

EMPLOYER RELIEF ACT OF 2018

AUGUST 28, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BRADY of Texas, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4616]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 4616) to amend the Patient Protection and Affordable Care Act to provide for a temporary moratorium on the employer mandate and to provide for a delay in the implementation of the excise tax on high cost employer-sponsored health coverage, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Employer Relief Act of 2018”.

SEC. 2. MORATORIUM ON EMPLOYER MANDATE.

Section 4980H of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

“(e) **SUSPENSION.**—This section shall not apply to any month beginning after December 31, 2014, and before January 1, 2019.”.

SEC. 3. DELAY IN IMPLEMENTATION OF EXCISE TAX ON HIGH COST EMPLOYER-SPONSORED HEALTH COVERAGE.

Section 9001(c) of the Patient Protection and Affordable Care Act is amended by striking “December 31, 2021” and inserting “December 31, 2022”.

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

The bill H.R. 4616, as reported by the Committee on Ways and Means, provides retroactive relief from Obamacare’s employer mandate and one additional year of delay in the implementation of the law’s “Cadillac tax” on high-cost employer health plans.

B. BACKGROUND AND NEED FOR LEGISLATION

The Affordable Care Act (ACA), also known as “Obamacare,” imposes a mandate on employers with more than 50 full-time equivalent workers (FTEs) to offer health coverage to their workers or pay one of two penalties. Full-time workers for the purposes of the employer mandate are defined as those who work at least 30 hours per week. After a one-year delay by the Obama Administration, the employer mandate was partially implemented in 2015 and then fully implemented in 2016. In November 2017, the Internal Revenue Service (IRS) began issuing notices to employers of employer mandate penalty collection for 2015.

The ACA also imposes a 40 percent excise tax on high-cost employer health plans, commonly referred to as the “Cadillac tax.” The tax was originally supposed to be implemented in 2018 but has since been delayed by Congress until 2022.

The ACA’s government intrusion into the employer/employee relationship through the employer mandate and flawed Cadillac tax increases costs on employers and harms job growth. The Obama Administration appears to have failed to take required action to protect employees, employers, and the taxpayers with respect to timely notification of potential liability under the law’s employer mandate. Now, employers are being asked to prove they were in compliance with the employer mandate for coverage in 2015, three years after the fact. This retroactive enforcement for compliance

with a then partially implemented mandate that lacked clear guidance places a needless burden on employers.

C. LEGISLATIVE HISTORY

Background

H.R. 4616 was introduced on December 12, 2017 and was referred to the Committee on Ways and Means.

Committee action

The Committee on Ways and Means marked up H.R. 4616, the “Employer Relief Act of 2018,” on July 11, 2018, and ordered the bill, as amended, favorably reported (with a quorum being present).

Committee hearings

The policy issues associated with the employer mandate and the issue of tax pertaining to health care and the ACA were discussed at the following Ways and Means hearings during the 112th through 115th Congresses:

- Full Committee Hearing on the Health Care Law’s Impact on Jobs, Employers, and the Economy (January 26, 2011)
- Subcommittee on Health Hearing on the Individual and Employer Mandates in the Democrats’ Health Care Law (March 29, 2012)
- Subcommittee on Oversight Hearing on the Tax-Related Provisions in the President’s Health Care Law (March 5, 2013)
- Subcommittee on Health Hearing on the Delay of the Employer Mandate (July 10, 2013)
- Subcommittee on Health Hearing on the Delay of the Employer Mandate Penalties and Reporting Requirements (July 17, 2013)
- Subcommittee on Health Hearing on the Treasury Department’s Final Employer Mandate and Employer Reporting Requirements Regulations (April 8, 2014)
- Subcommittee on Health Hearing on the Individual and Employer Mandates in the President’s Healthcare Law (April 14, 2015)
- Full Committee Hearing on the Tax Treatment of Health Care (April 14, 2016)
- Subcommittee on Tax Policy Member Day Hearing on Tax Legislation (May 12, 2016)
- Subcommittee on Health Member Day Hearing on Tax-Related Proposals to Improve Health Care (May 17, 2016)
- Subcommittee on Health Hearing on Rising Health Insurance Premiums Under the Affordable Care Act (July 12, 2016)
- Subcommittee on Health Hearing on Lowering Costs and Expanding Access to Health Care through Consumer-Directed Health Plans (June 6, 2018)

II. EXPLANATION OF THE BILL

A. MORATORIUM ON EMPLOYER MANDATE

PRESENT LAW

In general

An applicable large employer, as defined below, may be subject to a tax, called an “assessable payment,” for a month if one or more of its full-time employees is certified to the employer as receiving for the month a premium assistance credit with respect to health insurance purchased through an Exchange (commonly referred to as the “employer mandate”).¹ As discussed below, the amount of the assessable payment depends on whether the employer offers its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under a group health plan sponsored by the employer and, if it does, whether the coverage offered is affordable and provides minimum value.

