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Repeal of Obamacare? Not so fast! Popular items at risk in ax attack

As a candidate, Donald Trump referred to the Affordable Care Act as a “catastrophe” and vowed to repeal it if elected. Since so many Republican members of Congress have also condemned “Obamacare,” we can presume there will be a serious attempt to repeal it in 2017. But it may not be as easy to repeal it either in whole or in part.

Before the passage of the ACA, the principal federal statute governing employee benefits was the Employees' Retirement Income Security Act of 1974.

It did not require employers to offer group health coverage, but many medium and large employers did because of the favorable tax benefits conferred upon employees. Those employees and their families did not have to pay income tax on the value of the employer-provided health coverage. In contrast, those without employer-provided health coverage had to purchase their own health plans with after-tax dollars.

Employers who insured their group health plans were subject to state insurance laws. Those laws permitted insurers to use pre-existing exclusion clauses, which allowed them to exclude coverage of certain medical conditions that existed before the employee or his family became eligible under the plan.

Those laws also allowed insurers to compute premiums based on sex, age, geographical area, family history and individual or family coverage. The self-insured group health plans were also able to impose similar restrictions. If Congress repeals ACA in its entirety that is the situation to which we would revert.

Under the ACA, there were two major changes. First, insurance reforms referred to as “market

reforms” were enacted at the federal level and pre-empted state insurance laws and regulations.

Second, federal taxes were imposed to enforce the individual and the employer “mandates” to have health-care coverage.

The market reforms required all health-care plans to prohibit exclusions for pre-existing conditions and limited the ability of insurers to set premiums by age.

They also expanded coverage to include dependents up to age 26, banned out-of-pocket costs for certain preventative care and created state and federal exchanges for individuals and small businesses to purchase and compare insurance policies.

Premiums charged for health coverage cannot take into account sex or family history and must fit with a maximum variance of 3:1 (which means a \$200/month premium for a 21-year-old in a given plan limits the premium for a 64-year-old to \$600).

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To make these market reforms work, the ACA required that insurance coverage be extended to the uninsured and the young, relatively healthy individuals who had opted out of health-care plans. That's where the federal taxes came into play.

The ACA imposed an “individual mandate” to force the young, healthy individuals to opt for coverage or pay a tax penalty. It also imposed an “employer mandate” to force employers with 50 or

BY KATHRYN J. KENNEDY

Kathryn J. Kennedy is associate dean and professor of law at The John Marshall Law School. She directs the Center for Tax Law & Employee Benefits, which hosts the only LL.M. degree in employee benefits law in the nation. She can be reached at tkennedy@jmls.edu or (312) 987-1418.

more employees to offer affordable and adequate coverage or face a hefty tax penalty.

In order to help make coverage affordable, the ACA gave premium tax credits to individuals or families earning an income of less than the 400 percent poverty level to offset the cost of the insurance premiums. To curb the costs of insurance coverage, the ACA imposed a 40 percent “Cadillac tax” on high-cost employer-provided coverage. The real purpose of this tax was to “score” the cost of ACA (i.e., to determine how much

that many Americans (and even some Republicans) favor many of the market reforms imposed by ACA, especially the ban on pre-existing exclusions.

But now the repeal of the ACA has become a priority of the Republican-controlled Congress and President-elect Trump. A total repeal of ACA would need a supermajority of 60 votes in the Senate in order to overcome a filibuster; a number that those favoring repeal clearly don't have.

An alternative the Republicans could consider is use of the budget reconciliation process. (As an aside, this is route the Republicans took in 2015 to repeal ACA, but it was vetoed by President Barack Obama.)

Those types of bills need only a simple majority vote, which the Republicans have. But here's the wrinkle — parts of the bill that have no revenue implications can be stricken. That means the Democrats could strike out of the bill the repeal of market reforms (so they continue to be the law), but could not strike out the tax provisions (so if passed, would no longer be the law).

To gut the taxes but keep access to coverage would then force insurance companies to refuse to extend coverage that would bankrupt them. That would effectively “repeal” the ACA, but at a terrible cost to our nation.

So let's hope that the Republicans are willing to work with the Democrats to come up with a proposal to replace ACA, not simply repeal ACA.

A number of Republicans have such plans, including House Speaker Paul Ryan. But such a placement plan requires the parties to compromise in order to avoid reverting to a pre-ACA era that lacked much-needed market reforms.