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INNOVATIVE BENEFIT SOLUTIONS, INC.

FOREFRONT

Future Election Year & Health Care

We are on the precipice of another election period, thus the return of single payer health insurance arguments. Canadian model single-payer health care patients are finding that when they get sick the only way to get "free" medical care is to wait for weeks or months.

The Fraser Institute, a Vancouver-based, independent, non-partisan research-educational organization, reported the following in a 2017 survey about Canadian health plans and physicians:

- When patients get sick, the only way to get "free" medical care is to wait for weeks or months;
- The median waiting time of 21.2 weeks between referral from a general practitioner to treatment (*which is worse than 2016*);
- The wait to see a specialist for a consultation is 10.9 weeks (*more than 3-weeks longer than considered clinically reasonable*);
- Canadians can expect to wait 4.1 weeks for a CT scan, 10.8 weeks for an MRI scan, and 3.9 weeks for an ultrasound;
- Worst care reported in New Brunswick where the median wait from general practitioner to treatment is an appalling 41.7 weeks;
- There are 1,041 patients waiting in line for treatment *(a 6.9% increase for 2017);*
- With free treatment unavailable, nearly 63,500 Canadians went abroad for care in 2016.

This care delivery delay results in negative consequences such as increased pain, suffering, mental anguish, and poorer outcomes, not to mention the poor sick patient may have to forego wages while they wait for treatment.

While some wonder why America does not have a single payer health care system, for my family, this Canadian model is proof that it is no cure for U.S. patient health.

Randall B. Marking
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An ACA Change of Note

For the first time, the federal government is changing the federal age curve, which is how much an individual's premium can vary based upon age. This change takes effect on January 1, 2018 and will apply only to people under the age of twenty-one. Premiums for all ACA plans in both the individual and small group markets will be affected. Here is how the change can affect those insured:

- A $200 per month premium charged to a twenty-year old in 2017 will increase to $305.51 per month in 2018, assuming no other changes to the age 20 rate;
- Health carriers file rate changes every year to account for trend, claims experience, plan design modifications, and other rating components combined;
- A twenty-year old premium would change to $366.61 per month which is an 83.3% rate increase over the 2017 age twenty premium.

The ACA age curve change will have a dramatic effect on individuals and small groups who enroll dependents between the age of fifteen and twenty. This affects all ACA plans and all ACA health carriers *(excludes: AL, D.C., MA, MN, MS, NJ, NY, UT, and VT)* in the same manner. Residents of Wisconsin with children under the age of twenty-seven may want to look to Badger Care for a much better deal, particularly for those who have children in college.

Year-End Self-Funded Health Plans

High Cost Claims: Sun Life reports a sixty-eight percent increase in claims over $1 million in the past three years. Make sure you right size your specific stop-loss level to best reflect corporate risk tolerance.

Specialty Costs: As the fastest growing component of medical trend, specialty drugs are not an issue to be ignored. The first step is to take a look at current utilization and spend for these drugs. There is opportunity for management in this area.

Understand the Cost of Care: Deductibles continue to creep higher. For some employees, reaching the deductible in a given year would put a real strain on family finances. Consider telemedicine:

- ✓ A telemedicine visit costs approximately $40 and can be set at your convenience;
- ✓ A visit to a pharmacy will cost $60-$90 depending on services;
- ✓ The average cost for an office visit is $125;
- ✓ A visit to an urgent care facility will typically cost $200-$300;
- ✓ An emergency room visit is the most expensive, with costs over $1,200.

