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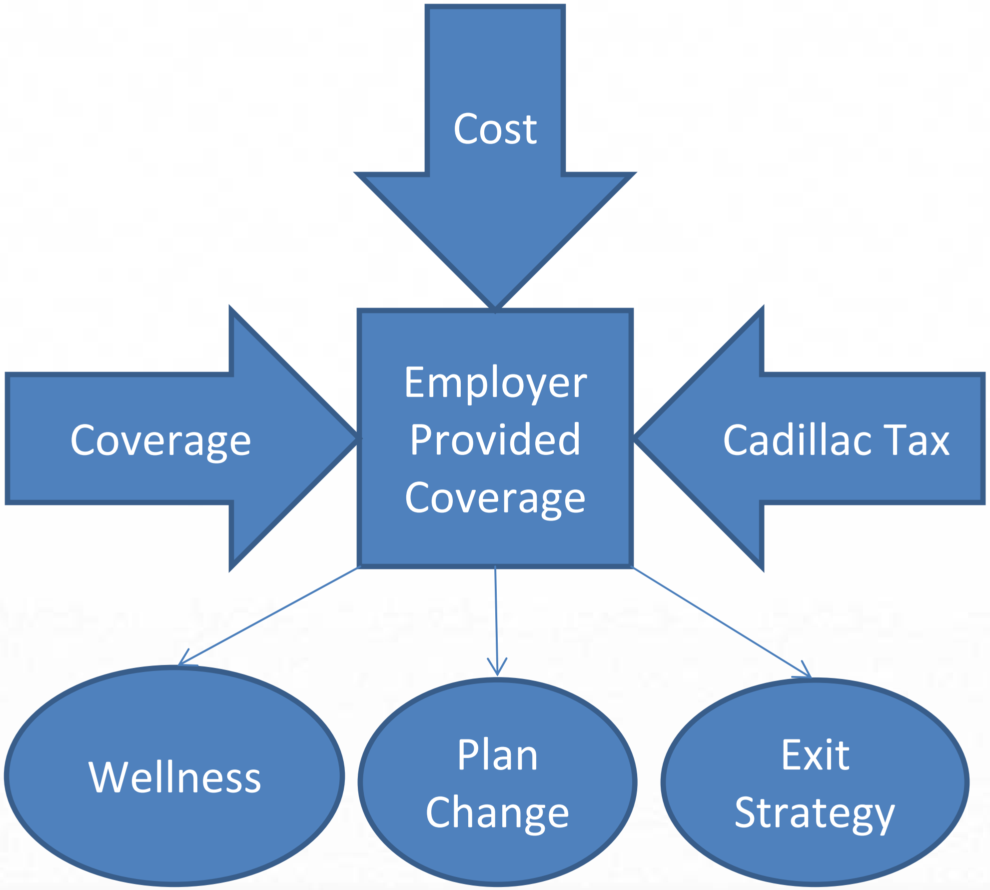
The Aftermath: Employer Sponsored Coverage in a Post-ACA World

Agenda/

- Post ACA reality for employers
  - More cost, more coverage, more employees
- The Cadillac Tax
  - The ACA table has been cleared, its time to get in shape…
- Wellness as a vehicle for value based purchasing
  - From Cadillac to Prius?

Decision 2018/



ACA/
Coverage and Cost

- The Shared Responsibility provision provides that "applicable large employers" with 50 or more full-time (including full-time equivalent) employees are potentially subject to a tax penalty if any "full-time employee" receives a premium tax credit or cost-sharing reduction to purchase coverage through an Exchange
- Full-time employee is eligible for a cost sharing subsidy if:
  - An employer does not offer at least 95 percent of its full-time employees (and their dependents) the opportunity to enroll; or
  - An employer offers its full-time employees the opportunity to enroll but coverage is "unaffordable" or does not provide "minimum value"

ACA/
Reform and Cost

- ACA is more “coverage” than “reform” but…
- Health insurance standards created by ACA include:
  - Wellness
  - Essential Health Benefits
  - Pre-Existing Conditions
  - Rescissions
  - Lifetime/Annual Limits
  - Claims and Appeals
  - Preventive Care
  - Dependent Coverage
  - Rate Review
  - Prohibition on Excessive Waiting Periods
  - Among many others…