Definitions of full-time employee and applicable large employer

Applicable large employer generally means, with respect to a calendar year, an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year. For purposes of these rules, full-time employee means, with respect to any month, an employee who is employed on average at least 30 hours of service per week. Solely for purposes of determining whether an employer is an applicable large employer (that is, whether the employer has at least 50 full-time employees), besides the number of full-time employees, the employer must include the number of its full-time equivalent employees for a month, determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120. In addition, in determining whether an employer is an applicable large employer, members of the same controlled group, group under common control, and affiliated service group are treated as a single employer.² If the group is an applicable large employer under this test, each member of the group is an applicable large employer even if any member by itself would not be an applicable large employer.

Assessable payments

If an applicable large employer does not offer its full-time employees and their dependents minimum essential coverage under an employer-sponsored plan and at least one full-time employee is so certified to the employer, the employer may be subject to an assessable payment (for 2018) of \$2,320 (divided by 12 and applied on a monthly basis) multiplied by the number of its full-time employees in excess of 30, regardless of the number of full-time employees so certified.

¹Sec. 4980H. As discussed in Part A, premium assistance credits under section 36B apply with respect to health insurance purchased through an Exchange. An employer may also be subject to an assessable payment if an employee received reduced cost-sharing with respect to coverage purchased through an Exchange as discussed in Part A.

²The rules for determining controlled group, group under common control, and affiliated service group under section 414(b), (c), (m), and (o) apply for this purpose.

Generally an employee who is offered minimum essential coverage under an employer-sponsored plan is not eligible for a premium assistance credit or reduced cost-sharing unless the coverage is unaffordable or fails to provide minimum value.³ However, if an employer offers its full-time employees and their dependents minimum essential coverage under an employer-sponsored plan and at least one full-time employee is certified as receiving a premium assistance credit or reduced cost-sharing (because the coverage is unaffordable or fails to provide minimum value), the employer may be subject to an assessable payment (for 2018) of \$3,480 (divided by 12 and applied on a monthly basis) multiplied by the number of such full-time employees. However, the assessable payment in this case is capped at the amount that would apply if the employer failed to offer its full-time employees and their dependents minimum essential coverage.

REASONS FOR CHANGE

The Committee believes that the employer mandate imposes an undue and unnecessary burden on employers by requiring them to offer minimum essential coverage to their full-time employees. The Committee believes a retroactive moratorium on the employer mandate will help provide relief for employers that struggled to comply with the ACA's complicated new requirements during the first few years of implementation.

EXPLANATION OF PROVISION

Under the proposal, the employer mandate does not apply to any month beginning after December 31, 2014, and before January 1, 2019.

EFFECTIVE DATE

The proposal is effective for taxable years beginning after December 31, 2018.

B. DELAY IN IMPLEMENTATION OF EXCISE TAX ON HIGH COST EMPLOYER-SPONSORED HEALTH COVERAGE

PRESENT LAW

In general

Effective for taxable years beginning after December 31, 2021, an excise tax is imposed on the provider of applicable employer-sponsored health coverage (the "coverage provider") if the aggregate cost of the coverage for an employee (including a former employee, surviving spouse, or any other primary insured individual) exceeds a threshold amount (referred to as "high cost health coverage").⁴

³Coverage under an employer-sponsored plan is unaffordable if the employee's share of the premium for self-only coverage exceeds 9.5 percent of household income, and the coverage fails to provide minimum value if the plan's share of total allowed cost of provided benefits is less than 60 percent of such costs.

⁴Sec. 4980I, was added to the Code by section 9001 of the Patient Protection and Affordable Care Act (PPACA) and amended by section 10901 of PPACA and section 1401 of the Health Care and Education and Reconciliation Act (HCERA). The effective date was subsequently changed by section 1401(b)(2) of Pub. L. No. 111-152, section 101(a) of Pub. L. No. 114-113, and section 4002 of Pub. L. No. 115-120.

The tax is 40 percent of the amount by which aggregate cost exceeds the threshold amount (the “excess benefit”).

