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JIM: There still seems to be a lot of uncertainty with the Affordable Care Act otherwise known as ObamaCare for many small business owners. There are still a lot of changes scheduled to go into effect in 2015 as well as court challenges that leaves some degree of uncertainty as to what will all be left when all is said and done. Well, joining us today to shed some light on where things are at, is Terry Frett, one of the most knowledgeable people I know when it comes to health insurance. He's served on a health advisory counsel for the commissioner of insurance as well as National Association of Insurance and Financial Advisor Government Relations Committee. He carries the designations of registered health underwriter, registered employee benefit counselor, as well as certified employee benefits specialist.

Welcome, Terry.

0:50

TERRY: Well, good morning, Jim.

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JIM: Hey, I'm so glad to have you here, and we've got so much stuff to cover. I think there's nothing more uncertain than the future of health care in the United States, and you'd think with the federal government getting involved with the Affordable Care Act otherwise known as ObamaCare, that things would get simpler but it seems like it's more complicated. Every time I read something about it, the uncertainly as to whether or not this is extended or this is ready to go into effect, or whether or not the law provides for some of these things. There's so much stuff going on, and I'm so glad that you're here, Terry, because I don't know of too many people in this industry that are more on top of things than you are, and I really appreciate you joining us today.

1:31

TERRY: Well, thank you, Jim, appreciate that.

1:32

JIM: I've been talking to some clients about this, and every time I bring it up they kind of have this dear in headlights look like, what are you talking about, and that's, come April, I know we've helped a lot of families get on the health care exchanges and getting their health insurance lined up, and in that process they disclose their income and all these things, and they automatically get credits based on what they put in there, but come April I think a lot of people are going to be kind of surprised with what's going to happen come tax time.

Can you share with the audience what they need to be prepared for?

2:04

TERRY: Sure, and that's kind of what I call the April surprise, because as you outlined, Jim, what happened in 2014 is individuals that applied for health insurance through one of the government type exchanges in most cases qualified for subsidize which was advanced tax credits that were given to them up front, but at the time they were enrolling the income information that determines a person's tax credit that was being used, in many cases was their last reported income in 2012 because as they were utilizing Healthcare.gov, if they were on one of the state programs that used the federal government's Healthcare.gov exchange, that was the last filing data that the government had and they would ask the individuals, is this your current income, and I'm sure many of them wouldn't necessarily know to the detail and probably went along with that.

They were supposed to, during the year, report back to the government if their income changed, in other words in their income increased, because that would have a direct impact on the amount of tax subsidy they'd be eligible for. Well, reconciliation comes now when they file their tax return. In fact, if they received a government subsidy, they are required to file a tax return, and as they file their tax return they'll find that they have to complete a new form called 8962, with is a reconciliation form, and obviously not simple to complete, but the individual basically will have to match what is their actual income and determine did they get more money up front from the government in the form of a tax credit than they were eligible for, and if indeed they did, well, then they have to pay that money, and so it will be an added tax to their return as they do their final tax return filing.

The other thing they're going to find is any individual again that bought an insurance plan through any of the exchanges, they're going to receive a new tax form from the exchange known as a 1095 which will be like a W2 but it's a separate document validating that they have insurance, so the government certainly has all the records that they had insurance through the government exchange, that they received whatever amount of subsidy throughout the year, and now it's reconciliation time.

4:12

JIM: I know we were recording this program at the end of January, and the president just gave his State of the Union address a few days ago, and the thing that I find interesting and that I think a lot of people are getting caught with this, I know there's a lot of people we helped get their health insurance through the exchange, and as the president talked about in his State of the Union address, there's a lot of people going back to work, so they might have applied for this when they were unemployed, and if all the sudden they got a job or another part time job, that could produce a significant difference if what they might owe back. Do you have an idea of what that might mean?

Let's say someone was unemployed, getting their unemployment checks, and now they've got a regular full time job making $40,000 or $50,000 a year, how much of an impact might that have roughly as far as what they might owe back, if that was something that happened early in the year and they had a full year of earnings?

5:02

TERRY: It could be rather significant because they could be in a position of owing back most all of what they received, because the burden of responsibility was placed on the individual, that if their income changed during the year and your example is a classic where someone, when they first applied and qualified for an individual plan and was getting up front subsidy, then was able to find employment during the year and continued to keep that insurance plan, possibly even though they were offered maybe insurance through their employer because it seemed like a better financial deal, you might say, may find that deal was not as enticing when they now have to refund some of the money back to tax payers for excess tax credits.

