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Employer Groups to Congress: Don't Mess with Employer-Provided Insurance

More than 30 of the most influential advocacy groups representing employers across a wide variety of industries and sizes recently wrote a letter to Congress urging it not to break what works: employer-provided insurance. The letter warns Congress that forcing employees to treat the value of their employer-provided health insurance as a taxable fringe benefit – something being actively discussed in Congress – increases taxes on employees and employers.

> ***Lockton comment:*** We wrote last week about what is commonly called the "income tax exclusion," the rule that treats the value of employer-provided health insurance as excludable from employees' taxable income. The exclusion has been a part of the federal tax code for more than half a century. Employers also benefit from the exclusion, because it reduces their share of payroll taxes.

Most Republican proposals for replacing the Affordable Care Act (ACA) include refundable tax credits to individuals to help offset the cost of obtaining health insurance. "Refundable" credits are those that would effectively be refunded to individuals as cash if not used. Providing refundable tax credits to everyone is expensive, and the proposals suggest taxing employees on at least a portion of the value of their employer-sponsored insurance as a way for the federal government to pay for those refundable credits.

In their letter, the advocacy groups remind Congress that taxing employer-sponsored insurance to pay for individual tax credits would hurt middle class families and disrupt the employer-sponsored insurance market. The letter emphasizes that disrupting the employer-sponsored insurance market could have serious negative consequences for the nearly 178 million people in the US who have health insurance through an employer plan.

> ***Lockton comment:*** A recent Employee Benefits Research Institute survey shows that 88 percent of workers are "satisfied" to "extremely satisfied" with their employer-sponsored insurance. President Obama received sharp criticism for the ACA changes

that cut against his statement 'if you like your plan you can keep it.' Republicans may be leery to make changes to a popular employer-sponsored insurance system and risk a similar, and possibly more significant, backlash.

Could ACA Replacement Come in Pieces?

Congressional Republicans have struggled to agree on the best way to repeal and replace the ACA. Most of the talk in Washington has centered on a two-phased approach: having a skimpy repeal bill signed early in 2017 (effectively eliminating the employer mandate by zeroing out its penalties, and repealing other ACA taxes and fees) while delaying a replacement plan until sometime later. A growing minority of voices, including influential Senator Lamar Alexander (R-TN), have advocated waiting to repeal the ACA until repeal and replace can happens simultaneously.

This week we heard a third possibility. This emerging approach would include a quick repeal, but would accomplish replacement over time with numerous different pieces of legislation.

> ***Lockton comment:*** Championing too many separate replacement bills seems like a risky move for Republicans. One potential hazard is the fact that the legislative process takes time. There are a lot of other pressing issues Republicans would like to tackle (e.g., immigration, Supreme Court nominations, funding infrastructure repair, tax reform, etc.). Not only will a piecemeal approach interfere with the timing of those efforts, but Republicans might also have to give up more than they would otherwise have to, either on their health reform agenda or otherwise.

This option emerged out of Republican concerns that they won't be able to find enough support from Democrats to avoid a filibuster in the Senate if they try to pass a comprehensive, all-or-nothing replacement package. Without the support of at least eight Democrats in the Senate, Republicans must use the controversial reconciliation process to pass legislation, but that process is confined to legislation affecting the budget, and there are many key aspects of the ACA that do not have adequate budgetary impact. Not only does reconciliation limit the reforms Republicans can put in place. It also exposes them to additional claims of partisanship.

> ***Lockton comment:*** Even in the Republicans' best case scenario it is difficult to imagine a situation where the Republicans avoid reconciliation altogether.

Drug Costs May Be a Target for Congress and the Trump Administration

"I'm going to bring down drug prices," President-elect Trump told *Time Magazine* in his interview for Person of the Year. A recent report by Congress suggests he'll have plenty of help from both sides of the aisle.

> ***Lockton comment:*** Prescription drug prices are one of the biggest and fastest growing cost drivers for group health plan sponsors – especially for those that self-insure.

This week, a bipartisan report issued by the Senate Special Committee on Aging strongly criticized four pharmaceutical companies for what the Committee labeled price gouging. The report detailed how the four companies were able to acquire the rights to certain drugs and increase the price of those drugs by up to 5,000%.

This report comes on the heels of the 21st Century Cures Act, signed by President Obama last week. Among other things, the Cures Act included a provision to speed up the Federal Drug Administration (FDA) process for approving generic drugs.

Increased prices, large profits and some bad actors have made the pharmaceutical industry a prime target for reform efforts. Look for Republicans to take advantage of this seemingly low hanging fruit by including more regulation of the pharmaceutical industry in legislation to replace the ACA, in an effort to gain support from both the public and Democrats.

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