

February 23, 2017

# Keeping Up with Changes to Employee Benefits Rules

Presented by Benefit Comply

# Keeping Up with Changes to Employee Benefits Rules

- Welcome! We will begin at 3 p.m. Eastern
- There will be no sound until we begin the webinar. When we begin, you can listen to the audio portion through your computer speakers or by calling into the phone conference number provided in your confirmation email.
- You will be able to submit questions during the webinar by using the “Questions” box located on your webinar control panel.
- Slides can be printed from the webinar control panel – expand the “Handouts” section and click the file to download.



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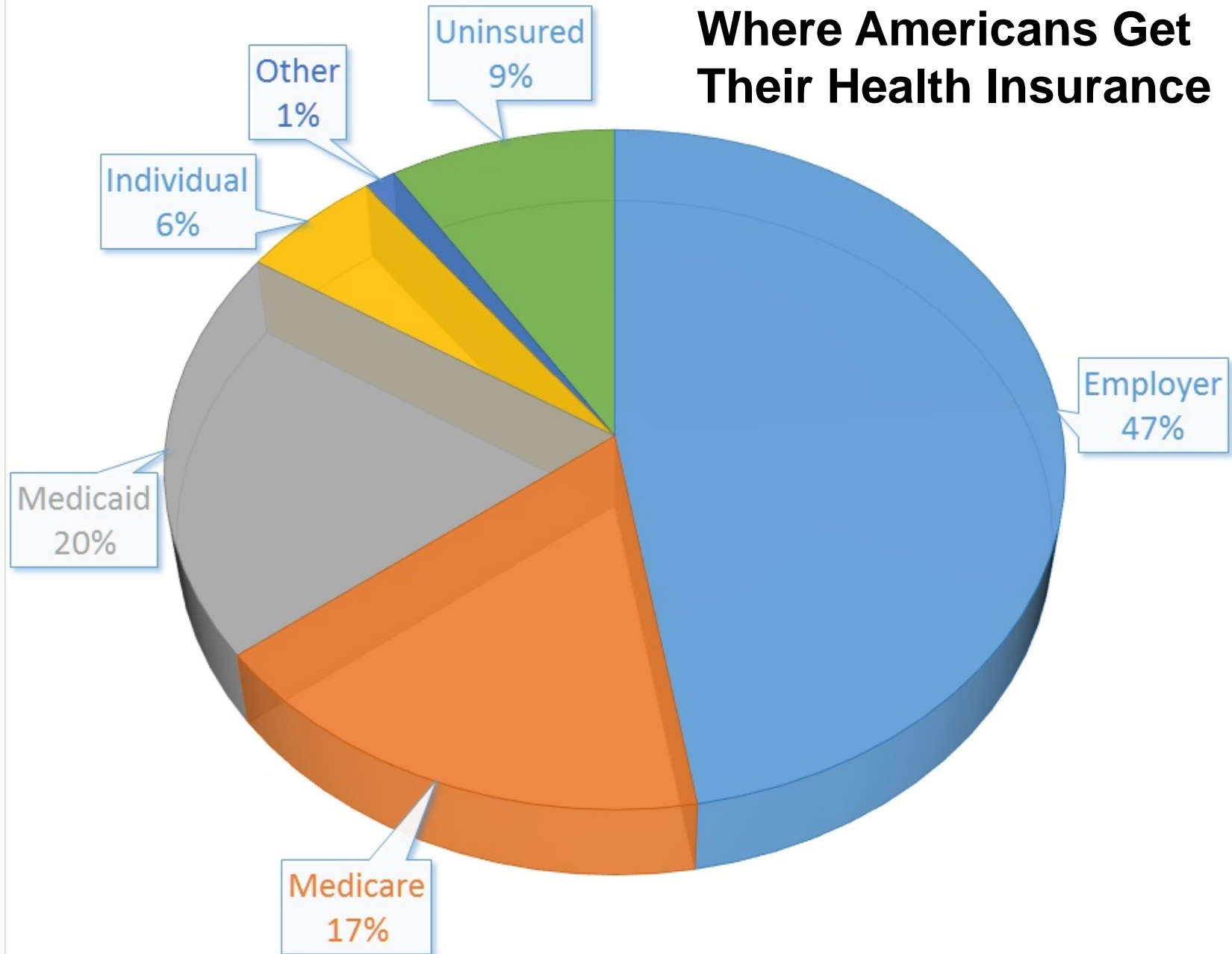
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# Agenda

