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# Catalysts and Macro Forces Affecting Employer Provided Benefits

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Celebrating 25 years!

Jekyll Island Convention Center  
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# Catalyst

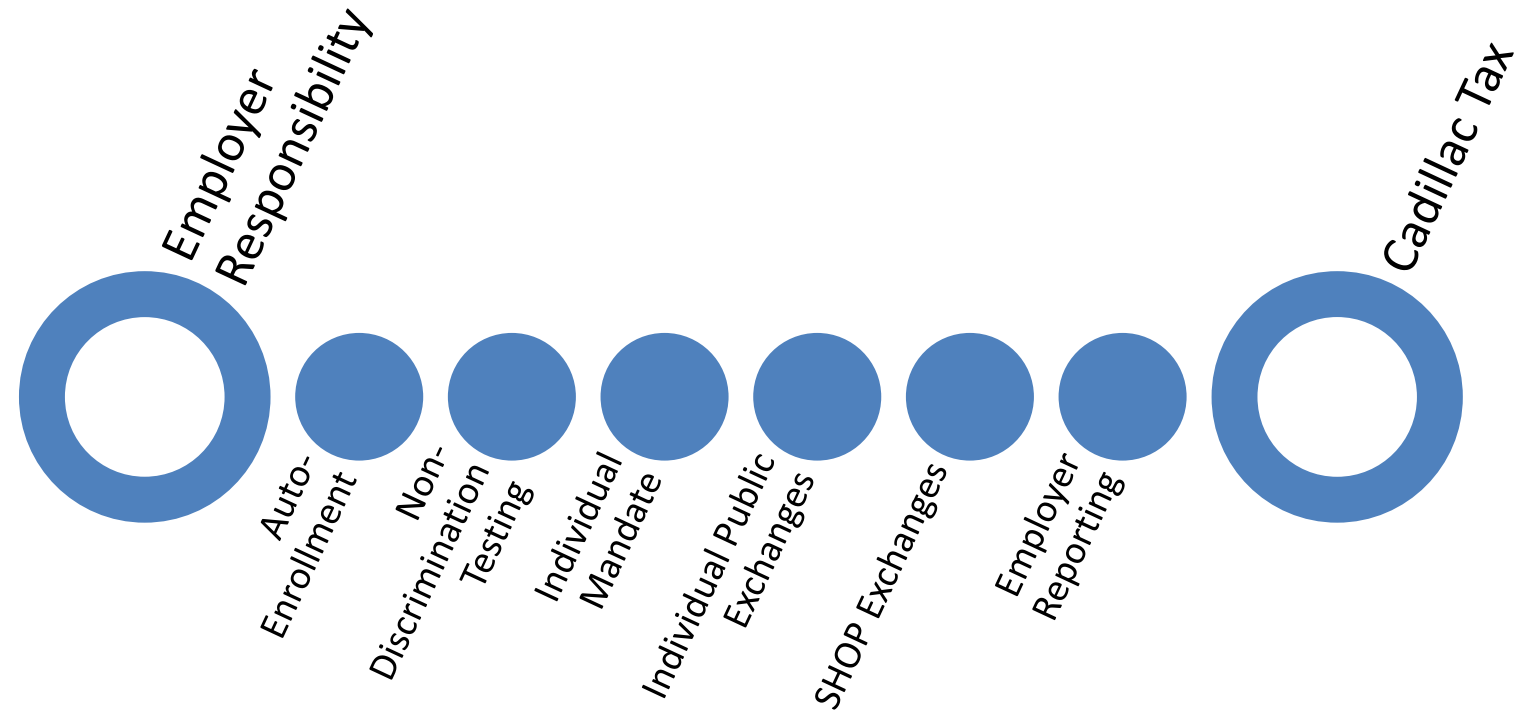
[**kat**-l-ist]

Noun

1. a substance that causes or accelerates a chemical reaction without itself being affected.
2. something that causes activity between two or more persons or forces without itself being affected.
3. a person or thing that precipitates an event or change.
4. a person whose talk, enthusiasm, or energy causes others to be more friendly, enthusiastic, or energetic.

