



ACA SMALL ALABAMA EMPLOYER SURVIVAL GUIDANCE

Presented by: Alabama Cooperative Extension System

CONSTANGY
BROOKS & SMITH, LLP
The Employers' Law Firm, Since 1946

NFIB
The Voice of Small Business.[®]
National Federation of Independent Business

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"No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers."

Meet the Presenters



Thomas M. Eden III

Partner at Constangy, Brooks and Smith, LLP

Bar & Court Admissions

Alabama, 1980

Georgia, 1981

U.S. District Courts, AL & GA,
Eleventh Circuit Court of Appeals

U.S. Supreme Court

Education

Cumberland School of Law,

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J.D., *cum laude*

Auburn University,

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Tommy Eden's law practice is principally in the areas of Management Labor and Employment Law; Drug Testing Law (DOT Regulated and Non-Regulated) throughout the United States; defense of employers in federal court in all aspects of employment litigation including claims under Title VII, ADA, FMLA, FLSA, ADEA, and retaliatory discharge actions; defense of employers in charges brought with the EEOC, Wage and Hour Division, National Labor Relations Board, and the Department of Labor; and litigation over employee benefits under ERISA and frequent speaker on Affordable Healthcare topics. He also counsels employers on Immigration compliance under the Alabama Immigration Act and conducting I-9 audits under the Federal Immigration Act.



Meet the Presenters

Rosemary Elebash

NFIB/Alabama State Director

Rosemary Elebash is a native of Opp, Ala., and a graduate of Troy University. She was appointed as state director of NFIB/Alabama in January 2003 and represents NFIB's Alabama members as the public policy advocate. She represents the members' interests before all branches of state and local government. Prior to the NFIB appointment, she was the state director of law and government affairs for AT&T overseeing legislative and regulatory affairs in both Alabama and Mississippi. She also served as a staff assistant to U.S. Sen. Donald Stewart and was a legislative staff assistant to former Gov. Fob James during his first term.

She is an active participant in several organizations, including the American Legislative Exchange Council, the Baptist Hospital South Advisory Board, the Alabama Hospital Association Special Care Facilities Financing Authority, the Alabama Civil Justice Reform Committee and the Troy University Alumni Board of Directors. In 2004, then-Gov. Bob Riley appointed her to serve as a member of the Unemployment Compensation Reform Committee and in 2010, Riley named her to the Coastal Recovery Commission following the Gulf oil spill. Gov. Robert Bentley named Elebash to a seat on the Long-Term Recovery Partners Committee, created in response to the April 2011 storms.

She also serves on the 14-member Alabama Health Insurance Exchange Study Commission. She previously served on the State Task Force on Welfare Reform and the Department of Human Resources State Board, where she served as vice chairman. She was nominated by U.S. Sen. Jeff Sessions and appointed by President George W. Bush to the National Advisory Council on Violence Against Women.

Affordable Care Act: Top 5 Small Employer Steps

Why Participate in this Training?

- ▶ Why should I care?
- ▶ How will this Training make my life better?
- ▶ What must I do?

Affordable Care Act: Top 5 Small Employer Steps

Why Should I Care?

- ▶ It's full steam ahead on implementation.
- ▶ Small employers have many difficult decisions to make.
- ▶ Pay or Play Penalty is \$2000 per Full-time Employee.

Affordable Care Act: Top 5 Small Employer Steps

How Will This Training Make My Life Better?

- ▶ Gives you the direction you need to plan now, before its too late.
- ▶ There is still time to restructure your workforce – find out how.
- ▶ Shows you how to retain your best and brightest employees.

Affordable Care Act: Top 5 Small Employer Steps

What Must I Do?

- ▶ Consider what new policies and programs you need to implement quickly.
- ▶ Strategic plans for where you are headed, company structure, part-time vs. full-time employees, and benefits, etc.
- ▶ Consider what role your employer Association may have to assist you with options.