- Perspective on Changes
- Republican Plans and Initiatives
- Recent Developments
- The Latest From Washington D.C.
- What to Watch for Going Forward

**PERSPECTIVE**

## Where Americans Get Their Health Insurance



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# What is Obamacare/The ACA?

## Employers

- Shared responsibility rules for large employers
- Tax credits for small employers
- Coverage Requirements (Preventive care, Age 26, No lifetime or annual max, etc.)
- Small employer modified community rating

## Individual Insurance

- No Pre-ex or underwriting
- Subsidies to help pay for insurance based on income
- Exchanges to coordinate sales and subsidies

## Medicaid and Medicare

- Medicaid expanded to include low wage working adults
- Restructure payments to Medicare Advantage (MA) plans

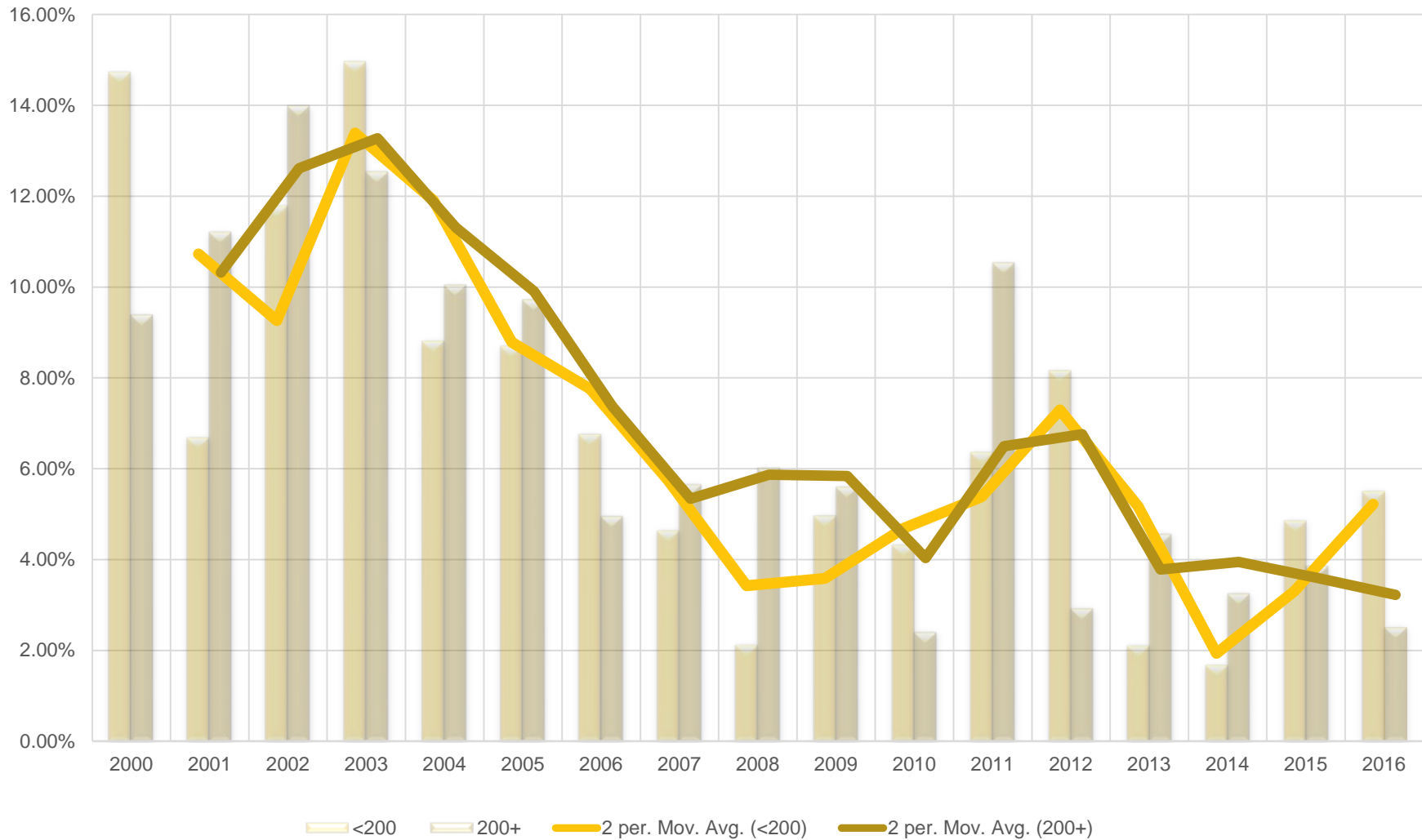
## Healthcare Cost Savings

- Medical Loss Ratio (MLR) requirements for health insurance companies
- Adopt Accountable Care Organization (ACO) payment model for Medicare
- Chronic condition treatment research

## Gov. Cost Savings & Revenue

- Cadillac Tax
- Individual mandate tax and employer shared responsibility payments
- Excise tax of 2.3% on medical devices
- Health insurance company tax

# Average Group Health Plan Premium Increase





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# Healthcare Cost Drivers

- **Many Things Drive Healthcare Costs**
  - People with Chronic Conditions Account for 84% of National Healthcare Dollars and 99% of Medicare Spending
  - Aging Population and Near End of Life Healthcare Costs
  - Rapidly Increasing Rx Cost
  - Lack of Transparency in Healthcare Pricing
  - Consolidation in Healthcare Industry
  - Adoption of Expensive Medical Technology
