Life, Liberty and the Pursuit of Conscious Healthcare Spending: The Uncertain Political Future of the “Cadillac Tax” as Effective Deadline Nears

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In the months that have followed King v. Burwell, the spotlight on the ACA’s Cadillac tax has grown hotter for groups interested in the reform, and repeal, of the ACA. The King v. Burwell decision, in large part, moved the debate over the future of ACA from the courtroom to the other governmental branches, as the more appropriate forums for that discussion. That its effective date is in the future and its implementing regulations are still forthcoming likely has fostered the current discussion on the Cadillac tax’s future.

The Cadillac Tax and Controlling Healthcare Spending?

Targeting high-end health plans—often referred to the Cadillac plans—the Cadillac tax is an excise tax that effectively amounts to a cap on tax-shielded health care benefits. Enacted as part of the ACA, the Cadillac tax is the targeted levy of a 40% excise tax on health insurance plans worth more than $10,200 per individual and $27,500 per family, although its effective deadline was delayed until January 1, 2018. According to the nonpartisan Kaiser Family Foundation, an average employer-sponsored individual plan costs less than $6,100, while an average family plan cost less than $16,900 in 2014. Given this, most people will not be affected by the Cadillac tax, at least initially.

By its design, the Cadillac tax will affect an increasing number of health plans as premiums increase over time. Congress tied the tax threshold to a slow measure of inflation that the Congressional Budget Office (“CBO”) estimates is less than half of the projected annual increase of private health care spending over the next decade. Even so, the CBO and the Joint Commission on Taxation concluded earlier this year that fewer health plans would be hit by the excise tax than earlier projections predicted due to the slower-than-anticipated growth in premium rates.

Uncertain Political Future

The Cadillac tax was a response to tax incentives that favor health insurance over wages, ultimately encouraging individuals to spend more on health care than they otherwise would. That incentive also results in high-end insurance policies with very low co-payments and deductibles that encourage individuals to spend more on health care because, under such plans, it is essentially free. So, the Cadillac tax was designed to incentivize employers to increase deductibles and co-pays so covered individuals become better consumers of health care. Simultaneously, the Cadillac tax sought to encourage insurers to increase utilization and push back on providers in rate negotiations. Even so, not everyone agrees that the Cadillac tax is the correct means to accomplish those aims. Indeed, a number of bipartisan lawmakers have expressed support for the reform or repeal of the Cadillac tax.

Proposed Regulations Forthcoming
In spite of the public debate on the Cadillac tax’s future, the Treasury Department is still preparing for its January 1, 2018, effective deadline. This spring, the Internal Revenue Service (“IRS”) issued its first notice of guidance regarding the Cadillac tax, in which it sought feedback from stakeholders on the same. In that notice, the IRS defined the applicable coverage to be included for the tax, discussed how to calculate the cost of coverage, and addressed the process for determining the specific thresholds that trigger the tax’s application. The comment period for the notice expired May 15, 2015. The IRS is currently reviewing submitted stakeholder comments responsive to the notice, with the intent to develop proposed regulations in the near future.

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