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A Taxing Time: The Tax Bill's Impact on Self-Insurance

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Our Webinars Are Awesome!

We are honored to announce that The Phia Group's free monthly webinar has recently been named one of the top-ranked healthcare webinars of 2017!

Today's Agenda

- Tax Cuts and Jobs Act of 2017
- Major Elements of the Bill
- A Closer Look at the Numbers
- The Individual Mandate: A Refresher
- How the Tax Bill Eliminates the Mandate
- The Impact on Employer-Sponsored Insurance
- State Responses: Filling the Policy Gap

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Tax Cuts and Jobs Act of 2017 (TCJA)

On December 22, 2017, President Trump Signed TCJA as Public Law No. 115-97, Amending the Internal Revenue Code of 1986

Major Elements of the Tax Bill

- Reduces Tax Rates for Businesses (for good) and Individuals (until 2025)
- Increases the Standard Deduction and Family Tax Credits
- Eliminates Personal Exemptions
- Limits Deductions for State and Local Income Taxes and Property Taxes Reduces Incentive to Itemize Tax Deductions (Simplification)
- Curbs the Impact of the Alternative Minimum Tax ("AMT") for Individuals and Eliminates It for Corporations
- Reduces the Impact of the Estate Tax
- Expands Healthcare Deduction (2017-2018)
- **Eliminates the Individual Mandate of the Affordable Care Act (2019)**

By the Numbers: Individual Income Tax

Single filers (2018)[25]				Married filing jointly (2018)[25]			
Under previous law		Tax Cuts and Jobs Act		Under previous law		Tax Cuts and Jobs Act	
Rate	Income bracket	Rate	Income bracket	Rate	Income bracket	Rate	Income bracket
10%	$0–$9,525	10%	$0–$9,525	10%	$0–$19,050	10%	$0–$19,050
15%	$9,525–$38,700	12%	$9,525–$38,700	15%	$19,050–$77,400	12%	$19,050–$77,400
25%	$38,700–$93,700	22%	$38,700–$82,500	25%	$77,400–$156,150	22%	$77,400–$165,000
28%	$93,700–$195,450	24%	$82,500–$157,500	28%	$156,150–$237,950	24%	$165,000–$315,000
33%	$195,450–$424,950	32%	$157,500–$200,000	33%	$237,950–$424,950	32%	$315,000–$400,000
35%	$424,950–$426,700	35%	$200,000–$500,000	35%	$424,950–$480,050	35%	$400,000–$600,000
39.6%	$426,700 and up	37%	$500,000 and up	39.6%	$480,050 and up	37%	$600,000 and up

- Standard Deduction Nearly Doubles ($6,350 to $12k for Single; $12,700 to $24k for Married)
- Eliminates Personal Exemption of $4,150 (unless in an estate or trust)
- State, Local, Property Tax Deduction Capped at $10k
- Child Tax Credit Doubles from $1k to $2k Per Child
- Mortgage Interest Deduction Capped at $750k (New Buys); No Deduction for Second Mortgage (Except for Home Improvements)
- Lowers Threshold for Healthcare OOP Expense Deduction to 7.5% (2017-2018 only); Then Back to 10%
- Doubles Estate Tax Threshold to $11.2 Million and $22 Million If Married Filing Jointly

By the Numbers: Business Taxes

- Corporate Tax Rate Reduced from 35% to 21%
  - Corporate Alternative Minimum Tax (“AMT”) Is Eliminated
  - Corporate Subsidiaries Pay the Tax Rate of the Country Where the Corporation Is Legally Established
  - One Time Repatriation Tax of Profits in Overseas Subsidiaries of 7.5%, 14.5% for cash ($3 trillion offshore!)
- Pass-Through Taxes (LLCs, Partnerships, S-Corps) Reduced Via a 20% Deduction, After Which a Lower Rate of 29.6% Is Applied (Rather than a Higher Individual Rate)*
  - There are some limitations and restrictions here (specified services, trades, or businesses face a phase-in where the benefit decreases)

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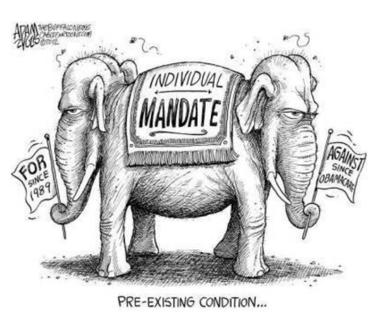
A Closer Look: Impact of Tax Cuts On Our Industry

- Many Fortune 500 companies paid far less than the corporate rate of 35%, or nothing at all, because of tax loopholes and special breaks
- Self-funded employers and TPAs in our industry are typically either organized as pass-through entities, or, if incorporated, they do not qualify for special breaks and were paying closer to 35%
- In either case, the corporate tax cut and/or the pass-through deduction of 20% (even with its restrictions/limitations) will help employers and TPAs in our industry

The Individual Mandate: Why Go After It?

