

GOVERNMENT RELATIONS

Lockton Companies



Dec. 16, 2019

Cadillac tax repeal headlines health policy provisions in year-end deal

Congress is set to repeal the Affordable Care Act's much maligned Cadillac tax, health insurer tax (HIT) and medical device tax as part of a bipartisan, year-end spending deal. The legislation has been agreed to in principle; it is widely expected to pass both the U.S. House of Representatives and Senate and be signed into law by the end of the week.

Lockton comment: Make no mistake, the repeal of the Cadillac tax and HIT is a huge victory for group health plan sponsors, a result sought by Lockton and key industry coalitions for nearly a decade.

Of course, the package has a few thorns, most notably an extension of the administratively burdensome Patient Centered Outcomes Research Institute (PCORI) fee that had already expired for most plan sponsors.

Repeal of the Cadillac tax

The Cadillac tax was first proposed to go into effect in 2018 in the text of the ACA but was eventually delayed to 2020 then again to 2022 in post-ACA legislation. Had the tax gone into effect, it would have required plan sponsors to pay a 40% excise tax on the value of employer-sponsored health coverage exceeding certain benefits thresholds.

The original aim of the tax was to raise revenue to offset spending under the ACA and to force employers and unions to eliminate excessive and costly benefits from their plans. It quickly became apparent, however, that the tax was ill-conceived and would apply to plans with even modest benefits designs, and that the tax was more punitive than beneficial.

Earlier this year the House voted 419-6 to repeal the tax, but it was not clear whether the Senate would act. The biggest obstacle was the estimated cost of repeal, nearly \$200 billion in lost tax revenue over 10 years. Congressional negotiators, however, seem to have now reached agreement.

Lockton comment: Some legislators called for additional or new taxes to offset the cost of repeal. Among the discussed offsets was a dangerous proposal to make employees pay taxes on the value of their employer's contribution for their health insurance premiums, a fringe benefit that has long been treated as nontaxable. Ultimately, the repeal effort did not include an offset, a particularly significant win for employees enjoying employer-provided group insurance.

Repeal of the HIT and medical device taxes

The year-end package also eliminates both the HIT (beginning in 2021) and medical device tax (beginning in 2020).

The HIT is a tax on medical insurance carriers. Federal authorities annually determine, under a formula described in the ACA, the total tax due for the year, then allocate that total among the nation's medical insurers based on each insurer's share of the medical insurance market. Of course, that additional tax expense has been passed along to sponsors of insured plans, resulting in a premium increase of about 3%. The HIT, and related premium increase will remain in effect for 2020, but be completely eliminated beginning in 2021.

Plan sponsors will also avoid the indirect effect of the medical device tax, which was expected to start in 2020. That tax amounted to a 2.3% levy on the cost of medical devices like pacemakers and replacement joints. The tax was estimated to generate nearly \$3 billion in tax revenue annually from medical device manufacturers, an expense that would have been passed along to medical device payers like employer-sponsored health plans.

PCORI extension

It's not all good news for plan sponsors, as the legislation also includes a provision to extend the PCORI fee. Plan sponsors have helped fund PCORI through an annual assessment of approximately \$2 per covered life. Insurers collected the fee on behalf of insured plan sponsors, but self-insured plan sponsors have had to separately file and pay the fee each July. The assessment was set to expire with the last payment being made in July 2020 for plan years ending before Oct. 1, 2019. The extension means the PCORI fee will remain in effect for plan years ending before Oct. 1, 2029.

Lockton comment: Self-insured employers with calendar year plans thought they'd seen the last of the PCORI fee with their payment last July, for the plan year ending Dec. 31, 2018. Like a bad and annoying rash, the fee will now linger for another decade.

Timing

Details of the year-end package were released on Monday. The House is expected to pass the legislation on Tuesday, with the Senate finalizing the package before the end of the week. President Donald Trump has indicated he will sign the legislation by Dec. 20 to avoid a government shutdown. Lockton Compliance Services will issue an update once the legislation is finalized.

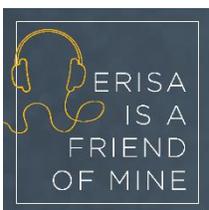
Looking ahead to 2020

While the package is expansive, there were several important issues for health plan sponsors that remain unresolved. The package makes May 22, 2020, the next best opportunity for additional measures.

Most significantly, a bipartisan group of legislators in both the House and Senate have pledged to continue working on a package that includes a prohibition on surprise medical billing, increases transparency in healthcare, provides plan sponsors with access to more data, and makes drug pricing reforms. Lockton Government Relations will provide additional updates as this package continues to take shape.

Scott Behrens, J.D.
Government Relations

Compliance resources at your fingertips.



[ERISA is a friend of mine](#) is a new podcast that keeps you entertained AND up-to-date on employee benefits compliance.

The [Lockton Benefits Blog](#) is your source for breaking benefits news and essential information.



Not legal advice: Nothing in this Alert should be construed as legal advice. Lockton may not be considered your legal counsel, and communications with Lockton's Government Relations group are not privileged under the attorney-client privilege.

© 2019 Lockton Companies

Lockton Companies | 444 West 47th Street | Suite 900 | Kansas City | MO | 64112