  - Too Many Specialists, Not Enough Primary Care
- **Health Insurance Plan Administrative Costs**
  - Administrative expenses make Up 5%-20% of total health insurance plan costs depending on the type of plan
  - ACA MLR rules limit fully-insured health insurance plan administrative costs
    - 20% maximum for small group and individual plans
    - 15% maximum for large group plans

# REPUBLICAN PLANS AND INITIATIVES

## **Important Note**

The following section contains descriptions of proposals and legislation that is not yet in effect. As of February 22, 2017 none of these items have been passed into law or implemented by regulatory action.

# H.R. 3762 - 2015 ACA Repeal Legislation

Topic	Provisions With Impact on Employers
OTC Medications	Modifies the definition of qualified medical expenses to include over-the-counter (OTC) drugs. Under the ACA, a drug must be prescribed to be a qualified medical expense for HFSA's, HRAs, & HSAs
Health Savings Account Tax	Reduces the tax on withdrawals from HSAs not used to pay for qualified medical expenses from 20% to 10%
Flexible Spending Accounts	Repeals the \$2,500 contribution limit on health FSAs
Fee on Health Insurance Providers	Repeals the ACA's annual fee on health insurance providers
Employer Deduction for Retiree Prescription Drug Costs	Reverses the ACA's amendment to the tax code so that employers do not have to reduce their business-expense deductions for retiree prescription drug costs by the amount of any federal subsidies
Small Business Tax Credits	Repeals the tax credit for small employers with no more than 25 FTEs
Employer Mandate	Eliminates the penalties associated with the employer mandate, effective January 1, 2015
Medicaid Expansion	Repeals the optional Medicaid expansion
Cadillac Tax	Repeals the "Cadillac Tax"

