

Please note, to accommodate the demand for the *LIVE from NAHU!* webinar series, this session is presented in broadcast mode only.

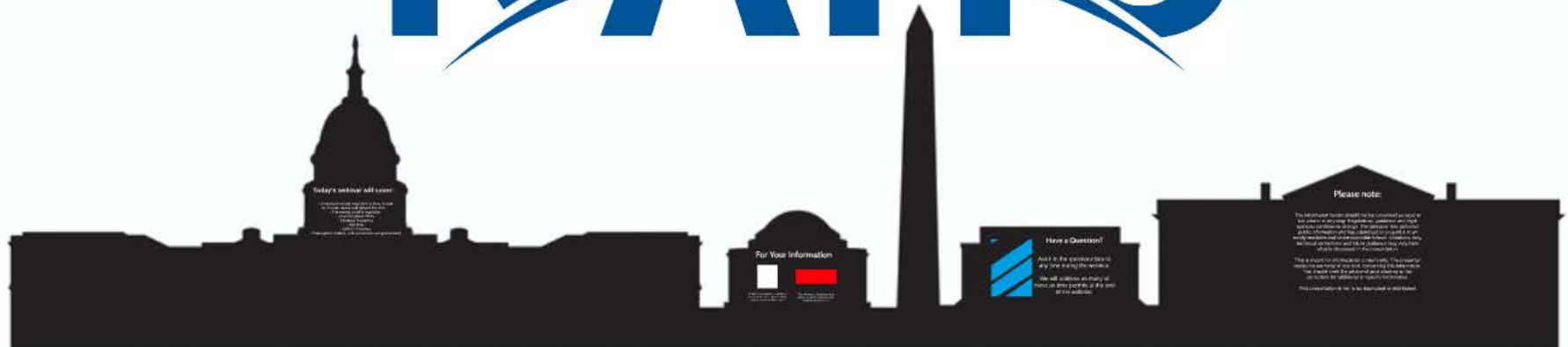


You must use your computer speakers to listen to the webinar.

LIVE

from

NAHU



With Pamela Mitroff Senior Director of Health Reform Compliance

Pamela Mitroff joined the staff at the National Association of Health Underwriters in March of 2011 as a Director of State Affairs. She was promoted to the new position of Senior Director of Health Reform Compliance in November 2013. In that role, Mitroff has provided NAHU members consultative compliance assistance, answering more than 1000 written member inquiries annually.

She has more than 20 years in the health care and workers' compensation insurance and cost control field.

Today's webinar will cover:

- Congressional and regulatory actions to date to change, repeal and replace the ACA
 - The market stability regulation
 - Small Employer HRAs
 - Employer Reporting
 - Opt-Outs
 - NAHU's Priorities
- How agents, brokers, and consumers can get involved

For Your Information



Today's presentation is available for pdf download in the handouts section of your webinar pane.

**RECORDING
IN PROGRESS**

This webinar is being recorded will be emailed to all attendees following the broadcast.



Have a Question?

Ask it in the questions box at any time during the webinar.

We will address as many of these as time permits at the end of the webinar.

Please note:

The information herein should not be construed as legal or tax advice in any way. Regulations, guidance and legal opinions continue to change. The preparer has gathered public information and has attempted to present it in an easily readable and understandable format. Situations vary, technical corrections and future guidance may vary from what is discussed in the presentation.

This is meant for informational content only. The presenter makes no warranty of any kind concerning this information. You should seek the advice of your attorney or tax consultant for additional or specific information.

This presentation is not to be duplicated or distributed.

With Pamela Mitroff

Senior Director of Health Reform Compliance

Pamela Mitroff joined the staff at the National Association of Health Underwriters in March of 2011 as a Director of State Affairs. She was promoted to the new position of Senior Director of Health Reform Compliance in November 2013. In that role, Mitroff has provided NAHU members consultative compliance assistance, answering more than 1000 written member inquiries annually.

