

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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May 23, 2017

The Honorable Orrin G. Hatch
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Chairman Hatch:

The U.S. Chamber of Commerce joins you in applauding your colleagues in the House for passing the American Health Care Act of 2017 (“AHCA”). There are a number of absolutely critical tax relief provisions in the AHCA that we urge the Senate to include in its reconciliation legislation. Additionally, we strongly encourage the Senate to similarly protect the employer-sponsored health care system on which over 177 million Americans rely for affordable, innovative and dependable health insurance.¹ There are several additional reforms that we would fervently recommend that the Senate also include in its legislation to provide patient-focused reforms that given Americans greater control over their health care decisions.

Dismantle Obamacare’s Harmful Taxes and Mandates

The Chamber has long advocated for full repeal of Obamacare’s harmful taxes and mandates. Most notably, the so-called “Cadillac tax,” the health insurance tax, the medical device tax and the employer mandate increase insurance premiums, put American manufacturers at a competitive disadvantage and limit flexibility in benefit offering, respectively. We support the tax relief in the House passed bill, but urge the Senate to repeal rather than delay the Cadillac tax.

Repeal the Cadillac Tax

We urge the Senate to repeal *outright* the so-called “Cadillac tax” added by Obamacare’s Section 9001 which is misleadingly titled an “Excise Tax on *High-cost Employer-sponsored Health Coverage*” (emphasis added). The supposed purpose of the Cadillac tax was to discourage employers from offering exceedingly generous health plans that would insulate consumers from the cost of services and drive up unnecessary utilization. However, because of the way this

¹ Census Bureau, Health Insurance Coverage in the United States: 2015, Table 1, September 13, 2016, <https://www.census.gov/content/dam/Census/library/publications/2016/demo/p60-257.pdf>

provision was drafted and since the thresholds are not properly indexed, the tax will eventually affect an increasing number of plans. Contrary to some assertions by economic theorists, employers will, in all likelihood, *not* increase wages as a result of this tax or to off-set benefit reductions. Instead, in order to avoid the tax, employers may either cut benefits or shift more of the costs onto the worker in the form of higher deductibles, or co-pays.

However, despite the tax's delay and the future effective date of 2020, it is already affecting the future coverage decisions employers are making as well as impacting the current offerings employers are providing for their employees. For both fully-insured and self-insured plans, much of the cost when the tax does become effective will be passed on directly to plan participants in the form of increased contributions and premiums. This ill-conceived tax will simply push costs higher and steadily unravel employer-sponsored coverage, the backbone of our nation's health care system through which over 177 million individuals obtain their health care coverage. Full repeal is critical and necessary to protect employer-sponsored health coverage.

Repeal the Health Insurance Tax

The health insurance tax continues to increase premiums for fully-insured plans—disproportionately hurting small businesses, individuals and families. According to past analysis, the average family will pay an additional \$5,000 over 10 years in extra premiums simply because of the health insurance tax.² Other past analysis quantified that 84 percent of the premium tax burden for the 4 year period from 2014-2018 would be borne by those earning less than \$100,000 per year and more than 50 percent of the tax burden would be borne by those earning less than \$50,000 per year.³

The health insurer tax contained in the Obamacare will increase costs of taxable health insurers by \$175-200 billion over the 2014 -2023 period, assuming current market shares. This includes \$130 billion attributable to the statutory fees plus \$45 billion to \$70 billion from the federal income tax treatment of the health insurer tax.⁴ Repealing the health insurance tax is an vital and necessary step to make health insurance more affordable for small businesses and individuals.

Repeal the Medical Device Tax

The medical device tax has been driving up the cost of medical technology and undermining America's global leadership position in product innovation, clinical research, and patient care. This tax weakens the industry's ability to create and maintain well-paying jobs in the United States and hinders the development of breakthrough treatments. According to a survey by the Advanced Medical Technology Association (AdvaMed), two-thirds of the companies surveyed reported that they have had to "slow or halt U.S. job creation as a result of the tax." This survey found that 53 percent of respondents have reduced research and development as a result of the tax. Additionally, 75 percent of respondents said they have deferred or cancelled capital investments and plans to open new facilities, reduced investment in start-up companies, found it more difficult to

² <https://www.americanactionforum.org/wp-content/uploads/sites/default/files/Case%20of%20the%20Premium%20Tax.pdf>

