Congress eliminated the ACA Cadillac Tax!

Repealed Some Taxes and Extended Others

- ACA Cadillac tax completely eliminated
- Health Insurance Tax (HIT) ends after 2020
  - Impact on GGB Blue Shield and Kaiser HMOs: 1 – 2 % of premiums
- Medical device tax ended as of 2020

Extended
- PCORI fee for 10 years
  - Funds research into cost-effectiveness of treatments
  - Paid annually based on the self-funded plan head-counts

Other Legislative Action

- Surprise medical billing prohibitions lost traction despite support from both parties
- House and Senate drug proposals failed in 2019 and are unlikely to pass in 2020
  - House bill would let HHS negotiate certain drug prices
  - Senate bill would overhaul Medicare Part D and cap Medicare drug price increases
  - Modest reforms to encourage generic usage may be enacted
  - Drug Importation plan has been proposed by President Trump and by various states
Texas Federal Court Declares Part of ACA Unconstitutional
Appeals Court agrees and sends case back to the lower court

**COURT’S HOLDING**

- A federal district court ruling (Texas v. U.S.) declared the ACA unconstitutional in late 2018:
  - Congress’ reduction of the individual mandate to $0 as of January 1, 2019 means the individual mandate is unconstitutional
  - Individual mandate can’t be severed from the ACA
- Trump administration initially argued that only certain parts of the ACA should be struck down but now argues that the entire ACA should be struck down
- The 5th Circuit Court of Appeals agreed that the individual mandate is unconstitutional and sent the case back to the District Court to decide whether the entire law is unconstitutional

**EFFECTS OF RULING**

- Employers should continue to comply with ACA
- The decision leaves federal and state lawmakers focused on protecting:
  - Requirement of guaranteed issue,
  - Prohibition on pre-existing condition exclusions, and
  - Other insurance market reforms
- Case may eventually reach the US Supreme Court
  - Before or after the Presidential election?
  - Trump has suggested that Republican plan to replace the ACA will be revealed after 2020 election
Health policy in a divided Congress creates an opportunity for states to fill the void

Progressive Democrats tout “Medicare for All”

Moderate Democrats want to expand Medicare, strengthen the ACA

Bipartisan legislation targets surprise bills, drug prices and transparency

Republicans disagree on what’s next if ACA struck down by courts

Trump: Plan to replace the ACA will be unveiled after the election
Democrats would have to win White House and Senate control to seriously consider Medicare-for-All.

Even if that were to happen, intraparty differences, opposition from industry groups and policy challenges would make enactment unlikely.

State action will continue:
- Enshrinement of certain ACA provisions into state insurance laws
- State taxation of individuals who do not maintain medical plan coverage
- Development of state medical programs, e.g., California drug purchasing
- Potential expansion of Medi-Cal programs
FEDERAL REGULATORY ACTIONS
### Federal Regulatory Action 2019

<table>
<thead>
<tr>
<th>Executive Order on Healthcare Price and Quality Transparency</th>
</tr>
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<tbody>
<tr>
<td>Require hospitals to post standard charge information and information on 300 “shoppable” services</td>
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<tr>
<td>Charges would include gross charges, discounted cash prices for self-pay, specific payer negotiated charges</td>
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<td>Legal challenged to the requirements have been file by the American Hospital Association</td>
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<tr>
<th>Group Health Plan Disclosures</th>
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<tbody>
<tr>
<td>Requires group health plans to publish negotiated rates for all in-network services and historic payments to out-of-network providers</td>
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<tr>
<td>Post a transparency tool for consumers to obtain out-of-pocket cost information for all covered services before they receive care</td>
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<tr>
<th>Information Sharing</th>
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<tr>
<td>Increase access to de-identified claims data (governmental and private plan data) for research and innovation purposes</td>
</tr>
<tr>
<td>Create an all-payer claims database, combining de-identified claims from private plans (insured and self-funded), Medicare and state programs</td>
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</tbody>
</table>
### Prescription Drugs – Canadian Drug Importation

One Proposed Regulation would establish a drug importation plan to allow certain drugs, including controlled substances, most biologics and intravenously injected drugs, to be imported from Canada.

States and some non-federal government entities would submit proposals to the FDA to import drugs under this program.

Drugs must be approved for use in Canada and approved for use in the US by the FDA.

Strenuous opposition from the US drug industry.

Canada is uncertain that it can supply sufficient drugs for both Canada and the U.S.