She has more than 30 years in the health care and workers' compensation insurance and cost control field. Mitroff is a licensed Illinois insurance producer and has held positions with a major insurance company and a third-party administrator of benefit plans for self-funded companies. She was a lobbyist for the Illinois State Chamber of Commerce, lobbying on health insurance, employee benefits and workers' compensation issues.

Prior to joining NAHU's staff, Mitroff had been an active NAHU member on federal, state and local levels. Mitroff established the professional lobbying role for the state association (ISAHU). She was Associate Chairman for Employee Benefits of NAHU's Legislative Council from 2007 to 2010.

Mitroff previously had a Wheaton, Illinois based consulting firm, Pamela D. Mitroff Consulting, Inc. The firm provided services to insurance companies, employers, brokers and associations in the public policy, government relations, employee benefits compliance, marketing and training areas.

In 2012, Mitroff was awarded the prestigious Edward H. O'Conner Memorial Distinguished Service Award from the Chicago & Northeastern Illinois Association of Health Underwriters. She received NAHU's Distinguished Service Award in 2006 and the NAHU Region 3 Distinguished Service Award for Legislative activities in 2007.

She has a B.A. degree from Knox College in Galesburg, Illinois and an MBA from Dominican University in River Forest, Illinois.

What's Happening in D.C. Impacts Compliance

Congressional and Regulatory
Actions to Date

1

1/12/17
Senate votes **51-48** to approve a budget resolution instructing the House and Senate to develop legislation to repeal the ACA. *Rand Paul (KY) is lone Republican senator to defect.*

2

1/13/17
House votes **227-198** to approve the budget resolution. *Nine Republicans defect.*

3

3/7/17
H.R. 1628, The American Health Care Act (AHCA), is introduced; unlike early draft, it does not include a cap of the employer exclusion.

4

3/9/17
House Ways & Means Committee votes **23-16** party-line to pass their reconciliation portions.

House Energy & Commerce Committee votes **31-23** party-line to pass their reconciliation portions.

5

3/16/17
House Budget Committee votes **19-17** to pass their reconciliation portions. *Three Republicans defect.*

3/13/17
Congressional Budget Offices scores the AHCA - \$2 million to be uninsured, budget deficit to shrink by \$150 BB over 10 years.

6

3/24/17
House Rules Committee votes **9-3** to advance the reconciliation bill with several manager's amendments.

Citing lack of support due to disagreements inside the Republican party as well as push back from Republican centrists, House cancels planned floor vote on the AHCA.

7

4/6/17
House Rules Committee votes **9-2** to approve amendment to AHCA for \$15 billion "Federal Invisible Risk Sharing Program."

8

5/4/17
House votes **217-213** to pass the AHCA, with additional amendments including a state flexibility amendment and additional high-risk pool funding.

9

5/25/17
Congressional Budget Offices scores revised AHCA - \$1 million to be uninsured, deficit to shrink by \$119 BB over 10 years.

10

6/5/17
Senate returns from Memorial Day Recess, begins deliberations on their health reform legislation.



1

1/12/17

Senate votes **51-48** to approve a budget resolution instructing the House and Senate to develop legislation to repeal the ACA.

Rand Paul (KY) is lone Republican senator to defect.



2

1/13/17

House votes **227-198** to approve the budget resolution.

Nine Republicans defect.



3

3/7/17

H.R. 1628, *The American Health Care Act (AHCA)*, is introduced; unlike early draft, it *does not* include a cap of the employer exclusion.



3/9/17

House Ways & Means
votes **23-16** party-line



4

3/9/17

House Ways & Means Committee votes **23-16** party-line to pass their reconciliation portions.

House Energy & Commerce Committee votes **31-23** party-line to pass their reconciliation portions.

3/16/17



5

3/16/17

House Budget Committee votes **19-17** to pass their reconciliation portions. *Three Republicans defect.*

3/13/17

Congressional Budget Offices scores the AHCA - 52 million to be uninsured, budget deficit to shrink by \$150 BB over 10 years.



3/24/17

House Rules Committee votes **9-3** to advance the reconciliation bill with several manager's amendments.

