



HEALTH REFORM ADVISORY PRACTICE

Weekly Legislative Update



Feb. 10, 2017

ACA Uncertainty Lingers and Another Proposal to Tax Employees' Health Insurance

A battalion (well, maybe an understrength platoon) of Lockton representatives was in Washington, DC this week and found that while confusion remains king of Capitol Hill, there are signs that the GOP is getting closer to repealing and replacing key aspects of the Affordable Care Act (ACA).

The week started off with turmoil when President Donald Trump made a comment during a pre-Super Bowl interview with Fox News that ACA-related legislation might "take some time into next year." Pushing ACA legislation out until 2018, an election year, would be a significant shift and could decrease the chance of any support from Democrats.

However, Republican members of Congress and staffers who met with Lockton representatives this week clarified that President Trump's comments were referencing the *effective date* of repeal and replace legislation, not the timing of its passage in Congress. We were told to expect action on the ACA by the Easter recess, currently scheduled to begin April 10.

Speculation abounds on the details of the future legislation, but it still appears there is little consensus. Rhetoric has moved from repeal-and-replace to repeal-and-delay to repeal-and-repair and, most recently, to rescue-and-rebuild. Our sources on Capitol Hill tell us that an outline of a House bill is with the Congressional Budget Office for assessment of cost implications.

Lockton comment: That Republican efforts to address the ACA have veered all over the repeal-and-replace road is not uncommon for major pieces of legislation. Like the harrowing bus ride the author took up a Venezuelan mountainside, passing major legislation includes many fits and starts – and seemingly imminent catastrophic crashes at every turn.

What We Really Need Are More Proposals

The Heritage Foundation, a leading conservative think tank, released this week its latest ACA repeal-and-replace proposal.

Lockton comment: The Heritage Foundation is especially influential with a group of House Republicans called the Freedom Caucus. The Caucus is relevant because it is large enough to derail legislation its members do not approve.

The Heritage Foundation's proposal takes a hard swing at the income tax exclusion for employer-provided health insurance (i.e., the treatment of employer-provided insurance as a tax free fringe benefit), calling it unfair. The proposal calls for taxing the value of coverage in excess of a threshold to be defined later and to allow employees to choose employer-sponsored coverage with the limited tax benefit or, alternatively, a tax deduction or tax credit if they opt out of the employer-sponsored plan and choose other coverage.

Lockton comment: In Lockton's view, there are several problems with a cap on the exclusion. Financially, a great many people will have to pay taxes on at least a portion of their health insurance value. This will hit hardest employee populations that are older, sicker or in higher risk professions. It will also hit hardest those employees in geographic areas where insurance is more costly or employees whose employer wants to offer generous health insurance coverage. A cap, depending on how it is structured, could also increase employer payroll taxes, punishing employers for offering health insurance.

If *employees* respond to their tax increase by reassessing whether to enroll in the employer's plan at all, group plans risk a migration of their youngest and healthiest employees from the plan, a result with adverse financial consequences for the plan. If *employers* respond by reducing health insurance benefits, employees will see higher out-of-pocket expenses, reduced benefits and narrower networks. A cap would also require re-tooling of payroll systems to capture income and payroll tax withholdings on the taxable portion of the premium cost.

While You Wait – Cabinet Confirmations Likely to Jumpstart Administrative Action

Early Friday morning, Congressman Tom Price (R-GA) was confirmed by the Senate to be the next Secretary of Health and Human Services (HHS). The vote was a 52-47 split along party lines.

HHS oversees much of the ACA, including the market reforms that apply to employer-provided plans. The president and Congressional Republicans have consistently said administrative actions to tackle problems with the ACA were being held back until Rep. Price's confirmation.

Some actions are already underway, including a proposed regulation designed to stabilize the individual market. That regulation is currently being reviewed by the Office of Management and Budget (OMB). As is customary, the specific details of the regulation have not yet been released, but OMB's review shows the administration is positioning itself to act quickly.

Lockton comment: OMB's job is to review the regulations to ensure consistency and coordination, particularly when regulations affect the jurisdiction of multiple federal agencies. In this case, the ACA largely impacts HHS, Department of the Treasury (including the IRS) and Department of Labor (DOL).

On Monday, Feb. 13, the Senate is expected to vote on the president's secretary-designate for the Treasury, Steve Mnuchin. The Treasury oversees the IRS, which has authority over ACA employer mandate penalties and reporting. We expect Mr. Mnuchin will be confirmed. Once

that happens, we expect to quickly receive action in response to the president's executive order, discussed [here](#), directing the agencies to take all actions to "the extent permitted by law" to mitigate the economic and regulatory burdens of the ACA.

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