

# U.S. Legislative Update

36TH ANNUAL ISCEBS  
*Symposium*

**James Klein**  
President  
American Benefits Council  
Washington, D.C.

The opinions expressed in this presentation are those of the speaker. The International Society and International Foundation disclaim responsibility for views expressed and statements made by the program speakers.



**International Society**  
of Certified Employee Benefit Specialists

PARTNERS IN EDUCATIONAL EXCELLENCE

**International Foundation**  
OF EMPLOYEE BENEFIT PLANS



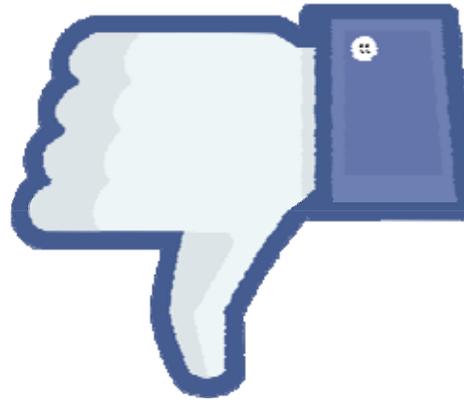
# Health Care Policy

# Repeal and Replace *U.S. House of Representatives*



American Health Care Act  
Passed 217 to 213

# Repeal and Replace *U.S. Senate*



Better Care Reconciliation Act  
Failed 49 to 51

## Repeal and Replace *Relevance to Employer-Sponsored Plans*

- Importance of stable individual insurance market
  - Concerns regarding more uninsured Americans
  - Part-time employees and early retirees
  - Cost shift to all other purchasers
- Employer shared-responsibility penalty
- Employer-reporting requirements
- Cadillac Tax and other fees

## Will the Repeal and Replace Effort Be Revived?

- Used FY2017 budget bill since it cannot be “filibustered” and only requires a simple majority to pass
- Parliamentarian ruled that the budget bill can not be considered beyond September 30th
- GOP leadership wants to use the FY2018 budget bill as the vehicle for tax reform

# Bipartisan Strategy

- Shift to “regular order” and bipartisan solutions
- Immediate focus: Stabilizing individual insurance market
- Cost Sharing Reduction (CSR) payments
  - Monthly payments to insurers to offset out-of-pocket costs for low-income individuals (58% of people in exchanges)
  - Legal dispute over legitimacy of CSR since Congress did not explicitly appropriate funds
  - President Trump has repeatedly threatened to stop payments
  - Insurers can immediately raise premiums or cease coverage
  - CBO: Cost to taxpayers will be \$194 billion over ten years if CSR not funded

# Bipartisan “Problem Solvers” Caucus

- Funding of CSR payments
- Federal stability funds for states
- Modify employer mandate
  - Apply to employers of 500+ workers
  - Change full-time definition to 40 hours
- Eliminate 2.3% medical device tax

# Bipartisan Governors' Proposal

- CSR payments through 2019
- Temporary stability fund for reinsurance
- Exempt insurers from the health insurance tax if they are the only remaining company on the exchange in a county
- Allow residents of “underserved counties” to buy into the health benefit program for federal workers
- Continue ACA outreach efforts to maximize sign-ups
- Facilitate states' obtaining ACA waivers and streamline the approval process
- Give states additional flexibility in determining Essential Health Benefits
- Promote price and quality transparency for consumers

## Other Bipartisan Proposals

- Allow subsidies for purchase of coverage not offered on the exchanges
- Allow anyone to buy a “catastrophic only” plan
- Create “copper” plan with < 60% actuarial value
- Allow employers to give workers pre-tax dollars to buy coverage in the individual market
- Tighten rules regarding late sign-ups for coverage
- Smooth the “subsidy cliff” for those earning just over 400% of FPL

