The Future of Health Care

2017 SourceAmerica National Training and Achievement Conference

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May 2017
What Keeps You Up At Night?

- FIDUCIARY
- COMPLIANCE
- ADA
- 1095-C
- COBRA
- PPACA
- WELLNESS
- FMLA
- HIPAA PRIVACY & SECURITY
- MHPAEA
- ERISA
I. Overview of Compliance “Hot Spots”

II. Agencies & Audit Targeting

III. HIPAA Enforcement Update

IV. Non-Discrimination in Health Activities & Related Rulemaking

V. Wellness, Mental Health Parity & Addiction Equity

VI. Consumerism and the Growth of Account-based Health Plans

VII. The Uncertain Future of the ACA
Overview of Compliance

“Hot Spots”
<table>
<thead>
<tr>
<th>Penalty Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>$22,800,000</td>
<td>A logistics firm’s poor LTD feed, dropping 147 employees, three of whom entered claim status without verifiable coverage</td>
</tr>
<tr>
<td>$15,800,000</td>
<td>An auto manufacturer accidentally dropping coverage of an employee on leave, resulting in denied medication and subsequent death</td>
</tr>
<tr>
<td>$14,200,000</td>
<td>A high-tech firm’s loss of annual enrollment elections for 675 employees, requiring retro-enrollment and full remuneration across all costs once discovered</td>
</tr>
<tr>
<td>$3,000,000</td>
<td>A private health system failed to assure HIPAA’s physical, administrative and technological safeguards where an unsecured laptop computer was “misplaced”</td>
</tr>
<tr>
<td>$1,900,000</td>
<td>A medical system denying benefits enrollment and subsequent coverage to a same-sex partner, resulting in a discrimination suit</td>
</tr>
<tr>
<td>$1,000,000</td>
<td>A retailer neglecting to send a COBRA packet to a former employee who subsequently passed away, resulting in full out-of-pocket compensation for the entire value of their life insurance benefit</td>
</tr>
</tbody>
</table>
Top employer health and welfare compliance concerns

**Compliance activity is on the rise**
- Proactive ACA enforcement is underway
- DOL H&W audits have roughly tripled; recent HIPAA audit settlements have ranged from $650k to $5.5M
- EEOC wellness regulations bring new compliance challenges and potential penalties
- ERISA Section 510(b) and Fiduciary Provisions

**Governance issues**
- Certain activities must be performed on a recurring basis
- Known (vs. perceived) issues should be addressed
- Best practices require periodic assessment

**Legislative/Regulatory activity**
- New rules may require assessment and action
- A change in enforcement may affect risk
- Changes provide opportunity for broader review

**Organizational changes**
- New leadership may want to determine existing risk
- M&A due diligence review of acquisition targets
- Changes to plan design, administration or vendors
## Most common health and benefit compliance failures

- 5 most common compliance failure areas identified below are relevant for employers of all sizes and industries and support risk mitigation.

<table>
<thead>
<tr>
<th>#</th>
<th>What</th>
<th>Why</th>
</tr>
</thead>
</table>
| 1 | **Wellness**  
  - HIPAA/ACA compliance  
  - EEOC/ADA/GINA compliance | • With final EEOC regulations all wellness programs should be evaluated  
  • Confirm employers complying with prior HIPAA/ACA and GINA rules |
| 2 | **Due Diligence/Testing**  
  - HIPAA Privacy and Security Nondiscrimination testing | • Round 2 HIPAA audits are winding up – critical to be “audit ready”  
  • H&W programs are required to be nondiscriminatory; only testing can validate this |
| 3 | **Governance**  
  - Reporting and Disclosure Requirements  
  - Documentary and Operational Compliance  
  - Documented Governance Procedures | • Some document updates and/or distributions are required annually  
  • Ongoing obligation to satisfy documentary requirements and confirm plan’s compliance with law  
  • Distributions and posting rules for documents and notices vary  
  • Plan Fiduciaries are required to develop, document and maintain prudent governance procedures  
  • Form 5500 delinquent filings |
| 4 | **Overlooked Requirements**  
  - Section 1557  
  - MHPAEA  
  - ACA | • Landscape and trends changing quickly and benefit offerings should be reviewed for compliance  
  • ACA is falling off employers’ radars  
  • Employees should confirm that they are “audit ready” |
| 5 | **Education**  
  - Regular compliance education through periodic compliance calls  
  - Stay abreast of developments | • Keep a pulse on developments  
  • Partner with resources to make adjustments when necessary to achieve compliance |
Agencies & Audit Targeting
Federal Agencies Regulating Employee Benefits (cont.)