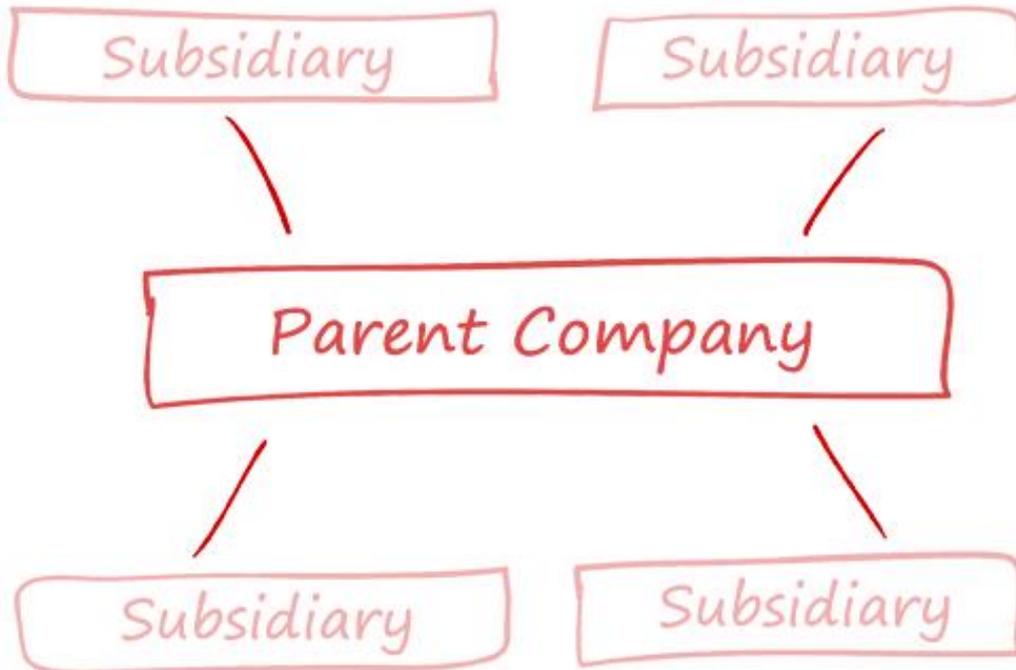
Step 1:

“Go or Stay Small”

- ▶ Applicable large employers who have **50 FTEs** must offer health coverage to all full-time employees, and their dependents (may exclude spouse), or face the fines.
- ▶ Must correctly identify the “employer group” to correctly apply the rules. (Who is the Employer? - IRS controlled group rules apply)



Who is the “Employer”?



Who is the “Employer”?

- ▶ Controlled Group determination
 - ❖ Parent/subsidiary group
 - ❖ Brother/sister group
 - ❖ Attribution of ownership
 - ❖ Affiliated service groups
- ▶ For-profit and not-for-profit entities

Who is the “Employer”?

- ❖ Large employers may think that subdividing into smaller companies may provide some relief from the Employer Mandate
- ❖ IRS “controlled group” rules found in IRS Code § 414 (b) and 414(c).
- ❖ The controlled group rules essentially state that “all employees of all corporations which are members of a controlled group of corporations” and “all employees of trade[s] or business[es] (whether or not incorporated) which are under common control” are to be treated as employed by a single employer.

Who is the “Employer”?

- ▶ Determine impact of controlled group rules on coverage requirements.
- ▶ Establish a system to monitor controlled group status.
- ▶ Determine overall ability to manage the health care reform requirements on a controlled group basis.



**KEEP
CALM
AND
STAY
SMALL**

Go small by...

- ✓ contracting out distinct business functions
- ✓ consider a Staffing Service (still questions left in regulations)
- ✓ break up controlled group (within IRS Attribution Rules)
- ✓ reduce size of workforce

Go small by...

- ✓ sell your business
- ✓ sell parts of your business
- ✓ use part-time and variable hour employees (still may be an Applicable Larger Employer, but avoid fines)
- ✓ solicit wise counsel so that what you do will truly make a difference

Which Employees Must be Offered Coverage?

- ✓ Employer is not required to offer coverage to or pay a penalty for non full-time employees
- ✓ Critical to classify all current and newly hired employees

Classify All Employees

- ✓ “Full-Time Employees” – 30 hours per week standard
- ✓ Part-Time, Seasonal, Temporary, and Variable Employee hours are aggregated to determine whether the Employer has 50 full-time employees and is subject to the “play or pay” rule

Step 2:

Count the Cost



The logo for the National Federation of Independent Business (NFIB) is located in the top left corner. It consists of a dark blue rounded rectangle with a white border. Inside, the letters "NFIB" are written in a large, bold, white sans-serif font. Below "NFIB", the text "The Voice of Small Business." is written in a smaller white font, and "National Federation of Independent Business" is written in a smaller blue font.

