Notice 2015-52

From: Robin Van Vliet <robin@vvwins.com>
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To: Notice Comments
Subject: Notice 2015-52 - comments

Thank you for reading my general comments. I'm sharing my perspective as an insurance broker. I consult with both small and large employers on their benefits programs. Additionally I work with individuals who purchase individual insurance on the Marketplace.

Lost Purpose of Cadillac Tax:
I believe the intention of President Obama was to put a cap on the tax-free fringe benefit offered to executives in the form of very generous health insurance, hence the Cadillac tax. The ACA created this equity this by including non-discrimination in plan design requirements in the law, so now there aren't glorious "Executive" and crappy "Non-Executive" benefits within the same company. (Although regulatory guidance is still pending in this arena.)

I believe the intention of President Obama was to put a limit on the out of pocket exposure to medical expenses to working Americans. He accomplished this by setting overall cost sharing limits. HHS further recently clarified that HDHP limits must use the 'self-only' limit on the deductible (embedded deductible) in order to protect a family for the large family deductible.

Lastly, I believe the ACA's goal was to put some controls on rising healthcare costs. We solved some of this by mandating the Medical Loss Ratio (MLR) for the insurance companies (80-85% of premiums must be spent on claims). And we solved some of this by reducing the number of uninsured, whose claims costs drove up costs for the insured.

The impact: If an employer receives a large premium increase, it's due to claims costs. Claims costs that are generally out of the employer's control. While the press jumped on Tim Armstrong (http://www.wsj.com/articles/SB10001424052702304680904579366502779160032), what he said wasn't false – it's just a truth a company clearly cannot tell employees.
So the employer has to result in cuts, which means cost shifting medical expenses to employees – such as HDHP plans. Health insurance is expensive because it is a heavily used benefit. Employee's then may take money out of their paychecks to fund Flexible Spending Accounts or Health Savings Accounts – money they might've otherwise spent on college savings fund or mortgage. In the end, it's the same amount of money being spent on healthcare – and nothing yet has been done to fundamentally reduce to cost of care.

A Cadillac Tax that includes Medical, FSA and H.S.A. funding will result over time in:

- Eventually the employer will cut benefits as much as they can before hitting the cost-share limits. Even without the Cadillac tax, they'll have to do this.
- Employer's will avoid hiring or retaining older or employees who may have any health concerns. While there are laws that prohibit this, the conflict of interest is inherent.
- Large employers may be able to negotiate deeper discounts with hospitals and pharmacy benefits managers, but those hospitals will then seek to make up that revenue elsewhere. (These are the major drivers of health care costs, but these companies do not have the same mandatory "MLR" requirements, which is a significant gap in our ACA law.)
- This, more than anything, may result in employers cancel providing employer provided health benefits and a shift to the individual market. It will be far cheaper to pay employees more.

Thoughts on how to impose the tax:

Fully-insured employers are not prepared to take on additional and complex tax calculations and reporting. Ideally the tax would be paid by the insurer and therefore will get added to the premiums (which then will get cost shifted to the employee). If paid by the insurer, it would be extremely complex to also include employee individual contributions to a FSA or H.S.A. Keep it simple. Create a "Table I" (see Section 79) type table that the insurer or self-funded employer will use and keep it just on premiums. Yes, cost shifting is going to happen, more money will go into H.S.As (this will make Republicans happy). Some employers may try to keep employee's compensation whole, so compensation may go up to some degree – which will also increase tax revenues, albeit less directly than the Cadillac tax.

The other alternative: Be more transparent about this tax and shift it directly to individuals. If the goal is to alter consumer behavior by exposing Americans to the true cost of health insurance, then let them report income taxes on it. You can again use something like the "Table I" for Group Term Life to adjust for age and income. This may result in employees being equally concerned about the rising costs of healthcare – although they are equally un-empowered to change the types of costs that drives someone's expenses to be greater than the annual cost share limits, like a hospital stay or specialty drug.

Final thoughts: Picture healthcare spending as a cardboard box, except with an ever increasing volume, often growing faster than inflation. ACA has made the top of the box level and mandated that it can only have so much room inside for just air and packing pops. We've made the box wider to include more people. But the Cadillac Tax is trying to penalize companies when the box gets too big. And that can only be controlled by an employer two ways - taking covered services out of the box (the height) or taking people (the width) out of the box. We need the government to succeed first in controlling the cost size of each unit of care that's going into the box. The Cadillac Tax is the only component of the ACA reforms that doesn't do this. Give up this tax, and gain the revenue instead from non-deductible excise taxes on pharmaceutical companies, hospitals, and durable medical equipment manufacturers. Create a tax that incents them to manage their profits to a reasonable "MLR" and executive compensation.

Thank you for reading these thoughts,
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