³ https://www.americanactionforum.org/wp-content/uploads/sites/default/files/Premium_Tax_Fairness.pdf

⁴ Quantria Strategies Report, https://www.uschamber.com/sites/default/files/documents/files/quantria_pdf_-_background_on_hif_6-3-13_del.pdf

raise capital, and reduced or deferred increases in employee compensation.⁵ Similarly, a survey by the Medical Device Manufacturers Association (MDMA) of 100 industry executives found that 72 percent “slowed or halted job creation” to pay for the tax, and 85 percent would hire more workers if the tax were repealed.⁶

If not repealed, this tax will continue to weaken the industry’s ability to create and maintain well-paying jobs in the United States and hinder the development of breakthrough treatments. Repealing the 2.3% medical device tax, which is imposed on medical device manufacturers whether or not they make a profit, will help restore a more level playing field for our nation’s medical device manufacturers and allow for greater innovation, job creation and growth domestically.

Zero-out the Employer Mandate Penalties

Zeroing out the penalties associated with the employer mandate under Obamacare is critical in order to allow greater flexibility in affordable benefit offerings and to reverse the perverse incentive for smaller businesses to remain below the 50 full-time equivalent threshold. Despite the intended goal, the employer mandate has not resulted in any significant increase in the number of individuals enrolled in employer-sponsored plans.⁷ Instead, the employer mandate has created a tremendous amount of paperwork and administrative burdens for employers with more than 50 full-time equivalent employees, whether they offer coverage or not. To allow for the penalties to be assessed, the law requires employers to submit to the Internal Revenue Service extensive information as to who is employed along (as well as information about their dependents), how many hours individuals have worked, what type of coverage (if any) is offered, and how much of health insurance premium the employer pays.

Zeroing out the employer mandate penalty is a critical first step in unraveling the red tape and penalties that are failing to achieve any intended increased coverage outcome. This will stop penalizing employers for providing, and instead facilitate the ability of employers to provide, a wider range of offerings including more affordable plans for part-time employees or in industries with high turnover.

Strengthen the Employer-Sponsored System

As the Senate examines opportunities to repeal Obamacare, rebuild viable health insurance markets, grow the economy and expand financial opportunity, we urge you to protect the efficient and effective offering of employer-sponsored insurance which has provided stable health care benefits to more than 177 million Americans. Efforts to repeal the mistakes and

⁵ https://www.advamed.org/sites/default/files/resource/835_2014_device_tax_survey_final_1.pdf

⁶ <https://medicaldevices.site-ym.com/news/213268/MDMA-Survey-Shows-Repealing-the-Medical-Device-Tax-Would-Create-Jobs-Increase-RD.htm>

⁷ Yet according to a Mercer survey: [T]here was virtually no change between 2014 and 2015 in the average percentage of all employees — full-time and part-time — enrolled in employer-sponsored health plans... While there was a 1.6% increase in the absolute number of employees enrolled, that was the result of a 2.2% increase in the size of the workforce, rather than the changes required by the Obamacare.

<https://www.mercer.com/newsroom/aca-broadened-eligibility-rules-have-little-impact-on-employee-enrollment-levels-in-2015.html>

burdens of Obamacare and the collapsing individual market must not jeopardize the employer-sponsored system where innovation in benefit and plan design are advancing, where chronic disease management and population health efforts are improving productivity and wellbeing, and where unnecessary health care costs are being reduced.

Protect the Employee Exclusion

We remain dedicated to protecting our country's pre-Obamacare tax treatment of employer-sponsored insurance and believe that imposing a cap on the individual tax exclusion constitutes a direct tax increase on middle class Americans and their families, as well as on the businesses Americans are counting on to create jobs. We support efforts aimed at controlling health care costs, but taxing health benefits will not lower health care costs. On the contrary, taxing benefits will raise costs for employees who are already struggling to afford health insurance.

Maintain ERISA Pre-emption Protection

Additionally, we encourage you to remain mindful that many employers offer health coverage to employees in a variety of states and that federal pre-emption protects the ability of employers to administer these plans in a uniform way. This ability to offer and administer coverage uniformly is absolutely critical to the current employer-sponsored system.