NFIB

The Voice of Small Business.[®]
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NFIB online calculator
www.nfib.com/advocacy/healthcare/credit-calculator

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Issues — Healthcare Reform

[Read NFIB's positions on healthcare reform that affects small businesses.](#)

NFIB is committed to seeking legislative reforms that help small businesses. And, since 1986, our small business members have told us that [increasing healthcare costs are their No. 1 problem](#). NFIB has worked tirelessly to offer solutions and encourage Congress to pursue reforms that will help lower healthcare costs and provide affordable options for small businesses.

Understanding the New Healthcare Law

The new healthcare legislation was signed into law March 23, 2010, leaving many small business owners wondering: What does this mean for me? What do I have to do now? NFIB has answers.

The Healthcare Playbook: A Small Business Guide to PPACA

This printable document provides details about the timeline of new fees and regulations set to take effect, as well as information about whether these provisions will affect you and your business.

NFIB Healthcare Solutions



NFIB's Work on the Hill

- [Letter in Support of the Save American Workers Act](#)
- [NFIB Letter in Support of Delaying the Individual and Employer Mandates](#)
- [NFIB's William Dennis Tells Congress Healthcare Law Needs Fundamental Change to Relieve Burden on Small Business](#)
- [Key Vote Letter in Support of Delaying the Individual Mandate](#)
- [NFIB Testifies on the Delay of the Employer Mandate](#)

What's Your Number for a Tax Credit?

SCENARIO 1	SCENARIO 1	INDIVIDUAL DATA (USERS FILL IN YELLOW CELLS)	
15	18	Number of full-time employees in firm	[a]
12	12	Number of full-time employees participating in insurance plan	[b]
3,000	3,200	Annual employer premium contribution per participating employee. If less than 50% of total insurance premium, business isn't eligible for credit.	[c]
29,345	31,255	Average annual wage per employee	[d]
2013	2014	Year	[e]
\$36,000	\$38,400	Total employer premium contribution	[f]=[b]x[c]
35%	50%	Maximum tax credit (as % of employer contribution)	[g]=35% if 2013 or earlier, 50% if 2014 or later
-11.67%	-26.67%	Percentage reduced by employee count over 10	[h]=-[g]x([a]-10)/[a]
-5.60%	-12.00%	Percentage reduced by average wage over \$25,000	[i]=-[g]x([d]-25000)/25000)
17.73%	11.33%	Tax credit as % of premium contribution	[j]=[g]+[h]+[i]
\$6,384	\$4,352	Total tax credit	[k]=[f]x[j]
\$532	\$363	Tax credit per participating employee	[l]=[k]/[b]

Evaluate whether to “play” or “pay”



- ❖ Pay the annual nondeductible \$2,000 penalty for all FTE' s - 30
- VERSUS
- ❖ Anticipated cost of providing plan (make reasonable assumptions about who will take the plan if offered and how much cost will increase - i.e. will a significant number of employees actually take the plan if offered, or will participation remain relatively stable?)

Pay or Play?

Analysis

- ▶ Do you currently offer a group health plan?
- ▶ What percentage of full-time employees is currently covered?
- ▶ What is the most cost-effective and practical approach?
- ▶ Enforcement/penalty is delayed until 2015

Pay or Play?

Play

- ▶ Offer affordable coverage that meets applicable requirements.
- ▶ What is the anticipated additional cost for those to whom coverage is already provided?
- ▶ What percentage of those not covered do you anticipate will actually take the coverage? What is the projected cost? Want to eliminate spousal coverage?

Pay or Play?

Play

- ▶ Remember that the penalty applies only if you do not offer coverage; if you offer coverage and the employee declines affordable coverage, then you do not owe the \$2000 penalty.

Pay or Play?

Play

- ▶ Be aware of the substantial new/additional compliance requirements
- ▶ Determine whether new requirements will be handled internally or through the vendor(s)
- ▶ Renegotiate vendor agreements to cover new duties/requirements.

Pay or Play?

