AMERICAN BENEFITS COUNCIL

YOUR ADVOCATE FOR EMPLOYER-SPONSORED BENEFITS SINCE 1967

December 8, 2017

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Paul Ryan
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Chuck Schumer
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Nancy Pelosi
Minority Leader
United States House of Representatives
Washington, DC 20515

Dear Leaders:

The American Benefits Council (Council) urges you to enact legislation this year to protect the employer-sponsored health coverage of over 178 million Americans by addressing the 40 percent "Cadillac Tax," granting relief from the Affordable Care Act (ACA) employer mandate penalties and reporting requirements and stabilizing the individual insurance market.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing employee benefits. Collectively, the Council's members either directly sponsor or provide services to retirement and health plans covering virtually all Americans who participate in employer-sponsored benefit programs.

ADDRESS THE 40 PERCENT "CADILLAC TAX"

Employer-sponsored health benefits upon which the majority of Americans rely are threatened by the 40 percent "Cadillac Tax." Starting in 2020, the ACA imposes a 40 percent tax on employer-sponsored coverage that exceeds certain thresholds, projected to be $10,800 for employee-only coverage and $29,100 for family coverage. For many Americans who depend on health insurance coverage through an employer, the forthcoming implementation of this tax has already resulted in reduced coverage and increased out-of-pocket costs. As Congress crafts end-of-year legislation granting relief from other ACA taxes, it should take action to address the 40 percent "Cadillac Tax."

REPEAL THE ACA EMPLOYER MANDATE PENALTY

If Congress enacts legislation that repeals the ACA's individual mandate penalties, it is essential that it also provide relief from the employer mandate penalties. The individual and employer requirements are directly linked to one another. The statutory structure of the employer mandate makes clear that it was not simply a free-standing add-on to a long list of provisions in the ACA but, rather, inextricably entwined with the individual mandate. Not coincidentally, the employer penalties are referred to as Employer *Shared Responsibility* Payments (emphasis added). These penalties are triggered when an employer has not offered a certain level of coverage and just one single employee receives a subsidy to purchase coverage in the insurance exchange. The employer mandate was intended to enable individuals to meet their legal obligation to have an established level of coverage – *a legal obligation that no longer exists once the individual mandate is repealed.*

We note that the vast majority of large employers offered coverage to their employees before the ACA was enacted and would continue to do so in the absence of an employer mandate. However, the final regulations implementing the employer mandate include many complex rules that present a significant challenge for employers.

For example, the rules create a very difficult process for determining who is a full-time employee. The rules provide complicated methods for crediting hours of service, breaks in service and changes in employment status. Compliance with the mandate is extremely problematic, particularly with respect to employees who work a variable schedule (rather than a regular 30 or more hour/week schedule) as well as for temporary, seasonal or similar contingent workers. We strongly urge you to repeal the employer mandate to relieve administrative costs and burdens on employers.

The Council recognizes that the Congressional Budget Office projects (in the context of the Tax Cuts and Jobs Act) that repeal of the individual mandate will result in over $300 billion in savings, while a previous estimate projected over $150 billion in revenue loss associated with repeal of the employer mandate. However, in considering whether to repeal the employer mandate, it would be inappropriate to use a score for repealing the employer mandate in isolation when, in fact, it only would be considered following repeal of the individual mandate. Even if there is a large revenue loss associated with repeal of the employer mandate, it is inequitable to leave in place a costly burden for employers, when its purpose – to support the individual mandate – no longer exists.

Simplify the Employer Reporting Requirements

Apart from repeal of the employer mandate, it is imperative that the onerous employer reporting requirements be simplified. This can be accomplished legislatively as well as with explicit direction to regulatory agencies, consistent with the executive branch's directives to reduce regulatory burdens. Specific ideas for relieving cost and administrative burdens and promoting regulatory flexibility regarding employer reporting requirements include:

1. Maintaining the relief from penalties for employers who make good faith efforts to comply with the information reporting requirements.
2. Assisting employers with Social Security number reporting and verification rules.
3. Providing relief from reporting deadlines, including allowing an automatic extension for the January 31 deadline to furnish statements to employees.
4. Allowing reporting for employers on a controlled group basis.

Additionally, last month, the Internal Revenue Service (IRS) began enforcing the employer mandate by mailing Letter 226-J to employers, notifying them of proposed employer shared responsibility payments (ESRPs) owed for calendar year 2015. Council members have many concerns about the ESRP process, including the short 30-day response time (from the date of the letter), the potential for Letters 226-J to be delayed in reaching employers due to change of address, penalties triggered by systems errors, or mistakes due to the complexity of employer information reporting, particularly in 2015, the first year reporting was required. Collectively, these complications demonstrate the need for very prompt action to make the reporting process more administrable.

Stabilize the Individual Health Insurance Market

Another concern of many employers is the stability of the individual insurance market. Instability, resulting in loss of health coverage for many Americans, has obvious serious consequences for the people directly affected and for the future viability of the individual insurance markets in each state. Additionally, the fate of those individuals and the markets has a direct and palpable impact on employers that sponsor health coverage.

Legislative efforts earlier this year to repeal the individual mandate recognized the importance of implementing policies encouraging individuals to obtain coverage in the absence of a requirement to do so. Congress should immediately take steps to mitigate loss of coverage and destabilization of insurance exchanges and the individual market. Destabilization increases uncompensated care, resulting in cost-shifting from health care providers to large employer payers. Additionally, destabilization would make individual market coverage a less viable option for part-time workers, early retirees, and those who would otherwise elect to secure coverage through an ACA exchange (or the individual insurance market more generally). Likewise, for those employers that transitioned their pre-age -65 retirees to the individual market, the absence of a requirement for Americans to purchase coverage and the cessation of the cost-sharing reduction payments that occurred earlier this year will adversely affect the number of insurers participating in the individual market or the insurance products offered. All of these potential results would add costs for employer plan sponsors. Clearly, a stable individual market is important not only for those directly served by it, but also for the many millions more covered by employer-sponsored plans.

We urge Congress to take the necessary action to ensure a stable, viable individual insurance marketplace. This should also include a federal appropriation for the cost-sharing subsidies and adequate federal funding for risk mitigation to ensure carriers can remain viable participants in the individual market.

*****

Employers are very supportive of implementing policies that will lead to a more competitive environment in the United States, spurring economic growth and job creation. As Congress advances down this path, we urge you to ensure that the 178 million Americans with employer-provided health coverage, and the companies that sponsor that coverage, are protected from burdensome taxes and reporting requirements as well as the negative consequences of an unstable individual health insurance market. Please let us know how we can assist you in this important effort.

Sincerely,

James A. Klein

James A. Klein
President

CC: All members, U.S. Senate
All members, U.S. House of Representatives