



# EMPLOYEE BENEFITS UPDATE

January 30, 2017

## What does Trump's Executive Order on the ACA Mean to Employers?

As has been widely reported, President Trump issued an Executive Order addressing the Affordable Care Act (the "ACA")—but many of our clients are wondering what impact it has on them and the group health plans that they sponsor for their employees, because the language of the Executive Order only speaks to minimizing the economic burden of the ACA on individuals, families, healthcare providers, health insurers, and health insurance purchasers.

By its terms, the Executive Order does not specifically address employers. Further, implementation of the Executive Order involves several practical challenges, including the fact that the heads of the agencies overseeing the ACA have not been confirmed and that the Order is to be implemented consistent with applicable law—meaning that the agencies are not supposed to disregard the ACA while repeal or replacement legislative efforts are being undertaken.

So, what's an employer to do?

### **Continue with ACA Reporting**

No relief has been announced for ACA information reporting for the 2016 plan year, so the most prudent course of action is for employers and their vendors to continue to prepare and distribute the Forms 1095-B and 1095-C. The forms are due to be distributed to employees no later than March 2, 2017 (a 30-day extension from January 31<sup>st</sup>), but the due dates for filing with the IRS remain unchanged: February 28<sup>th</sup> for paper/mail submissions, and March 31<sup>st</sup> for electronic filing. A "good faith" standard applies to these forms, which essentially means that the IRS generally will not penalize employers for good faith mistakes on these forms if the errors involve incorrect or incomplete information, provided that the forms are submitted on a timely basis.

### **Continue with Payment of ACA Related Fees until Further Notice**

The transitional reinsurance fee under the ACA is set to expire for 2017, but insurers and self-funded plan sponsors owe \$27 per covered life for 2016. Most employers choose to pay that in two installments, with the first installment of \$21.60 per covered life having already been paid on January 17, 2017, and the second installment of \$5.40 per covered life being due on November 15, 2017. Depending on what happens with the ACA repeal, the November installment may not be required, but until further notice, employers should plan on completing those payments on time.

Likewise, the PCORI fee of \$2.00 per covered life is still scheduled to be due by July 31, 2017, unless it is suspended, and employers should still budget for that payment.

**Review Mandated Health Benefits and Carefully Consider Plan Design Implications**

The ACA requires that all health plans cover preventive care services without any cost-sharing, as well as a list of other essential health benefits. Those requirements, along with the ability for children to remain on their parents’ plan until age 26 and the elimination of pre-existing condition restrictions, have proven to be very popular with employees.

Until the precise scope is known about repeal and replacement of the ACA, employers would be wise to not act pre-emptively to make any changes to their health benefit plan design. Even putting aside the ACA, if your group health plan is a fully-insured product, it is subject to state insurance law mandates that are independent of the ACA, so the repeal of the ACA is not likely to immediately change the types of benefits that your plan is required to offer.

Self-funded plans, on the other hand, are not subject to state insurance laws, which are pre-empted by ERISA. Once the details regarding the ACA repeal and replace efforts are known, to the extent any changes to the ACA impact the level of health benefits that must be provided under a group health plan, you may be able to redesign your health plan on a going-forward basis. This could present opportunities for businesses to differentiate themselves from competitors as part of their overall strategies to recruit and retain talent. Until the parameters of any ACA repeal or replace efforts are more clearly delineated, however, employers should consider adopting a “wait and see” approach.

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If you would like to discuss how the repeal of the ACA may impact the design of your health plans, or if you’d like to discuss your employee benefit plans generally, please feel free to contact the members of our Employee Benefits group below.

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