Tax Bill Impact On Benefits

The primary goal of the Tax Cuts and Jobs Act is to lower the corporate tax rate and tax obligation for many Americans. There are several provisions that will have an impact on employer health and fringe benefits. Here is quick run-down:

What is changing:

- **Individual Mandate Penalty goes away in 2019.** The penalty for individuals lacking health coverage is reduced to zero dollars starting in 2019. Employers sponsoring self-funded health plans are still required to send Form-1095 to employees at the end of January 2018 for the 2017 calendar year and will need to report for the 2018 calendar year in early 2019. The employer and ACA reporting requirements are also still required.
- **Employer business deductions for qualified transportation benefits end on January 1, 2018**. Benefits provided for qualified parking, mass transit, and van pools continue to be excluded from employee income, but employers can no longer deduct these benefits from their corporate taxes starting on January 1, 2018. The January 1st effective date does not leave much time for employer to decide whether or how to modify their transportation programs.
- **Exclusion of qualified bicycle commuting benefits from employee is suspended for 2018-2025**. Some employers offer their employees benefits for qualified bicycling commuting expenses that permit an excludable benefit of up to $20 per month. This tax-favored exclusion ends between 2018 and 2025. If employers continue to offer the benefit to employees on an after-tax basis, they can still deduct it through 2025.
- **Suspension of employee tax exclusion for qualified moving expense paid or reimbursed by an employer for 2018-2025.** The exclusion will be retained for active duty armed forces that move due to military orders.

What is NOT changing in the tax code that had been under consideration:

- The ACA's forty percent excise tax on high cost employer-provided health coverage has been moved to 2022 in the tax bill; no change has been made to the exclusion from employee income of employer-provided health coverage. The tax-favored status of adoption assistance, dependent care assistance, educational expense, employer child-care tax credit, and employer deduction for on-site gyms and fitness facilities for the benefit of employees are also not changed in the final version of the bill.

Next Steps:

- You will want to consult with your tax advisor and make appropriate payroll changes for all benefit tax status changes effective January 1, 2018. From a communication perspective, in addition to notifying employees, you will need to make revisions to benefit communication materials, plan documents, online resources, and other collateral that reference the impacted benefits.

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A Tight Labor Market

In a tight labor market, business leaders should commit to keeping the key talent they have in place. As job markets tighten, the talent will be aggressively pursued by your industry competitors. To combat this, you should have a strong talent management system already in place.

It also may make sense to consider an employee engagement survey. Employers have made a sizable change when it comes to benefits. In years past, when employers wanted to know if employees were happy with their jobs they provided an employee survey. Cutting edge surveys help managers understand how connected employees are to their jobs and how committed they are to the organization's goals and values.

Currently, the concern seems to be on recruiting, retention, and employee benefits management. In Wisconsin, we also see the workforce shifting with an aging population and this can make it difficult to hire and retain younger people as they have different views. For example, many younger people are less attracted by cash; they want more paid time off or a sabbatical leave. Although older workers are not interested in paid maternity leave, we are seeing a greater use of this benefit.

An employee survey can give employees a voice and may provide empowerment for different types of feedback in addition to letting them know that their opinions and ideas matter. An employee engagement survey may help your organization in determining what may resonate with your population.

Next in Line: Cadillac Tax

Now that the individual mandate is toast, let's pursue the Cadillac tax. Who really thinks employers sponsoring a full benefit health plan to its employees should face a significant tax for doing so?

The Cadillac tax is poorly designed because it would hit low-salaried workers as hard as the C-suite. The good news is the Cadillac tax has now been pushed out to 2022. Employers have extra breathing room on the Cadillac tax now, but 2022 is not that far out into the future, so employers need to factor it in. The tax is still on the books and employers should remain mindful of it.

The two-year delay of the forty percent Cadillac tax on employer-sponsored health coverage is part of the resolution that Congress passed to end the federal government shutdown in January 2018.

The American Benefits Council has pledged to continue to work for full repeal of the Cadillac tax on behalf of its members. The measure also includes a two-year delay of the ACA tax on medical devices, a one-year delay *(for 2019 only)* of the ACA health insurer fee, and reauthorization of the Children's Health Insurance Program for six years.

We urge employers to contact their members in Congress and urge them to repeal the forty-percent Cadillac tax on employer-sponsored health coverage.