Pay

- ▶ Shut down (or do not start) the plan depending on the latitude you have in your plan documents
- ▶ Pay the \$2000 penalty for the total number of full-time employees minus 30
- ▶ Consider the impact on recruiting/retention/morale

Step 3:

Update Your Employee Handbook



Handbook Update Steps

Full-Time Determination

- ▶ IRS Notice 2012-58
 - ❖ Establishes a safe harbor method that employers may use to determine full-time status
 - ❖ Safe harbor allows employers to avoid a month by month determination
 - ❖ Safe harbor distinguishes between
 - ❑ New employees
 - ❑ Ongoing employees

Handbook Update Steps

Full-Time Determination

- ❖ Hours are counted for both groups during “measurement periods”
- ❖ Measurement periods are:
 - ❑ “standard measurement periods” for existing employees
 - ❑ “initial measurement period” for new employees
- ❖ Measurement periods must be:
 - ❑ At least 3 months
 - ❑ Not more than 12 months

Handbook Update Steps

Full-Time Determination

- ❖ Employers must apply the measurement period uniformly to all employees in the same employment classification
- ❖ Permissible classifications are:
 - ❑ collectively bargained and non-collectively bargained
 - ❑ salaried and hourly
 - ❑ employees of different business entities
 - ❑ employees located in different states

Handbook Update Steps

Full-Time Determination

- ❖ Employee must be treated as full-time in the following “stability period” if the employee averages 30 hours during the measurement period
- ❖ Stability period must:
 - ❑ Last for at least 6 months
 - ❑ Be the same for new employees and on-going employees
- ❖ Employers can rely on safe harbors through the end of 2014

Handbook Update Steps

Practical Tips

- ▶ Carefully consider the best measurement and stability periods to minimize costs
- ▶ Track hours to confirm that individuals are properly classified
- ▶ **Document** determinations/testing results

Handbook Update Steps

Practical Tips

- ▶ Confirm that “variable hour” employees truly have variable hours (i.e. if they routinely work full-time hours, then they are not “variable hour” – you cannot treat them differently than other full-time employees)
- ▶ Confirm that independent contractors are correctly classified (i.e., if the person truly is a full-time employee, failure to either offer coverage or pay the penalty is a violation)

Handbook Update Steps

Practical Tips

- ▶ Evaluate all employee temporary staffing arrangements
- ▶ Benefit disclaimer language critical to allow quick pivots on benefit related issues

Handbook Update Steps

Practical Tips

- ▶ Move benefits to separate explanation of benefits booklet and out of handbook
- ▶ Sole authority to interpret benefits eligibility and “bad boy” disqualification language can be most helpful

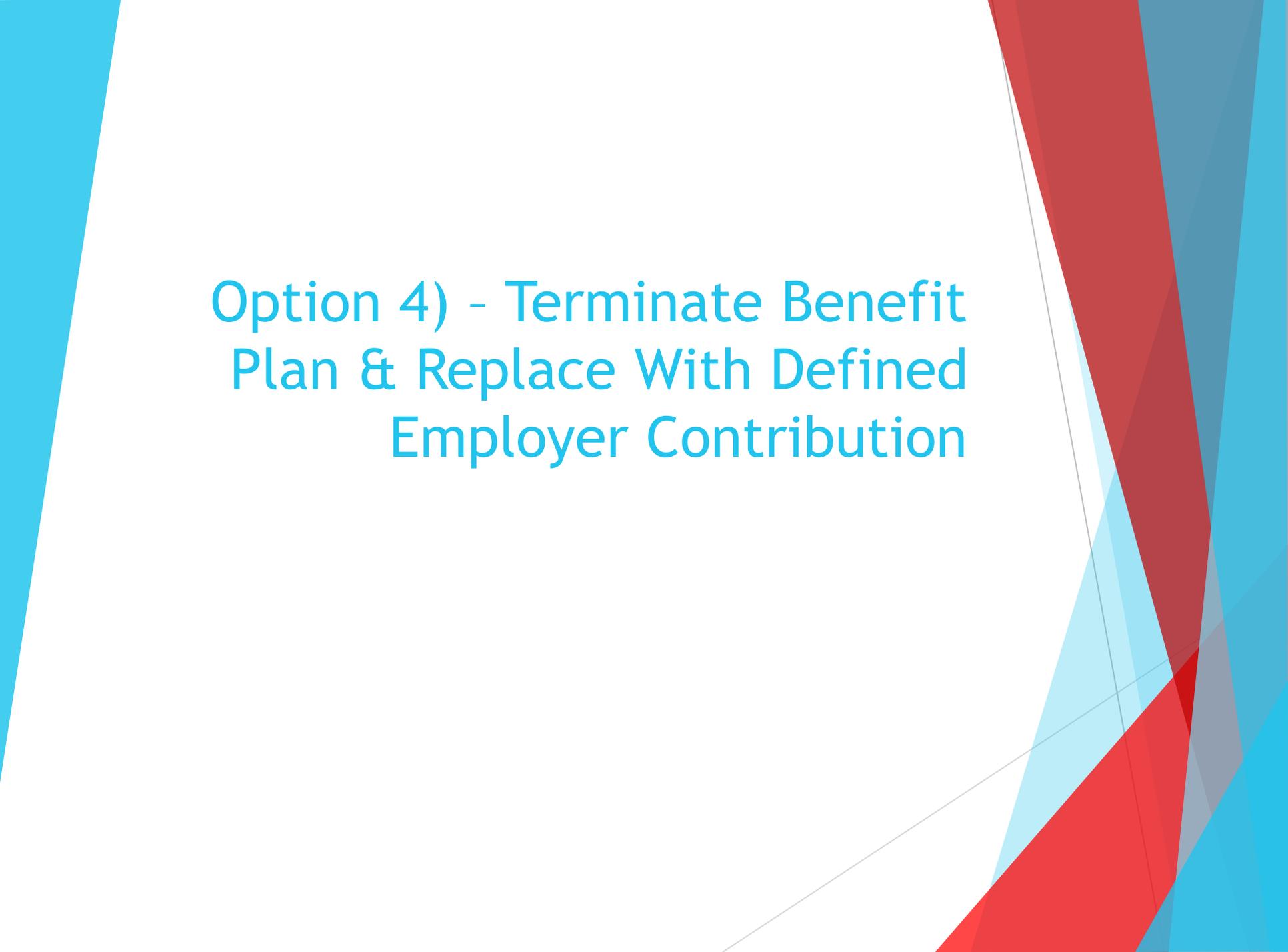
HealthCare Plan Design Choices for Groups Under 50