The annual threshold amount for 2018 is \$10,200 for self-only coverage and \$27,500 for other coverage (such as family coverage), multiplied by a one-time health cost adjustment percentage.⁵ This threshold is then adjusted annually by an age- and gender-adjusted excess premium amount. The age- and gender-adjusted excess premium amount is the excess, if any, of (1) the premium cost of standard FEHBP coverage for the type of coverage provided to an individual if priced for the age and gender characteristics of all employees of the employer, over (2) the premium cost of standard FEHBP coverage if priced for the age and gender characteristics of the national workforce. For this purpose, standard FEHBP coverage means the per employee cost of Blue Cross/Blue Shield standard benefit coverage under the Federal Employees Health Benefit Program.

The excise tax is determined on a monthly basis, by reference to the monthly aggregate cost of applicable employer-sponsored coverage for the month and 1/12 of the annual threshold amount.

Applicable employer-sponsored coverage and determination of cost

Subject to certain exceptions, applicable employer-sponsored coverage is coverage under any group health plan offered to an employee by an employer that is excludible from the employee’s gross income or that would be excludible if it were employer-sponsored coverage.⁶ Thus, applicable employer-sponsored coverage includes coverage for which an employee pays on an after-tax basis. Applicable employer-sponsored coverage includes coverage under any group health plan established and maintained primarily for its civilian employees by the Federal government or any Federal agency or instrumentality, or the government of any State or political subdivision thereof or any agency or instrumentality of a State or political subdivision.

Applicable employer-sponsored coverage includes both insured and self-insured health coverage, including coverage in the form of reimbursements under a health flexible spending account (“health FSA”) or a health reimbursement arrangement and contributions to a health savings account (“HSA”) or Archer medical savings account (“Archer MSA”).⁷ In the case of a self-employed individual, coverage is treated as applicable employer-sponsored coverage if

⁵The health cost adjustment percentage is 100 percent plus the excess, if any, of (1) the percentage by which the cost of standard FEHBP coverage for 2018 (determined according to specified criteria) exceeds the cost of standard FEHBP coverage for 2010, over (2) 55 percent.

⁶Section 106 provides an exclusion for employer-provided coverage.

⁷Some types of coverage are not included in applicable employer-sponsored coverage, such as long-term care coverage, separate insurance coverage substantially all the benefits of which are for treatment of the mouth (including any organ or structure within the mouth) or of the eye, and certain excepted benefits. Excepted benefits for this purpose include (whether through insurance or otherwise) coverage only for accident, or disability income insurance, or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability insurance; workers’ compensation or similar insurance; automobile medical payment insurance; credit-only insurance; and other similar insurance coverage (as specified in regulations), under which benefits for medical care are secondary or incidental to other insurance benefits. Applicable employer-sponsored coverage does not include coverage only for a specified disease or illness or hospital indemnity or other fixed indemnity insurance if the cost of the coverage is not excludible from an employee’s income or deductible by a self-employed individual.

the self-employed individual is allowed a deduction for all or any portion of the cost of coverage.⁸

For purposes of the excise tax, the cost of applicable employer-sponsored coverage is generally determined under rules similar to the rules for determining the applicable premium for purposes of COBRA continuation coverage,⁹ except that any portion of the cost of coverage attributable to the excise tax is not taken into account. Cost is determined separately for self-only coverage and other coverage. Special valuation rules apply to retiree coverage, certain health FSAs, and contributions to HSAs and Archer MSAs.

Calculation of excess benefit and imposition of excise tax

In determining the excess benefit with respect to an employee (i.e., the amount by which the cost of applicable employer-sponsored coverage for the employee exceeds the threshold amount), the aggregate cost of all applicable employer-sponsored coverage of the employee is taken into account. The threshold amount for self-only coverage generally applies to an employee. The threshold amount for other coverage applies to an employee only if the employee and at least one other beneficiary are enrolled in coverage other than self-only coverage under a group health plan that provides minimum essential coverage and under which the benefits provided do not vary based on whether the covered individual is the employee or other beneficiary. For purposes of the threshold amount, any coverage provided under a multiemployer plan is treated as coverage other than self-only coverage.¹⁰

The excise tax is imposed on the coverage provider.¹¹ In the case of insured coverage (i.e., coverage under a policy, certificate, or contract issued by an insurance company), the health insurance issuer is liable for the excise tax. In the case of self-insured coverage, the person that administers the plan benefits (“plan administrator”) is generally liable for the excise tax. However, in the case of employer contributions to an HSA or an Archer MSA, the employer is liable for the excise tax.

The employer is generally responsible for calculating the amount of excess benefit allocable to each coverage provider and notifying each coverage provider (and the IRS) of the coverage provider’s allocable share. In the case of applicable employer-sponsored coverage under a multiemployer plan, the plan sponsor is responsible for the calculation and notification.¹²

⁸Section 162(l) allows a deduction to a self-employed individual for the cost of health insurance.

