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Legislate®

Key Legislative Developments Affecting Your Human Resources

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Presidential Debate Propels Healthcare into Spotlight

The Affordable Care Act, enacted in March 2010, touched virtually every aspect of the American healthcare system and fundamentally altered significant portions of it. With boundless opinions as to its strengths and weaknesses, both presidential nominees — Hillary Clinton and Donald Trump — presented their views during the most recent debate. In this issue, we consider their policy positions, as well as those of their respective parties, and how they may affect employers.

Employer-Sponsored System

Many Americans (approximately 55%) receive their health insurance coverage from an employer-provided group health plan — either directly as an employee (or former employee) or indirectly as a dependent (generally, a child or spouse) of an employee.

Bipartisan Support

Despite the apparent challenges of the purportedly flawed system, neither presidential candidate nor party has suggested any intention to move away from this employer-provided model. Notably, the House GOP's policy blueprint — A Better Way — made clear, without reservation, their support for the continuation of such a system. Specifically, the report states that their plan "protects the health insurance Americans receive through their job." Likewise, when advocating for the continuation and improvement of the ACA, Hillary Clinton noted that, while the "vast majority" of Americans receive coverage through their employers, the ACA (with its employer shared responsibility provisions, individual mandate and more) is designed to "fill the gap" by extending access to affordable coverage to Americans who otherwise would not have it.

Pressure from Tax Expenditures

The tax treatment of employer-sponsored health coverage is a hot topic and has been targeted for change. Currently, health coverage premiums provided through an employment arrangement (e.g., for the employee, spouse and children) generally are excluded from an employee's gross income for income tax, FICA and FUTA purposes. This impacts federal tax revenues to the tune of more than $200 billion in 2015, according to the Treasury Department, and will increase each year so that the total tax expenditure for the period of 2016 through 2025 will exceed $2.74 trillion. Similarly, according to the Congressional

Budget Office, the impact of the tax exclusion for employment-based coverage is projected to be $266 billion for 2016 and $3.6 trillion for the period of 2016 through 2025.

> **Comment.** Projections on the implications the employer exclusion has on revenue differ as they are based on slightly diverse data sets, such as the inclusion or exclusion of people over age 65 with employer-sponsored coverage. Notwithstanding, it is clear that the impact is notable, if not staggering.

Definition

Tax expenditures are "revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability."

Clinton Proposal. Mrs. Clinton's tax proposals would impact the value of employer- sponsored coverage. Specifically, she supports:

- Imposing a 28% limit on the tax benefit from specified deductions and exclusions (excluding charitable contributions). As it would apply to employer-sponsored health insurance paid for by employers (or by an employee on a pre-tax basis), it would serve as a cap on the employer exclusion for such coverage. (The 28% limit would also apply to employee deferrals to 401(k) and other tax-qualified defined contribution plans.) According to independent analysis, the limit would increase federal revenue by approximately $520 billion over a 10-year period between 2016 and 2026.
- Repealing the 40% deductible excise tax on "high-cost" plans (the so-called Cadillac tax). According to independent analysis, this would result in a reduction of federal revenue by approximately $79 billion over the same 10-year period.

Trump Proposal. Donald Trump has also unveiled proposals that would impact the tax exclusion for employer-sponsored coverage. He proposes to repeal the ACA in its entirety, including the Cadillac tax. Mr. Trump has also proposed to "allow individuals to fully deduct health insurance premium payments from their tax returns." To the extent Mr. Trump's proposal includes those individuals with employer-sponsored coverage, it would be a departure from currently pending Republican sponsored legislation. It would also be a departure from the House GOP's public policy paper (A Better Way), which includes a proposal to introduce a cap on the tax exclusion that employees receive for employer-sponsored coverage. (See our June 27 *Legislate* for more on the report.)

> **Comment.** Mr. Trump's proposal does not draw any distinction between those with and without employer coverage. As such, it's unclear whether his proposal is intended to affect only those individuals without employer-sponsored healthcare coverage or all taxpayers. Additionally, under current law, those who receive coverage from an employer are eligible for a tax exemption, not a tax deduction, with respect to premium payments. Thus, there is a lack of clarity as to whether his proposal would replace or somehow coordinate with current law.

Pending Legislation. Numerous pending bills, including those highlighted below, would affect the tax exclusion:

- The Empowering Patients First Act (H.R. 2300) generally would limit the tax exclusion to $8,000 per employee for self-only coverage and $20,000 for family coverage, subject to indexing. It would give employees a refundable tax credit for health insurance coverage purchased through the individual market (but not for employer-sponsored health insurance).

- The American Health Care Reform Act of 2015 (H.R. 2653) generally would eliminate the tax exclusion and replace it with a standard tax deduction ($7,500 for individuals; $20,000 for families) for coverage obtained in the individual or group markets.

  Comment. Limiting the tax exclusion would subject many employees to an increase in taxable income and, this, in turn, would increase employers' employment tax obligations.

Views on the ACA

Whether the Democrats or the Republicans have the majority in the House and Senate next year will, in large part, dictate the healthcare reform policies that reach the desk of the next president. However, whatever the result of the congressional elections, the ultimate outcome will depend in part on what the next president does and does not support.

Cadillac Tax. Both Mrs. Clinton and Mr. Trump support repeal of the Cadillac tax, as do many members of both parties in the House and Senate. However, it is unlikely that stand-alone legislation to repeal the tax will advance in 2017. A repeal may be possible should it be included as part of a comprehensive tax policy reform proposal that includes an offset for the projected loss of revenue from such a repeal. In such event, the Cadillac tax may go away before 2020, the year in which it is scheduled to go in effect.

> **Comment.** Earlier this year, Congress passed legislation that included numerous provisions that would affect the ACA, including one that would repeal the Cadillac tax. However, the bill was vetoed by President Obama and Congress was unsuccessful in its attempt to override the veto.

Market Reforms. The ACA provides for certain consumer protections. For example, plans cannot:

- Impose annual or lifetime limits for coverage of essential benefits
- Deny eligibility or coverage due to pre-existing conditions
- Prohibit coverage of children up to age 26

Mrs. Clinton's proposals do not seek to unwind these protections. Mr. Trump has stated that he would support public policies that "broaden healthcare access," but he has not yet indicated if he supports a framework to continue these ACA reforms. If he doesn't, it would be a departure from many House and Senate Republicans, who appear to favor the market reforms from their sponsorship of legislation that include these ACA requirements. Notably, the House GOP's blueprint includes recommendations to keep these specific protections in place.

For additional information on healthcare policy proposals from Mrs. Clinton and Mr. Trump, as well as the Democratic party and Republican party platforms, see our prior issues of *Legislate*: September 6, August 1, July 25, and March 7.

Volume 7 | Issue 41 | October 17, 2016

Looking Ahead

With November 8 fast approaching, all eyes and efforts are focused on the upcoming elections as the outcome will lay the foundation for the next chapter in the evolving landscape of employer-sponsored benefits.

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