# ACA - What we thought

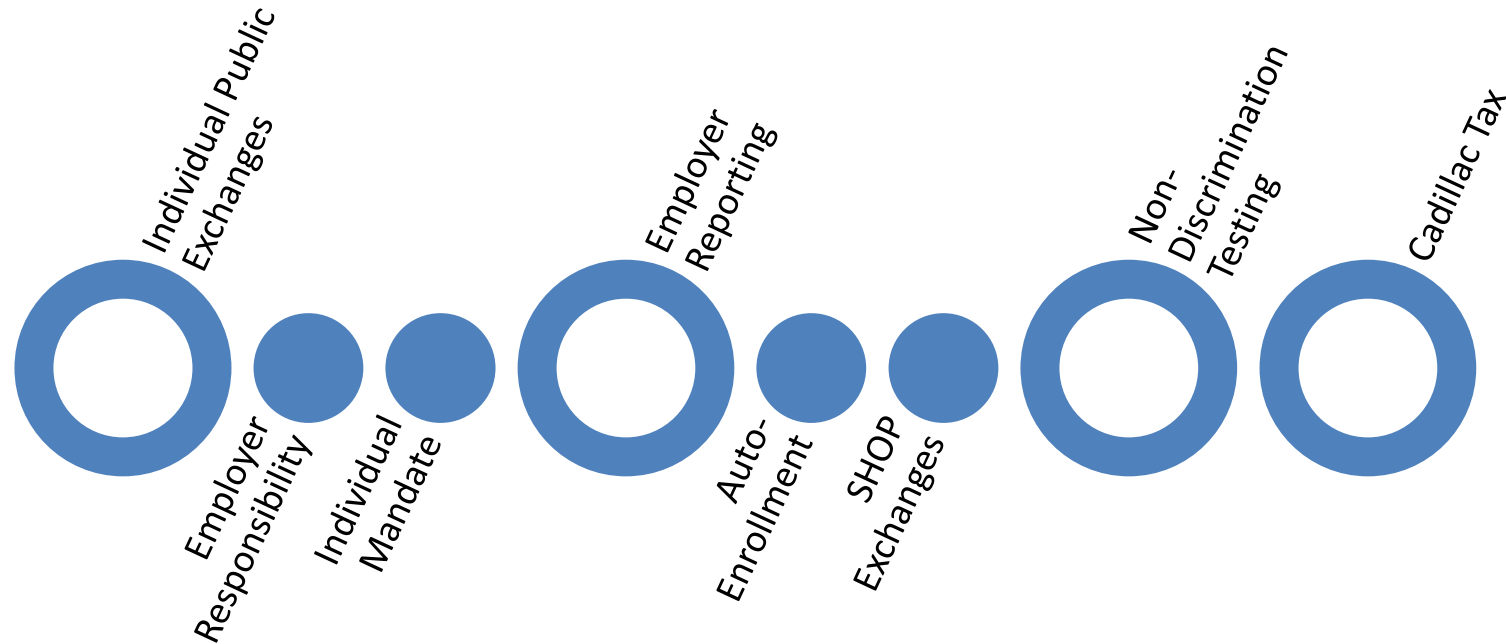
*The ACA promised multiple catalysts for benefit changes.*