ACA/

The Post-ACA Reality For Employers

- Today most employers must provide a more rich benefit package to more employees
  - ACA plan change was done with compliance in mind, not long term sustainability of plan

Looking Ahead…

Cadillac Tax/
Law of Unintended Consequences

- Revenue
  - As one of the Affordable Care Act's principal "pay-fors," the Cadillac tax was initially expected to raise $137 Billion in the first 10 years.
  - After examining recent cost trends in employer-sponsored health benefits, that estimate was revised, and now CBO expects the Cadillac tax will generate about $80 billion over the next 10 years
- Purpose/Debate
  - Health economists for some time have argued that rich benefit structures create price insensitivity in consumers who demand more and more expensive services
    - Consumers, plans, and providers need "skin" in the game for reform to work.
    - Does the Cadillac tax achieve this?
- Cadillac Tax will end top hat plans offered to executives as income shelter
  - Won't 105(h) rewrite accomplish this?
- Opposition arguments: single payer time bomb, employer ante at health reform table.

Cadillac Tax/
The Reality

- The Cadillac tax will affect fairly modest plans and could be a significant burden on all employers
  - State governments, unions, employers all subject to tax
- Takeaway: While regulations implementing this provision are still a ways off, plans and employers will need to take action in the near future to avoid penalties.
  - Long term avoidance requires more than benefit buy downs.
  - Need strategy combining patient engagement with provider and plan strategies
- Takeaway: Because so much of the Cadillac tax is statutory, legislation is needed to fix.
  - Potential for broad based coalitions
    - Safe harbors vs repeal
    - How would revenue be recaptured
  - ACA 2.0 presents an opportunity

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Cadillac Tax/
The Basics

- Beginning in 2018, employer-sponsored plans will be subject to a 40 percent <u>non-deductible</u> excise tax on the dollar amount of coverage that exceeds certain specified thresholds.
  - Was originally slated to take effect in 2013 and original thresholds just indexed to 2018 dollars.

- 2018 threshold for individual coverage is $10,200 and the threshold for family coverage is $27,500.
  - Adjusted by “health cost adjustment percentage”
  - Adjusted upwards for early retirees and individuals in high-risk professions
  - Indexed for inflation
  - Multiemployer plans will be treated as family coverage for purposes of the Cadillac tax.

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Cadillac Tax/
How Does It Work?

