Employer-sponsored Health Insurance — a Thing of the Past?

Adam Beck

The American College

Follow this and additional works at: http://digitalcommons.theamericancollege.edu/faculty

Part of the Finance and Financial Management Commons

Recommended Citation
http://digitalcommons.theamericancollege.edu/faculty/340

This Article is brought to you for free and open access by TAC Digital Commons. It has been accepted for inclusion in Faculty Publications by an authorized administrator of TAC Digital Commons. For more information, please contact John.Whitham@theamericancollege.edu.
Employer-sponsored Health Insurance — a Thing of the Past?

Will individuals rely less on employer-sponsored benefits and more on professional advice for financial planning?

*By Adam S. Beck, Esq.*

On June 30th, the U.S. Supreme Court issued a 5-4 opinion in the case of *Burwell v. Hobby Lobby*, which was heralded by the right as a victory for religious liberty and corporate rights and by the left as a slippery slope that enhances corporate personhood to such a degree that claims of religiosity could trump the rights of individuals. The Court’s opinion is not likely to have much impact on either the implementation of the Affordable Care Act or the availability of contraception. However, while its meaning for the future of corporate personhood could be substantial, the Hobby Lobby
decision could have a major unintended consequence: hastening the decline of employer-sponsored health insurance.

Some background is important. Nothing in the text of the Patient Protection and Affordable Care Act of 2010 requires the provision of contraception at no cost to the consumer, but it does require individual and group health plans to pay for a variety of preventive services without any cost sharing. Based on rules issued in 2012 by the Department of Health and Human Services (HHS), the federal government would require all health plans to cover FDA-approved contraceptive devices and services for women of reproductive age at no cost to the insured individual. Hobby Lobby is a chain of craft supply stores that is privately owned by the Green family of Oklahoma City. The Greens are a devout Pentecostal family and claim that their entire business is built on principles of the Christian Bible. The Greens have asserted that their beliefs prevent them from knowingly paying for certain contraceptive devices, which they believe to be abortifacients. When HHS required their self-funded health insurance plan to cover these contraceptive drugs, Hobby Lobby sued the federal government.

The Supreme Court ultimately sided with the Greens and Hobby Lobby, although without addressing the company’s claims that their First Amendment rights to free exercise of religion were being infringed. Justice Samuel Alito, writing for the majority of the Court, relied upon the Religious Freedom Restoration Act (RFRA) of 1993, which requires strict scrutiny to be applied to any law that appears to substantially burden a person’s free exercise of religion. The Court in the Hobby Lobby case found that the availability of contraceptives to female employees was indeed a compelling governmental interest, but that the rules issued by HHS were not the “least restrictive” means of achieving the goal, as required of laws subject to strict scrutiny. Importantly, the Court was able to reach that analysis because it concluded that Hobby Lobby, as a closely held business corporation, was a person within the meaning of the RFRA and that such a corporation could actually manifest religious beliefs.

For many supporters of the contraceptive mandate, women’s rights and the rights of individuals over corporations, the practical consequences of the narrow holding signaled a disturbing possibility: employers being able to dictate the availability of medical care based not on science or medical need, but on their personal beliefs. Could someone’s boss decide that no contraceptives at all will be covered? Or medication to treat HIV? Or vaccines for children? For many, these very legitimate concerns about possible consequences of the Hobby Lobby case have them rethinking the role of employer-sponsored health insurance, particularly now that the Health Insurance Marketplace makes individual health insurance more widely available and affordable.

As it is, employer-sponsored health insurance is an accident of history, dating back to wage controls enacted during World War II and an IRS rule issued in 1954 that made the benefits tax advantaged. There was never a rational, industry-led, health-based or even truly market-driven decision to tie health insurance to employment. The decline of employer-sponsored insurance was coming even without Hobby Lobby. The health exchanges created by the Affordable Care Act — with a variety of plans open to anyone regardless of health status, subsidized for most by the federal government and not connected to one’s employer — was going to see to that. Many more with employer-sponsored insurance will now begin to seriously question whether they want their employer involved at all in the payment or availability of their health care.

For the financial advisor, this could actually bode very well. When individuals rely on employer-sponsored benefits for financial security, including retirement planning, investments and insurance, they become less likely to have a strong need (or at least recognize the need) for personalized financial planning. With the decline of employer-based pensions over the past few decades, more and more Americans have had to exert greater control and decision-making over their retirement, which has been a boon to the retirement planning industry. This will be true with health insurance. Beyond giving one the ability to see a doctor when the need arises, health insurance is primarily a financial product and one that with the right planning can provide tremendous financial security and peace of mind. As more Americans are faced with making decisions about health insurance on their own — rather than leaving that to their employer — a real opportunity arises for the advisor.

Advisors should prepare for that, and the Hobby Lobby case occurring just months after the opening of the health insurance exchanges is like a starter’s pistol signaling a massive shift in employee benefits. Years from now, when most Americans purchase their health insurance on their own rather than relying on their employer, it may be in part because a craft store objected to paying for Plan B.