*Some were expected to have a big impact, some not.*

# ACA – Our current thinking

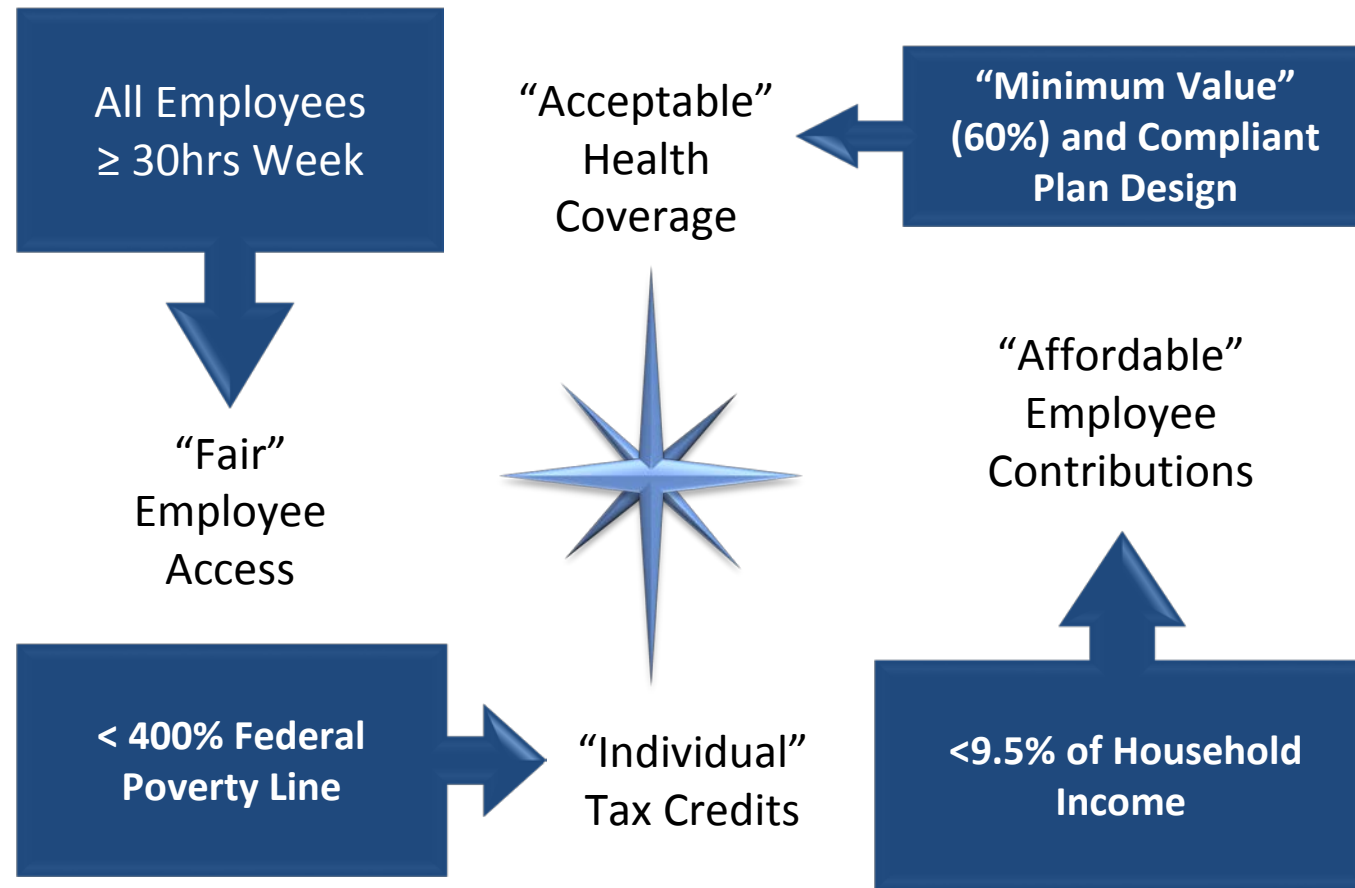
*In retrospect, some things weren't as big as we thought,*



*And some are likely to be bigger.*

# Changing employer perspectives

*ACA Created New Benchmarks and New Options*



# Strategy?

## Or annual reaction to healthcare inflation?

**Healthcare reform holds the single greatest opportunity in the last 20 years for employers to re-think how they allocate compensation to benefits.**