Citing lack of support due to disagreements inside the Republican party as well as push back from Republican centrists, House cancels planned floor vote on the AHCA.



7

4/6/17

House Rules Committee votes **9-2** to approve amendment to AHCA for \$15 billion “Federal Invisible Risk Sharing Program.”



5/4/17

House votes **217-213** to pass the



8

5/4/17

House votes **217-213** to pass the AHCA, with additional amendments including a state flexibility amendment and additional high-risk pool funding.



5/25/17

Committee on Health and Human Resources



5/25/17

Congressional Budget Offices scores revised AHCA - 51 million to be uninsured, deficit to shrink by \$119 BB over 10 years.

1

1/12/17
Senate votes **51-48** to approve a budget resolution instructing the House and Senate to develop legislation to repeal the ACA. *Rand Paul (KY) is lone Republican senator to defect.*

2

1/13/17
House votes **227-198** to approve the budget resolution. *Nine Republicans defect.*

3

3/7/17
H.R. 1628, The American Health Care Act (AHCA), is introduced; unlike early draft, it does not include a cap of the employer exclusion.

4

3/9/17
House Ways & Means Committee votes **23-16** party-line to pass their reconciliation portions.

House Energy & Commerce Committee votes **31-23** party-line to pass their reconciliation portions.

5

3/16/17
House Budget Committee votes **19-17** to pass their reconciliation portions. *Three Republicans defect.*

3/13/17
Congressional Budget Offices scores the AHCA - \$2 million to be uninsured, budget deficit to shrink by \$150 BB over 10 years.

6

3/24/17
House Rules Committee votes **9-3** to advance the reconciliation bill with several manager's amendments.

Citing lack of support due to disagreements inside the Republican party as well as push back from Republican centrists, House cancels planned floor vote on the AHCA.

7

4/6/17
House Rules Committee votes **9-2** to approve amendment to AHCA for \$15 billion "Federal Invisible Risk Sharing Program."

8

5/4/17
House votes **217-213** to pass the AHCA, with additional amendments including a state flexibility amendment and additional high-risk pool funding.

9

5/25/17
Congressional Budget Offices scores revised AHCA - \$1 million to be uninsured, deficit to shrink by \$119 BB over 10 years.

10

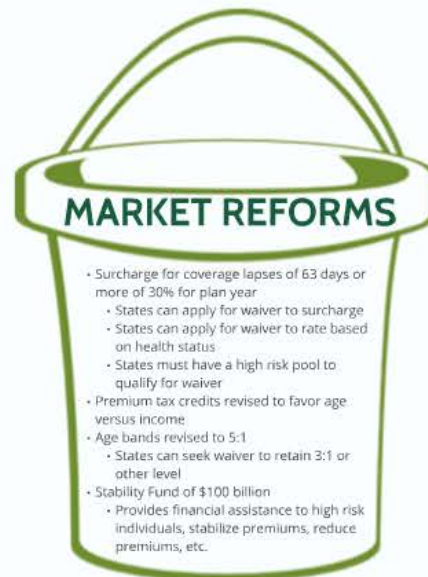
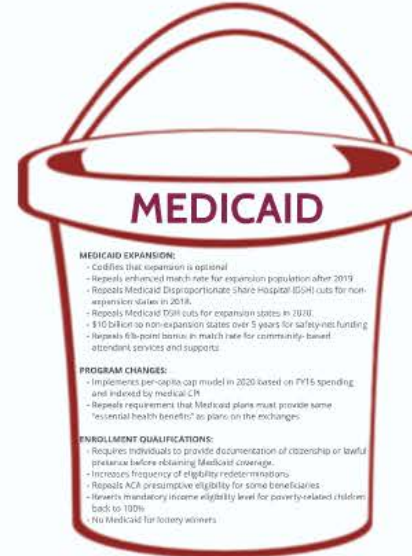
6/5/17
Senate returns from Memorial Day Recess, begins deliberations on their health reform legislation.



6/5/17

Senate returns from Memorial Day Recess, begins deliberations on their health reform legislation.

