May 31, 2016

The Honorable Tom Price
Chairman
Committee on the Budget
207 Cannon House Office Building
Washington, DC 20515

The Honorable John Kline
Chairman
Committee on Education and the Workforce
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Kevin Brady
Chairman
Ways and Means Committee
1102 Longworth House Office Building
Washington, DC 20515

Dear Chairmen:

As you work to achieve the goals set out for the Task Force on Health Care Reform ("Task Force"), we hope you will expressly endorse repeal of the Affordable Care Act's (ACA) 40% "Cadillac Tax" on employer-sponsored insurance as a first step toward improving our health care system.

The Alliance to Fight the 40 ("the Alliance") is a broad based coalition comprised of businesses, patient advocates, private sector and public sector employer organizations, consumer groups, and other stakeholders that support employer-sponsored health coverage. This coverage is the backbone of our health insurance system and protects over 175 million[1] Americans across the United States. The Alliance is appreciative of Congress' efforts to delay the 40% tax as part of legislation enacted in 2015. It is vitally important, however, that Congress *repeal* the 40% tax on employee health benefits to ensure that employer-sponsored coverage remains an effective and affordable option for working Americans and their families.

The Alliance welcomes the opportunity to provide recommendations that promote the goals of the Task Force of supporting patient-centered solutions that improve access, choice, and quality, lower costs, promote innovation, and strengthen the safety net for the most vulnerable. Repealing the 40% "Cadillac Tax" on health benefits would promote these laudable goals and benefit all patients and families that rely on employer-sponsored health benefits – the primary source of affordable quality coverage for working Americans.

DISCUSSION

Repeal the 40% "Cadillac Tax" on health benefits to protect access, choice, and affordability

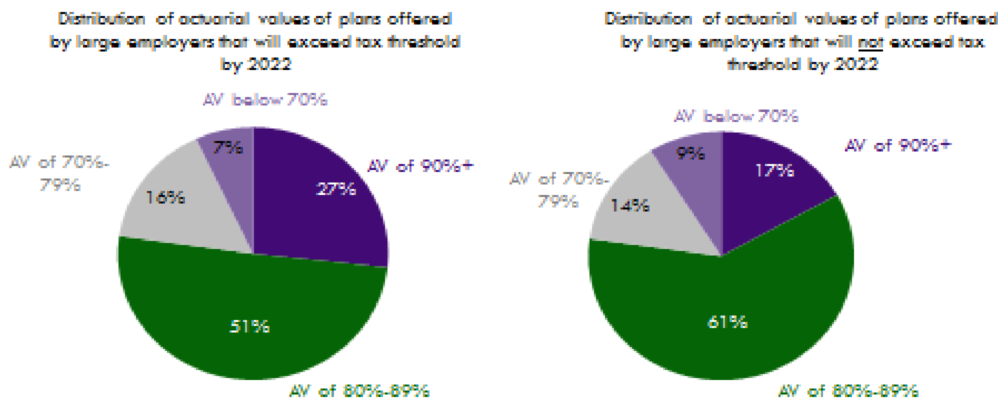
The "Cadillac Tax" is already harming the most stable source of health coverage for Americans. The "Cadillac Tax" is a 40% excise tax on amounts above set thresholds of the cost of group health benefits that

[1] U.S. Census: https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-253.pdf Table 1

will take effect in 2020.[2] These costs include not only the employer and employee share of premiums, but also many other costs borne by employers (e.g. on-site clinics, preventive services such as cancer screening and immunizations, etc.) Employees are already feeling the effects of this tax as employers are forced to respond to the punitive structure of the tax as described below.

Impact Far Beyond 'High-Priced' Plans. The ACA's 40% tax on employer-provided coverage is disrupting the health care marketplace by shifting ever increasing costs to workers. Contrary to the notion that only "gold-plated" high-value plans would be affected, the tax will eventually have an impact on virtually <u>all</u> employer plans. The first plans to be hit will not be "Cadillac" plans that have the most extensive benefits -- they will be plans that are expensive because they cover older Americans, retirees, women, families and other individuals with chronic health conditions, or who have suffered catastrophic health events and those living in higher-cost geographic areas. The tax will affect families from all walks of life and in many professions, including low-wage and part-time workers; public servants who protect our safety, like firefighters and police officers; and workers in diverse professions and economic sectors, including retail, education, health care, hospitality, the clergy, as well as retirees.