### **Prior to healthcare reform**

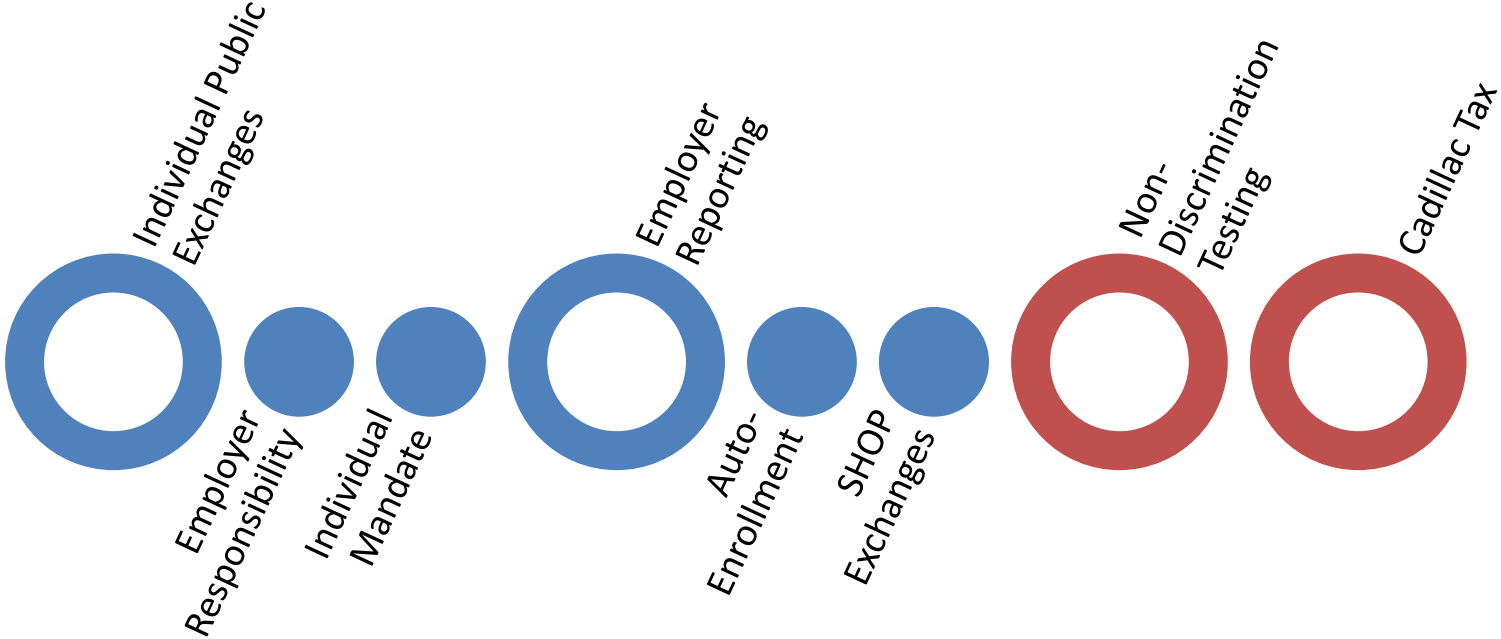
- **Healthcare trend at 2x – 3x overall inflation**
- **Steady offer rates – declining take-up rates**
- **Employer frustration – Employee dissatisfaction**

### **After healthcare reform**

- **Every employer has to “react” to ACA**
- **Low wage employees coming back into pool**
- **ACA will commoditize traditional health insurance**

# The biggest catalysts may be in the future

*Depending on how they are implemented these future changes  
May have the greatest impact on employer-provided benefits*



