

# **The ACA in Adolescence:** **The Existential Angst of Large Employers**

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# Overview

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- The [rocky] future of health reform
- Challenge for employers of implementing ACA guidance
- Prolonging the uncertainty: tax reform

# The Big Question

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- What will happen to the ACA?
  - Congressional dismemberment
  - Defenestration
    - By the SCOTUS
    - By the November elections
  - The salvage operation

# SCOTUS and the ACA

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- SCOTUS: is the ACA constitutional?
  - Briefs coming in now
  - Oral arguments this spring
    - 3/26: does the AIA preclude a ruling on the case at this point?
    - 3/27: is the individual mandate constitutional?
    - 3/28: 1) what other provisions can be upheld if the mandate is unconstitutional; and 2) is the expansion of Medicaid constitutional?
  - Decision probable late June



# Implementing the ACA guidance: the role of large employers

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- Employers as villains
- Employers as unwelcome presence between “you and your doctor”
- Employers as cash cows
- Why would employers want to provide quality health insurance to their employees, anyway???



## Implementing the ACA guidance, cont.

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- The *good*
- The *bad*
- The *ugly*



# Implementing the ACA guidance: Uniform benefit summaries

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- Detailed rules for appearance, content, and format of health plan benefit summaries
- Square peg in a round hole for large self-insured plans
- Duplicative of material plans already distribute
  - Not as effective
  - Expensive
  - Confusing

# Implementing the ACA guidance: Essential health benefits

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- Two roles for EHBs under ACA
  - Must be offered in Exchange plans
  - Large non-Exchange plans may not limit dollar value of EHBs
    - Examples: are bariatric surgery, in-vitro fertilization EHBs?
- Recent HHS guidance does not address second use of EHBs





# Implementing the ACA guidance: Exchange standards

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- ERISA preemption and national uniformity concerns
- Impact of new reporting and disclosure requirements on employers

# Implementing the ACA guidance: Shared responsibility penalty

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- \$2000/\$3000 per head penalty
  - Distinction between two not clear
  - Is family coverage required?
- Connection with premium tax credit
  - Employee eligible for exchange if employer's plan unaffordable or does not meet "minimum value" test



# Implementing the ACA guidance: Wellness and prevention

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- Workplace wellness programs stymied by many government rules
  - GINA, ADA, rogue enforcement actions by EEOC
- Anxiously awaiting upcoming regulatory guidance under the ACA



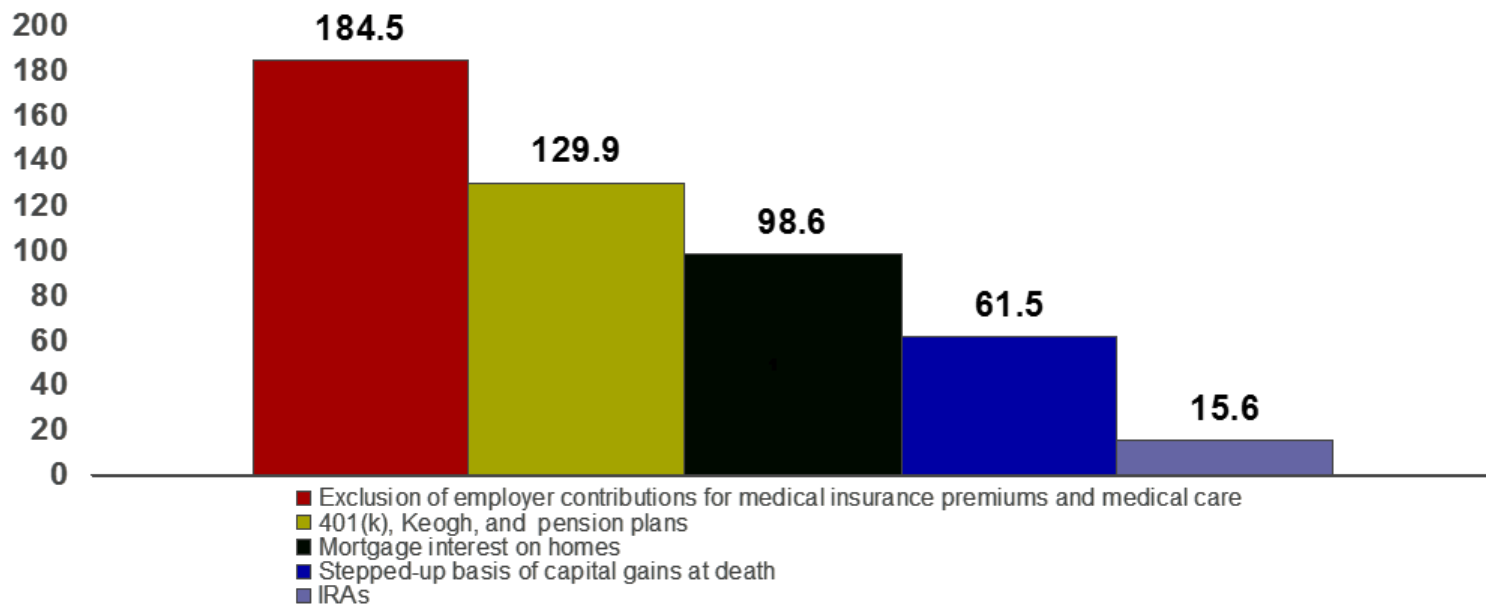
# Prolonging the uncertainty: Tax reform

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- Employee benefits in the revenue crosshairs
  - Limiting the exclusion for employer-provided health care

# Top Income Tax Expenditures FY 2012

Estimated dollars in billions



Source: Office of Management and Budget (OMB), *Analytical Perspectives, Budget of the U.S. Government, Fiscal Year 2012*.

# For further information

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