DOL / WHD

- FLSA – Wages
- FMLA
- Child Labor
- Government Contracts
- Immigration
- Agricultural Employment
- Employee Polygraphs

DOL / EBSA

- ERISA – Fiduciary
- Correction programs
- COBRA
- HIPAA
- GINA
- MHPAEA
- CHIP

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Audit Triggers for Federal Regulatory Enforcement

- Random Technical Inquiry
- Targeted Inquiry (Occupation, Industry)
- Agency Information Sharing
- Compliant-based Investigation
- Regulatory Compliance (Filings, Disclosures)
Areas of Increased DOL Activity– Health & Welfare Plans

- DOL national and regional initiatives involving health and welfare plans
  - Recent uptick in DOL investigations/audits and multi-plan investigations/audits
  - New DOL document requests for standard health & welfare plan investigation/audits contain more detail than ever before
    - Document requests grown from 3 pages to 9 pages in length
    - Additional documents requested may include:
      - Specific data regarding the Mental Health Parity and Addiction Equity Act of 2008
      - Administrative Services Only contracts and related data
      - Pharmacy Benefit Manager (PBM) contracts and related data
    - Increased scrutiny reviewing whether the plan operates in accordance with plan documents

Best Practices in Plan Management

- Selection of vendor is a fiduciary activity; a sponsor should document the following:
  - Rationale for selecting its vendors
  - Periodically review vendor performance and fees, and document results

- Plan operations should be regularly reviewed to confirm they comport with the Plan documentation (Plan document/SPD/Policies)
  - Regularly review the current Plan document/SPD to confirm if updates are needed or Summary of Material Modifications (SMMs) should be issued
  - Both the DOL and IRS recommend periodic self-audits of plan operations
EEOC Enforcement Activities are Booming!
Retaliation, Race, Disability, and Sex Discrimination Lead Enforcement Activity

**EEOC Fiscal Year 2016 Enforcement Stats:**

- **Total workplace discrimination charges filed in 2016:** 91,503 charges
- **Total workplace discrimination charges resolved in 2016:** 97,443 charges
- **Total workplace discrimination charge-related recoveries:** $482 million for victims

Specifically, the charge numbers show the following breakdowns by bases alleged, in descending order:

- Retaliation: 42,018 (45.9 percent of all charges filed)
- Race: 32,309 (35.3 percent)
- Disability: 28,073 (30.7 percent)
- Sex: 26,934 (29.4 percent) [LGBT: 1,650 charges & $4.4M recovered]
- Age: 20,857 (22.8 percent)
- National Origin: 9,840 (10.8 percent)
- Religion: 3,825 (4.2 percent)
- Color: 3,102 (3.4 percent)
- Equal Pay Act: 1,075 (1.2 percent)
- Genetic Information Non-Discrimination Act: 238 (.3 percent)

* These percentages add up to more than 100 because some charges allege multiple bases.
Overview of HIPAA Auditing Programs
Phases of the Audit Program
What happened before & what happens afterward?

**Phase I:**
Employers already under audit are given the opportunity to “voluntarily participate” in the Phase I Audit Program in exchange for a reduction of audit penalties

**Phase II:**
Desk & face audits based on the observations and evidence collected during Phase I

**Phase III:**
Agency standardization of on-going audit protocol and rollout of systematic auditing policies and procedures
Elements of a Phase II Audit
The Desk Audit Phase

- Notification
- Production of Documents
- Agency Review
- Findings of Fact (10 Day Response)
- Closing or Selection for Face Audit
Elements of a Phase II Audit
The Face Audit Phase