Only 27% of the employer-sponsored plans estimated to exceed the excise tax cost threshold by 2022 currently have actuarial values of 90% or higher



More than half of large employers (58%) are estimated to have plans that will exceed excise tax threshold by 2022 (based on their 2014 medical plan premiums for the employer's highest-cost or only plan, trended forward at 6%)

Note: The analysis was conducted before the tax's delay to 2020.
Source: Mercer's National Survey of Employer-Sponsored Health Plans

As illustrated by this chart, it is the population covered by a plan – not the relative richness of the benefits – that determines whether a particular plan hits the tax. 23% of the plans hit in the first two years will have actuarial values in the lowest, (i.e.60-70%) range. By way of reference, the minimum value plan prescribed under the ACA has a 60% actuarial value.

Greater Cost-Sharing. Studies by the American Health Policy Institute[3] and Aon Hewitt[4] indicate significant numbers of employers are already modifying their plan designs by increasing deductibles, co-

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[2] The effective date of the "Cadillac Tax" was delayed from 2018 to 2020 by the Consolidated Appropriations Act, 2016

[3] American Health Policy Institute, "ACA Excise Tax: Cutting Family Budgets, Not Health Care Budgets," October 2015, http://www.americanhealthpolicy.org/Content/documents/resources/AHPI_Excise_Tax_October_2015.pdf

pays and other cost-sharing features, to avoid paying the 40% tax. Although they are very reluctant to do so, requiring employees to bear a larger share of the cost, is the primary lever employers are compelled to use to decrease a plan's value. Higher cost-sharing curtails the ability of some lower and middle class individuals to actually access their insurance. As deductibles rise, and approach $5,000 or more, many middle income families who *have* insurance will not be able to access the medical system due to large out-of-pocket costs.

The workers of those employers that contemplate paying the tax can expect their already large share of the premiums to rise even higher.

Stifling private sector innovation. The punitive structure of the Cadillac tax's thresholds will tax health plan features that are designed to promote better health and reduce costs – such as employee assistance plans, on-site health clinics, wellness initiatives, flexible spending accounts, health reimbursement arrangements, and employer and employee pre-tax contributions to health savings accounts – which are all counted toward the thresholds that trigger the tax. 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. Providing and administering health care coverage for employees is a significant expense for employers. Implementing the convoluted "Cadillac Tax" will only add complexity, cost and administrative burden for employers and employees.

Penalizing Employers for Factors Beyond Their Control. The 40% tax also unfairly taxes employers for factors they do not control. Employers with higher numbers of workers who have chronic diseases or larger families are disproportionately targeted by the tax, as are employers in specific industries, such as manufacturing or law enforcement. A study by the Economic Policy Institute found that because the tax is focused on high costs, 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.[5]

Geographic Disparities. Notably, employers with workers who live in higher-cost areas would pay more of the 40% tax for the same level of health coverage than people in lower cost areas. A 2014 report by the benefits consulting firm Milliman found that geography could potentially account for a 69.3% variation in premiums. For example, a plan that would cost $9,189 in one area would cost $15,556 elsewhere.[6] The report also demonstrated that the age and gender adjustments permitted under the law fail to compensate for the impact those factors have on premiums when combined with a high-cost geographic area and/or lower provider discounts.

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[4] Aon Hewitt, "New Aon Hewitt Survey Shows Majority of Companies Taking Immediate Steps to Minimize Exposure to Excise Tax," October 16, 2014, http://aon.mediaroom.com/2014-10-16-New-Aon-Hewitt-SurveyShows-Majority-of-Companies-Taking-Immediate-Steps-to-Minimize-Exposure-to-Excise-Tax.