What's in the AHCA?



TAXES

- Repeals most of ACA taxes
 - Cadillac tax delayed from 2020 to December 31, 2024
- Zeroes out individual mandate penalty
- Zeroes out employer mandate penalty

MARKET REFORMS

- Surcharge for coverage lapses of 63 days or more of 30% for plan year
 - States can apply for waiver to surcharge
 - States can apply for waiver to rate based on health status
 - States must have a high risk pool to qualify for waiver
- Premium tax credits revised to favor age versus income
- Age bands revised to 5:1
 - States can seek waiver to retain 3:1 or other level
- Stability Fund of \$100 billion
 - Provides financial assistance to high risk individuals, stabilize premiums, reduce premiums, etc.

What's in the AHCA?

Employer Impact

- **Zeroing out of employer mandate penalty**
 - Employers could revisit requirement to offer coverage to 95% of full-time employees
 - Employers could revisit 30 hour threshold for coverage offer
 - Administrative complications of measurement methods ends
- **Reporting still required**
 - New field on Form W-2 added to report monthly eligibility for group plan
- **Limits on FSAs of \$2,500 repealed as is OTC limit**
- **HSA contributions would be increased** to maximum sum of annual deductible and out-of-pocket expenses permitted under HDHPs

What's in the AHCA?

What is Unaffected

Among the provisions unaffected by the AHCA are:

- Prohibition on pre-existing condition exclusions
- Prohibition on excessive waiting periods
- Requirement to cover in-network preventive services at no cost to the participant
- Requirement to offer coverage to dependent children up to age 26
- Limits on maximum out-of-pocket expenses
- Prohibition on rescissions
- Requirements for enhanced claims procedures and external review requirements.

SHOP

Changes Coming to SHOP:

Regulations expected that will do the following --

- 2018 SHOP marketplace will allow window shopping
- Employer will go to SHOP to verify eligibility for small business tax credit

Which means --

- Employer who wants to provide choice of carriers will have to have employees enroll with respective carriers
- No consolidated billing
- More insurers may participate since no requirement to also be in individual market in state (change for 2018)
- Insurers will no longer pay the 3.5% user fee.

Proposed Changes

Changes Coming to SHOP:

Regulations expected that will do the following --

- 2018 SHOP marketplace will allow window shopping
- Employer will go to SHOP to verify eligibility for small business tax credit

Which means --

- Employer who wants to provide choice of carriers will have to have employees enroll with respective carriers
- No consolidated billing
- More insurers may participate since no requirement to also be in individual market in state (change for 2018)
- Insurers will no longer pay the 3.5% user fee.



- Stabilize the health insurance market
- Keep a focus on availability and affordability
- Advocate for need for and value of insurance brokers
- Advocate for a strong private employer-based system
- Work with President Trump and Congressional leadership on best approach and timing for change
- Repeal MLR provision in its entirety
- Pursuing regulatory changes
 - Limits on SEPs with required documentation
 - Extension of “grandmothered” policies
 - Redefine MLR formula to exclude commissions

FINAL RULE

To Stabilize the Individual Market

- Theme – Promoting continuous coverage
- Shortens 2018 OEP to **November 1-December 15, 2017**
- Expands variation allowed on AV for metal levels
- SEP must be pre-verified while application is pended beginning June 2017
- Previous history of nonpayment would allow back payment of premiums to re-enroll
- SEP through marriage requires one person to have already had coverage
- Limits metal level changes at SEP
- SEP due to move, must have had coverage



Updating Compliance Facts

Changes, Timelines, New Regs and Other Compliance Tips

Cadillac Tax

EXPECTATIONS VS. REALITY

February 2017

What's the Cadillac tax?

Starting in 2020, there will be a 40% tax on health insurance plans that cost more than \$10,800 for individuals and \$29,100 for families.¹

REALITY

EXPECTATIONS

How many plans?

Initially was supposed to affect just 3% of plans.²

Will hit 47% of plans by 2022.³ "Over time...virtually every employer will be subject to the Cadillac tax." - Kaiser Family Foundation SVP Larry Levitt⁴

Who's affected?

