



## HEALTH REFORM ADVISORY PRACTICE

### Weekly Legislative Update



March 3, 2017

## **GOP Readies its Repeal-and-Replace Bill, Likely to Include Taxing Employees on Health Insurance**

Drama worthy of the television series *House of Cards* unfolded on Capitol Hill this week, with Sen. Rand Paul (R-KY) scurrying about the House side of the Capitol building Thursday morning in search of a rumored secret room with locked door, presumably holding the Holy Grail of this Congress: the long-awaited Affordable Care Act (ACA) repeal-and-replace legislation under construction by House Republicans.

Unable to locate the secret trove, Paul conducted an impromptu press conference where he accused his fellow Republicans in the House of playing “hide the ball” with the legislation, a charge quickly echoed by Congressional Democrats.

The spectacle followed midweek reports that House Republicans were preparing to mark up a repeal-and-replace bill next week. Two key House committees, the Ways and Means Committee under its chairman Kevin Brady (R-TX) and the Energy and Commerce Committee under its chairman Rep. Greg Walden (R-OR), were said to be close to having legislative language ready for unveiling.

Rumors swirled about controversial items in the draft legislation. Those items include non-means-tested refundable tax credits to purchase health insurance, something Sen. Paul and other conservatives in the Senate and the House have vocally opposed.

By this morning, rumors were spinning in opposite directions. One report claimed Republicans were considering subsidies payable directly to taxpayers looking to purchase individual market coverage (rather than paying the funds to insurers on behalf of the person enrolling in the individual market).

### **Congress Poised to Tax Health Insurance**

Congress is seriously considering taxing employees (income and payroll tax) and employers (payroll tax) on a portion of their group health plan values. If you are opposed to such action, click here for [model text](#) you might consider sending to your representative and senators.

Another report suggested Republicans were backing away from offering subsidies, regardless of income, and were considering limiting subsidy availability along lines similar to the ACA's means-testing structure.

### **House Republicans Appear Intent on Taxing Employees on Their Health Insurance (and Employers Take a Payroll Tax Hit, Too)**

The draft legislation reportedly also includes rules imposing income and payroll taxes on employees whose group health insurance premiums exceed certain levels. The new tax is similar in appearance to the ACA's much reviled "Cadillac tax," which would directly or indirectly impose large penalty taxes on employers whose health plans' premiums exceed certain thresholds. The new tax, however, falls upon employees.

***Lockton comment:*** Employers may be required to pay payroll taxes on the premium values exceeding the GOP-imposed limits.

A draft bill dated Feb. 10 was leaked several days ago, and it reflects a tax trigger threshold set at the 90th percentile of average self-insured medical plan premium rates. In other words, once a health plan's premium cost exceeds that 90th percentile, premium value in excess of that threshold would be treated as taxable income to the employee, and also subjected to payroll taxes payable by both the employee and the employer.

Additional reports today hint at a later draft bill with tax triggers set at even lower thresholds.

***Lockton comment:*** One has to wonder what net political gain Republican leaders think can come from repealing ACA taxes on a variety of industries, from insurers to medical device manufacturers to pharmaceutical companies, and levying a new tax not only on workers and their families, but also on the employers that supply healthcare to those employees and dependents.

### **The Unveiling Should Occur ... Any Day Now**

We and the rest of America are going to see the draft Republican proposal shortly. Once unveiled, it appears House leadership will endeavor to push the bill very hard and very fast, not only to shorten the window for public controversy before the bill goes to the Senate, but also to shorten the time the Senate will have to deal with the bill. (Under Congressional rules governing the process by which the repeal-and-replace bill will move through the Congress, the House can set the schedule by which the Senate must act.)

Some talk this week suggested the cost of the complete bill would not even be scored by the Congressional Budget Office, due to lack of time, before coming to the floor of the House for a vote. In Washington-speak, that very likely means GOP leadership knows exactly what the bill will cost, or at least what its main components will cost, and is concerned about potential outcry over the number.

***Lockton comment:*** Then-House Majority Leader Nancy Pelosi (D-CA) was roundly criticized in 2010 for telling her members, regarding the ACA, “We have to pass the bill so that you can find out what is in it.” This year’s GOP version might be, “We need to pass the bill so that you can find out how much it costs.”

So we shall see. The time for unveiling of the long-awaited repeal-and-replace bill draws nigh.

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