- Killing Two Birds with One Stone
  - The Individual Mandate Was the Least Popular Component of the ACA
    - Political Benefit in Eliminating It
  - Congressional Budget Office ("CBO") Estimated the Tax Bill Will Cost $1.455 Trillion over 10 Years
    - Eliminating the Mandate Freed Up $338 billion over 10 Years and Complied with Senate Rules
  - Despite POTUS Tweet, This Does Not "Essentially" End Obamacare



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A Refresher

- NFIB v. Sebelius
  - A majority of the Supreme Court held that Congress did not have the constitutional authority to require individuals to purchase insurance under its authority to regulate interstate commerce. Instead, it upheld the mandate as a tax
- Section 5000A:
  - *"An applicable individual shall for each month beginning after 2013 ensure that the individual, and any dependent of the individual who is an applicable individual, is covered under minimum essential coverage for such month."*

2014	2015	2016 and beyond
$95 per adult	$325 per adult	$695 per adult
or	or	or
1% of family income	2% of family income	2.5% of family income

whichever is greater

Why Is the Individual Mandate So Important?

- The Glue Holding Obamacare Together
  - It solves two problems: **Free Riders** and the **Death Spiral**
  - ACA addressed unaffordability for sick people through "guaranteed issue" and "community-rating" provisions
    - These did not address people free riding the system
- The "Death Spiral"
  - Goal of the mandate was to solve this problem.
  - CBO → ending mandate = 13 million fewer insured by 2027
  - CBO → premiums in marketplaces will rise by at least 10% in 2019

What the Bill Does and Does Not Do

- It Does **Not** Repeal the Individual Mandate → It Eliminates Enforcement of It
  - It zeroes out the dollar amount and percentage of income penalties imposed by the mandate
- Why Didn't the GOP Repeal the Mandate?
  - Because of Budget Reconciliation rules. Repealing legislation requires 60 votes
- Section 5000A Is Important for Other Reasons
  - It contains definitions of "minimum essential coverage," "eligible employer-sponsored plan," and "modified adjusted gross income," and these terms are important for tax credits and other ACA provisions

What the Bill Does and Does Not Do (cont.)

- It Does **Not** Repeal the Reporting Requirements under Section 6055 of the Internal Revenue Code
  - There are penalties for anyone who provides "minimum essential coverage" (insurers, employers, government programs) and does not report specific information to the IRS and to the covered individual
- It Does **Not** Eliminate the Employer Mandate, Its Reporting Requirements, or its Penalties
- So…How Might It Impact Employer Insurance?

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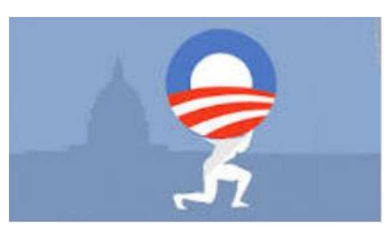
A Tax Credit for Paid Family and Medical Leave

- Starting in 2018, Eligible ERs Can Claim A General Business Credit Equal to A Percentage of Wages Paid to Qualifying EEs on Leave under the FMLA
- Credit Ranges from 12.5% to 25% of the Cost of Each Hour of Paid Leave, Depending on How Much of a Worker's Earnings the Benefit Replaces
- What's the Catch?
  - EE cannot make more than $72k/yr.
  - ER must have a written policy that provides 2 weeks of paid family and medical leave at not less than 50% of wages for FT EEs and is prorated for PT EEs
  - The time cannot be provided as vacation, personal (PTO), medical, or sick leave. Must be a separate policy
- We expect additional regulations will flush out this provision in the tax code
- Credit Ends in 2019 Unless Congress Extends It

Paid Family Leave Program

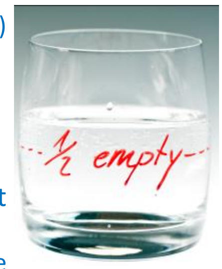
Majority of the Impact Is On the Individual Market

- 150 Million Americans Get Health Insurance Coverage through An Employer
- The Majority of the Impact of This Bill Will Affect the Individual Insurance Market
  - Especially those on the exchange who make too much money to qualify for subsidies → they will face the full impact of higher premiums
    - Note that subsidies protect most others in the exchange
- That Said, Employer-Sponsored Insurance of All Types Will Also Be Affected



The Glass Is Half Empty

- Some EEs May Choose Not to Enroll in Employer Plans
  - Which EEs are likely to forgo coverage? **Healthy ones**
  - They may feel young and invincible (adverse selection)
  - They may not want to pay for it
- CBO estimate → 2-3 million fewer individuals will have ER coverage without the individual mandate over the next 10 years
- This Makes Cost-Containment Even More Important
  - You Don't Want to Lose Low Risk EEs from Your Risk Pool. That Can Result in Higher Costs for Everyone



The Trickle-Down Effect

- No One Knows for Sure How Many Individuals Will Drop Out
- Losses in the Individual Market May Be Made Up In Other Lines of Business
  - Group policy rates will go up for fully-insured plans
  - Many self-funded plans work with ASOs (Aetna, Cigna, United)
    - They may raise administrative fees, stop-loss premiums, etc. to cover losses
  - Network access fees may increase for self-funded plans
- Overall, without the individual mandate, individuals may receive less preventive care, leading to higher costs to the system down the line
- Providers should expect more uncompensated E.R. care
- Providers, networks, administrators, and vendors may raise prices across the board. Therefore, just like in the individual market, the employer market should expect costs to rise