While we support and appreciate the value of returning authority to the states to regulate the individual insurance markets, we implore you to be mindful of unintended consequences. Employers depend on the ERISA framework to ensure that they can offer plans nationwide, providing fairness to all employees regardless of where they live, work, or receive medical care. Any attempts to erode ERISA would make it more difficult for businesses to offer health plans as businesses would face additional reporting and paperwork requirements.

Additional Reforms

Beyond repealing the taxes and mandates and protecting the pillars of the employer-sponsored system, we urge you to consider additional reforms to financing mechanisms such as tax-preferred arrangements that benefit individual consumers, as well as critical emergency action to stabilize the individual market and protect health care providers.

Expand Opportunities for Savings and Consumerism

The Chamber has long advocated for and supported the ability of individuals and employers to contribute to tax-preferred accounts in order to help defray costs of medical care and expenses now and in the future. There are many improvements that can be made to these accounts which would allow for greater consumerism and improve the ability to save for future health care expenses. Some of these improvements were included in the American Health Care Act as well as goals of prior bipartisan legislation.

We urge you to include important changes to these tax-preferred accounts such as:

- Repealing the limitation on the use of tax-preferred funds for the purchase of over-the-counter items;
- Allowing employers to expand the health savings account's (HSA's) preventive care safe harbor for value-based insurance design;
- Repealing the cap on contributions to HSA and flexible spending accounts (FSA) to allow individuals to contribute amounts into these accounts that correspond to the deductible and out-of-pocket limits;
- Excluding all "excepted benefits" from the definition of "other coverage" in order to permit employers to offer additional supplemental insurance products when they offer high-deductible health plans.

Consumerism depends on placing health care spending decisions back into the hands of individuals. To achieve this goal, employers and workers need health plan options that meet their needs and give them personal ownership of their health care dollars. Repealing some of these restrictions and allowing greater flexibility will help control health care costs and encourage individuals to more carefully evaluate their various options for service and treatment.

Take Action to Stabilize the Individual Market

The Obamacare exchanges are failing. Over one-third of the country's counties have only one carrier offering coverage and the 2018 options will likely be worse. Millions of people do not receive health insurance through an employer, Medicare or Medicaid. The individual market is their only option for getting coverage. Unless the cost sharing reduction payments are funded, carriers will continue to exit the market and there will be no coverage options for a tremendous number of people. These individuals will move to the ranks of the uninsured. This threatens not just the health and financial stability of these individuals and their families but also the economic stability of communities. The cost of the uninsured is borne by us all—providers, employers, and individual tax-payers. With more uninsured, providers will experience increased uncompensated care costs which will further strain their ability to meet the needs of their communities and raise costs for everyone, including employers who sponsor group health plans for their employees. Taxpayers will pay billions of extra dollars in costs due to higher premium subsidies—in fact, recent studies have found overall federal costs will be 23 percent higher.⁸

We urge you to take action to help the millions of consumers who are at immediate and direct risk as well as the communities, providers, employers and tax-payers who will pay the price. The status quo is dire and immediate action is absolutely critical.

Protect Hospitals and Providers

As you consider changes to coverage provisions, including Medicaid, we urge you to consider the potential impact of increases in uncompensated care on health care providers, including hospitals, local communities, and employers.

⁸ <http://kff.org/health-reform/issue-brief/the-effects-of-ending-the-affordable-care-acts-cost-sharing-reduction-payments/>

The costs of uncompensated care were a major problem prior to Obamacare and remained a concern after its enactment as enrollment in private coverage failed to reach initial projections.

Given the tremendous ripple effect that changes to Medicaid funding and structure have on individuals most importantly but communities, states, and employers more globally, we urge you to proceed carefully and if necessary adopt policies to offset any negative impacts.

Beyond Reconciliation

As the Senate considers opportunities to pass additional legislation and to work with the administration on health reform, please consider three other discrete issues of significant concern including the tremendous burden of the costly Obamacare reporting requirements for employers, the counterproductive and unpopular non-discrimination notice specifications and the danger of permitting drug importation.

Simplify Employer Reporting Requirements

Obamacare requires employers and insurers to gather a tremendous number of data points on a monthly basis and submit them to the IRS and individuals so the government can track coverage offerings and enrollment as required by the employer mandate and individual mandate. The challenge of collecting this information and submitting it successfully has been costly and burdensome to employers and insurers alike. When the employer mandate penalties are zeroed out much of the detailed specific information as to the number of hours worked by the employee and the information regarding the coverage offered may not be necessary to track or collect.

