

**Breaking News:** Corker announced Friday afternoon that he will vote in favor of the bill. The final details of the proposal are expected around 5:30 EST.



## HEALTH REFORM ADVISORY PRACTICE

### Weekly Legislative Update



Dec. 15, 2017

## House to Consider Partial Employer Mandate and Cadillac Tax Relief; Progress Continues on the Tax Bill

Text of the final tax-overhaul bill is expected later today, but several bills introduced in the House earlier this week merit the attention of benefit plan sponsors. The proposals provide temporary relief for several Affordable Care Act (ACA) tax rules:

- **Employer mandate penalties** are eliminated for 2015 through 2018. As described in our prior [Update](#) the IRS has started enforcement of the employer mandate for 2015. The relief proposed this week would stop the IRS's current enforcement effort, and the mandate would not go into effect until 2019. Should the bill pass, employers would still be required to file reports with the IRS to help the IRS determine which individuals are eligible for premium subsidies. Reporting is still necessary because individuals are ineligible for subsidies if they are offered affordable coverage through a sufficiently robust employer plan.

**Lockton comment:** Partial elimination of the employer mandate may be more aspirational than practical. The legislation will need support of Democrats in the Senate, and early indications are that Democrats would seek significant trade-offs for their votes. For now, employers are encouraged to continue operating under the assumption that the employer mandate will remain in place.

If your company receives an IRS Notice 226J assessing employer mandate penalties, your Lockton account team can help make sense of the assessment and process for responding. It is important that you respond to the IRS within the 30-day response period. Lockton Compliance Services held a webinar on Dec. 6 discussing the form and process for responding and can work with you to help prepare a response.

- **Cadillac tax** delayed an extra year to 2021. The short delay gives employers an extra year before they need to make plan changes to avoid being hit with the 40 percent excise tax if the total plan costs exceed certain thresholds.
- **Over-the-counter (OTC) medications** may be purchased from pre-tax accounts in 2018 and 2019. Under the current rule imposed by the ACA, funds in pre-tax accounts like health savings accounts (HSAs) and health flexible spending accounts (health FSAs) cannot be used to pay for OTC medications other than insulin without a prescription.
- **Health insurer tax (HIT)** is delayed through 2019 provided insurers offer premium rebates to those who have paid for the tax through higher premiums on their 2018 plans. This special rule for 2018 applies because some carriers already factored the HIT into their 2018 premium structure. The delay could save sponsors of insured plans about 2 to 4 percent per year.
- **Medical device tax** is delayed until 2023. This ACA provision applies a 2.3 percent excise tax on the sale of medical devices.

Several hurdles must be cleared before final passage of any of the proposed changes. Republican lawmakers would like to see these provisions included in a larger year-end spending package; however, the need to finalize other agenda items in the last week of the legislative calendar may mean the larger spending bill gets pushed back into early 2018.

### **Tax-Overhaul Details Expected Later Today**

Late Wednesday it was announced that members of the House and Senate conference committee for the tax bill were able to come to an agreement in principle about a compromise package. Text of the final package has not been made public, but reports are the bill will be available sometime later today.

***Lockton comment:*** Early indications are that the final bill does eliminate the ACA's individual mandate, but details of other provisions affecting plan sponsors remain unclear. We'll follow up with a report on the final package next week.

GOP leadership is hopeful the bill will pass both chambers by Tuesday. Most Washington insiders we've spoken with expect the bill to succeed; however, the vote is projected to be close, particularly in the Senate where losing three Republican votes can kill the bill. Several votes remain in play:

**Bob Corker, R-Tenn.:** The only Republican senator who voted against the original Senate bill is also expected to vote against the bill that comes out of conference committee.

**Marco Rubio, R-Fla.:** Announced Thursday he will vote against the new bill unless it increases the child tax care credit for lower-income taxpayers. Reports early Friday are that the conference committee reached an agreement to satisfy Rubio's concerns.

**Susan Collins, R-Maine:** Conditioned her support of the bill on promises that two other bills intended to stabilize the individual insurance market receive a vote. She is also concerned about the reduction in the tax rate for the highest-income taxpayers. Some of the more conservative members of the House were initially cool to Sen. Collins' demands, but recent public comments suggest they may have come around.

**John McCain, R-Ariz. and Thad Cochran, R-Miss.:** Both senators have recently been hospitalized due to health concerns, and there are questions about whether they will be healthy enough to participate in the vote.

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