- 1. Keep everything “as is”. Cover issues like “grandfather rules” and notices that still apply in ACA.**
- 2. Purchase group insurance through the SHOP (small Business Health Options Program) exchange to qualify for the company tax credit**
- 3. Change to a self insured group plan to better control your plan design (can go down to 10 participants)**
- 4. Terminate group plan but replace with a defined contribution amount for health expenses so employees qualify for Federal subsidies through the Federal exchange.**
- 5. Terminate group plan and either keep the money**

Information Contributed by Alan Chappelle of
Chappelle Consulting

Let's "Drill down" ...on Option 4)



The background features abstract geometric shapes in shades of blue and red. On the left, a solid blue shape tapers towards the top. On the right, there are overlapping, semi-transparent shapes in red and blue, creating a layered effect. The text is centered in the white space between these shapes.

Option 4) - Terminate Benefit
Plan & Replace With Defined
Employer Contribution

Defined Benefit vs. Defined Contribution

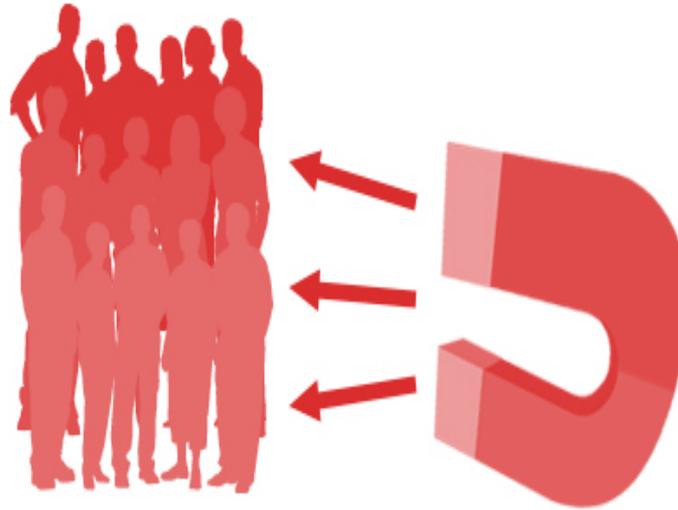
▶ Defined Benefit

- ❖ Coverage plans are determined and set by employer
- ❖ Employees have limited choice on their coverage
- ❖ Employer costs are unpredictable

▶ Defined Contribution

- ❖ Fixed, pre-tax dollar amount to spend towards health coverage
- ❖ Employees have a choice on how to spend the contribution
- ❖ Dollars can accrue over time to plan for higher expenses, i.e. surgery, procedures, etc

Will benefits still be beneficial?