"an excise tax on... executives at Goldman Sachs" - Senior White House Advisor David Axelrod, 2009.⁵

The tax will hit a higher percentage of state/local government employees - like schools and police departments - than finance firms.⁶

What type of plans?

Will affect overly generous, gold-plated plans.

In 26 states, the typical plan hit by the tax is equivalent to the mid-level "Silver" plans on the ACA's exchanges.⁷

Revenue?

Congressional Budget Office expects that the tax will raise \$91 billion over a decade.⁸

3/4 of that \$91 billion comes from increased income taxes, on the questionable expectation that employers will compensate for cutting benefits by raising wages.⁹

Delayed until 2020

- Notice 2015-16 (2/24/15)
- Notice 2015-52 (6/30/15)
- Recap - 40% excise tax on the total cost of employer-sponsored coverage over a threshold amount that will take effect for tax years beginning after 12/31/2017
- The thresholds will be approx. \$10,800 for self-only and \$29,100 for other than self-only coverage
- Most recent CBO estimate projects excise tax revenue at \$91 billion over a decade
- 25% of revenue from tax, 75% from increased income and payroll taxes

¹<https://www.fda.gov/biologics/biotech/2015/02/24/2015-02-24-notice>
²2012 Health Insurance Premiums, CBO.pdf
³<http://www.kaiserfamilyfoundation.org/docs/130113main.pdf>
⁴David Axelrod, 2009. "an excise tax on... executives at Goldman Sachs" - Senior White House Advisor David Axelrod, 2009.
⁵<http://www.kaiserfamilyfoundation.org/docs/130113main.pdf>
⁶<http://www.kaiserfamilyfoundation.org/docs/130113main.pdf>
⁷<http://www.kaiserfamilyfoundation.org/docs/130113main.pdf>

⁸<http://www.cbo.gov/ftpdocs/120xx/doc12067/12-06-HealthInsurancePremiums.pdf>
⁹<http://www.kaiserfamilyfoundation.org/docs/130113main.pdf>
¹⁰<http://www.kaiserfamilyfoundation.org/docs/130113main.pdf>
¹¹<http://www.kaiserfamilyfoundation.org/docs/130113main.pdf>
¹²<http://www.kaiserfamilyfoundation.org/docs/130113main.pdf>





Medicare Advantage OEP restored

- Effective January 2019
- Key component of NAHU's Medicare Advisory Group legislative "to-do" list

HRAs for Small Employers (Section 18001)

- Provisions effective 12/31/2016
- Established QSEHRAs



Mental Health Parity

- No expansion of Mental Health Parity and Addiction Equity Act
- Directs DOL and Treasury to issue compliance guidance related to the mental health rules and coordination by states and federal government
- 5 violations by plan or insurer will result in audit of plans to improve compliance

QSEHRAs – New HRA

- “qualified small employer health reimbursement arrangement” funded solely by an eligible employer without salary reduction
- Eligible employer one who is not an ALE
- Employer cannot offer health coverage at all
- Benefit may vary based on price of individual policy based on age of employee and/or family members and number of family members eligible
- Provides payment or reimbursement of eligible employee’s expenses for medical care [Section 213(d)] incurred by the employee and eligible family maximum
- Annual limit \$4,950 for individual employee/ \$10,000 for family members

QSEHRAs Eligible Employees



- Plan is subject to nondiscrimination requirements with change from 5 years to employee who hasn't completed 90 days of service
- Must be offered to all eligible employees
- Full-time
- Non-seasonal
- Employed 90 days
- Employee covered on an individual health insurance policy or spouse's group health plan
- Employer must obtain proof of coverage
- Maintain records related to ongoing coverage

QSEHRAs

Employer Reporting and Notice

- Report benefit amount on Form W-2 of employee
- Annual notice to all eligible employees
 - Who is eligible for QSEHRA
 - Informs employee to notify Marketplace of QSEHRA benefit
 - Individual health insurance mandate and penalty reminder
 - Deadline: 90 days prior to beginning of calendar year or initiation of plan