### Prescription Drugs – Drug Maker Importation

Would allow drug makers to import their own drugs which are sold in other countries.
CALIFORNIA & THE PRIVATE SECTOR
INDIVIDUAL COVERAGE MANDATES
SOME STATES ARE ADOPTING INDIVIDUAL COVERAGE MANDATES FOR RESIDENTS

California

• California Coverage and Reporting Requirement
  - The District must report covered individuals to the California Franchise Tax Board (FTB) by March 31, 2021 for 2020
  - Notices must go to covered individuals and their dependents by January 31, 2021 for 2020
  - Forms being developed by the FTB, but currently expect 1094/1095 forms to suffice
  - Support from Tango, the District’s current ACA reporting vendor, to be determined
  - Open Question: will reporting of coverage to District retirees be required?

• California has expanded financial assistance to facilitate purchasing of coverage

OTHER STATES

Massachusetts, New Jersey, Vermont, D.C., and Rhode Island
# MISCELLANEOUS CALIFORNIA DEVELOPMENTS

## California Consumer Privacy Act

A complex law patterned to some extent after the privacy laws of the European Union which gives consumers certain rights regarding usage of data

- Exemption for Personal Health Information (PHI) that is subject to HIPAA privacy, security and notice requirements
- Limited one-year “employee exemption” for employee data used for certain employment purposes, including health & welfare plan enrollment and administration

## Insurance Renewal Rate Disclosure

Requires insurers to release renewal rates four months prior to their effective date

## California Prescription Drug Purchasing

Concept is that California would contract with certain generic drug makers to produce drugs under a California label. The drugs would be available to all consumers, presumably at a lower cost.
**CALIFORNIA SDI & PFL UPDATES**

**PAID FAMILY LEAVE EXPANDS TO EIGHT WEEKS**
- SB83 signed into law adds two weeks of paid family leave beginning July 2020.
- Expands the permissible uses of paid family leave to include military exigencies beginning in Jan. 2021.

- **FAMILY LEAVE**
  - 6 weeks to care for a seriously ill family member or for child bonding (going up to 8 weeks for leave starting on or after July 1, 2020); also available for qualifying military exigency beginning Jan. 1, 2021.

- **DISABILITY LEAVE**
  - 52 weeks for employee’s own non-work related disability.

- **BENEFIT**
  - Weekly benefit is a percentage of the employee’s average weekly wage or the state average weekly wage, whichever is higher, up to **weekly benefit max of $1,300** in 2020.

- **FUNDING**
  - Funded by **employee payroll tax of 1% of wages** (up to a wage max of $122,909 for 2020). There is no change in the contribution rate from 2019.
PRIVATE SECTOR CAN’T WAIT FOR CONGRESS

Amazon, Berkshire Hathaway and JP Morgan Joint Venture

• New Haven health plan for 30,000 employees
• No deductible – removes a barrier to primary care access
• Fixed co-pays for office, specialists and hospitals
• Amazon data mining, analytics and AI identifying individual behaviors, e.g., reducing obstacles to acceptance of wellness recommendations
• Amazon purchase of PillPack

Consumer Health Data

• How will it be used to improve health?
• Digital health care: data mining, artificial intelligence
• Privacy concerns and control of access to data
• Google - Project Nightingale: gather and analyze data from millions of Ascension patients
HEALTH REIMBURSEMENT ACCOUNTS
NEW OPTIONS
**HEALTH REIMBURSEMENT ACCOUNTS**

INFORMATIONAL ONLY – NOT CURRENTLY APPLICABLE TO DISTRICT ILLUSTRATES HRAS ARE STILL VIABLE

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### EXPANSION OF HRA MODEL

- Trump issued Executive Order instructing agencies to find new ways to increase health coverage access
- Order called for agencies to expand use and flexibility of HRAs
- Retiree medical HRAs have been implemented successfully due to active Medicare Supplemental Policy market
- New rules focus on expanding employee access to the individual policy market and to limited duration policies

### TWO NEW HRAs

- **Individual Coverage HRAs**
  - Can be funded by employers and used to purchase individual policies
  - Cannot be offered alongside traditional coverage
  - Viability linked to individual market

- **Excepted benefit HRA**
  - Subject to $1800 annual limit
  - Must be offered alongside traditional coverage
  - Can be used for 213(d) expenses or to reimburse premiums for COBRA, excepted benefits and limited duration policies
LEGAL NOTICES

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