Selection
Inspection of Premises
Interview Privacy Officer
Interview Security Officer
Corrective Actions
Penalty
Preparation for an Audit
The 4 A’s Methodology

- **Adoptions (Document Review)**
  - Business Associate Agreements
  - Policies & Procedures
  - Appointments
  - Disclosure Logs
  - Participant Forms

- **Appointments**
  - Privacy Officer
  - Security Officer
  - Privacy Contacts
  - Designated Individuals

- **Assessments (Training)**
  - Designated Individual training on the Privacy & Security Rules
  - Officer training on enforcement
  - Non-discrimination for health outcomes (if necessary)

- **Auditing**
  - Independent or 3rd party risk assessment
Practice the Four “As” Methodology

HIPAA Compliance Requires a Consistent Approach
Preparation for a Phase II Audit

Consider Physical, Administrative & Technology Safeguards

- **Physical**
  - Scalability
  - Physical security
  - Locking & tracking of documents and files
  - Office design
  - Storage

- **Administrative**
  - Privacy & Security Officer appointment & training
  - Privacy Contacts & designated individual training/education
  - Policies & procedures; documents
  - Access controls

- **Technology**
  - Neutrality
  - Timeouts & access (verification)
  - Encryption
  - Termination & deactivation
  - Data storage
Non-Discrimination in Health Activities & Related Rulemaking
# Nondiscrimination Rules

ACA Section 1557, OFCCP Final Rules, and EEOC’s Position on Title VII

<table>
<thead>
<tr>
<th>Effective</th>
<th>ACA Section 1557</th>
<th>OFCCP Final Rules</th>
<th>EEOC’s position on Title VII</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>January 1, 2017 (benefit requirement)</strong></td>
<td><strong>August 15, 2016</strong></td>
<td><strong>Enforcement currently in effect</strong></td>
<td></td>
</tr>
<tr>
<td><strong>October 17, 2016 (notice requirement)</strong></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Covered employers</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>“Covered Entities;” health programs or activities receiving “federal financial assistance” (FFA) based on OCR definition</td>
<td>Employers with Federal Contractors</td>
<td>All employers should be aware of EEOC’s position</td>
</tr>
<tr>
<td>Hospital systems</td>
<td>Note, impacts employer’s entire population; not just Federal Contractor population</td>
<td>Employers are not <em>required</em> to make benefit changes unless ACA Section 1557 or OFCCP applies, but may be in their interest to do so</td>
</tr>
<tr>
<td>Receiving retiree drug subsidy (RDS) or EGWP – open issue</td>
<td></td>
<td></td>
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</tbody>
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<table>
<thead>
<tr>
<th>Impact</th>
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<tbody>
<tr>
<td>“Categorical exclusions” in health coverage based on gender identity are prohibited</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No guidance on the extent to which employers are required to provide health coverage for transgender surgery and other expenses related to gender transition</td>
<td></td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Notice requirement</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

*Employer should confirm with legal counsel whether one (or more) of these nondiscrimination rules is applicable. While many employers may determine that they are not directly subject to the Section 1557 rules nor the OFCCP rules, all private and public entities with more than 15 employees will be subject to Title VII*
Section 1557 ACA nondiscrimination in health programs

- The Office of Civil Rights (OCR) and the Department of Health and Human Services (HHS) issued final regulations implementing ACA Section 1557 to address nondiscrimination in health programs and activities.

- ACA Section 1557 prohibits covered entities from discrimination on the basis of race, color, national origin, sex, age or disability in health programs or activities receiving “federal financial assistance” (FFA).