Net Neutrality

It appears that the Trump administration is poised to repeal net neutrality regulation, which currently requires internet service providers to allot the same bandwidth to all sites. We should care about this because of the potential negative impact net neutrality could have on health care services. Specifically, access to telemedicine services could be at risk, particularly for individuals living in rural areas.

Telemedicine services have been a rapidly growing field, but the end of net neutrality could hamper its progress with slower speeds, lower bandwidth, or higher costs incurred in order to access the internet. Telemedicine is all about making access to health care services cheaper, more convenient, and independent of geographic location. Some fear this regulatory change would erode all three advantages.

If you are one of tens of thousands of employers offering telemedicine you will need to monitor how the end of net neutrality may affect access to your telemedicine program.

Sexual Harassment

Sexual harassment is a human resource matter. Employers who rush to fire alleged sexual harassers may risk a countersuit. The “me too” movement has exposed deplorable behavior and taken down household names, but hasty action could spur successful wrongful termination cases.

It would be important to talk with everyone involved and quickly conduct a thorough query, preserve any evidence, in addition to separating alleged victims and offenders. It is all right to suspend the accused during the probe and in some cases it may make sense to get an outside investigator with no organizational ties to avoid bias charges.

Final judgement and action must be justifiable and uniform with no exceptions.

Association Plans

The Labor Department released proposed guidance on President Trump’s executive orders related to Association Health Plans (AHPs). The basic idea is to create greater access and competitive options for small employers and the self-employed via AHPs. The proposed guidance offers the following:

1. Employers may band together for the express purpose of offering health care coverage, if
    a. They are in the same trade or industry, line of business or profession, or
    b. Have a principal place of business within a region that does not exceed the boundaries of the same state or the same metropolitan area.
2. An employer may include owners and sale proprietors.

Association plans are far from becoming active. We have a catalyst, but creation of an AHP is not simple; there are regulatory requirements, funding issues, state regulations, and insurance carrier partnerships to navigate. We will be keeping a close eye on this matter.

W O R K -F-L-E-X
In the 21st Century Act

Three Republicans from the House of Representatives hailing from states with paid family and sick leave laws have sponsored the Workflex in the 21st Century Act. In its current form, the bill would serve to drastically reduce employee access to paid leave, but would also grant employees alternative work arrangements known as workflex options.

Under the law, employers would be exempt from state paid leave law requirements, but since the bill only reaches employees eligible for employer-provided benefits, employers would still have to comply with state and local leave laws for employees ineligible for the organization's benefits. Employers with a unionized workforce must incorporate the rights of employees to compensable leave and workflex options pursuant to applicable collective bargaining agreements into the plan. The bill provides that plans which meet all of these requirements will also satisfy the requirements of paid sick leave for federal contractors; however, this law does not on its face, amend, or limit employee's ability to use unpaid leave in accordance with the Family and Medical Leave Act.

Employers wishing to take advantage of the bill's pre-emptive effects must provide a minimum amount of compensable leave for employees based on their years of service. Compensable leave includes any leave permitted to be used for paid time off, sick leave, personal leave, or vacation. Employers are permitted to include up to six paid holidays towards meeting the minimum amounts reflected below. The bill makes clear that employers who wish to allow employees to take leave exceeding these minimum amounts are free to do so under the law. In that vein, employers who provide unlimited compensable leave, as defined above, are deemed to comply with the minimum amount of leave requirement.

Employers may frontload the employee's compensable leave at the beginning of the plan year, or allow the employee to accrue compensable leave proportionally as the calendar year progresses. The leave is available for the employee to use as the calendar year progresses and as the compensable leave accrues. It is unclear whether the employer can impose a waiting period to use compensable leave or if there are further limits on accrual of leave based on the wording of the bill. Further, the employer has the option to offer both carryover and cash out of unused leave.

The number of employees is determined by calculating the total number of monthly employees for each month of the preceding plan year and dividing by twelve. To be counted, an employee must be considered an employee for the first and last day of the month.