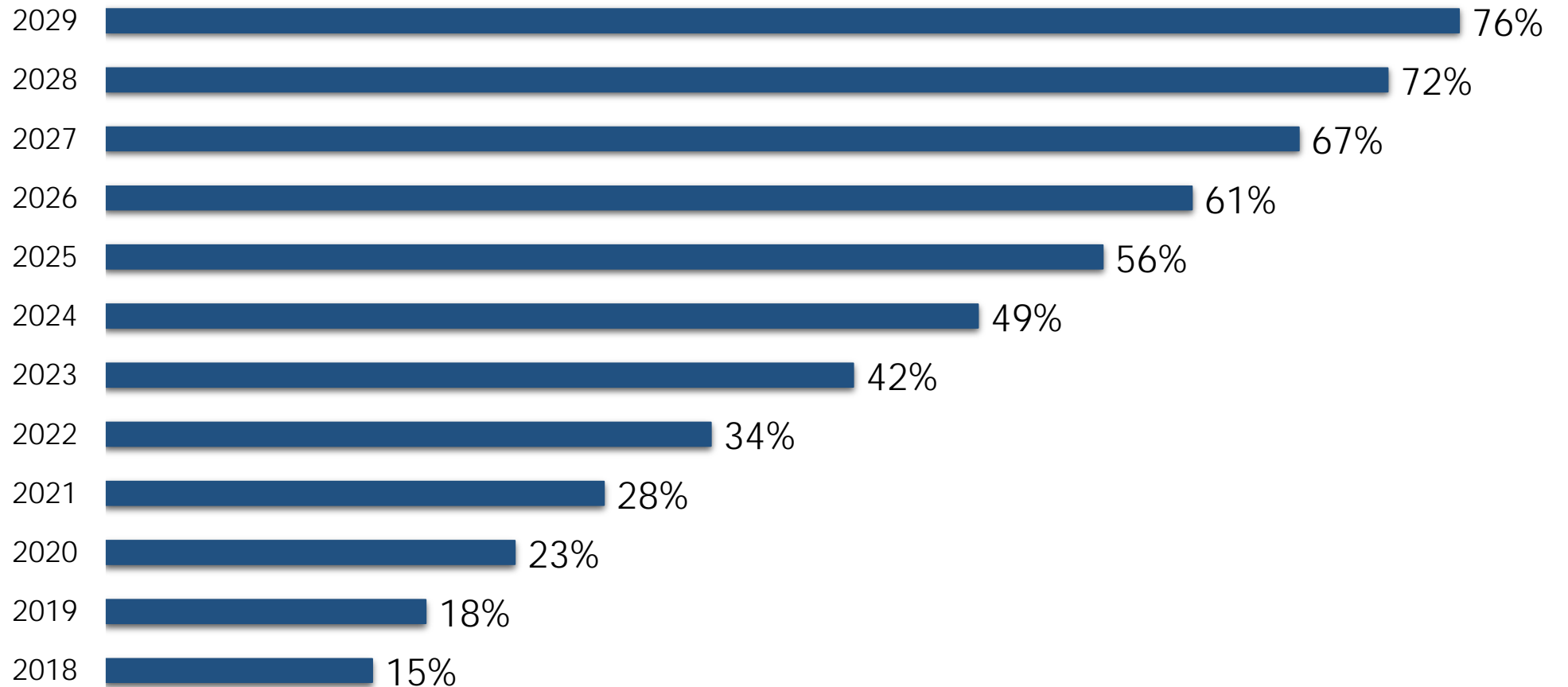


# Cadillac Tax

The catalyst for everyone who didn't have to react to "Employer Responsibility"

# Not everyone is affected, but almost.

## Plans Exceeding ACA 'Cadillac Tax' Threshold



# Treasury Releases Initial Guidance

## Notice 2015-16 on 2/23/15

- Which plans are subject to tax
- How to determine the cost of coverage
- How to apply the statutory threshold to cost of coverage
- Beginning in 2018, Section 4980I of the IRC will impose a 40% Excise Tax if the aggregate value of employer-sponsored coverage exceeds a threshold.

## Notice 2015-52 on 7/30/15

- Identification of the "coverage provider" liable to pay the tax
- Employer aggregation rules
- Allocation of the tax among coverage providers
- Payment of the tax.

# What is included in the computation?

Plan Type	Included in Applicable Coverage Calculation
HSAs	Employer contributions are included; Post-tax employee contributions are excluded
HRAs	Included
Health FSAs	Includes employer contributions and pre-tax salary reductions
EAPs	Under review: possible exclusion
Limited-Scope Dental/Vision	Insured stand-alone dental and vision are excluded. Self-insured standalone plans under review.
Executive Physical	Under review: possible inclusion
Military Coverage	Excluded
On-Site Medical	Excluded only if provides de Minimis medical care



# Non- Discrimination Testing

The “Velvet Hammer” of the  
Affordable Care Act



# Nondiscrimination Testing

- Qualified retirement plans (e.g. 401(k) plans) have required nondiscrimination testing – these plans are closely monitored and thus testing is routinely performed
- Self-funded health plans, Cafeteria Plans and certain other welfare benefit plans also have nondiscrimination requirements
  - Requirements are not new – have been in Code and Treasury regulations for years
  - Overlooked by many employers because not closely regulated and regulations are outdated, confusing and sparse
  - Expect closer monitoring because of expansion under ACA to include fully-insured plans