The Glass Is Half Full

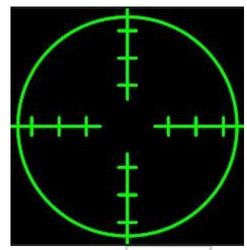
- Don't Panic People!
- The Majority of the Impact Is on the Individual Market
- Most EEs Will Still Want Coverage; Even If They're Not Required to Have It
- Other Regulations, i.e. Association Health Plans and State Laws, Present the Opportunity to Design Plans That Are Attractive for EEs Who May Otherwise Drop Coverage
- Self-Funding Permits Flexibility and Creativity Not Available with Fully-Insured Plans to Attract Healthy Lives
- Remember…These Mandates May (and in Some Cases Already Have) Come Back at the State Level

Some ERs May Inadvertently Escape the ER Mandate

- How? Recall There Are Two ER Mandates:
  - A penalty on ER who fail to offer "minimum essential coverage" to full-time EEs if any EE receives premium tax credits to enroll in coverage through an exchange, calculated on a per-EE basis for all full-time EEs; and
  - A larger penalty imposed on ERs who offer "minimum essential coverage" but fail to offer "minimum value" coverage, which applies for each full-time EE who in fact receives premium tax credits for exchange coverage
- If fewer EEs seek coverage through the exchange, it is likely that some employers will escape the employer mandate penalties, since they are imposed only if one or more EEs receive premium tax credits through the exchange
- Note that the Reporting Requirements Will Still be Effective

The Employer Mandate in the Crosshairs

- NYT (1/14/18) – GOP is Targeting the ER Mandate
  - Why? Reporting requirements are onerous. Penalties are high
  - Reps. Nunes (R-CA) and Kelly (R-PA) introduced bill to suspend mandate and cancel penalties from 2015-2018
  - Since Oct., IRS notified thousands of ERs of penalties due to failure to offer adequate coverage in 2015
- Potential Penalties are Enormous
  - CBO estimate - $12 billion this year
- Potential Impact?
  - This would cost federal and state gov'ts a lot
- Not So Fast…



State Responses

- States Have An Interest In Preserving Coverage Mandates
  - **Why?**
  - They want to show low uninsured rates (MA = 2.8%, VT = 3.8%, IA = 5%)
  - Medicaid is consuming state budgets (MA = 41%, TX = 33%)
  - The economy is stable with low unemployment!
- Individual Mandate Proposals
  - MA – only state with an individual mandate
  - MD – first to propose a bill; includes a creative plan to use the penalty as a down payment
  - Other states (and D.C.) with their own marketplaces and income tax are considering individual mandates, i.e. CA, NJ

State Responses (cont.)

- Massachusetts → Backdoor Employer Mandate
  - The EMAC Supplemental
  - A model for other states to follow?
- Colorado → Ballot measure under consideration (Nov. 2018) would require hospitals and other providers to disclose:
  - "Chargemasters"
  - Whether charges can be negotiated
  - Which insurance plans they accept
- Idaho → Executive Order on fully-insured plans
  - Instructs state DOI to allow insurance policies that do not meet ACA regs. (EHBs)
  - Almost certain to face a legal challenge

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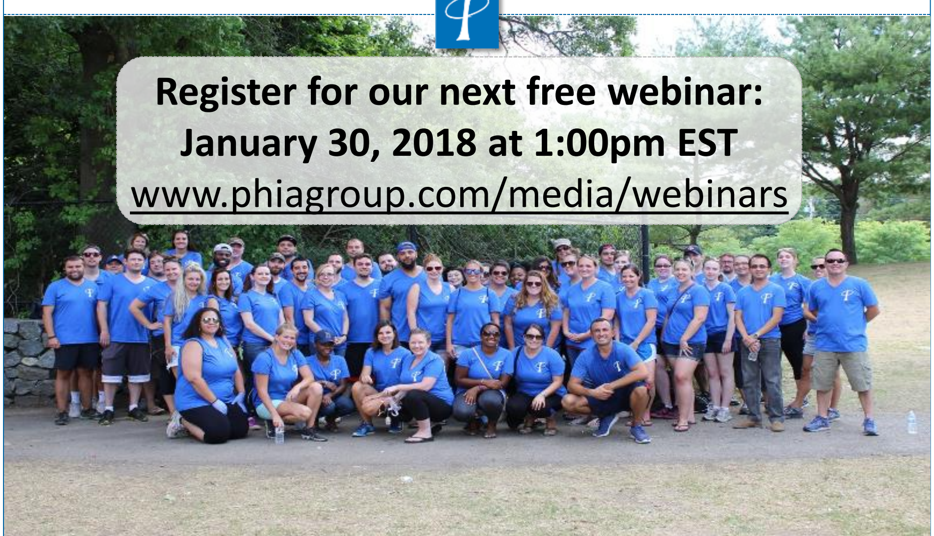

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