- ACA Section 1557 applies only to a covered entity:
  - All health programs and activities that receive FFA through HHS
  - Health programs and activities administered by HHS, including the federally facilitated marketplace and Medicare Part D
  - Health Insurance Marketplace and all plans offered by issuers that participate in those Marketplaces (including plans offered to employers outside of the Marketplaces)

- FFA for purposes of civil rights complaints handled by OCR includes:
  - Health care providers participating in CHIP and Medicaid programs
  - Hospitals and nursing homes (recipients under Medicare Part A)
  - Medicare Advantage Plans (e.g., HMOs and PPOs) (recipients under Medicare Part C)
  - Prescription Drug Plan sponsors and Medicare Advantage Drug Plans (recipients under Medicare Part D)
  - Human or social service agencies
  - Insurers who are participating in the Marketplaces and receiving premium tax credits

- Employers receiving retiree drug subsidy (RDS) payments from HHS should confirm with legal counsel whether they are a covered entity subject to Section 1557 and if so, which plans are impacted.
Section 1557 and Transgender Benefits

- ACA Section 1557 prohibits sex discrimination and specifically prohibit discrimination based on gender identity, which includes identity as “male, female, neither, or a combination of male and female”
  - Covered entities must treat transgender individuals consistently with their own gender identity
  - If a health service is exclusively available to a particular gender, that service must be provided to an individual with a different gender identity if medically necessary

- An employer who qualifies as a covered entity cannot have a categorical exclusion that denies transgender benefits

- The OCR intends to interpret transgender benefits broadly and denial of claims will be evaluated on a case-by-case basis, where OCR has jurisdiction (i.e., employer receiving FFA)

- If an employer is not a covered entity under ACA Section 1557, OCR may share the individual’s discriminatory claim with the EEOC
  - Denial of a transgender benefit claim will likely be evaluated on a case-by-case basis by another federal agency even for employers that are not covered entities for 1557 purposes

If an employer is receiving FFA and considered a covered entity, we would recommend discussing with its legal counsel which transgender benefits, including surgery, should be covered under the plan.
OFCCP Final Nondiscrimination Rules for Federal Contractors

- On June 14, 2016, the U.S. Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) announced a Final Rule setting forth the requirements that covered contractors (including subcontractors) must meet to fulfill their obligations under Executive Order (E.O.) 11246 to ensure nondiscrimination in employment on the basis of sex.

- Applies to any business or organization that:
  - Holds a single federal contract, subcontract, or federally assisted construction contract or subcontract in excess of $10,000;
  - Holds federal contracts or subcontracts that have a combined total in excess of $10,000 in any 12-month period; or
  - Holds government bills of lading, serves as a depository of federal funds, or is an issuing and paying agency for U.S. savings bonds and notes in any amount.

- Nondiscrimination requirements of E.O. 11246 obligate contractors to ensure that coverage for healthcare services be made available on the same terms for all individuals for whom the services are medically appropriate, regardless of sex assigned at birth, gender identity, or recorded gender.
  - For example, where a transgender man needs medical treatment for ovarian cancer, a contractor may not deny coverage based on the individual’s identification as male.

- Effective on August 15, 2016, but OFCCP will consider good faith progress to take steps to change benefits policies and practices in this area in analyzing whether enforcement action is appropriate.

*If an employer has federal contractors, we would recommend discussing with its legal counsel whether transgender benefits, including surgery, must be covered under the plan.*
ACA Section 1557 Preliminary Injunction

- A nationwide preliminary injunction was issued to temporarily prohibit OCR from enforcing the ACA section 1557 provisions prohibiting discrimination based on gender identity or termination of pregnancy.

- The preliminary injunction was issued on December 31, 2016 by the U.S. District Court for the Northern District of Texas in *Franciscan Alliance, Inc. et al v. Burwell*.
  - Plaintiffs assert that these provisions would require them to perform and provide insurance coverage contrary to their religious beliefs or medical judgment in violation of the Administrative Procedures Act and the Religious Freedom Restoration Act.

- OCR confirmed it will continue to enforce ACA section 1557 beyond the scope of the injunction including:
  - General prohibition against discrimination
  - Notice and tagline requirements
  - Translation services
  - Designation of a compliance coordinator
  - Adoption of grievance procedure

Covered entities should closely monitor further developments in this litigation.
Wellness, Mental Health Parity & Addiction Equity
On May 16, 2016 the EEOC issued final ADA and EEOC regulations impacting employer sponsored wellness programs

Final rules under Title I of the Americans with Disabilities Act (ADA)

- The ADA rules provide guidance on the extent to which employers may use incentives to encourage employees to participate in wellness programs that ask them to respond to disability-related inquiries and/or undergo medical examinations.

