preparing for the “Cadillac Tax”


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## Excise Tax on High Cost Plans

- General thresholds applicable in 2018 (will be indexed for 2022):
- Individual coverage: \$10,200
- Family coverage: \$27,500
- High Risk Professionals or retired individuals age 55 and older and not eligible for Medicare
  - » Individual Coverage: \$11,850
  - » Family Coverage: \$30,950


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## When to Start?

- For non-calendar year plans, adjustments will likely need to be in place for the plan year beginning in 2021
- Allow time for collective bargaining discussions
- Allow for time to adjust offerings and educate employees


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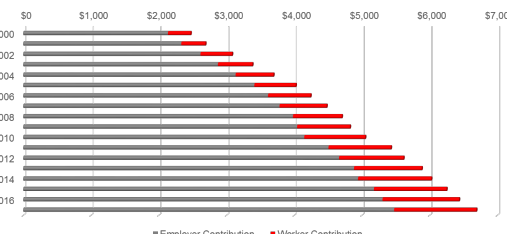
## Employee Exclusion

Congressional proposals would have left untouched the provision that makes employer-provided health coverage not subject to income or employment tax

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## Employer/Worker Contributions, Single Coverage



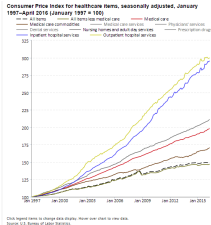
Year	Employer Contribution	Worker Contribution	Total Contribution
2000	\$1,000	\$500	\$1,500
2002	\$1,200	\$600	\$1,800
2004	\$1,400	\$700	\$2,100
2006	\$1,600	\$800	\$2,400
2008	\$1,800	\$900	\$2,700
2010	\$2,000	\$1,000	\$3,000
2012	\$2,200	\$1,100	\$3,300
2014	\$2,400	\$1,200	\$3,600
2016	\$2,600	\$1,300	\$3,900

Source: Kaiser/HRET Survey of Employer-Sponsored Health Benefits <https://www.kff.org/infocenter/premiums-and-employer-contributions/>

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## Consumer Prices of Medical Services



- Since 1997, consumer prices have increased
- inpatient services 195%
  - outpatient services 200%
  - prescription drugs, nursing homes and adult day services have more than doubled

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## What is our new reality?

- No provisions in current law or proposed legislation which will curb the actual costs of health care.
- Employers must start reducing costs and educating employees now.

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## Education Requires a Commitment

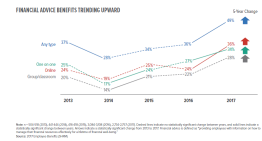
Benefits account for up to 30% of total employee compensation, yet employers rarely allocate resources to make sure their employees understand and value the benefits they are offered.

Help Employers Connect the Dots - 2016 LIMRA Employer Study

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## Education Requires a Commitment

- Financial illiteracy is common.
- Financial security is a key component of the emerging idea of "well-being".
- Healthier and more financially secure employees may improve productivity.



Source: Annamaria Lusvardi, "The Importance of Financial Literacy," NBER Reporter: Research Summary 2  
[https://www.frb.org/infocenter/files/documents/public\\_events/consumer-information-mortgage-market/annamaria\\_lusvardi\\_presentation\\_fr.pdf](https://www.frb.org/infocenter/files/documents/public_events/consumer-information-mortgage-market/annamaria_lusvardi_presentation_fr.pdf)

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## Education May Improve Value

- ✓ Increase appreciation of the value of benefits
- ✓ Improve cost management through consumerism
- ✓ Decrease disputes, complaints, and administrative hassles

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## Reposition HSA

- Health Savings Account (HSA) as a financial tool
- Provides ongoing protection from increasing out-of-pocket expenses
- Present in nonmedical financial discussions
  - Tax planning (triple tax advantage)
  - Retirement planning
  - Estate planning

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## What We Do Know

- ACA remains the law
- Repealing it is not as easy as it first appeared

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## Stay Informed

- Find a trusted source of news
- Get regular updates
- We're here to help

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## Thank you!

American Fidelity Administrative Services

[www.HCReduction.com](http://www.HCReduction.com)

Contact us: 877-302-5073 or [HCR@americanfidelity.com](mailto:HCR@americanfidelity.com)

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## Federal Level Action (inaction)

*"Death by a thousand cuts"*

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## 1332 Waivers for states Innovation Waivers

*States can implement innovative ways to provide access to quality health care that is at least comparable in providing coverage and does not increase the Federal deficit.*

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## Categories of 1332 Waivers

1. *Establishing Qualified Health Plans (QHP's)*
2. *Consumer Choice and competition though insurance marketplace*
3. *Premium tax credits on cost-sharing reductions for plans offered within the marketplace*
4. *Employer shared responsibility*
5. *Individual shared responsibility*

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### Examples of Waivers filed

1. *Reinsurance for individual markets – AK, MA, IA, WI, OR, OK*
2. *Waive requirement for SHOP portal – VT*
3. *Individual Mandate – OH*
4. *Eliminate marketplace requirements – HI*
5. *Allow illegal immigrants to purchase on the exchange with subsidies – CA*

*Colorado failed to pass legislation regarding establishing a reinsurance program this past session.*

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### Other “cuts” to ACA

1. *Medicaid work rules*
2. *Association plans*
3. *Cadillac Tax delayed until 2022*
4. *Health Insurance Tax suspended for 2019 – is ACA still constitutional?*
5. *Medical Device tax suspended for 2018 and 2019*
6. *Pre-existing condition back in play*

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### Future of ACA

1. *Colorado uniqueness*
2. *November Elections*
  - a. *Federal – who will be in majority?*
    - a. *Democrats – Single Payer*
    - b. *Republicans – More Cuts to ACA*
3. *States – will waiver process accelerate?*
4. *Opposition to repeal crosses the aisle*

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Thank You

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