# Applicability of Nondiscrimination Requirements

- Self-funded health plans (IRC §105(h))
  - Including: medical/drug, dental, vision, health flexible spending accounts (FSAs) and health reimbursement accounts (HRAs)
  - Does not include: self-funded STD/LTD, etc.)
- Cafeteria Plans (IRC §125)
- Dependent Care Assistance Programs (DCAP) (IRC §129)
- Group Term Life Insurance Programs (IRC §79)
- Apply to ALL employers with these types of plans
  - No size requirement or exceptions
  - No ERISA-like exceptions for public or religious employers (except Church plans are not subject to Section 79 rules)
  - Though some parts of the definitions may not apply to every employer (e.g. gov't plans won't have "shareholders") there is no general exclusion because other parts will still likely apply
  - One exception under ACA for "Simple Cafeteria Plans" (discussed later)
- Be mindful of Control Group Rules for testing purposes

# Requirements are expansive and complex

- If offering certain tax-free health benefits to employees – must ensure that such plans do not unduly favor the Highly Compensated individuals (HCIs), Highly Compensated Employees (HCEs) and/or Key Employees with respect to either eligibility to participate or benefits
  - The only way to ensure this is by performing annual nondiscrimination testing
  - “Benefits” include things like contribution amounts and waiting periods
- Saying “we offer the same benefits to everyone and so we can’t be discriminatory” is not enough
- HCE, HCI, and Key Employee have different definitions – each looked at individually
  - Exclusions for who you can leave out of testes vary between tests
- The actual nondiscrimination test(s) under each code section for each type of plan are different – each plan looked at individually

# The ACA and Nondiscrimination

- Nondiscrimination rules for fully-insured plans
- Originally to be effective for plan years on and after 9/23/2010 – has been delayed until regulations are approved
  - Does not apply to Grandfathered Plans
- Insured group health plans will be subject to rules similar to the current 105(h) rules
  - Note: this ma
  - Mandate applies to the employer plan and not the insurer
- Consequences of noncompliance for fully insured plans:
  - Penalty is an excise tax under IRC §4980D (not taxation of HCIs) of \$100/day per non-HCI for the period of noncompliance (annual max of \$500K)
  - Participants may also be able to sue employer individually to enforce these requirements (under ERISA)



# Considerations for Plan Sponsors

- If you have a fully-insured plan, consider:
- Some plan designs that were previously allowed will/may be precluded
  - Executive-only plans
  - Insured plans limited to certain HCIs with post-tax premiums/employer paid premiums
  - Plans for retiring executives (being considered for exemption)
- All other differences in plans/designs should be reviewed
  - Eligibility
  - Waiting periods
  - Maximum reimbursement amounts
- May be testing issues for employers with both fully-insured and self-funded plans (eligibility based upon entire census)



# Additional Forces

Where are we headed?

# The Irrefutable Sources of Trend

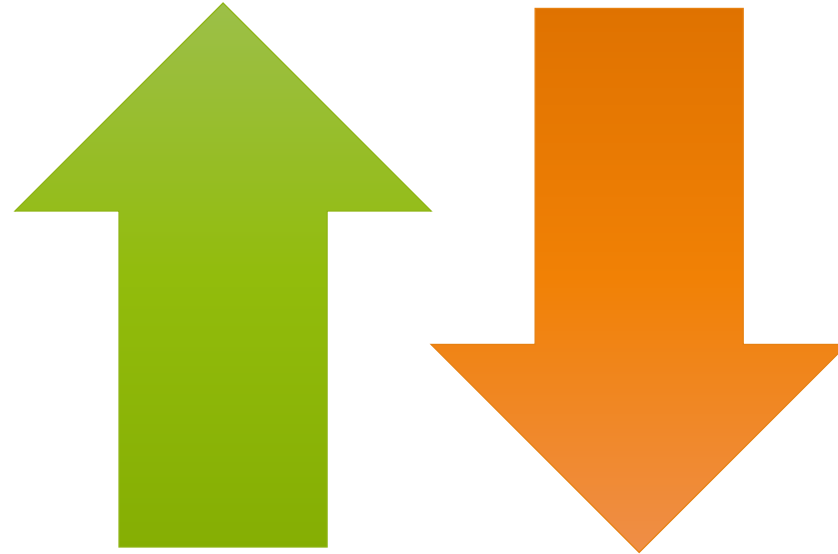
**The rate of growth is slowing but the % of GDP is still rising**