Final rules under Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)

- The GINA rules address the extent to which an employer may offer an incentive to an employee to provide genetic information about the health of the employee’s spouse as part of a health risk assessment (HRA) or medical examination administered as part of a wellness program.

EEOC’s rules are not in alignment with HIPAA/ACA rules.

Review of each component of a wellness program is required to ensure compliance with all regulations.

EEOC continues to provide guidance on application of rules

Final notice requirements and rules apply to plan years beginning on/after January 1, 2017
Wellness program compliance — Example summary for 2017+
Common incentive program examples

<table>
<thead>
<tr>
<th>Program for Employees and Spouses</th>
<th>HIPAA/ACA</th>
<th>ADA</th>
<th>GINA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tobacco surcharge, no nicotine screening required</td>
<td>✓ (incentive up to 50% of the total cost of coverage in which the employee and spouse are enrolled)</td>
<td>ADA does not apply</td>
<td>GINA does not apply</td>
</tr>
<tr>
<td>Tobacco surcharge, nicotine screening required</td>
<td>✓ (incentive up to 50% of the total cost of coverage in which the employee and spouse are enrolled)</td>
<td>✓ (incentive up to 30% of the total cost of employee-only coverage)</td>
<td>GINA does not apply</td>
</tr>
<tr>
<td>Complete Health Risk Assessment (HRA) and/or biometric screenings <strong>(not outcomes based)</strong></td>
<td>✓ (no incentive limit because participatory only)</td>
<td>✓ (incentive up to 30% of the total cost of employee-only coverage)</td>
<td>✓ (incentive up to 30% of the total cost of employee-only coverage; additive to ADA limit)</td>
</tr>
<tr>
<td>Nutrition class attendance</td>
<td>✓ (no incentive limit because participatory only)</td>
<td>✓ (reasonable accommodation only)</td>
<td>GINA does not apply</td>
</tr>
<tr>
<td>Walking program with step/distance requirement</td>
<td>✓ (incentive up to 30% applies only to health contingent programs)</td>
<td>✓ (reasonable accommodation only)</td>
<td>GINA does not apply</td>
</tr>
</tbody>
</table>

Key take away — even a minor change to a wellness program can impact compliance

✓ Indicates rules apply
MHPAEA Enforcement Statistics

FY 2016 Enforcement Fast Facts:* 

• EBSA closed 330 health investigations in FY 2016 (and 3,100 health investigations since FY 2011).

• Of these 330 closed investigations in FY2016, 191 involved plans subject to MHPAEA and were, therefore, reviewed for MHPAEA compliance.

• Of these 191 investigations where MHPAEA applied, **EBSA cited 44 violations for MHPAEA noncompliance.**

• EBSA Benefits Advisors answered over 112 public inquiries in FY 2016 related to MHPAEA (and have answered 1,191 inquiries related to MHPAEA since FY 2011).

MHPAEA Enforcement Statistics

MHP Enforcement by Topic (DOL)*

- Annual Dollar Limits (54.55%)
- Financial Limits & QTLs (22.73%)
- Treatment Limitations (13.64%)
- Benefit Classifications (6.82%)
- NQTLs (2.27%)


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Areas of Increased DOL Activity—MHPAEA

- DOL recently released guidance on mental health parity, which focuses on non-quantitative treatment limitations (NQTLs) and how to identify provisions that will require analysis beyond the plan/policy terms in order to determine compliance with mental health parity requirements.

- The guidance provides a non-exhaustive list of MH/SUD provisions that if found in the plan should trigger careful analysis of the medical/surgical benefits to ensure the plan is in compliance with NQTLs.