[5] Economic Policy Institute, "Increased Health Care Cost Sharing Works as Intended. It burdens patients who need care the most," May 8, 3013, http://www.epi.org/files/2013/increased-health-care-cost-sharing-works.pdf

[6] Milliman (study prepared for the National Education Association), "What does the ACA excise tax on high-cost plans actually tax?," December 9, 2014, http://www.nea.org/assets/docs/Milliman--What_Does_the_Excise_Tax_Actually_Tax.pdf

Additionally, because the tax thresholds are pegged to the consumer price index, which is lower than health care inflation, every year an increasing number of health plans will be subject to the tax. In fact, a 2014 survey found that 82% of employers estimated that without changes, at least one plan they sponsor will trigger the tax within the first five years of implementation.[7]

Measures to Reduce Health Care Costs

Instead of trying to raise revenue for the ACA with the blunt instrument of the 40% tax on employer coverage, Congress should focus on strategies that reduce the true cost of health care. Long before the ACA was enacted, employers were driving innovative delivery system reforms, experimenting with new payment structures, consumer education tools and innovative payment reforms like bundled payments, reference pricing and value based purchasing. Efforts related to systematically measuring and reporting quality; reducing health care fraud and abuse; simplifying administrative burdens on providers and insurers; adopting more health information technology; and programs that improve population health through a focus on at-risk populations and those with high needs and high costs, offer more hope than imposing a new tax on top of already costly coverage. Additionally, reforms that improve meaningful price transparency and enhance consumer tools would be welcomed by patients and their families.

Proposals to tax employee health premiums suffer many of the same defects as the "Cadillac Tax"

As the Task Force examines the tax treatment of employer-sponsored health coverage, the Alliance believes it is important to consider the lessons learned from the troubled "Cadillac Tax" so future policy recommendations will avoid similar pitfalls. Policy options that rely on limiting the current tax exclusion that employees have for employer-sponsored health coverage may unintentionally cause similar market distortions and harm to working Americans and their families. To achieve the goals of the Task Force, any new policy proposals should not disrupt elements of the current system that work well.

We offer the Task Force the following lessons learned from the impending "Cadillac Tax" that should inform future policy decisions:

- **The "Cadillac Tax" increases taxes on middle income families and retirees.** Middle-income families and retirees will bear the brunt of the "Cadillac Tax," which increases costs -- by compelling employers to shift costs to employees in an attempt to avoid triggering the tax – rather than actually lowering the cost of health coverage. In order to avoid paying the tax, companies are already being compelled to shift the burden to employees in the form of higher deductibles, increased co-pays and thinner benefits. Joseph Antos, Ph.D., Wilson H. Taylor Scholar in Health Care and Retirement Policy for the American Enterprise Institute, in his testimony before the House Ways and Means Committee, pointed out that the "Cadillac tax has serious defects." Antos highlighted that "low-wage workers are disadvantaged by the Cadillac tax" and that "the Cadillac tax will eventually impact everyone with employer coverage." Proposals that directly tax employees could mistakenly recreate these problems.

- **Reducing incentives to participate in employer coverage could increase government spending.** Employers contribute on average about 70% of the cost of employer-sponsored

[7] Towers Watson: https://www.towerswatson.com/en/Press/2014/09/nearly-half-us-employers-to-hit-health-care-cadillac-tax-in-2018-with-82-percent-by-2023

health care coverage. This is a significant benefit to the 175 million individuals receiving employer-sponsored coverage and it reduces the need for costly government subsidies to help individuals afford health care services.[8] Enabling the provision of health coverage through a tax incentive is far more efficient than providing the same benefits through government-funded public programs. Employers are a critical force in the market, negotiating with plans and providers to keep costs down and quality high. Employers also help employees navigate the complex health care system, improving their ability to act as informed consumers and providing them with tools to improve their health such as wellness plans and on-site medical clinics. Health and tax policy should encourage employer-sponsored coverage – not tax it.