CAUTION: For small employer Groups (under 50) offering group health benefits could soon repel applicants

- **High Deductibles**
- **High Co-Pays**
- **One-Size-Fits-All Group Approach**

Obamacare Is Killing Traditional Employer-Sponsored Health

A MORE
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Obamacare Is Killing Traditional Employer-Sponsored Health Insurance

By Paul Howard

Obamacare is going to kill traditional employer-provided insurance. And that's probably a good thing. IBM, Time Warner, and now Walgreens have made headlines over the past two weeks by announcing that they plan to move retirees (IBM, Time Warner) and current employees (Walgreens) into private health insurance exchanges with defined contributions from employers.

<http://www.forbes.com/sites/theapothecary/2013/09/23/obamacare-killing-traditional-employer-insurance/>

Forbes

Retiree health benefits—lifetime pensions—have been shrinking in the private sector (only about half of large employers still offer them, down from 80 percent 20 years ago), so it's no surprise that the relatively few companies like IBM that do offer generous post-retirement health benefits are trying to find ways to keep

Obamacare Will Increase Health Spending By \$7,450 For A Typical

Terminate Group Health Plan Employer Defined Contribution + EXCHANGE

▶ **Defined Contribution**

- ▶ Determine ER \$ Contribution
- ▶ Legally Complaint Plan Document Critical
- ▶ Enrollment

▶ **Decide on Products**

- ▶ Health Insurance through either EXCHANGE
- ▶ Plus Life, Dental, Cancer, Disability, etc

▶ **Decide on Benefit Plan Consultant**

- ▶ Need benefits expert to insure ACA/IRS compliance

Defined Contribution Plan

- ▶ SPEND Dollars, not PERCENTAGES
 - ▶ Fixed Sum
 - ▶ Applies to All employees or Selected Classes
- ▶ Changes @ Employers Direction
- ▶ Flexible Use of \$\$\$ by Employees to fit their specific life needs

Types of Alabama Exchanges

PUBLIC	
# Carriers	BCBS-Statewide HUMANA- 3 counties
Subsidy	Available, if qualify
Assistance	www.healthcare.gov

▶ PUBLIC

- ▶ Limited Carriers
- ▶ Limited Plan Designs
- ▶ Limited PPO Network
- ▶ Assistance: ACA Navigators

PRIVATE	
# Carriers	United Healthcare, Humana, Assurant
Subsidy	Available, if qualify
Assistance	Dedicated website, Telephonic, Face-to-Face

▶ PRIVATE

- ▶ Broad Plan Designs
- ▶ Carrier PPO Networks
- ▶ Supplemental Insurance
- ▶ Assistance: Licensed Professionals

Step 4:

Give Your Employees a Private Exchange Option





Step 4: The Problem

1. Employers squeezed out of group health insurance policies;
2. Rising small group premium cost;
3. SHOP exchange for small business delayed until November 2014;
4. Public exchange absolute disaster;
5. Policies canceled by the thousands; and
6. Insurance always attracted and kept best employees.



So what is a small employer to do?

Enter the Private Exchanges

- ▶ Traditional health insurers across the nation have entered into agreements with the federal government Department of HHS
- ▶ Offer compliant insurance policies on a private exchange
- ▶ Exchanges have their own network of physicians
- ▶ Much like traditional policies except they are individual policies



So what is a small employer to do?

- ▶ Typically purchased through a defined contribution plan established by employer that is tax sheltered
- ▶ Private Exchange may be sponsored by an employer Association
- ▶ Internet portal where the choices are made by employee
- ▶ Multiple carriers and also multiple types of policies available



So what is a small employer to do?

- ▶ Policies will not be purchased by an employer but basically by employee through a free-market system
- ▶ Employee selects options that fit their life needs
- ▶ Paid for though tax sheltered employer defined contribution plan

Time is critical to get Associations on board to help their members by offering Private Exchange options.



