ALLIANCE TO FIGHT THE 40

Stop the 40% tax on health benefits

August 21, 2015

To: Members of the United States House of Representatives

The Alliance to Fight the 40, a broad-based coalition of private and public employers and employees, is committed to protecting employer-sponsored health coverage that safeguards over 150 million Americans. As you continue to meet with constituents over the August work period, please consider the negative impact the 40 percent tax on health benefits is having on the working families you represent. The Alliance to Fight the 40 urges Congress to repeal this tax.

The Affordable Care Act's (ACA) so-called "Cadillac tax" is a 40 percent non-deductible tax on the cost of employer-sponsored health coverage that exceeds certain thresholds. This includes plans covering retirees, small businesses and even self-employed individuals. Because it is an excise tax, it also will be imposed on health plans covering federal, state and local government workers, as well as plans sponsored by charitable and other non-profit organizations. Congress' original intent was to target only a small number of "overly rich" plans. However, nonpartisan analyses reveal that it will hit modest health plans that are expensive simply because they are offered in high-cost areas; or because they cover large numbers of people whose health costs are typically higher than average--women, older and disabled workers, and families experiencing catastrophic health events.

In the public sector, the Office of Personnel Management wrote, in official comments to the Department of Treasury and the Internal Revenue Service, that the "tax will most likely require a reduction in [federal employee health] benefits and elimination of other benefit programs. This will impact the lives of current enrollees and will affect the ability of agencies to recruit and retain a world class workforce."

In the private sector, according to a recent National Business Group on Health survey, nearly half (48 percent) of large employers will have at least one health plan trigger the tax when it goes into effect in 2018; and by 2020, almost three-quarters (72 percent) will do so. Analysis by Ernst & Young demonstrates that in certain high cost areas, even the second lowest cost silver-level plan in the small business insurance exchanges will trigger the tax in 2018 or shortly thereafter. Clearly, the ACA did not intend to impose this tax on plans that the law itself requires be sold to small businesses.

This is not just a 2018 problem. Benefits firm Aon Hewitt reports that one third of employers who have determined the impact of the tax are increasing out-of-pocket costs this year — 2015 — to avoid being on a trajectory to hit the tax in 2018. Illogically, the cost of benefit plan features designed to promote better health and reduce costs such as on-site clinics, wellness programs, employee assistance plans, flexible spending accounts, health reimbursement arrangements, and both employer and employee pre-tax contributions to health savings accounts are included when determining if the tax thresholds are crossed. Even the cost of preventive benefits such as cancer screenings and immunizations is included, despite the fact that the ACA requires such benefits to be provided with no employee cost-sharing.

Making matters even worse, because health care costs outpace the growth of the tax-triggering thresholds, the tax will apply to an increasing number of modest plans every year. The thresholds are tied to the Consumer Price Index which the Congressional Budget Office (CBO) estimates will increase, on average, 2.4 percent annually over the next decade. By contrast, the Centers for Medicare and Medicaid Services expect private health care spending to rise, on average, 5.8 percent each year. Consequently, the tax will catch more plans, and more of

the benefits offered, simply because health costs outpace general inflation. And, eventually, plans will face a situation — either because they cover individuals with high health expenses, or operate in high-cost areas of the country — where even the legally-required 60 percent minimum value plan will exceed the cost threshold. This will ultimately force public and private employers to make an untenable choice: continue providing the plan and incur the 40 percent tax, or pay the employer mandate penalty.

Some have acknowledged the inequities described above and assert that the "Cadillac tax" should be fixed, not repealed. But that underestimates the difficulty for employers who do not purchase insurance coverage to calculate the "cost" of their self-insured plans. And it would be enormously complex, if not impossible, to modify the law to account for all the variations in health plan costs attributable to age, gender, health status and geography.

Finally, the issue of the estimated revenue loss associated with repeal of the tax must be mentioned. CBO projects the tax will result in $87 billion of collected tax revenue over ten years. Approximately one quarter of that amount is attributable to actual imposition of the tax. The other three quarters assumes employers will decrease health benefits and increase taxable wages. Neither projection is supportable. Regarding the first assumption, many employers may be forced to drop coverage altogether rather than pay a 40 percent non-deductible tax on top of already-expensive health coverage. As to the second assumption, it is economic theory, not hard evidence, supporting the claim that employers will make up lowered health benefits with higher wages. Moreover, according to CBO's own estimates, whatever revenue may be collected will largely result from a tax increase on working Americans. As the forgoing demonstrates, it is a highly inequitable and arbitrary tax.

The stated goal of health reform was to build upon employer-based coverage and lower costs. This tax will do neither. Instead, it will erode an important source of quality coverage and compel a shift of costs to workers – something neither employers, nor employees want to see happen. Attached to this letter are descriptions of numerous studies detailing the expected effects of the tax on workers, employers, and the health benefits enjoyed by over 150 million Americans.