- **Taxing health care coverage has a negative impact on women, individuals with high cost health conditions, older workers, families, early retirees and small businesses**. The cost of a health plan varies greatly based on utilization and the insured population. A tax on individual plans or on employer plans that cover greater numbers of higher cost populations like women (who actuarially have higher costs), individuals with expensive chronic health conditions or who suffer catastrophic health events, older workers, families, early retirees and small businesses will disproportionality disadvantage these populations.

- **Taxing health care coverage does not directly affect the unit cost of health care**. The "Cadillac Tax" does not address the true costs that comprise the health care delivery process. It also does nothing to improve the actual health of American workers. The majority of health care costs are primarily driven by a relatively small population with high cost health care needs. Taxing their health coverage does not reduce their utilization of health services – it just makes it more expensive.

- **Taxing health care coverage targets families**. The Economic Policy Institute[9] has estimated that a number of proposals to cap or eliminate the exclusion and replace it with tax credits would be "more favorable toward (disproportionately advantages or disadvantages to a lesser degree) single plans over family plans. And, those with family plans will see a higher share of their premiums taxed than their single counterparts."

- **Taxing health care coverage leads to geographic disparities.** As noted above, health care costs vary across the country and within states. This means individuals living in higher cost areas would pay more tax for the same level of health coverage as individuals living in lower cost areas. Limiting the existing employee tax exclusion for health coverage would face the same geographic disparities the "Cadillac Tax" displays.

- **Taxing health care coverage results in a loss of coverage options.** The Congressional Budget Office (CBO) estimated that one alternative, a cap on the exclusion of $7,000 for individual coverage and $17,000 for family coverage, would cause 6 million fewer people to have

[8] A 2014 study of health care expenditures by the American Health Policy Institute found that the federal government is spending nearly three times as much on health care for its beneficiaries as employers are spending to cover their employees.
[9] Economic Policy Institute: http://www.epi.org/files/2013/increased-health-care-cost-sharing-works.pdf

employment-based coverage than current law.[10] Over 175 million Americans depend on employers for health coverage, including retirees, low- and moderate-income families, public sector employees, non-profit organizations and small-business owners.

- **Employer-sponsored insurance is efficient, effective and affordable for working Americans and their families.** Employers have numerous incentives to manage costs and improve health outcomes by investing in innovative approaches such as on-site medical clinics, employee wellness programs and other initiatives. Ironically, such innovations would be penalized by the "Cadillac Tax", which treats such programs only as expenditures that help to trigger the tax. Elimination or capping the tax exclusion would have a similar impact if these innovations are subject to tax. Employers also provide valuable assistance to employees regarding their health coverage, including assistance selecting the best health plans, resolving claims questions, choosing higher quality providers and other assistance. Changes that undermine or weaken the employer-sponsored insurance market, like the "Cadillac Tax," could force more people to the individual market for insurance, a market that is not as efficient, not as innovative, and may not be as affordable as employer-sponsored coverage.

CONCLUSION

As the Task Force considers ways to reform the health care system, including different proposals for the tax treatment of health care, we urge lawmakers to repeal the 40% tax on employer-sponsored health coverage. The tax endangers a segment of our health insurance system that is demonstrably more efficient and cost-effective than other alternatives. The 40% tax will force employees to bear more of the cost regardless of their ability to do so, a trend that is already emerging as employers prepare for the tax by increasing co-pays and other out-of-pocket expenses. Policymakers should focus on reforms that improve our health care system, achieve true savings and eliminate waste.

Thank you for the opportunity to work with the Task Force. We look forward to working with the Congress on legislation to repeal the "Cadillac Tax" and to support other health care reforms that strengthen the health care system.

Respectfully,

James A. Klein
President
American Benefits Council

On behalf of:
The Alliance to Fight the 40

For more information about the tax, the Alliance to Fight the 40, or this statement, please contact:
info@fightthe40.com

[10] CBO, "Health-Related Options for Reducing the Deficit: 2014 to 2023," December 2013,page 63, https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/reports/44906-HealthOptions.pdf