Defining Full-Time: Full-time must be reasonably defined, but the bill does not give further guidelines regarding the definition. All other employees are considered part-time, but the method of determining how part-time employees may accrue compensable leave is not clear based on the bill. An employer may restrict the use of leave during the first ninety-days of employment. The employer may also limit the use of leave to times when it does not unduly disrupt the operations of the employer and whether to use the leave in full-day or partial-day increments.

Options offered may differ depending on the particular position: Employees eligible for workflex options must be employed for at least twelve-months for at least 1,000 hours of service during the twelve-month period, an employer may estimate the number of hours worked by the employee, and the employer may not force an employee to use workflex options. If an employee elects to use a workflex option offered by the employer, a written agreement signed prior to starting the arrangement must set forth the employee's work schedule with a description of the workflex option.

In addition to paid leave, the bill provides that an employer must offer each employee in the plan, as long as the employee meets eligibility requirements, and at least one of the following workforce options *(which are not limited in time according to the bill as written):*

1. **Bi-weekly Work Schedule:** A non-exempt employee may work up to eighty-hours in a two-week period. In any one week, the employee may work between 40-60 hours. Employees must be compensated at their regular rate, and may only earn overtime for any time worked over the agreed upon bi-weekly work schedule, or over 80 hours in the two-week period. It is unclear how this arrangement will interact with the Fair Labor Standards Act or state wage and hour laws.
2. **Compressed Schedule Work Program:** A non-exempt employee may work his or her regular weekly hours spread among fewer days *(i.e., a 40-hour week over four days).* Employees who choose this option earn overtime in accordance with the Fair Labor Standards Act of 1938 (FLSA). State wage and hour requirements apply.
3. **Job Sharing Program:** An arrangement where the employer approves two or more employees to share one employment position.
4. **Flexible Scheduling:** An agreement under which the employee's regular work schedule is altered. This term is not further defined in the bill.
5. **Predictable Scheduling:** A system whereby the employer provides a schedule to an employee with reasonable advanced notice and with as few alterations as possible.
6. **Telework Program:** An arrangement where the employee is permitted to perform the duties and responsibilities of his or her position from a worksite other than where the employee would otherwise work.

Employees who elect to use a workflex option or compensable leave under the bill must be reinstated to their same or equivalent position unless the employee has used more than twelve-weeks of compensable leave in a twelve-month period, or is a key employee as defined under the Family and Medical Leave Act. The bill also notes it is not intended to relieve an employer's obligations under the Americans with Disabilities Act.

If this bill passes, it would offer attractive alternatives to employers who find complying with various state and local paid leave regulations challenging. It would also offer flexible work arrangements to employees that could save employers money and reduce turnover of employees who would otherwise leave a job for family or personal reasons. It would presumably pre-empt paid leave laws that are popping up all over the country, including most recently paid family leave in New York and paid sick leave in various municipalities, including Cook County, Illinois and the state of Washington. However, it overlaps with various laws, including ERISA, the FMLA, and the FLSA may necessitate complex legal solutions in order to implement it.

We will continue to track this bill as it moves through the legislative process.

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From the President

Tax Reform and 529 Plans

The good news here is the final tax bill authorizes the use of 529-Plan savings, up to $10,000 a year, for elementary and secondary school expenses. Currently the 529-Plan money can only be used for qualified college expenses.

This is a day short and a dollar late for us, as both of our children were privately schooled and are now in college; however, it may be great for you and your family.

Tax Bill and Small Business 401(k)

The final tax reform bill, which merged both the House and Senate versions, includes a provision that could expand whether or not small businesses host retirement plans. The bill increases the deductions for qualified business income of pass-through entities to twenty percent. That means that pass-through business like S-Corporations would pay a lower tax rate by excluding as much as twenty percent of their business income from taxation. Retirement plan contributions are generally deducted against the S-Corporation's business income, which under this provision would be much lower than the income tax rate S-Corporation owners pay on retirement savings when they retire.