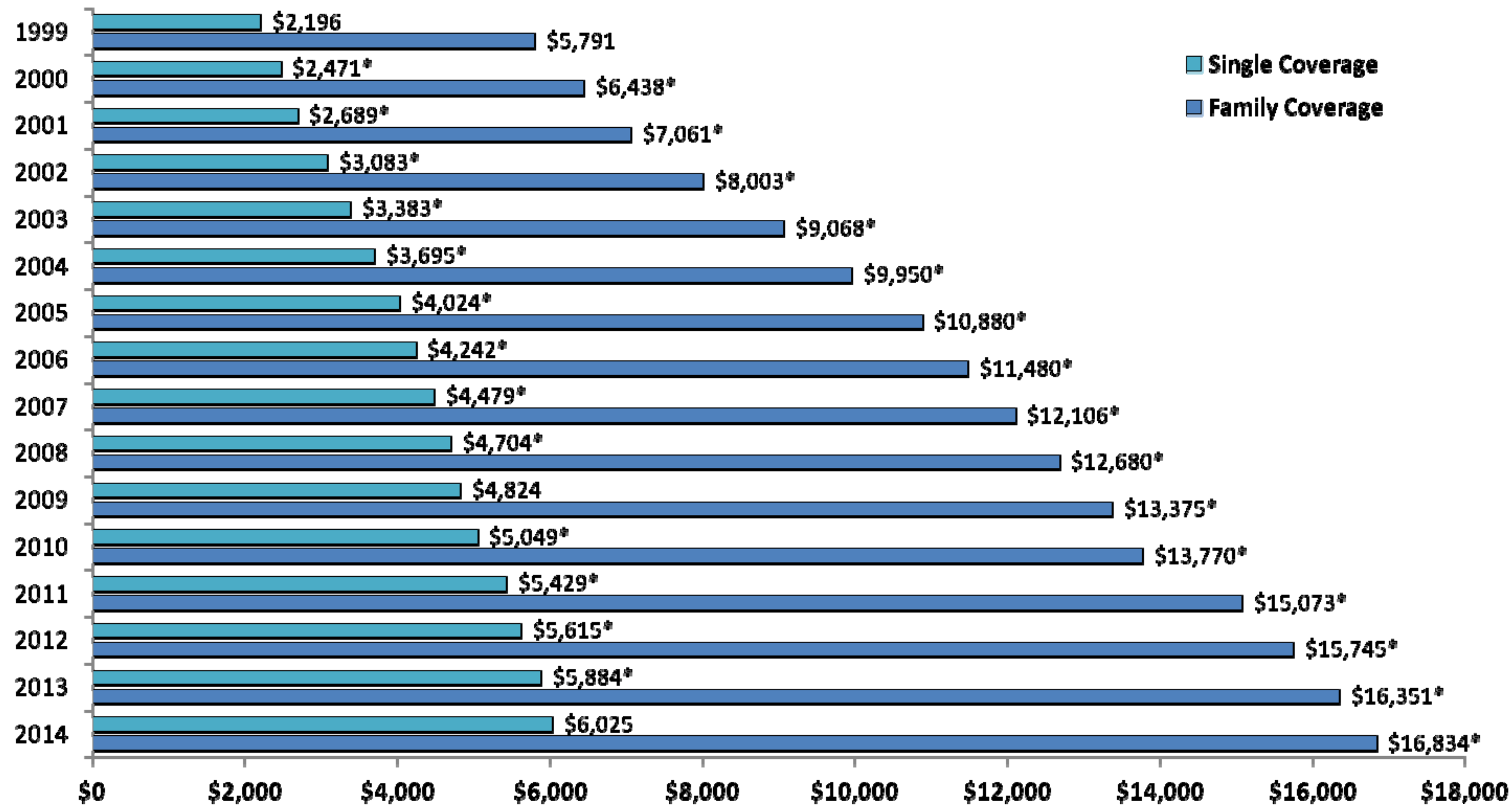
- The Cadillac tax applies to the dollar amount that exceeds the specified threshold using the following formula:
  - "The aggregate cost of the applicable employer sponsored coverage of the employee for the month, over
  - An amount equal to 1/12 of the annual limitation for the calendar year in which the month occurs."

- Example: If an employer offered individual coverage that cost $12,000 per employee, the excess amount for a month would be calculated by ($12,000 / 12 months) – ($10,200 / 12) = $150. Therefore, the employer would be taxed 40 percent of $150, or $60 per employee per month. Over a year, the Cadillac tax liability per employee would be $720.

Cadillac Tax/
Thresholds: Indexing

- In 2019, thresholds are indexed for CPI–U, plus one percentage point, rounded to the nearest $50.
- Beginning in 2020, the threshold amounts are indexed to the CPI–U, rounded to the nearest $50.
- Problem: Medical inflation has historically grown faster than CPI-U
  - Holding everything constant plans will come closer to threshold by virtue of indexing
  - Holding everything constant if subject to the tax the amount will grow each year

Average Annual Premiums for Single and Family Coverage, 1999-2014



* Estimate is statistically different from estimate for the previous year shown (p<.05).

SOURCE: Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 1999-2014.

Cadillac Tax/
To Whom Does the Cadillac Tax Apply

- The ACA states that each “coverage provider” is responsible for payment of the tax.
  - In the context of insured group health plans, the coverage provider is the health insurance issuer.
  - For self-insured plans, the entity that administers the plan is the covered provider responsible for payment of the tax.
    - Could be plan sponsor or TPA depending upon interpretation
  - In the case of multiemployer plans, the plan’s insurer or administrator will be responsible for paying the tax.
  - HSA and MSA contributions the coverage provider is the employer
  - Other coverage, the administrator
- While the penalties may technically apply to the health insurance issuer or TPA, rules are likely to be promulgated on whether the cost of the penalties will be passed down to the employer.

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Cadillac Tax/
What Benefits are Included?