5:43

JIM: We had another guest on awhile back and they did a survey of American workers, and they found that when it came to health benefits, the average American spent less than five minutes reviewing their options, so if that is in line with this ObamaCare issue, I look at the average person out there, probably doesn't even know that they would have owed that money back, because let's face it, we have gals like Nancy Pelosi who said, we have to pass this so we can read it. Well, if congress didn't even read the bill, what's to say the American citizens did.

They think we're getting the subsidy and I have a feeling, when you talk about an April surprise, I think, we're not talking just a couple hundred bucks here. Some of those subsidies were several hundred dollars per month, and if you're going to owe all that back for six, seven, eight, 10 months, it could be in the thousands of dollars, and that might really catch people a little bit off guard, especially if they're just getting back into the work force.

6:35

TERRY: Exactly, and especially something new and this of course is brand new for 2014, not only the opportunity to buy insurance through the government exchange, but at the same time to qualify for government to reduce your direct cost of insurance, and as you say, this is probably going to be a surprise for quite a few people that maybe had the good fortune of a change in their income but didn't understand their responsibility to report that back to the government, because what people don't understand is you were basically advanced a tax credit before you had actually been eligible to receive it, so it's kind of like not paying income taxes during the year, and then you get to the end of the year, you're finally paying your income tax bill, so in this case they were advanced credits on the anticipation that their income was going to be what they originally reported, but now as they do their final reporting, if indeed it has increased, there may be a need for them to pay back some of the excess money they received up front.

7:26

JIM: One of the court challenges was about whether or not this ObamaCare was constitutional and all of that, and they ruled that this was a tax. One thing I'm curious about, let's say they owe this money and they don't have the money, is it subject to the same interest and penalties as someone that doesn't pay their ordinary income tax?

7:43

TERRY: Boy, that's a great question and I'd have to say, I don't know the answer, but it certainly would appear it should be because a tax is a tax, and I don't think we distinguish this any different than any other tax liability that a consumer has the responsibility to pay back to the government.

The other part of this what I call April surprise is the individuals that didn't carry insurance, and that was kind of the root of the Supreme Court decision, because as you know, Jim, if a person was not responsible in 2014 to have carried insurance, they are the ones that were originally thought going to receive a fine, that the Supreme Court decided was a tax, and they're also going to be filling out additional tax forms reconciling the number of months during 2014 for which they didn't have insurance for which that tax for not carrying insurance will apply.

8:32

JIM: Well, this is just excellent. We're going to take a short break. When we come back, I want to talk about one issue that might effect people, and that's the current court case regarding whether or not the states, and there are quite a few of them that don't have state exchanges, the original federal law said that the subsidies could only be paid to states that have exchanges, and many people that are listening are not in a state with exchanges, and the federal government has just went ahead and paid them, that could be subject to change, so please stay tuned as we continue to visit with Terry Frett about the latest updates with the Affordable Care Act.

[BREAK]

9:33

JIM: Welcome back as we continue to visit with Terry Frett who is the president and founder of Frett Barrington, a benefits specialist in Wisconsin, and I know you've done a lot of working with senators and congressmen, both on a state and national level, and have been well tuned in with what's been happening with health care. One thing that kind of hit the lime light for a little bit, now you don't really hear too much about it, is this court situation where these states, and I believe there's over 30 of them, that did not create their own state exchange, went on the federal exchange, and the law is very clear that only people that are in state created exchanges are eligible for subsidies, but the federal government has been paying these subsidies to all of these people, we might have a different surprise depending on how this court rules as far as people that might owe back all their subsidies, and how many states are there, Terry, are you aware?

10:23

TERRY: There's 34 states that during 2014 were part of what we call Healthcare.gov, so they were part of the federal exchange in lieu of having their own state based exchange, and you're absolutely right. The Supreme Court has agreed to take up this case. Actually starting March 4 will be the official oral arguments where both sides of the argument will present their case to the Supreme Court, and then the anticipation is the court will provide their ruling at the end of their current session, which would normally mean the end of June would be when we'd have an official decision from the Supreme Court on this issue.

10:59

JIM: We had a prior guest that was on long before this stuff hit the national news media, and I think a lot of people are kind of confused and not sure about it, but from what I've seen, the law is very clear, and from what our guest Grace Marie Turner had talked about, she said that there was a Democratic senator that insisted in order to get his vote, they wanted to mandate that only the states that had exchanges would be eligible for these subsidies, and the reason for it was to incentivize the states and put pressure on them to go ahead and create these exchanges so that burden wasn't on the federal government, because there's a huge cost involved in having an exchange, so the feds were hoping to make the states do it by putting that carrot out there, but a lot of states decided they didn't want that mess, they didn't create the mess, we'll let the federal government figure it out, so it's going to be interesting what happens with this court case.