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# Ryan's Plan

- Paul Ryan Introduced “A Better Way” Republican Plan to Replace the ACA
  - The plan proposes to retain a number of elements of the ACA:
    - Restricting pre-existing limitations
    - Prohibiting insurance companies from rescinding coverage
    - Allowing coverage on parents' plans for adult children to age 26
  - Examples of some of changes to the ACA proposed in the plan include:
    - The elimination of Medicaid expansion, replaced by block grants to states
    - Repeal of the “Cadillac” tax, replaced by a limit on the amount of benefits employers can provide to employees on a tax-free basis
    - Elimination of ACA income-based subsidies for purchase of individual health insurance, replaced by an age-based refundable tax credit for those without access to employer sponsored insurance
    - Allowing employers to pay for individual health insurance for employees
    - New rules that would make it easier for small employers to join together in pools to provide insurance to employees

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# More Recent Republican Talking Points

- February 16 House Republicans Released a Policy Brief
  - Repealing the ACA's employer and individual responsibility provisions as well as the ACA's provider and insurer taxes
  - Providing fixed-dollar refundable tax credits based on age, not on income, which could be used to purchase any state-approved individual market plan or for COBRA premiums (not for employer plans or government programs)
  - Increasing HSA contribution limits and liberalizing other HSA requirements (more later)
  - Phasing out Medicaid expansion and moving federal Medicaid funding to a per capita cap or block grant basis
  - Providing "innovation grants" to states, which the states could use to fund high-risk pools, reduce out-of-pocket costs, reinsure health plans, fund preventive services, or for other purposes
- Patient Freedom Act of 2017
  - Two Republican Senators introduced legislation that would give states the choice to keep much of the ACA

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# HSA Proposals

- Recent HSA Activity
  - House Policy Brief
  - Senator Orin Hatch (R-UT) has released a Senate bill
- Common Elements
  - Increase Maximum HSA Contribution Limit
    - Increase from \$3,400 for self-only and \$6,750 for a family to \$6,550 for self-only coverage and \$13,100 for family
  - Catch-Up Contributions
    - Allow both spouses to make catch-up contributions to the same HSA
  - HSA Establishment Period
    - If an HSA is established within 60-days after HDHP coverage date, expenses incurred during that period are eligible expenses

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# Limits on Tax Exclusion for Health Benefits

- Both Ryan's Plan & The Most other Republican Proposals Limit How Much Healthcare Related Employee Benefits Can Be Provided on a Tax Free Basis
  - In HR 3762 the limitation would include all plans providing "medical care" as defined by Code §213(d), including medical, dental, vision, Rx, etc. Limits exclusion for health coverage to:
    - Single - \$ 8,000/yr
    - Family - \$20,000/yr
  - 2010 Republican Patient Choice Act
    - Single - \$12,000
    - Family - \$30,000
- U.S. average family health insurance premium in 2015 was \$17,322



# RECENT DEVELOPMENTS

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# Congressional Action

- Reconciliation Process Begun
  - Congress passed legislation that set in motion the reconciliation process
    - The legislation did not actually change anything yet – it gives committees the direction to create budget reconciliation ready legislation
  - Reconciliation Process Basics
    - Under Senate rules most legislation must have 60 votes to move past a filibuster to a final floor vote – Republicans control 52 seats in Senate
    - The exception is the “budget reconciliation” process which allows a piece of legislation to be passed with a simple majority
      - Process expedites passage of bills pertaining to the budget—avoiding the Senate filibuster and constraining debate to 20 hours
      - The process is to be used only for legislation that directly impacts Federal revenues or expenditures
      - Senate parliamentarian must rule on legislation if a Senator questions the use of the reconciliation process

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# Regulatory and Agency Activity