A strongly bi-partisan group of nearly half the members of the House of Representatives have co-sponsored bills authored by Rep. Frank Guinta (H.R. 879) and Rep. Joe Courtney (H.R. 2050) to repeal the tax. We urge you to join their effort. The tax must be repealed. If Congress waits, it will be too late.

Sincerely,

The Alliance to Fight the 40 Stop the 40 Percent Tax on Health Benefits

For links to studies and more information on the tax and the diverse coalition seeking its repeal please visit:
www.Fightthe40.com

Studies Documenting the Impact of the 40% Tax on American Workers, Businesses, and Health Benefits

Impact on American Workers

- A study by the Economic Policy Institute found that because the tax is focused on high premiums, not high levels of coverage, companies that tend to pay higher premiums – such as small businesses and employers with a high proportion of sick workers – could wind up paying the tax even though their benefits are not particularly generous. Also, if employers try to avoid the tax by shifting to less generous plans, workers will likely suffer when it comes to their overall compensation, even if they get a boost in wages to make up for the lost health benefits.

- The tax will disproportionately affect women, older employees and certain geographic areas. A 2014 report by actuarial and benefits consulting firm Milliman identified that geography could potentially account for a 69.3% variation in premium. For example, a plan that would cost $9,189 in one area would cost $15,556 elsewhere. The report also demonstrates that the 40% tax's age and gender adjustment fails to compensate for the impact those factors have on premiums when combined with a high-cost geographic area and/or lower provider discounts.

- According to a 2014 study by Truven Health Analytics, the 40% tax will result in a cost increase of up to $480 per employee per year for plans that are expected to incur the tax. Early retirees are projected to incur the tax at a much higher rate than active employees, with 81% of such plans likely to trigger the tax.

- A study by the American Health Policy Institute estimated the 40% tax "could cost 12.1 million employees an average of $1,050 in higher payroll and income taxes per year, *if* employers increase their taxable wages as they reduce the cost of health care benefits. Alternatively, these employees could see up to a $6,150 reduction in their health care benefits and little or no increase in their pay."

Impact on Employers

- According to a survey by the actuarial and benefits consulting firm Towers Watson, 48% of employers believe the plans they provide will be affected the first year the law is implemented. And that rises to 82% of employers by 2023, just five years later.

- The Lockton Companies wrote in a 2015 benefits guidance document, "When we project five and ten years into the future, based on current guidance, the majority of our clients will eventually trigger the tax."

- Eventually, the 40% tax will apply to modest plans, not just high-cost coverage as intended. A recent study by actuarial and benefits consulting firm Mercer found that the Federal Employees Health Benefits Program's (FEHBP) Blue Cross Blue Shield standard option plan was projected to hit the 40% tax in 2019 for employee-only coverage, and in 2025 for family coverage.

- A study by the American Bankers Association's HSA Council found that "If your current HSA-qualified family health plan costs more than $17,000, including wellness programs, your firm is likely to incur excise tax liability in 2018 if anyone makes a maximum contribution."

Impact on Health Benefits

- The actuarial and benefits consulting firm Aon Hewitt reported that 33% of employers surveyed are increasing deductibles and other cost-sharing right now, in 2015, to avoid being on a trajectory to trigger the tax when it goes into effect in 2018. But fully 40% of employers expect at least one plan to unavoidably hit the tax threshold that year regardless.

- A survey conducted by the National Business Group on Health found that 42% of employers said they will increase employee cost-sharing, and 37% said they will reduce spousal subsidies or implement a surcharge for covering them to minimize the impact of the excise tax.

- A survey of 700 employers by Mercer in 2015 found that anticipation of the 40% tax is already leading many employers to consider excluding employees' spouses from their health policies or imposing a surcharge for including them. The survey found that the tax has consistently been the primary concern of employers since passage of the Affordable Care Act.

- The 40% tax is triggered when the value of an individual's health plan exceeds the $10,200 threshold – a supposedly high-end number for "Cadillac" plans. But a 2013 Mercer survey found that the average price of all employer-provided health plans in the state of Florida, for example, was already $10,067— a full 5 years before the tax goes in to effect.

- Because its thresholds are indexed to general inflation instead of faster-growing medical inflation, more plans will be hit by the tax every year. The tax thresholds ($10,200 for self-only coverage, $27,500 for family coverage in 2018) are indexed to the Consumer Price Index, which the Congressional Budget Office (CBO) estimates will rise annually by 2.4% on average over the next decade. But the Centers for Medicare and Medicaid Services (CMS) projects private health care spending to rise 5.8% on average each year, as health care costs increase significantly faster than general inflation. This insufficient indexing of the thresholds means more and more plans will trigger the tax, and to a greater extent, over time.

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