



## GOVERNMENT RELATIONS

Lockton Companies



---

July 18, 2018

---

# Health week in the House results in bill to suspend the employer mandate, delay of the Cadillac tax and expansion of HSAs

Last week the tax-writing committee in the House spent two days reviewing, and ultimately approving, 11 healthcare bills highlighted by a suspension of the Affordable Care Act's (ACA) employer mandate, a delay of the Cadillac tax and expansion of health savings accounts (HSAs). The bills received broad support among Republicans, and a few of the measures garnered limited bipartisan support. The next step is for the full House to vote on the legislation before the proposals are sent to the Senate, where passage will require bipartisan support before the bills can head to the president.

## Employer mandate and delay of Cadillac tax pass on party-line votes.

The committee originally announced it would review HSA legislation, but provided employers a welcome surprise when it approved changes to the ACA's employer mandate and Cadillac tax:

### Employer mandate suspension

A measure approved on party lines proposes to suspend the ACA's employer mandate for 2015 through 2018. The mandate penalizes employers with 50 or more full-time and full-time equivalent employees that don't meet certain requirements for health coverage offerings. Suspension of the mandate would not alleviate employers of the requirement to issue annual reports to employees and the IRS (i.e., IRS Forms 1094-C and 1095-C), which the IRS uses to determine whether individuals who buy individual coverage are eligible for government-funded subsidies.

*Lockton comment:* The IRS has begun its enforcement of the mandate for 2015, and enforcement of 2016 penalties is expected to begin as early as late 2018. In the unlikely event a suspension of the mandate comes to fruition, we would expect the IRS to establish a refund procedure for employers that paid penalties for years the mandate was ultimately suspended.

## Cadillac tax delay

A Republican-only majority also passed a one-year delay of the 40 percent excise tax applied to employer coverage that exceeds certain cost thresholds. The added delay proposes to make the tax effective in 2023 instead of 2022.

*Lockton comment:* Previous delays of the Cadillac tax have received bipartisan support. In fact, bills to eliminate the tax have 167 and 13 Democrat cosponsors in the House and Senate, respectively. The reason this delay passed on party lines is that it was paired with the employer mandate suspension in hopes of swaying Democrats to support that more controversial proposal. It didn't work this time, but we are encouraged to see modifications to the Cadillac tax remain on the agenda.

Suspension of the employer mandate is controversial and unlikely to receive serious consideration by Democrats in the Senate. The Cadillac tax delay has better odds, and reports suggest it may be paired with a must-pass government funding measure in September.

## HSA legislation moves forward with limited bipartisan support

The committee also passed several HSA enhancements in addition to those discussed in our [Alert](#) last week:

- A measure stating that direct primary care service arrangements like concierge coverage do not disqualify otherwise eligible individuals from making deductible HSA contributions.
- A proposal to allow both spouses to make catch-up contributions to the same HSA.
- A provision permitting individuals to use funds from a newly established HSA to reimburse medical expenses incurred prior to the HSA's establishment.
- A bill allowing individuals enrolled in catastrophic or bronze plans on the individual market exchanges to make HSA contributions even if the plans don't otherwise meet the requirements to be HSA-qualified.

The full House is expected to consider the HSA bills next week before leaving for a month-long recess to campaign for the midterm elections.

*Lockton comment:* Several members of the Senate's tax-writing committee, which will be the first to review any measures passed by the House, have already voiced support for many HSA enhancements. However, the numerous contentious moments during the House committee debate remind us how divisive any healthcare policy remains. Bipartisan support will be necessary in an almost equally divided Senate, which raises questions of whether any of these changes will come to fruition without significant grassroots support.

*Scott Behrens, J.D.*  
*Director, Government Relations*

---

**Not Legal Advice:** Nothing in this Update 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.

© 2018 Lockton Companies

---

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