⁹Sec. 4980B(f)(4).

¹⁰As defined in section 414(f), a multiemployer plan is generally a plan to which more than one employer is required to contribute and that is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer.

¹¹The excise tax is allocated pro rata among the coverage providers, with each responsible for the excise tax on an amount equal to the total excess benefit multiplied by a fraction, the numerator of which is the cost of the applicable employer-sponsored coverage of that coverage provider and the denominator of which is the aggregate cost of all applicable employer-sponsored coverage of the employee.

¹²The employer or multiemployer plan sponsor may be liable for a penalty if the total excise tax due exceeds the tax on the excess benefit calculated and allocated among coverage providers by the employer or plan sponsor.

REASONS FOR CHANGE

The Committee believes the excise tax on high-cost employer-sponsored health coverage was created to provide a tax incentive for employers to curb health care costs, including future increases in costs. In theory, because health benefits are important to employees, the excise tax on high-cost employer-sponsored health coverage should motivate employers and insurance issuers to find savings and reduce health care costs. While this is a worthy goal, the excise tax is poorly designed and disrupts the level of benefits provided to employees. To comply with the limits, employers will have to modify their health plans by either cutting benefits or shifting costs to employees. The Committee believes that postponing the punitive excise tax on employer-provided coverage until structural health care reform can be adopted will provide relief to employers and employees who are facing increased costs or decreased benefits and give employers more time to identify and implement their own measures to contain health care costs.

EXPLANATION OF PROVISION

Under the proposal, implementation of the excise tax on high-cost employer-sponsored health coverage is delayed until after December 31, 2022.

EFFECTIVE DATE

The proposal is effective for taxable years beginning after December 31, 2018.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means during the markup consideration of H.R. 4616, the “Employer Relief Act of 2018,” on July 11, 2018.

H.R. 4616 was ordered favorably reported to the House of Representatives as amended by an amendment in the nature of a substitute offered by Mr. Roskam by a roll call vote of 22 yeas to 15 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Brady	X	.....	.....	Mr. Neal .....	.....	X	.....
Mr. Johnson	X	.....	.....	Mr. Levin .....	.....	X	.....
Mr. Nunes	X	.....	.....	Mr. Lewis .....	.....	X	.....
Mr. Reichert	X	.....	.....	Mr. Doggett .....	.....	X	.....
Mr. Roskam	X	.....	.....	Mr. Thompson .....	.....	X	.....
Mr. Buchanan	X	.....	.....	Mr. Larson .....	.....	X	.....
Mr. Smith (NE)	X	.....	.....	Mr. Blumenauer .....	.....	X	.....
Ms. Jenkins	X	.....	.....	Mr. Kind .....	.....	X	.....
Mr. Paulsen	X	.....	.....	Mr. Pascrell .....	.....	X	.....
Mr. Marchant	X	.....	.....	Mr. Crowley .....	.....	X	.....
Ms. Black .....	.....	.....	.....	Mr. Davis .....	.....	X	.....
Mr. Reed	X	.....	.....	Ms. Sánchez .....	.....	.....	.....
Mr. Kelly	X	.....	.....	Mr. Higgins .....	.....	X	.....
Mr. Renacci	X	.....	.....	Ms. Sewell .....	.....	X	.....
Ms. Noem .....	.....	.....	.....	Ms. DelBene .....	.....	X	.....
Mr. Holding	X	.....	.....	Ms. Chu .....	.....	X	.....
Mr. Smith (MO)	X	.....	.....		
Mr. Rice	X	.....	.....		

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Schweikert	X	.....	.....		
Ms. Walorski	X	.....	.....		
Mr. Curbelo	X	.....	.....		
Mr. Bishop	X	.....	.....		
Mr. LaHood	X	.....	.....		
Mr. Wenstrup	X	.....	.....		

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 4616, as reported.

The bill, as reported, is estimated to have the following effect on Federal fiscal year budget receipts for the period 2019–2028:

Item	Fiscal Years—Millions of Dollars											
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2019-23	2019-28
Moratorium on Employer Mandate ¹	-12,111	-10,169	-3,630								-25,910	-25,910
Delay in Implementation of Excise tax on High-Cost Employer Sponsored Health Coverage ^{1,2,3}				-7,822	-5,766						-13,588	-13,588
Total	-12,111	-10,169	-3,630	-7,822	-5,766						-39,498	-39,498

NOTE: Details may not add to totals due to rounding.
¹ Estimate provided by the staff of the Joint Committee on Taxation and the Congressional Budget Office.
² Estimate includes the following off-budget effects