- The Cadillac Tax applies to “applicable employer-sponsored coverage.”
- Applicable employer-sponsored coverage includes coverage under any group health plan made available to the employee by an employer which is excludable from the employee’s gross income or would be excludable if it were employer-provided coverage.
  - Major medical coverage and coverage provided under account-based plans (e.g., FSAs and HSAs) are likely includable in the calculations.
  - Unclear if other benefits such as wellness programs, EAPs, telehealth, or on-site clinics will be includable.
  - Coverage for long-term care, stand-alone vision and dental, and non-coordinated benefits (e.g., hospital indemnity) are exempt.
- Coverage treated as applicable employer- sponsored coverage without regard to whether the employer or employee pays for the coverage.

Cadillac Tax/

What Benefits are Included?

Account Based Plans:

- FSAs: Includes the employee's salary reduction and any employer contribution
- MSAs and HSAs: Includes the employer contribution only
- HRA: Includes full amount of coverage purchased through an HRA

Other Benefits

- EAPs, Onsite Clinics, Wellness, Telehealth: TBD

Cadillac Tax/
How is Cost Calculated

- Until the regulations are released it is unclear how the cost of applicable employer-provided coverage will be calculated.
- The ACA does say that the cost of coverage will be determined under rules similar to the rules used for calculating cost of coverage under COBRA.
  - Employers may use these rules as a gauge to determine whether their plans may exceed the thresholds prior to the release of regulations.

Cadillac Tax/
Employer Response

- A fight for our life:
  - Given the indexing issue if thresholds are hit it is unlikely that the plan will continue to offer coverage.
    - o Hard to justify increasing non-deductible business expenses that do not provide additional benefit to employees.
- At this point mostly compliance focused. Evaluation of plans starting.
- Reducing benefit richness
  - Recruitment and retention issues
  - At some point employees better off in exchanges
  - Cadillac tax avoiding plans
    - o More migration to HDHPs
    - o Likely that only one benefit option will be offered if richer packages
    - o Lowest common denominator with stand-alone add on
    - o Skinny plans

Cadillac Tax/
Employer Response

- Doubling Down on Wellness
- Value Based Purchasing/ Population Health Management
  - In its infancy for employers.
    - Most programs only include provider incentives or specific conditions
  - Takes time to bend the cost curve
  - Need market share to negotiate
- Provider Innovation
  - Looking to telehealth, on-site clinics, and other non-traditional settings.
- Union Negotiation
  - Mandatory subject of bargaining

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Is there light at the end of the tunnel or a train?

Wellness/
Background

- Worksite wellness programs increasingly common
- Sixty-three percent of employers offering health benefits offer at least one wellness program[1]
- Despite this, employee participation remains limited[2]
- A quarter of large employers offer incentives for participation in wellness programs[1]
- Nevertheless, many employers report a reduction in health care cost trend because of wellness programs' effects[3]
- **RAND Workplace Wellness Study available at: http://www.rand.org/pubs/research_reports/RR254.html**

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Wellness/ Background

- Generally, group health plans are prohibited from charging similarly situated individuals different premiums or contributions or imposing different deductible, copayment or other cost sharing requirements based on a health factor. However, there is an exception that allows plans to offer wellness programs.
  - Section 2705 codifies previously enacted HIPAA nondiscrimination regulations
  - In May 2013, regulations implementing this section were promulgated
- Increases amount of incentive a plan may offer a participant for participation from 20 to 30 percent of the cost of coverage (50 percent for tobacco cessation)
- Further defines the categories of wellness programs
  - Participatory
  - Health Contingent
    - o Activity based and Outcome based

Wellness/ Participatory and HC

- Participatory:
  - Available to all “similarly situated individuals”
  - Does not provide a reward, or
  - Does not include any condition for obtaining a reward that is based on an individual satisfying a standard that is related to a health factor
  - Example: Participatory Wellness Program may include a program that reimburses for all or a part of the cost of a gym membership
- Health Contingent
  - An individual satisfy a standard related to a health factor to obtain a reward, or
  - Require an individual to do more than a “similarly situated individual” based on a health factor in order to obtain the same reward