## **Inflationary Factors**

- **Aging Workforce**
- **Specialty Pharma**
- **Cyber Security**

## **Deflationary Factors**

- **Consumerism**
- **Virtual Care**
- **New Health Advisors**



# Continued Acceleration of CDHP

## Changing the role of “Major Medical” coverage

ACA and HDHPs

Role of Supplemental Health

Exchanges and Consumer Buying Behavior



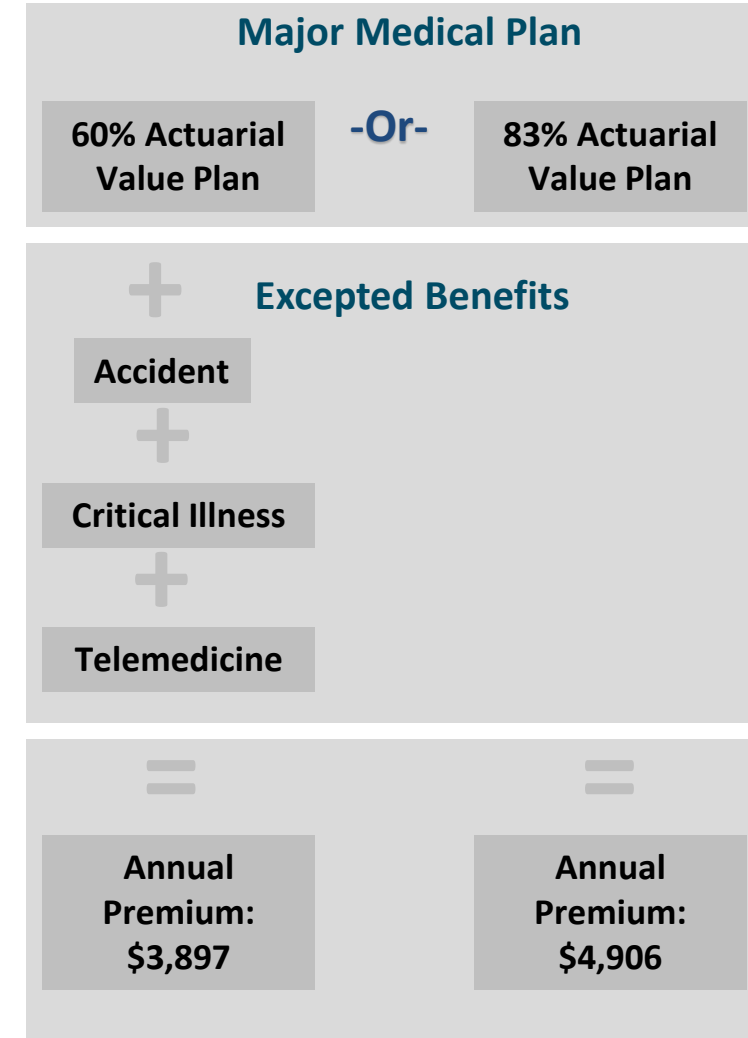
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# Supplemental Health Benefits will Increase

What is the real effect of lowering plan actuarial value and adding Excepted Benefits?

- **What if the employee gets cancer?**  
Total out-of-pocket cost for employee on the 60% plan is a savings of \$10,521 vs. \$8,576 on the 83% plan.
- **What if the employee has a major accident?**  
Total out-of-pocket cost for employee on the 60% plan is \$6,025 vs. \$8,226 on the 83% plan.
- **What if the employee has an ongoing condition that requires a few prescriptions and goes to the doctor a few times a year?**  
Total out-of-pocket cost for employee on the 60% plan is \$7,309 vs. \$7,697 on the 83% plan.
- **What if the employee is in good health and just uses preventative services?**  
Total out-of-pocket cost for employee on the 60% plan is \$3,897 vs. \$4,906 on the 83% plan.