11:49

TERRY: Indeed, Jim. I had a unique experience. I was on an advisory board for the State of Wisconsin because the State of Wisconsin, under the prior governor Jim Doyle, began the process, investigating, establishing our own state based exchange, and then I was still on that board even as our leadership changed and the governor went from Doyle to of course our present governor, Scott Walker, and Scott Walker evaluated it and basically came to the conclusion, why would we want to bring state tax payers into funding something that no matter what you do, even if it is a state based exchange, you still have to interface with the federal government, because how do you interface to find out tax information, et cetera, so Wisconsin, along with 33 other states, made the decision, this would be too costly to our state tax payers, and really it's a federal product, the Affordable Care Act, so why would states want to take on the responsibility of managing a federal law.

I do believe you're right, that many of the politicians in Washington were looking at pushing this so each state would be responsible, but clearly the majority decided it was not in their best interests of their own tax payers to take on the burden of creating, and all the duplication of having state based exchanges to do the same function, enrolling people into individual plans that qualify for federal tax subsidy.

13:09

JIM: I do think we're going to go a little bit long today. We're going to switch gears and go to what's happening in the business area, and a lot of you that are listening, we spent the beginning of the show talking about individuals, and you may think why is this going to affect me. From what I'm hearing, there are a lot of businesses that are looking as what some of these mandates are and what the coverages are, especially the small businesses that aren't required to carry the insurance, that are thinking of going without, which means people that might think they're all taken care of may find themselves in the individual market, but also one thing to understand is there's a lot of cost being shifted to the employer, and some of those costs are if the coverage is too good and some of the cost is if the coverage is not good enough, so it's important as a consumer of health care, as a person on a benefit plan to understand what some of these changes might be, and then in addition to that, being prepared because with these extra costs that the employer is going to have, it might impact future raises and future advancements for people, because the employer is going to have to pay all these additional costs, so it's important to understand.

So Terry, talk about some of the new things that are coming in to force this year, and I know there's a couple more things happening over the next several years as this gets phased in. Let's start with the employer shared responsibility that begins for large employers. What's that all about?

14:24

TERRY: In 2014 was the first year that the law imposed what we called the individual mandate which meant that 2014, every legal resident, American citizen by law has to carry insurance and their failure to do so would be a tax fine when they go to file their tax return for tax year 2014. Now as we move into 2015, which by the way is the fifth year of this law, so the law is of course not new, but now in 2015 companies that have a hundred or more full time equivalent employees, and equivalency is 30 hours a week, so if I have two employees working 15 hours a week for me, they count as one equivalent full time employee, so if I do have a hundred or more full time equivalent employees, I need to be offering insurance to my employees. If I fail to offer insurance to my employees, then I as an employer could be subjected to a fine, and that fine is $2000 for the year for each actual employee that I have that is full time, meaning they work 30 or more hours a week regularly for me, and the thing I point out to a lot of our business clients, a fine is not a business deduction because many employers do presently offer insurance to their employees.

Why? Because how do you recruit quality people if you don't offer fringe benefits, health care being the number one fringe benefit that many employers offer to recruit people and keep people, but as they pay their portion of the insurance for those employees, that's a business deduction like other business deductions as they operate, but this is an outright fine if they don't offer insurance, but the other complexity is even if they do offer health insurance, then the health insurance that they offer has to meet two tests set by the federal government. The first test is the minimum essential coverage, so basically the value of the coverage they offer to the employees has to meet a certain valuation that the government came up with, and that minimum valuation is 60%, which is a fancy way of saying general people that have that coverage would have 60% of their medical and prescription services covered by that policy, so that's the first test. The second test is what the government calls the affordability test, and the affordability test is defined as the portion the employer charges the employee to pay for the health plan, for employee only coverage, even though they might be taking family it's based on single coverage for just that employee. If the cost for that employee, their share is greater than 9.5% of their W2 annualized income, it could be considered unaffordable, and the reason why employers want to make sure their plan meets that minimum valuation and that affordability test, because even if they're offering insurance and their plan doesn't meet those two tests, they still can be exposed to fines under the Affordable Care Act.

17:05

JIM: That's why people like you still have job security, because as an employer to muddle through that, $2000 fine if you don't offer insurance and $3000 if you do, boy, you certainly don't want to trip over or get in that double jeopardy by offering insurance and still getting stung by it.

17:20

TERRY: Right, right, so there are you might say land mines within the law that employers need to be aware of, and this shared responsibility that we just discussed, for 2015 it impacts companies that have a hundred or more what we call full time equivalents. Starting in the year of 2016 it drops down to companies that have 50 or more full time equivalent employees, and presently there is no fine or responsibilities for small employers in that space of two to 49 employees, and as you indicated at this point they are probably the employers more inclined to consider, do I keep offering insurance, because the consequence of not offering insurance doesn't result in any fines or penalties; however, most of our small employers recognize the value of offering that health insurance benefit, which they've done all along for that fundamental reason of trying and recruit and retain a good labor force.