### Specific MH/SUD plan triggers

<table>
<thead>
<tr>
<th>Category</th>
<th>Provisions</th>
</tr>
</thead>
</table>
| Preauthorization & Pre-service notification requirements | - Blanket preauthorization requirements for all MH/SUD benefits  
- Treatment facility admission preauthorization  
- Medical necessity review authority  
- Rx preauthorization  
- Extensive pre-notification requirements |
| Fail-first protocols            | - Progress requirements prior to receiving intensive OP treatment  
- Treatment attempt requirements: 2 forms of OP treatment prior to IP treatment |
| Probability of improvement      | - Likelihood of patient improvement is reviewed prior to residential treatment |
| Written treatment plan required| - Written treatment plan required by behavioral health specialist  
- Treatment plan required within a certain time period  
- Treatment plan submission on a regular basis (every 6 months) |
| Other                           | - Patient non-compliance with treatment plan  
- Excludes residential level of treatment for chemical dependency  
- Geographical limitations  
- Licensure requirements |

The DOL, HHS, and the IRS continue to release guidance on MHPAEA. Congress also continues to support legislative measures related to MHPAEA compliance.
Increased enforcement for MHPAEA

- The 21st Century Cures Act signed into law on December 13, 2016 addressed increasing oversight, enforcement and education for the Mental Health Parity and Addiction Equity (MHPAEA), including the following provisions:
  - HHS, DOL, and Treasury to issue guidance with examples of MHPAEA compliance and non-compliance
  - Action plan to improve state-federal coordination in enforcing parity requirements
  - Require HHS and GAO to study parity compliance and enforcement
  - Clarification that coverage for eating disorders is subject to parity requirements

- The White House Mental Health and Substance Use Disorder Parity Task Force issued its final report to discuss key milestones of MHPAEA and to announce the following new initiatives:
  - Consumer Web Portal: helps drive consumers to the appropriate agency/resources for parity complaints, appeals and other actions
  - Consumer Guide to Disclosure Rights: explains the federal disclosure laws affecting employer-sponsored group health plans and issuers
  - Compliance Assistance Materials Index: helps support states and their enforcement of the parity rules
  - Further enforcement in Medicaid, CHIP, Medicare, and TRICARE
  - Recommendation for Congress to allocate funds for audits; authorize DOL to collect civil monetary penalties; require state and local governments and non-ERISA plans to comply

**Review plans to confirm compliance with MHPAEA**
Consumerism and the Growth of Account-based Health Plans
Employer confidence in offering health care continues to grow

How confident are you that your organization will continue to sponsor health care benefits to active employees in five years and in ten years, either via a self-managed plan or use of a private exchange?

Sample: Companies with at least 1,000 employees.
Note: High Confidence represents responses of “Very confident.” Years 2004-2015 are based on prior years of the TW Survey.
Health care cost trend remains at historically low levels

Health care cost trends after plan changes are well above the rate of inflation.

Sample: Companies with at least 1,000 employees.

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Nearly 4 in 5 companies offer an ABHP

Total-replacement ABHPs are also on the rise – up to 20 percent of companies with an ABHP as their only option compared to 2 percent a decade ago.

Note: Based on companies with at least 1,000 employees. 2006 is based on the 12th Annual Willis Towers Watson/National Business Group on Health survey; 2007 is based on the 13th annual survey, etc.

Employee enrollment in ABHPs continues to climb

Note: Enrollment rates are based on companies with at least 1,000 employees that offer an ABHP in various years. 2006 is based on the 12th Annual Willis Towers Watson/National Business Group on Health survey; 2007 is based on the 13th annual survey, etc.

Take-up in ABHPs by Industry

<table>
<thead>
<tr>
<th>Industry</th>
<th>Offered in 2016</th>
<th>Planned for 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Services</td>
<td>89%</td>
<td>1%</td>
</tr>
<tr>
<td>IT and Telecom</td>
<td>84%</td>
<td>7%</td>
</tr>
<tr>
<td>Energy and Utilities</td>
<td>82%</td>
<td>4%</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>80%</td>
<td>7%</td>
</tr>
<tr>
<td>General Services</td>
<td>80%</td>
<td>5%</td>
</tr>
<tr>
<td>Wholesale &amp; Retail</td>
<td>73%</td>
<td>4%</td>
</tr>
<tr>
<td>Public Sector and Education</td>
<td>64%</td>
<td>3%</td>
</tr>
<tr>
<td>Health Care</td>
<td>61%</td>
<td>6%</td>
</tr>
</tbody>
</table>

Sample: Companies with 1,000+ employees.
Employers increasingly contribute funds to an HSA

Percentage contributing funds to an HSA

Sample: Based on all companies with at least 1,000 employees with or without an ABHP.
Note: * “Planned for 2017”; ^ “Planned for 2017” or “considering for 2018”.