	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2019-23	2019-28
² Estimate includes the following off-budget effects				-291	-113						-404	-404
³ Estimate includes the following outlay effects				-1,359	-582						-1,941	-1,941

Pursuant to clause 8 of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: The gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not “major legislation” for purposes of requiring that the estimate include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX
EXPENDITURES BUDGET AUTHORITY

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue-reducing tax provision involves a new tax expenditure. See Part IV.A., above.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET
OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

H.R. 4616—Employer Relief Act of 2018

Summary: H.R. 4616 would suspend collection of penalties imposed on large employers who decline to offer their employees health insurance coverage that meets specified standards (known as the employer mandate) for plan years 2015–2018. It also would delay implementation of the excise tax on high-premium insurance plans by one year. CBO and the staff of the Joint Committee on Taxation (JCT) estimate that enacting the legislation would increase federal deficits by \$39.5 billion over the 2019–2028 period.

Enacting H.R. 4616 would affect direct spending and revenues; therefore, pay-as-you-go procedures apply.

CBO and JCT estimate that enacting H.R. 4616 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 4616 is shown in the following table. The costs of this legislation fall within budget function 550 (health).

	By fiscal year, in billions of dollars—												
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2019– 2023	2019– 2028
DECREASES (–) IN REVENUES													
Moratorium on Employer Mandate	0	–12.1	–10.2	–3.6	0	0	0	0	0	0	0	–25.9	–25.9
Estimated Revenues	0	0	0	0	–9.2	–6.3	0	0	0	0	0	–15.5	–15.5
Delay in Implementation of Excise Tax on High-Premium Insurance Plans	0	–12.1	–10.2	–3.6	–9.2	–6.3	0	0	0	0	0	–41.4	–41.4
Estimated Revenues	0	0	0	0	–9.2	–6.3	0	0	0	0	0	–41.4	–41.4
Total Changes in Revenues	0	–12.1	–10.2	–3.6	–8.9	–6.2	0	0	0	0	0	–41.0	–41.0
On-Budget	0	–12.1	–10.2	–3.6	–8.9	–6.2	0	0	0	0	0	–41.0	–41.0
Off-Budget ^a	0	0	0	0	–0.3	–0.1	0	0	0	0	0	–0.4	–0.4
DECREASES (–) IN DIRECT SPENDING													
Delay in Implementation of Excise Tax on High-Premium Insurance Plans	0	0	0	0	–1.4	–0.6	0	0	0	0	0	–1.9	–1.9
Estimated Budget Authority	0	0	0	0	–1.4	–0.6	0	0	0	0	0	–1.9	–1.9
Estimated Outlays	0	0	0	0	0	0	0	0	0	0	0	0	0
NET INCREASE IN THE DEFICIT FROM DECREASES (–) IN DIRECT SPENDING AND REVENUES													
Impact on Deficit	0	12.1	10.2	3.6	7.8	5.8	0	0	0	0	0	39.5	39.5
On-Budget	0	12.1	10.2	3.6	7.5	5.7	0	0	0	0	0	39.1	39.1
Off-Budget ^a	0	0	0	0	0.3	0.1	0	0	0	0	0	0.4	0.4

Annual amounts may not sum to totals because of rounding.
^aAll off-budget effects would come from changes in Social Security revenues.
^bFor revenues, a negative number indicates a decrease (adding to the deficit).

Basis of estimate: For this estimate, CBO assumes the legislation will be enacted near the end of fiscal year 2018. CBO and JCT estimate that enacting the legislation would increase federal deficits by \$39.5 billion over the 2019–2028 period; that change would result from a \$1.9 billion decrease in outlays and a \$41.4 billion decrease in revenues.

Moratorium on Employer Mandate Penalties. Section 2 of H.R. 4616 would suspend collection of employer mandate penalties related to plan years 2015 through 2018. CBO and JCT estimate that the moratorium on the penalties would decrease revenues by \$25.9 billion over the 2019–2028 period.

Under current law, large employers that do not offer health insurance coverage that meets certain standards under the Affordable Care Act will owe a penalty if they have any full-time employees who receive a subsidy through a health insurance marketplace.¹ The requirement generally applies to employers with at least 50 full-time equivalent employees. The Internal Revenue Service (IRS) is in the process of collecting penalties for plan year 2015. CBO and JCT estimate that, under the bill, any penalties that have been collected would be refunded and that the IRS would cease collecting penalties for plan years 2015 through 2018. Because the penalties would not be collected for prior plan years and would remain in place for years after 2018, CBO and JCT estimate that the provision would not significantly affect employer decisions about offering insurance coverage.