S-Corporation's shareholders may be better off financially if they forego a retirement plan contribution and instead pay tax on their savings and invest the proceeds outside the plan. The attractiveness of a retirement plan is further diminished when a business owner factors in the cost of contributions to meet plan testing rules, plan administration costs, and the ERISA fiduciary risks associated with operating and administering a qualified plan.

I suggest all small employers have a serious conversation regarding the state of their retirement plan in lieu of tax reform.

The Old Becomes The New

At one time, the great Milwaukee economy was heavily dependent on apprenticeships, as it became a machining economy. Apprenticeships are again in vogue and many industries are facing a lack of skilled workers. University and college costs are escalating to new highs making them less attractive to many students. It stands to reason that many young people will favor on-the-job training programs that end in vocational certification and gainful employment.

I expect employers will drive this trend as more and more industries will incorporate new training programs. The advantage is obvious. An employer can train future workers on the specific skills that it needs. Colleges just do not teach workers to drive trucks, weld, or run complex machinery.

The list of positions is long and the feds are starting to get involved. President Trump is on board and has allocated $200 million in apprenticeship grants and pilot project funding.

Facility Fees

When your employee decides to see an in-network doctor for a medical issue they pay the applicable office visit co-payment but this may not be all that is owed. Facility fees charged by hospital-owned clinics are a new wrinkle in the reimbursement battle. In addition to the charge for the doctor's services, patients are frequently being billed for the use of the hospital owned facilities and equipment. As more hospitals acquire physician groups, we expect to see more of this billing practice and many times the facility fee is greater than the doctor's fee which can become a concern.

Your insured employees may face a balance-billing event even for in-network services which can cause a great deal of discontent when assessed against an employee Health Savings Account. Oddly, Medicare reimbursements support this practice and a 2014 report by the Medicare Payment Advisory Commission reports Medicare paid twice as much for office visits at hospital-owned clinics as compared to private physician practices. As an example, the cost of an echocardiogram at a hospital owned clinic was $453, but only $189 at a privately owned office.

There is a lot of litigation and legislative activity concerning these fees. I have not seen legal settlements, but a New York facility currently charging these fees has to register under Article 78 and post a notice. In 2016, a new law went into effect in Connecticut requiring that this practice be disclosed by posting a notice in the facility's office.

To avoid the surprise of these facility fees, we should be reading the notices on the walls rather than looking at old magazines in the clinic's waiting room.

CVS and AETNA

I believe if the merger of CVS and Aetna escapes government obstacles, it will be considered a game changer. This $77 billion underscores the health care market's growing desire for health care vertical integration. The goal of a vertical model is to reduce fragmented care and align provider incentives.

CVS and Aetna intend to meld CVS's physical footprint, with stores and walk-in clinics, with Aetna's medical networks. This is a very big task. Currently, it is unclear how this delivery will coordinate with Aetna's existing physician network and if there is any financial impact to in-network physicians. However, there is the potential that Aetna will be able to drive its members into more appropriate settings to access primary care, converting unnecessary ER visits into retail clinic visits.

If this transaction receives approval from the feds, then the following will probably happen in 2018:

- *At least two major pharmacy providers (Anthem and CVS) are undergoing major delivery changes that will not be finalized by January 1, 2019;*
- *Other key providers across the continuum will likely review their current strategies including large stand-alone PBMs like Express Scripts and other key delivery players like Walgreens and Rite-Aid in the retail space.*
- *There is a possibility that players such as Walgreens and Humana will look to copy this arrangement through a strategic alliance. United HealthCare and its partner, Optum Rx division has already gone down this road.*

In looking at the longer term, while the combination creates a new player, it is unclear if other options will become less available resulting in fewer options. For instance, in certain business segments, will integrated players no longer allow pharmacies to be carved out to another provider, or make it difficult to do so? The real question is will the CVS/Aetna structure be aligned with the employer strategy.

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