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ABHPs with an HSA are the most common design

Since the ACA was passed in 2010, enrollment has increased from 15% to 45%, largely because many employers replaced all their plans with ABHPs

Among companies seeding an HSA.

Note: Based on all companies with at least 1,000 employees with or without an ABHP.
* Include companies indicating “planned for 2017” or “considering for 2018”.

Seed money into the account without matching or participation requirements. 62% contribute funds upfront at the beginning of the year and 13% immediately after contribution is earned.
More employers are offering ABHPs with a HSA as their only option

By employer size:
33% of large employers (25,000+) offer both HRAs and HSAs, while only 6% of small employers (<1000) offer both.

By industry:
Health Care (32%) and Manufacturing (28%) are the most likely to offer both, while Energy & Utilities (84%) and financial Services (80%) were most likely to offer HSAs only.

Note: Based on companies with at least 1,000 employees that offer an HSA-or HRA-ABHP. Years 2007-2015 are based on prior years of the TW Survey.
Best performers leverage participation and subsidization

**Participation**
- Offer an ABHP as our only plan (i.e., full replacement) 39% vs. 9%
- Offer an ABHP as our default plan 49% vs. 26%
- Offer a "skinny" or minimum-value plan (also referred to as a minimum essential coverage, or MEC, plan) 17% vs. 9%
- Use spousal surcharges (when other coverage is available) 37% vs. 21%
- Contribute funds to an HSA 76% vs. 66%

**Subsidization**
- Structure employee contributions based on employee compensation levels 27% vs. 16%
- Use a defined contribution arrangement (i.e., employer’s share of premiums are the same for all plans in a common tier) 27% vs. 16%
- Modify contributions to achieve affordable premiums for low-wage employees 41% vs. 28%
- Reward (or penalize) based on smoker/tobacco-use status (e.g., tobacco surcharge) 66% vs. 55%

Sample: Companies with at least 1,000 employees.
HSA seed contributions

Percentage of HSA-sponsors who seed accounts

- Percentage of TOTAL REPLACEMENT HSA ONLY-sponsors who seed accounts: 90%
- Percentage of TOTAL REPLACEMENT HSA-sponsors who seed accounts: 84%
- Percentage of HSA-sponsors who seed accounts: 83%

Sample: Based on companies with at least 1,000 employees and offer an HSA.
Please indicate the way(s) in which you provide HSA contributions

### HSA contributions - Design

- Seed money into the account (no match or participation required) - 81%
- Contribute based on participation in wellness programs or biometric outcomes - 29%
- Match employee contributions up to a specified limit - 8%
- Vary employer seed money based on pay - 5%
- Contribute based on achievement of specific biometric outcomes - 4%
- Other (please specify) - 6%
- None of the above - 1%

Sample: Based companies with at least 1,000 employees that contribute to an HSA. Source: 2016 Willis Towers Watson Best Practices in Health Care Employer Survey.
Which best describes how the HSA contributions are distributed to members?

HSA contributions - Timing

- Seed money up front in the beginning of the year: 62%
- Seed money immediately after contribution is earned: 13%
- Split seed per paycheck: 19%
- Split seed on a monthly basis: 3%
- Split seed on a biannual basis: 6%
- Other: 13%

Sample: Based companies with at least 1,000 employees that contribute to an HSA.
Potential role of HSAs

**Current caps** = $3,400 single, $6,750 family, $1,000 catchup age 55 – 64

**AHCA caps proposed** = Statutory maximum out-of-pocket limits: $6,550 single, $13,100 family, $2,000 catch up (if both spouses 55 – 64) (2017 figures)

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**Tax-free HSA contributions can help offset taxation on employer plans**

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**Employer opportunities**

- Offer High Deductible/Health Savings Account plan option (if not now offered)
- Consider shift to full replacement HD/HSA approach
  - Drive consumerism and tax-free savings
  - Linkage to retirement planning: pre-fund retiree medical cost
- Use any impending change in benefit taxation to reassess plans
Shifting labor force mix by generation

Source: 1985 and 2000 from OECD, 2015 from CPS, 2020 from BLS labor force projections and 2030 from Willis Towers Watson estimates based on Census population projections for 2030 and BLS labor force projections for 2024
The Uncertain Future of the ACA
What Does the Future Hold for the ACA?