We understand and support the need to identify which individuals are offered health care coverage by their employer in order to maintain a firewall going forward and ensure that those individual with an offering of employer-sponsored insurance are not eligible to receive premium tax credits. We view this firewall as critical to protecting the ability to pool all employees together and necessary to the viability of employer-sponsored coverage. However, we would like to identify the reporting fields that may no longer be necessary to track and report.

Possible information fields that may no longer be required could include the hours an employee worked, the details as to the type of coverage offered and the portion of the premium paid by the employer. Additionally, we hope the senate will consider waiving the mandated notices employers must provide all employees about the ability to purchase coverage on the exchanges and the availability of premium tax credits. The Senate should also consider additional ways to streamline the reporting processes and mechanisms such as permitting prospective reporting. With the employer mandate provision revised, there will likely be other administrative components that can be waived, dispensed with or simplified.

Mitigate the Administrative Burden of Obamacare's §1557 Non-discrimination Compliance

Obamacare includes a provision that prohibits “covered entities” from discriminating on the basis of sex, race, color, national origin, age, and disability in any health program or activity. These discrimination prohibitions generally apply to “covered entities” that offer health care programs receiving federal funds and include covered entities’ operations as health insurance issuers in exchanges, health care providers, managed care providers, and even health insurance issuers acting in their capacity as third-party administrators for self-insured group health plans.

Employers have concerns regarding the frequency and circumstances under which notice of these protections must be provided, as well as the requirement to have “taglines” on these notices.⁹ These taglines are short-text phrases in 15 different languages to indicate that language assistance is available. The expense of having to provide translations into 15 different languages and to provide multiple notices of these protections is significant and outweighs the benefit to consumers. It is expected that by providing these notices with such frequency, consumers will disregard the information rather than realize the protections afforded.

We urge the Senate to work with the administration to consider ways to simplify and alleviate the lengthy multiple translations required as well as the number of times the translations must be provided to satisfy the notice requirements for limited English proficiency consumers.

Drug Importation

Beyond the challenges and collapse of Obamacare, we remain concerned about the repeated efforts by members of Congress to change federal law to allow individuals to import price-controlled foreign prescription drugs into the United States. The Chamber opposes the importation of prescription drugs from foreign countries for a variety of reasons and urges the Senate to fight against the misguided legislative efforts to permit it.

Allowing individuals to import prescription drugs from foreign countries where they are available at a lower cost is dangerous in two ways: 1.) allowing personal importation of drugs into the U.S. could create a gateway for unsafe, substandard or counterfeit drugs to enter our prescription drug supply; and 2.) allowing individuals to purchase prescription drugs from countries where the cost is lower will cut off the research funding that drug laboratories need to develop the next generation of treatments. The Food and Drug Administration (FDA) cannot guarantee the efficiency or safety of drugs that re-enter the United States. Such drugs may be adulterated or counterfeit, and jeopardize patient safety.

One of the reasons countries like Canada can impose price controls on their drugs is that much of that multi-billion-dollar investment is made back in the American market. A wave of

⁹ In addition to meeting with staff in the Obama Administration several times as well as with staff in the Trump Administration on this requirement, the U.S. Chamber of Commerce filed extensive written comments on the regulations proposed to implement this provision.
https://www.uschamber.com/sites/default/files/documents/files/comments-nondiscrimination_in_health_programs-nprm_health_and_human_services-hhs-aca-november-9-11-9-15_0.pdf

The Chamber has also submitted numerous other requests for changes to the Obamacare litany of regulations and guidance documents which we would be glad to share with your staff.

drug importation would make pharmaceutical investment far less attractive, choking off funding for researchers who work to develop the next generation of treatments for diseases like cancer and Alzheimer's. We urge you to protect individuals from unsafe drugs and innovators from price controls that stifle new treatments.

Conclusion

The American health care system is at a crossroads as the individual market is failing under Obamacare, consumers are struggling to find affordable health coverage and businesses are reeling from ongoing regulation, taxes, administrative burdens and reporting obligations. We stand ready to work with you and your colleagues in the Senate, the House and the administration to advance true health care reform and improve our nation's health care system.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neil L. Bradley", with a large, stylized flourish at the end.

Neil L. Bradley