QSEHRAs

Regulatory Issues

- Not subject to COBRA
- Not subject to all of ERISA
 - Remains unclear if SPD or plan document required
 - HIPAA Privacy or other provisions may apply
- Limited penalties for failure to provide notice
 - \$50 per employee
 - \$2,500 calendar penalty maximum
- Complicated assessment of affordability to determine whether individual qualifies for subsidy
 - QSEHRA amount lowers effective net cost of coverage

QSEHRAs

Important Considerations

- Small group coverage may be better option
 - Broader networks
 - Lower deductibles and out-of-pockets
- Tax exclusion may be more favorable to employee for premium
 - Individual coverage paid with after tax dollars
- Employee recruiting and retention
 - Expectations that employer will provide coverage
- Administrative complexity

QSEHRAs

Types of Standalone HRAs

	QSE HRA	Spousal HRA	Retiree HRA	Medicare HRA
Active Employees?	Yes	Yes	No	Yes
Employer Size	Non-ALE	All	All	1-19 EEs
Offer Group Health Plan	Prohibited	Required	Required	Required
Impact on Premium Subsidies	Complicated	APTC Prohibited	APTC Prohibited	n/a
Reimburse health premiums	Yes and other 213(d) expenses	Only cost of coverage on spouse's plan	Yes	Medicare only
Flexibility to limit amount or benefits	No	No	Yes	Yes

EMPLOYER REPORTING

Requirements and Post-Mortem



BASICS OF EMPLOYER REPORTING UNDER ACA

Name of Form	Health Coverage		Employer-Provided Health Insurance Offer and Coverage			
Type of Entity – Employer or Insurer	Purpose of Form – Enforces Individual Mandate		Employer-Provided Offer and Coverage Returns	Purpose of Form – Enforces Employer Mandate 1 each to IRS and full-time employee eligible for MEC at any time during the year Due to covered individual on or before last day of January**		
	1094-B Transmittal Form 1 per insurer or self-insured plan Due last day of February*	1095-B 1 each to IRS and covered individual covered any time during the year*	1094-C Transmittal Form 1 to IRS per ALE member	1095-C Part I Employee	1095-C Part II Employee Offer and Coverage	1095-C Part III Covered Individuals
Insured small group – less than 50 FTEs						
Insured group – more than 50 FTEs			X	X	X	
Self-insured ALE			X	X	X	X
Self-insured Non-ALE	X	X				
Insurance Company	X	X				

* Last day of February; last day of March if filed electronically

EMPLOYER REPORTING

2017 Reporting Deadlines

- 2017 reporting deadlines have passed
- Didn't see many changes in reporting from prior year
- Good faith compliance standard still in effect

EMPLOYER REPORTING

2017 Reporting Deadlines

Employer Reporting Compliance

- Treasury Inspector General for Tax Administration (TIGTA) report found
 - IRS has had difficulty processing ACA-related forms that employers have filed
 - Needed systems expected to come online in May 2017
 - Progress is being made to implement the penalty assessment capabilities of the IRS
- Best advice – reporting is still required and is likely to be with us for the year, at a minimum

EMPLOYER REPORTING

Non-Compliance Penalties

Type of Failure	Per Form Penalty	Annual Maximum Large/Small Business
Filed less than 30 days late	\$50	\$529,500/\$185,000
Filed before August 1	\$100	\$1,589,000/\$529,500
Filed August 1 or later	\$260	\$3,178,500/\$1,059,000
Intentional Disregard	\$520	No Cap

2017-18 Limits

Affordability	2017	9.69%
	2018	9.56% (reduction! Same % as 2015)

Federal Poverty Level Safe Harbor

Calendar Year	Prior Year FPL	Affordability %	Maximum Monthly Contribution
2017	\$11,880	9.69%	\$95.93
2018	\$12,060	9.56%	\$96.08