Delaying Implementation of Excise Tax on High-Premium Insurance Plans. Section 3 of H.R. 4616 would delay the implementation of the excise tax on high-premium employment-based insurance plans until 2023. (The tax is currently scheduled to take effect beginning in 2022.) CBO and JCT estimate that the delay would decrease outlays by \$1.9 billion and decrease revenues by \$15.5 billion over the 2019–2028 period, resulting in an estimated \$13.6 billion increase in the deficit.

Current law requires providers of employment-based insurance to pay a federal excise tax on certain high-cost employment-based coverage beginning in 2022.² CBO and JCT expect that the excise tax will cause employers and employees to shift to lower cost plans to avoid paying the tax or to reduce their taxable liability. H.R. 4616 would delay the tax from applying until 2023.

The estimated decrease in revenues of \$15.5 billion over the 2019–2028 period stems from foregone excise tax receipts and from fewer employers and workers shifting to lower-cost health insurance plans to avoid paying the tax. That is, relative to current law, more people would remain in higher cost health insurance plans, and a larger share of total compensation would take the form of non-taxable health benefits, decreasing the share that takes the form of taxable wages and salaries. The reduction in revenues also reflects CBO and JCT's expectation that some employers who are projected to stop offering health insurance under current law would instead continue to offer insurance whose total value exceeds the

¹To meet the standards, the cost to employees for self-only coverage must not exceed a specified share of their income (which is 9.56 percent in 2018 and is scheduled to grow over time), and the plan must pay at least 60 percent of the cost of covered benefits.

²The excise tax will apply to plans that have total premiums above a certain threshold. The tax will be equal to 40 percent of the difference between the total value of the contributions and the applicable threshold.

specified thresholds for the excise tax. That response would further reduce the share of compensation taking the form of taxable wages and salaries.

The estimated \$1.9 billion decrease in outlays over the 2019–2028 period is attributable to individuals who would have received marketplace subsidies under current law and would instead enroll in employment-based coverage.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and on budget revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 4616, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS ON JULY 11, 2018

	By fiscal year, in millions of dollars—												
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2018–2023	2018–2028
	NET INCREASE OR DECREASE (–) IN THE ON-BUDGET DEFICIT												
Statutory Pay-As-You-Go Effect	0	12,111	10,169	3,630	7,531	5,653	0	0	0	0	0	39,094	39,094
Memorandum:													
Changes in Outlays	0	0	0	0	–1,359	–582	0	0	0	0	0	–1,941	–1,941
Changes in Revenues (on-budget)	0	–12,111	–10,169	–3,630	–8,890	–6,235	0	0	0	0	0	–41,035	–41,035

Increase in long-term direct spending and deficits: CBO and JCT estimate that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

Mandates: JCT has determined that the bill contains no inter-governmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Kate Fritzsche, Emily Vreeland, and the staff of the Joint Committee on Taxation; Mandates: The staff of the Joint Committee on Taxation.

Estimate approved by: Chad M. Chirico, Chief, Low-Income Health Programs and Prescription Drugs Cost Estimates Unit; Sarah Masi, Special Assistant for Health; Leo Lex, Deputy Assistant Director for Budget Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated into the description portions of this report.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the bill and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (“IRS Reform Act”) requires the staff of the

Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code of 1986 and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code of 1986 and that have “widespread applicability” to individuals or small businesses, within the meaning of the rule.

F. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. DUPLICATION OF FEDERAL PROGRAMS

In compliance with Sec. 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to section 6104 of title 31, United States Code.

H. DISCLOSURE OF DIRECTED RULE MAKINGS

In compliance with Sec. 3(i) of H. Res. 5 (115th Congress), the following statement is made concerning directed rule makings: The Committee advises that the bill requires no directed rule makings within the meaning of such section.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

A. TEXT OF EXISTING LAW AMENDED OR REPEALED BY THE BILL, AS REPORTED

In compliance with clause 3(e)(1)(A) of rule XIII of the Rules of the House of Representatives, the text of each section proposed to be amended or repealed by the bill, as reported, is shown below:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

* * * * *

Subtitle D—Miscellaneous Excise Taxes

* * * * *

CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

* * * * *

SEC. 4980H. SHARED RESPONSIBILITY FOR EMPLOYERS REGARDING HEALTH COVERAGE.