Repeal? ACA Replace?
American Health Care Act (AHCA)
Employer Implications of AHCA with Manager’s Amendments

<table>
<thead>
<tr>
<th>Key ACA repeal and transition provisions</th>
<th>ACA replacement elements: tax-credits for individual market coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repeal individual, employer mandate penalties</td>
<td>Advanceable and refundable</td>
</tr>
<tr>
<td>Repeal most ACA taxes (not 40% excise tax)</td>
<td>Age-rated; means-tested</td>
</tr>
<tr>
<td>Impose continuous coverage requirements</td>
<td>Not available if eligible for employer plans or government programs</td>
</tr>
<tr>
<td>Widen age-rating ratio</td>
<td>Excess may be deposited into HSAs</td>
</tr>
<tr>
<td>Repeal ACA cost-sharing subsidies</td>
<td>Health Savings Accounts</td>
</tr>
<tr>
<td>Transition ACA premium tax credits</td>
<td>Limits set to out-of-pocket max</td>
</tr>
<tr>
<td>Repeal bronze, silver, gold, platinum AV requirements</td>
<td>Spousal catch-ups to same account</td>
</tr>
<tr>
<td>Phase-out Medicaid expansion; reform Medicaid funding</td>
<td>Expenses incurred before HSA established</td>
</tr>
<tr>
<td>Phase-out Medicaid expansion; reform Medicaid funding</td>
<td>40% excise tax on high-cost group coverage</td>
</tr>
<tr>
<td></td>
<td>Retained; effective in 2026</td>
</tr>
<tr>
<td></td>
<td>Proposed cap on employee tax exclusion dropped</td>
</tr>
</tbody>
</table>

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What happens after the American Health Care Act?

Three-part strategy?
- Budget reconciliation
- Administrative actions
- Targeted legislation

Other vehicles for health care discussions?
- Tax reform
- Regulatory reform
- Appropriations
Most employers are unlikely to take immediate action to their plans in response to repeals of elements of the ACA

To what extent do you agree with the following statements about your organization’s likely response if the following changes are made to the ACA?

<table>
<thead>
<tr>
<th>Statement</th>
<th>Strongly agree or Agree</th>
<th>Neither agree nor disagree</th>
<th>Strongly disagree or Disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>Our organization would lower the eligibility age for adult dependents if the age 26 dependent coverage rule is repealed</td>
<td>22%</td>
<td>30%</td>
<td>48%</td>
</tr>
<tr>
<td>Our organization would add annual dollar limits on specific services if the prohibition under ACA is repealed</td>
<td>20%</td>
<td>39%</td>
<td>41%</td>
</tr>
<tr>
<td>Our organization would add lifetime dollar limits if the prohibition under ACA is repealed</td>
<td>15%</td>
<td>35%</td>
<td>50%</td>
</tr>
<tr>
<td>Our organization would stop covering contraceptive care at first dollar if the coverage requirement under ACA is repealed</td>
<td>11%</td>
<td>29%</td>
<td>59%</td>
</tr>
<tr>
<td>Our organization would stop covering first dollar coverage on at least some of the mandated list of preventive services if the ACA is repealed</td>
<td>10%</td>
<td>27%</td>
<td>63%</td>
</tr>
</tbody>
</table>

Sample: Employers with at least 200 employees.
Checklist

- Ensure ACA compliance
- Assess excise tax impact effective 2020
- Comply with employer mandate
- Ensure minimum value and affordability
- Update SBCs for new templates
- Review health status incentives
- Ensure mental health parity compliance
Questions?
Surveys

Time to Give Your Feedback!

• We are going Green this year!
• To access the survey, log into the app, click on the session
• The survey link will be located at the top of the session description

Thank you for participating!