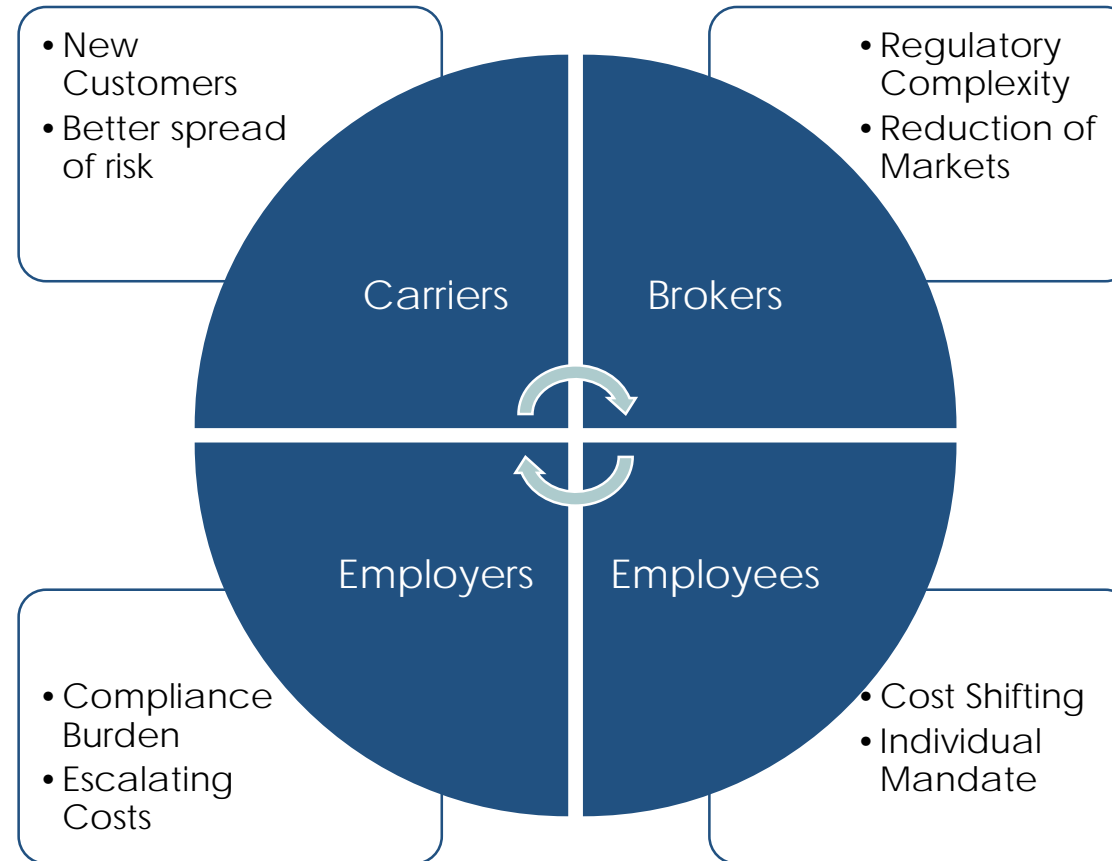
*All plan scenarios were based on a 35 year old male smoker. 0% employer contributions are assumed. Excepted benefits assume the full premium is paid by the employee on an after-tax basis.*

# Wage Pressure Squeezes Total Comp

## Changing the role of “Major Medical” coverage

- Full Employment
- Minimum Wage Increases
- Employer Initiatives

# Win<sup>4</sup> – Crafting a New Collaborative Landscape



And, the biggest catalyst of all...

## Tax Reform



# What does the future hold?

## Uncertainty

- **Minimize or Optimize?**
- **The Importance of Alignment**
- **The ACA is the single greatest opportunity in our lifetime to re-think the allocation of compensation to benefits.**

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