(a) **LARGE EMPLOYERS NOT OFFERING HEALTH COVERAGE.—If—**

(1) any applicable large employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

(2) at least one full-time employee of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,

then there is hereby imposed on the employer an assessable payment equal to the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

(b) **LARGE EMPLOYERS OFFERING COVERAGE WITH EMPLOYEES WHO QUALIFY FOR PREMIUM TAX CREDITS OR COST-SHARING REDUCTIONS.—**

(1) **IN GENERAL.—If—**

(A) an applicable large employer offers to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

(B) 1 or more full-time employees of the applicable large employer has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,

then there is hereby imposed on the employer an assessable payment equal to the product of the number of full-time employees of the applicable large employer described in subpara-

graph (B) for such month and an amount equal to $\frac{1}{12}$ of \$3,000.

(2) OVERALL LIMITATION.—The aggregate amount of tax determined under paragraph (1) with respect to all employees of an applicable large employer for any month shall not exceed the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) APPLICABLE PAYMENT AMOUNT.—The term “applicable payment amount” means, with respect to any month, $\frac{1}{12}$ of \$2,000.

(2) APPLICABLE LARGE EMPLOYER.—

(A) IN GENERAL.—The term “applicable large employer” means, with respect to a calendar year, an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year.

(B) EXEMPTION FOR CERTAIN EMPLOYERS.—

(i) IN GENERAL.—An employer shall not be considered to employ more than 50 full-time employees if—

(I) the employer’s workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and

(II) the employees in excess of 50 employed during such 120-day period were seasonal workers.

(ii) DEFINITION OF SEASONAL WORKERS.—The term “seasonal worker” means a worker who performs labor or services on a seasonal basis as defined by the Secretary of Labor, including workers covered by section 500.20(s)(1) of title 29, Code of Federal Regulations and retail workers employed exclusively during holiday seasons.

(C) RULES FOR DETERMINING EMPLOYER SIZE.—For purposes of this paragraph—

(i) APPLICATION OF AGGREGATION RULE FOR EMPLOYERS.—All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as 1 employer.

(ii) EMPLOYERS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is an applicable large employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

(iii) PREDECESSORS.—Any reference in this subsection to an employer shall include a reference to any predecessor of such employer.

(D) APPLICATION OF EMPLOYER SIZE TO ASSESSABLE PENALTIES.—

(i) IN GENERAL.—The number of individuals employed by an applicable large employer as full-time

employees during any month shall be reduced by 30 solely for purposes of calculating—

- (I) the assessable payment under subsection (a),
- or
- (II) the overall limitation under subsection (b)(2).

(ii) AGGREGATION.—In the case of persons treated as 1 employer under subparagraph (C)(i), only 1 reduction under subclause (I) or (II) shall be allowed with respect to such persons and such reduction shall be allocated among such persons ratably on the basis of the number of full-time employees employed by each such person.

(E) FULL-TIME EQUIVALENTS TREATED AS FULL-TIME EMPLOYEES.—Solely for purposes of determining whether an employer is an applicable large employer under this paragraph, an employer shall, in addition to the number of full-time employees for any month otherwise determined, include for such month a number of full-time employees determined by dividing the aggregate number of hours of service of employees who are not full-time employees for the month by 120.

(F) EXEMPTION FOR HEALTH COVERAGE UNDER TRICARE OR THE DEPARTMENT OF VETERANS AFFAIRS.—Solely for purposes of determining whether an employer is an applicable large employer under this paragraph for any month, an individual shall not be taken into account as an employee for such month if such individual has medical coverage for such month under—

- (i) chapter 55 of title 10, United States Code, including coverage under the TRICARE program, or
- (ii) under a health care program under chapter 17 or 18 of title 38, United States Code, as determined by the Secretary of Veterans Affairs, in coordination with the Secretary of Health and Human Services and the Secretary.

(3) APPLICABLE PREMIUM TAX CREDIT AND COST-SHARING REDUCTION.—The term “applicable premium tax credit and cost-sharing reduction” means—

- (A) any premium tax credit allowed under section 36B,
- (B) any cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act, and
- (C) any advance payment of such credit or reduction under section 1412 of such Act.

(4) FULL-TIME EMPLOYEE.—

(A) IN GENERAL.—The term “full-time employee” means, with respect to any month, an employee who is employed on average at least 30 hours of service per week.

(B) HOURS OF SERVICE.—The Secretary, in consultation with the Secretary of Labor, shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this paragraph to employees who are not compensated on an hourly basis.

(5) INFLATION ADJUSTMENT.—

(A) IN GENERAL.—In the case of any calendar year after 2014, each of the dollar amounts in subsection (b) and paragraph (1) shall be increased by an amount equal to the product of—

- (i) such dollar amount, and
- (ii) the premium adjustment percentage (as defined in section 1302(c)(4) of the Patient Protection and Affordable Care Act) for the calendar year.