18:14

JIM: I know there's a lot of new reporting and a lot of times I've talked to individuals that are like, well, how is anybody going to know? Well, everything's getting reported to the government. They're gathering more information to make sure that everybody is paying what the law provides for them to collect, and I don't want to go over all the forms but there are some fees that are coming up both this year and some other fees that are being phased in, and there's a Cadillac tax that's coming. Talk a little bit about those things.

10:41

TERRY: With regards to forms, you bring up a good point because I do a lot of meetings for our employer clients for their employees, and a lot of them have that attitude, well, no one's going to know that I don't have insurance, and Jim, you're absolutely right, yes, the government will know.

Now, for tax year 2014, generally they may not know and that's why many people when they fill out their tax return on line 61 of the 1040 could say yes, I had health insurance, but beginning in 2015 every employer that offers insurance, anybody that bought insurance as an individual, they're going to start receiving a tax form 1095 which is the verification that they had insurance, all of that information has been reported to the government, so the government is going to have a large database, and they will know if you had insurance or not.

The other of course is the employer responsibilities. They will be involved with doing some of this reporting back to the government, so there's no complexity with being an employer trying to just provide insurance benefits to your employees, but regarding the fees, just to share an interesting story with you, Jim, I met with a client yesterday and they were getting a 5% increase in the cost of their health insurance plan, which resulted in over $72,000 on an annual basis, but that's $72,000 is not going to the insurance company. All of that money is going to the federal government in the form of added fees that are part of the Affordable Care Act. One of those added fees is something that's called a temporary re-insurance fee that amounts to $44 per covered belly button on an employer group health plan for the year, and when I say belly button, that's an employee, a dependent child that's on the plan, so these are fees that the government are collecting from employers that are offering insurance, going into what they call a re-insurance program, which doesn't benefit the employer group. It's designed to help stabilize the individual insurance companies that are selling insurance plans to consumers in those exchanges we spoke of, but yet it's a financial burden for all employers that decide to offer insurance.

Another large fee is the insurance industry as a whole is being assessed a tax which amounts to about 3% of premium paid, is then going to the government to help fund the subsidies to individual consumers that qualify for tax subsidies, and then there is an interesting fee that's called the Patient Center Outcome Research Institute which ends up not sounding like a large amount of money, it's $2.08 per covered belly button for the year, but the question is, where exactly is this money going and how is it being spent?

Well, it's supposed to be going to this bureaucracy that is supposed to be evaluating how do we make our health care system more efficient, so they're collecting millions of dollars of fees, but I don't know what their studies have resulted in so far for us as tax payers.

21:23

JIM: I really appreciate you joining us, Terry. I think, let the buyer beware, and there's that old oxymoron, I'm from the government, I'm here to help you, and they call this the Affordable Care Act. I don't know about you that are listening, but I know I've seen my premiums rise dramatically. I'm told to brace myself for next year, that we're going to see some pretty significant increases in premium, and it seems like the health care is anything but affordable. I always look, and this is my two cents worth, I haven't seen a single program in my lifetime that the government has run efficiently and has gotten a bunch of accolades for saving money in that area. It just seems when the government bureaucracy gets involved, it's like a big sink hole of dollars just going to nowhere land, but as a consumer if this is a tax and you're assessed a tax because of these subsidies, I think that's the biggest thing to beware of, especially for the individuals that have bought health care because if you aren't prepared to pay that back, I just know interest and penalties, and I don't know yet, I'm still learning myself, but for those that owe money along the way, there's a protective amount that you've got to pay in for taxes to not have to pay underpayment penalties, and for those that have this earnings where they're not withholding all the taxes on their W2s, people may be in for some huge surprises that even go beyond the surprise when you start coupling all these things on there, if they're going to assess this just like an ordinary tax.

22:49

TERRY: Correct, and I think where people in the past may have been able to do their own tax returns, now you find that they do need the assistance of an advisor because some of the added requirements.

23:00

JIM: Terry, thanks again for joining us, really appreciate. You're always very informative and up to date, and look forward to having you on again soon as we continue to unwrap this special gift from the government called the Affordable Care Act.

23:12

TERRY: I appreciate it, Jim.

23:13

JIM: All right, take care.

23:14

TERRY: Have a great day.

23:15

JIM: Thanks for joining us this week, and tune in again next week as we explore another phase of the Real Wealth process, and remember, if anything you heard in today's show you'd like to get more information about, contact your Real Wealth advisor. Also if you feel that any of this information would be helpful to a friend or family member, just click the Forward to a Friend button.