Health Savings Accounts are Typically Included as an Option

- ▶ Moving to consumer driven healthcare
- ▶ Health Savings Account highly favored as best way to keep loyal employees
- ▶ Monthly payroll contributions
- ▶ IRS has over 40 medically accepted expense categories
- ▶ Use a VISA charge card or check to access funds
- ▶ Employee owned account

Health Savings Account Contribution Limits

Year	Single	Family
2013	\$3,250	\$6,450
2014	\$3,300	\$6,550

Step 5:

Adopt a Wellness Plan



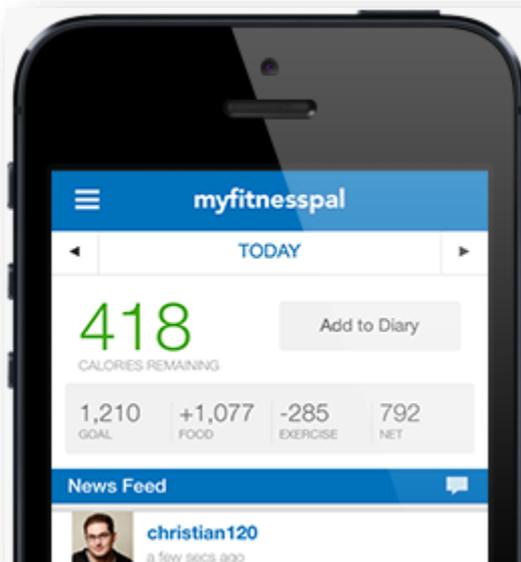
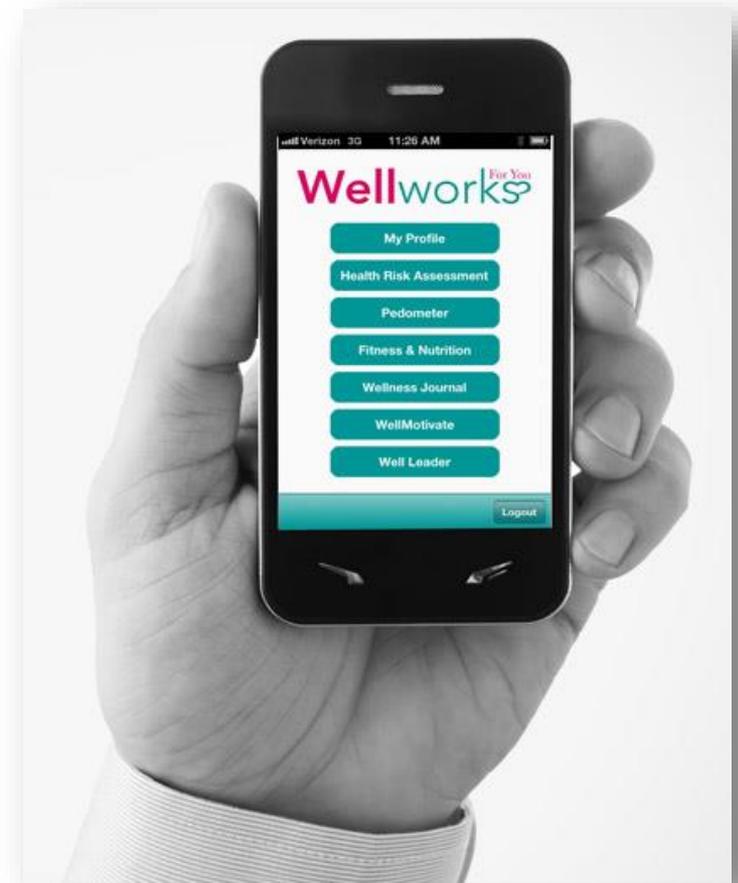
Wellness Plan

- ▶ Start with a smoke-free campus, store or shop
- ▶ Individual health risk assessments
- ▶ Individualized wellness plans
- ▶ Rewards can be participatory vs. contingent
- ▶ Challenge goals with reasonable design
- ▶ “Carrot and Stick” approach with incentives and penalties; can be up to 30% of total cost and 50% for smokers with measurable ROI



Wellness Tracking

- ▶ Examples of app-based wellness tracking
www.wellworksforyou.com
www.myfitnesspal.com
- ▶ Many other apps are available - find the one that works best for you.



What You Should Do Today:

- ▶ Consider what new policies and programs you need to implement quickly.
- ▶ Conduct a strategic planning meeting to decide where you are headed, company structure, part-time vs. full-time employees, and benefits etc.
- ▶ Decide who you will reach out to for guidance.
- ▶ “Who you gonna call?”



“Who You Gonna Call?”

Does our Association
endorse a Private
Exchange Option?

It's critical that you contact your employer Association and ask if they endorse a Private Exchange option for their members. If the answer is no, ask that establish one.



Contact the Presenters

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