(B) ROUNDING.—If the amount of any increase under subparagraph (A) is not a multiple of \$10, such increase shall be rounded to the next lowest multiple of \$10.

(6) OTHER DEFINITIONS.—Any term used in this section which is also used in the Patient Protection and Affordable Care Act shall have the same meaning as when used in such Act.

(7) TAX NONDEDUCTIBLE.—For denial of deduction for the tax imposed by this section, see section 275(a)(6).

(d) ADMINISTRATION AND PROCEDURE.—

(1) IN GENERAL.—Any assessable payment provided by this section shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68.

(2) TIME FOR PAYMENT.—The Secretary may provide for the payment of any assessable payment provided by this section on an annual, monthly, or other periodic basis as the Secretary may prescribe.

(3) COORDINATION WITH CREDITS, ETC.—The Secretary shall prescribe rules, regulations, or guidance for the repayment of any assessable payment (including interest) if such payment is based on the allowance or payment of an applicable premium tax credit or cost-sharing reduction with respect to an employee, such allowance or payment is subsequently disallowed, and the assessable payment would not have been required to be made but for such allowance or payment.

(e) SUSPENSION.—*This section shall not apply to any month beginning after December 31, 2014, and before January 1, 2019.*

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PATIENT PROTECTION AND AFFORDABLE CARE ACT

* * * * *

TITLE IX—REVENUE PROVISIONS

Subtitle A—Revenue Offset Provisions

SEC. 9001. EXCISE TAX ON HIGH COST EMPLOYER-SPONSORED HEALTH COVERAGE.

(a) IN GENERAL.—Chapter 43 of the Internal Revenue Code of 1986, as amended by section 1513, is amended by adding at the end the following:

[Omitted amendatory text]

* * * * *

(b) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code, as amended by section 1513, is amended by adding at the end the following new item:

”Sec. 4980I. Excise tax on high cost employer-sponsored health coverage.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after **December 31, 2021** *December 31, 2022*.

* * * * *

VII. DISSENTING VIEWS

H.R. 4616 (Nunes, R-CA and Kelly, R-PA) provides retroactive relief of the employer mandate for the tax years 2015 through 2018 and an additional one-year delay of the high-cost plan excise tax (often called the “Cadillac” tax) until 2022.

H.R. 4616 does not undo sabotage, premium hikes, and benefit cuts Republicans have caused over the past 18 months. This bill was one in a series of 11 bills the Committee marked up that Republicans claim will help lower health care costs for consumers. This legislation does not undo the disruption and sabotage on the American health care system. Democrats encourage the Committee to redirect its attention to legislation that could actually ensure that uninsured, low-income, and vulnerable people have real access to care. For example H.R. 5155, sponsored by Reps. Pallone, Neal, and Scott would protect people with pre-existing conditions, help lower premiums for Americans, and improve affordability of health coverage.

H.R. 4616 is a cynical attempt to address issues the Republicans could have easily included in their larger tax reform effort earlier this Congress. Yet, Republicans strategically left these taxes out and now only look to offer retroactive relief or tax delays. This is not a permanent solution. If Republicans truly want to help employers and employees, they would look at ways to address drug costs and other health care expenses that continue to grow faster than inflation. They would work to stabilize the larger health care marketplace and offer certainty that helps employers make the best decisions about how to get value for their health care dollar.

Legislation busts the deficit to benefit the wealthy, again. Altogether the 11 bills the Committee marked up would add another \$92 billion in unoffset tax cuts to the deficit. This bill comes at significant unoffset cost, nearly \$39 billion over ten years. While many Democrats are supportive of repealing the Cadillac tax, this bill’s meager one year delay is unacceptable. Even the Fight 40 Coalition noted that while recognition of the problem is nice, failing to move forward with full repeal is a 306 problem, especially as Republicans continue to advocate for full repeal of the medical device tax, benefiting one particular industry, while ignoring millions of Americans in employer-sponsored coverage.

The Joint Committee on Taxation estimates the cost of this bill to be \$39.5 billion over 10 years. Specifically, the employer mandate relief costs \$25.9 billion and high-cost plan excise tax delay costs \$13.6 billion. With this bill, Republicans are adding more tax cuts and increasing the deficit. Republicans are using the deficit, which they keep making larger with cuts for the wealthy, to justify the deep cuts they plan to make to Medicare and Medicaid. Republicans already are proposing to cut Medicare and Medicaid by nearly a trillion dollars to try to pay for the tax cuts they have already

enacted. This bill will only increase Republicans' call for further cuts to these critical programs.

RICHARD E. NEAL,
Ranking Member.

