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The Most Current Status

As much as I would like to give you a comprehensive up-to-date analysis of the Affordable Care Act (aka “the ACA” or “Obamacare”), the only thing I can tell you for certain is that the ACA remains a moving target that will continue to evolve for a long time. As for what the law will look like when the music stops (or whether the ACA will even survive), your guess is as good as mine. In the meantime, here’s an update of the status of the law, and the most pertinent changes to it so far.

In the days since March 2010, when the ACA was passed by Congress and signed into law by President Obama, it has been altered many times. In fact, according to the non-profit Galen Institute, there have been more than 40 significant changes to the law since it was passed. The Galen Institute calculates at least 22 of the changes were made unilaterally by the Obama administration, 16 changes were passed by Congress and signed by the President, and two changes were imposed by the U.S. Supreme Court. For a complete summary of the Galen Institute’s findings, as well as other interesting articles and information, you can visit their website at www.Galen.org. For a high-level executive overview of the ACA and the modifications to it so far, I offer the following:

ACA Changes Implemented by Unilateral Action of the Obama Administration

- The employer “play or pay” mandate was initially delayed one year for all affected employers. A few months later, it was delayed an additional year for employers with 50-99 employees, and the threshold requirement for large employers with 100 or more employees to provide insurance to “substantially all” employees was softened from 95% to 70%.
- Health insurance companies are allowed to continue offering plans that otherwise would have been deemed “illegal” and would have had to be cancelled under the ACA because they didn’t meet the law’s specific requirements (even

if they provided better benefits than ACA metal plans at cheaper rates). This change, which varies from state to state because it is subject to the approval of the various state insurance departments, will allow many non-grandfathered small employers to avoid being forced to a community-rated ACA “metal” plan with higher costs and worse benefits.

- Individuals who have experienced a “hardship” of some undefined and unspecific nature in obtaining coverage are exempt from the individual mandate penalty if they choose to be uninsured, as long as they represent to the federal government that purchasing health insurance would have caused them a “hardship.” It is unclear for how long this far-reaching exemption which eviscerates the individual mandate will be allowed.
- Unions have been granted an exemption from the ACA reinsurance fee that applies to other fully-insured and self-funded plans.
- Until the federal government says otherwise, fully-insured employer plans aren’t required to offer equal coverage to all of their employees despite the fact the ACA clearly requires it.
- A one-year delay on required W-2 reporting was granted to large employers, and an indefinite delay was granted to employers that issue less than 250 W-2s.
- Enrollment in the federal high-risk pool was closed, blocking coverage to an estimated 40,000 new applicants.
- Additional payments were ordered for Medicare Advantage plans.
- Individuals who purchase insurance through the Exchange marketplaces are permitted to self-attest their income. This position was partially retracted, but to the extent verification of income is not required, fraud is a concern.
- Federal subsidies can be allowed under certain circumstances for individuals who purchase their health insurance outside federal or state marketplace exchanges.

of the Affordable Care Act

ACA Changes Passed by Congress and Signed by President Obama

- The unsustainable long-term care insurance program known as the CLASS act was repealed.
- The free-choice voucher program was repealed.
- The “1099 mandate,” which would have required businesses to report to the IRS all transactions with vendors in excess of \$600, was repealed.
- Medicaid eligibility was readjusted to eliminate coverage for “well-to-do” seniors.
- Cuts of \$400 million were made to the “Consumer Operated and Oriented Plan” (Co-Op) insurance programs.
- TRICARE (the military’s health insurance program) and Veterans Affairs (VA) health care were determined to qualify as minimum essential coverage under the ACA. Additionally, TRICARE coverage was made available for adult children up to age 26.
- Drug pricing and premium tax credit glitches in the ACA were fixed.
- Medicare reductions were trimmed from \$500 million to \$300 million.
- The adoption tax credit, which was included in the ACA for political reasons, was extended.

ACA Changes by the United States Supreme Court

- The U.S. Supreme Court ruled the federal government cannot require states to expand Medicaid to people with incomes of up to 138% of poverty under the threat of losing existing Medicaid funding.

As you can see, the ACA is far from set in stone, and undoubtedly, these changes won’t be the last to this contentious and divisive law. In fact, although I may be in the minority, I remain convinced that despite President Obama’s pronouncement that “the Affordable Care Act is here to stay,” long-term survival of the law is not a foregone conclusion. The

next few years will be critical to the ACA’s success and survival, with some of the more crucial and pressing factors being the following: the upcoming mid-term elections (particularly in light of the precarious Democratic majority in the U.S. Senate); Obamacare metal plan renewals that are certain to far exceed medical trend; tapering reimbursement under the ACA’s reinsurance provisions for insurance companies that lose money under the law (which will necessitate more legitimate (*i.e.*, higher) premium rates); and intensified adverse selection amongst ACA community-rated metal plans (which will undoubtedly fuel the insurance death spiral).

These factors will not bode well for the ACA, and they will most definitely test the support of even the most ardent advocates of the law. As for whether they will result in more changes to the ACA, or whether they will threaten the law’s very existence, is anyone’s guess. Perhaps the most accurate summation of the ACA can be found in **Sir Winston Churchill’s** famous quote (with bracketed language added by me) ...

*“It’s
[an evolving]
riddle, wrapped in a
[dynamic]
mystery, inside an
[ever-changing]
enigma.”*

As Always ...

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