Year	Out of Pocket Maximums		
2017	self \$7,150	Other than self only	\$14,300
2018	self \$7,350	Other than self only	\$14,700

PCORI Fee

- The PCORI fee for calendar year plans is \$2.26 per covered life for the 2016 plan year
- must be reported on (and remitted with) IRS Form 720 by July 31, 2017
- For non-calendar year plans
 - If the 2015-16 plan year ended on or before Sept. 30, 2016, the fee is \$2.17 per covered life.
 - If the 2015-16 plan year ended between Oct. 1 and Dec. 31, 2016, the fee is \$2.26 per covered life

Fiduciary Rule

- Effective June 9, 2017
- Focus is on investment advisers
- Practical Impact with HSAs
 - Education only should mean no impact from rule
 - Investment advice likely trigger of rule
 - Ensure that fees charged to participants in an HSA program are appropriate and fully disclosed
- Advice should be general such as “You don’t have to open an HAS if you don’t want to.”

OPT-OUTS

- Cash-out, opt-outs or “cash in lieu” must be added to the employee contributions to determine affordability “Cash in lieu” arrangements after 12/16/15 must include opt-out
- New regulations issued defining conditional opt-outs such as employee providing proof of having coverage through spouse – *discussed on next slide*
- Recent Court case finds that cash-in-lieu amount must factor into overtime rate of pay
- Bottom line – legal guidance recommended

OPT-OUTS

- New rules generally apply to plan years beginning on or after January 1, 2017
- The easiest opt-out plan administratively is an “unconditional opt-out” arrangement. An unconditional opt-out doesn’t have strings such as requiring proof of other coverage for an employee waiving coverage
 - Must be included as part of affordability calculation
- Conditional opt-out is an “eligible opt-out arrangement”
 - Conditioned on:
 - 1) The employee declining to enroll in the employer-sponsored coverage *and*
 - 2) The employee providing reasonable evidence that the employee and all other individuals for whom the employee reasonably expects to claim a personal exemption deduction for the taxable year or years that begin or end in or with the employer’s plan year to which the opt-out arrangement applies (employee’s expected tax family) have or will have minimum essential coverage (other than coverage in the individual market, whether or not obtained through the Marketplace) during the period of coverage to which the opt-out arrangement applies.

HRAs – IRS Notice 2015-87

- Restricts reimbursements of integrated HRAs for spouses and dependents
- Those who are not covered under the group health plan can no longer receive reimbursements of qualified medical expenses.
- Service providers are encouraged to automatically adjust the HRA coverage in line with coverage changes made mid-year under the group health plan (add coverage for spouses/dependents, drop coverage, etc.)
- Effective: first plan year on or after Jan. 1, 2017

Compliance Reminders

- ACA compliance is not solely health plan compliance
- Variable hour employees
 - Reflect in job postings and job descriptions
- Handbooks
 - Review for exclusion of temps, interns, etc.
 - Useful to help document “offer of coverage”
 - No call No show provision needs to reflect variable hours
- Orientation period
 - Process to determine employee has successfully met it?
- Reporting errors corrections
 - SSN or other error on reporting may be correct in other systems

Get Prepared for Audits

- Update/Prepare plan documents
- Review and support employee classifications and independent contractor classifications
- Memorialize decisions
- Measurement methods/periods, orientation periods, waiting periods
- Safe harbors
- Premium calculations
- Maintain proof of enrollment materials
- Maintain proof of offers of coverage and waivers
- Identify key personnel to address issues

Coming Attractions/Tips?

- Proposal to change Form 5500 -- target 2019
 - End small employer exclusion for filing
 - Schedule J added
 - Eligibility for plan – who was coverage offered to
 - Benefits offered
 - Funding of plan
 - Rebates or reimbursements and how used
 - COBRA offers and elections
- Tip – Compliance Assistance Guide from DOL 60 plus page self-compliance tool – www.dol.gov/ebsa/compliance_assistance.html



Presented by

Pamela Mitroff

Senior Director of Health Reform Compliance
pmitroff@nahu.org



Questions?

Please ask your question
in the questions box.