Wellness/
Health Contingent

- Rules for compliant health contingent wellness programs
  - Frequency of opportunity to qualify
  - Size of reward
  - Reasonable design
  - Uniform availability and reasonable alternative standards
  - Notice of other means of qualifying for the reward

Wellness/ Health Contingent

- Frequency of Opportunity to Qualify
  - Individuals eligible for the program opportunity to qualify for the reward at least once per year
- Size of the Reward
  - Total reward offered to an individual cannot exceed 30 percent of the total cost of employee-only coverage under the plan
  - If dependents are eligible for a reward, the reward cannot exceed 30 percent of the total cost of coverage in which the employee and any dependents are enrolled
  - A reward of 50 percent of the total cost of coverage is permitted for programs designed to prevent or reduce tobacco use

Wellness/
Health Contingent

- Reasonable Design
  - Reasonably designed to promote health or prevent disease, not overly burdensome, not a subterfuge for discrimination based on a health factor, and not be highly suspect in the method chosen to promote health or prevent disease
  - Preserves plan's ability to conduct screenings and employ measurement techniques in order to target wellness programs effectively
  - Wellness programs need not be accredited or based on particular evidence-based clinical standards, but this is encouraged
    - Potential area of future rulemaking
  - Programs may be limited to a targeted group of individuals with adverse health factors

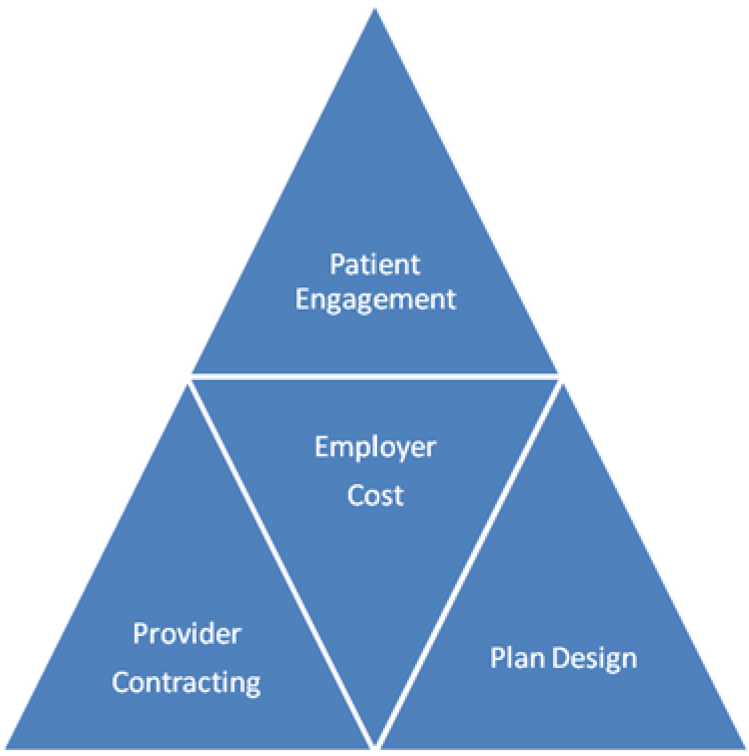
Wellness/
Health Contingent

- Uniform Availability and Reasonable Alternative Standards
  - Any reward must be available to all “similarly situated individuals”
  - Participants who are not able to satisfy the initial standard must be able to earn the full reward by satisfying a “reasonable alternative standard”
    - Plan or issuer does not have to develop reasonable alternative standards before they are requested, but must provide them once they are
    - Plan or issuer can also always choose to waive a standard and still give the reward
  - If a reasonable alternative standard is health contingent, it must itself meet the five requirements for health contingent wellness programs, including the opportunity to earn the reward by satisfying a second reasonable alternative standard
- Rules differ for activity-only and outcome-based programs

Wellness/
Health Contingent

- Notice of Other Means of Qualifying for the Reward
  - Requires plans to disclose the availability of other means of qualifying for the reward or the possibility of waiver of the otherwise applicable standard in all plans
  - Must also include contact information to learn about reasonable alternative standard and statement that recommendations from personal physicians will be accommodated
  - Outcome-based programs must include this information when they inform someone that they have missed an initial standard

Wellness/
What is Possible



Questions

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