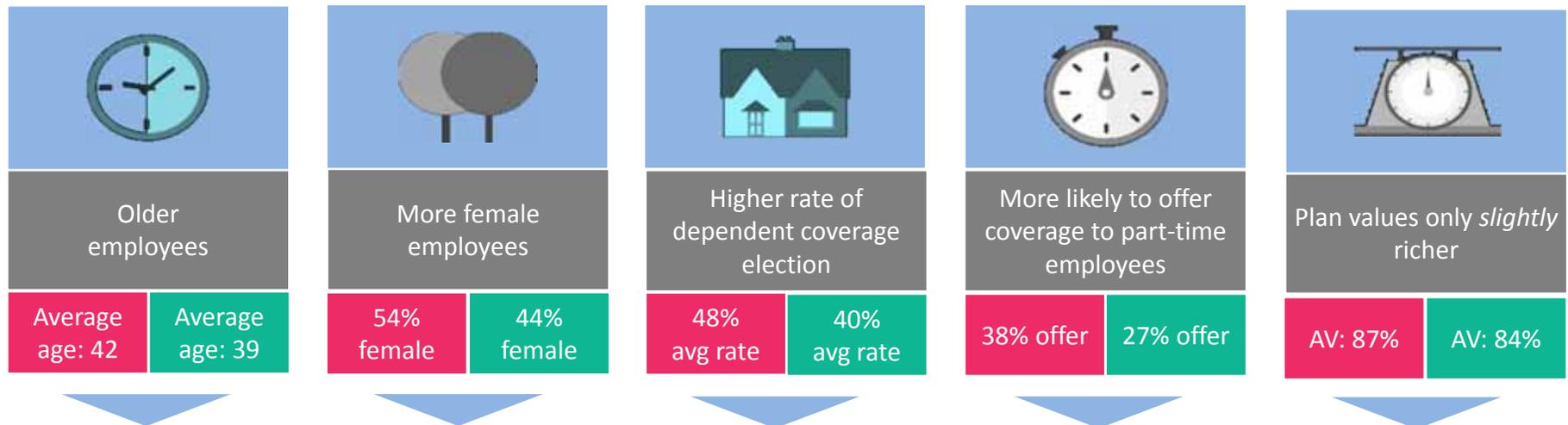
# Possible Areas of Agreement

- CSR funding
- Give states more authority/flexibility
- Use premium tax subsidies off exchanges
- Allow premium tax subsidies for purchase of COBRA
- Repeal or delay medical device tax and health insurance premium tax
- Cadillac tax—immediate prospects uncertain since it has 2020 effective date

# Factors That Affect Plan Cost

## *Not Just Plan Design—Demographics Matter*

Characteristics of employers with plans that **will reach** versus **won't reach** the Cadillac tax threshold in 2020:



Like the Cadillac tax, capping the exclusion is more likely to penalize older workers, women, people with families, and employers who provide health benefits to part-time employees . . .

*. . . And there is relatively little difference between the plan designs of those employers that will reach the threshold and those who won't.*

*Estimates based on data from Mercer National Survey of Employer-Sponsored Health Plans 2016; premium trended at 6%, tax threshold trended at 3% in 2021 and 2% in future years*

# Devolve Authority to States

- Legislation
  - Provisions of repeal and replace bills
  - Patient Freedom Act
- Regulatory
  - ACA Section 1332: State Innovation Waivers
    - States may apply to HHS and Treasury for waivers of benefits, subsidies, individual and employer mandates
    - Meet objectives of ACA without increasing federal deficit
  - Bipartisan interest in enhancing waiver process
- Uniformity for multi-state employers

# Regulatory Action

## *Department of Treasury and IRS*

- Intend to publish guidance prior to sending notices of employer mandate penalties
- Individual mandate—will IRS avoid enforcement?
- Likely to propose Cadillac tax implementation rules before end of 2017

# Health Care and Tax Reform

- \$2.9 trillion foregone revenue 2017-2026
- Long-standing GOP interest in limiting employee exclusion for employer-sponsored health coverage
- No current proposal to limit employer deduction
- Capping the exclusion is linked (politically) to the Cadillac tax
- Actuarial value, rather than dollar cap

# Empowering Patients First Act

## Low Income Families Hit Hardest

Cap will result in **increased income tax liability** for middle-income Americans



- The bars represent the percentage increase in income tax liability in 2026. Payroll taxes not included
- Proposed caps indexed at CPI% (CPI assumed to be 2%); medical plan trend assumed to be 5.5%
- Projects the impact of including account contributions—FSAs, HRAs and HSAs – in value of coverage
- Based on a Mercer proprietary database of 600,000 members' salary and benefits. Salary information used as proxy for household income.

# Retirement Policy

# Retirement Policy

- \$1.6 trillion foregone revenue for 2017-2026
- Political imperative for GOP Congressional leaders and White House
- Extent of retirement plan provisions will depend on comprehensiveness of tax reform
- Despite pledges of bipartisan approach, a budget bill (51-vote) approach is most likely
- Unlike ACA repeal, some Democrats may support even if 51-vote strategy is pursued

# Tax Reform and Retirement Policy

- 2014 tax proposal is starting point
  - First half contributions pre-tax, beyond that, after-tax (\$143 billion)
  - Freeze contribution and benefit limits for 10 years (\$60 billion)
  - Limit tax benefit for high income earners
- Concern for funded status of multi-employer plans, but defined benefit pension plans not likely a main focus

# “Rothification” Considerations

- Possibly just IRAs
- Partial or full “Rothification”
- Impact on savings behavior for low paid
- Impact of lower individual tax rates and higher standard deduction
- Impact on plan non-discrimination testing
- Impact on plan communication strategies

# Tax Reform and Retirement Policy

- Retirement Enhancement Savings Act
  - Open multiple-employer plans
  - Remove auto escalation cap
  - Lifetime income illustration
- Plan consolidation (i.e. 401(k), 403(b), 457)
- “Sidecar HSAs”—funded alongside 401(k)
- Auto portability: Through negative consent, allow automatic rollovers of small accounts to an IRA, and then to a new employer’s plan
- Electronic disclosure—but depends on vehicle

# Big Picture Considerations

- Will Congress address ACA taxes as part of tax reform?
- If tax reform is “comprehensive” will Congress revisit the employee exclusion for health benefits?
- Where do you stand on moving to an after-tax approach for retirement savings?
- Where do employee benefit provisions stand vis-à-vis other tax priorities and vis-à-vis one another?

# Other Issues

- Student loans
  - Modest tax benefit
  - Linkage with 401(k) contributions
- Paid leave
  - Trump: Mandatory, financed through state unemployment insurance programs; unfunded mandate
  - Voluntary minimum: Satisfying certain federal standards would be deemed compliance with state and local laws

# Thank you!

Questions?