- Trumps Executive Order
  - Trump signed an executive order instructing regulatory agencies to issue rules, delay enforcement, and take other actions “to the maximum extent permitted by law” to roll back the ACA
    - The order itself does not change anything and does not give the agencies any additional power that they did not already have – but it signals the direction Trump wants the agencies to go with rulemaking
  - IRS was first agency to issue anything specifically mentioning the order
    - Rule change that individuals do not need to check the box in their tax return indicating whether they have health insurance when filing taxes this year
      - Prior to this rule change, a return would get rejected if box was not checked
    - The individual mandate is still in force and IRS retains the right to demand proof of insurance on audit

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# Regulatory and Agency Activity

- First formal proposed regulations issued by new administration
  - February 15th, CMS and HHS released proposed rules for stabilizing the federally-facilitated health insurance marketplaces
    - Special enrollment periods (SEPs) – Tighten up existing SEP policies in order reduce adverse selection
    - Timing of annual open enrollment period (OEP) – Shorten the OEP from Nov 1 - Jan 31 to Nov 1 - Dec 15
    - Actuarial value (AV) adjustments

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# Regulatory and Agency Activity

- IRS Memorandum on Fixed Indemnity Plans
  - What is a fixed indemnity plan?
    - Pays out fixed dollar payments for health related events such as \$X per hospital day, or a fixed payment for a certain medical condition (e.g. cancer policies)
    - Plans are typically considered an “excepted benefit” and are not subject to ACA health insurance rules.
  - “Voluntary Benefits” or Not?
    - If employer has no part in offering or paying for these benefits they may fall under the category of voluntary benefits under existing rules.
    - It is an employer sponsored plan If employer pays for coverage or allows the coverage to be paid by pre-tax employee contributions through a §125 plan.

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# Regulatory and Agency Activity

- IRS Memorandum on Fixed Indemnity Plans
  - Plan benefits must be treated as taxable income unless employee pays for coverage with after tax dollars
  - Employer Administrative and Payroll Issues
    - Employer would need to add imputed income to employee based on amount of benefits received
      - Failure to do so would mean employer is underreporting employee income and underpaying employer payroll taxes
    - Alternatively employers can allow employees to pay for plans on an after tax basis – then plan benefits would be tax free
  - “Wellness” Plans
    - Memorandum also targets so called “wellness plans” that claim to offer a way to purchase voluntary benefits using the tax savings.
      - These arrangements would mean the benefits paid by the indemnity plans would also need to be treated as taxable income
  - Copy of memorandum at:
    - <https://www.irs.gov/pub/irs-wd/201703013.pdf>

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# Regulatory and Agency Activity

- Employer Reporting
  - Current employer reporting deadlines for 2016 data
    - IRS granted a 30 day extension for 1095s provided to employees and participants
      - Employer must deliver by March 2, 2017
    - 1094s and 1095s must be provided to IRS by:
      - Feb. 28<sup>th</sup> if filing by paper
      - March 31<sup>st</sup> if filing electronically
  - Employer reporting going forward?
    - Even if employer mandate is changed or eliminated IRS may need some form of employer reporting for purpose of tax credit administration

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# Regulatory and Agency Activity

- Other Regulatory Activity - Proposed regulations on hold for review
  - DOL 5500 expansion
    - All employers would have to file a 5500
    - New schedule J for employers with 100+ participants
  - No IRS rules yet issued on non-discrimination for fully-insured plans
    - Not likely to happen now



# WHAT TO WATCH FOR GOING FORWARD

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# Things to Watch For

- It will be difficult for the Republicans to change individual health insurance rules like the individual mandate and subsidies without destabilizing the market
- Removing employer requirements will be easier - "Repeal" by zeroing out employer and individual mandate taxes.
- Medicaid coverage will be returned to state control and will result in reduction in Federal funding and more variation between states
- HSAs will be expanded
- Cadillac tax is toast – but the loss of revenue will be paid for, in part, by capping tax exclusion for employer-provided health care

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