Why the Federal Government Should Not Be in the Insurance Business: The Case of the Cadillac Tax

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Introduction

Section 4980I of the Patient Protection and Affordable Care Act (ACA) provides part of the funding for the Act's provisions through the imposition of an excise tax on high-cost employer-sponsored health coverage. This tax, popularly known as the Cadillac Tax, was originally scheduled to take effect in 2013. The Congressional Budget Office (CBO) estimated in 2010 that the revenue impact of the tax provision would be $149 billion for the period 2010 – 2019, while estimating that the overall impact of the ACA for the ten-year period would be a reduction in deficits of $139 billion. Legislative activity since the passing of the ACA has moved the scheduled effective date of the Cadillac Tax to 2022, with the revenue impact for 2010 – 2019 dropping from $149 billion to $0. An examination of the legislative history of the Cadillac Tax and the voting history of members of Congress suggests that changes are more likely related to political ideologies and the desire to be re-elected rather than careful consideration of the fiscal impact or the needs of insureds in a changing marketplace. The Federal Government seems ill-equipped to make policy for the insurance industry and should leave such decisions to the private sector.

History of the Cadillac Tax

The Cadillac Tax is a 40% excise tax on the cost of employer sponsored health coverage that exceeds predetermined threshold amounts for either single coverage or family coverage. First enacted by HR 3590, Patient Protection and Affordable Care Act, on March 21, 2010, the single threshold was $10,200 and the family threshold was $27,500, with no adjustment for inflation. The Cadillac Tax itself was non-deductible and the effective date was 2013. The purpose of the Cadillac Tax is to reduce tax preferred treatment of employer provided health care, reduce excess health care spending by employees and employers, and raise revenue to finance expansion of health coverage under the Affordable Care Act.

Almost before the ink was dry on HR 3590, the effective date for the tax was pushed to 2018 by HR 4872, Health Care and Education Reconciliation Act of 2010, on March 25, 2010. HR 2029, The Consolidated Appropriations Act 2016, passed on December 18, 2015, further weakened the tax provision, adding health cost adjustments to increase thresholds for 2018 (single threshold estimated to increase to $10,900 and family threshold estimated to increase to $29,400), providing for cost of living adjustments for taxable years after 2018, delaying the effective date of the tax to 2020, and providing for tax deductibility of the Cadillac Tax itself. All of the changes reduced the effectiveness of the provision to achieve its intended purposes, especially in raising revenue to finance other portions of the Affordable Care Act.

Before examining the projected revenue impact of the Cadillac Tax, the intent of Congress to limit or eliminate the Cadillac Tax is evidenced by proposed changes in the House and Senate that passed in one chamber, but did not become law. In the Senate, the Heller Amendment No. 2882 would have repealed the Cadillac Tax. This legislation passed the Senate on December 3, 2015 by a vote of 90 -10, but did not become law. In the House, HR 1628, the American Health Care Act of 2017, delayed the implementation of the Cadillac Tax to 2026. This bill passed in the House 217 – 213 on July 28, 2017, but did not make it through the Senate. Finally, on January 17, 2018, the Extension of Continuing Appropriations Act, 2018, delayed the implementation of the Cadillac Tax to 2022.

Cadillac Tax Impact on Federal Revenues

The Congressional Budget Office (CBO) estimated the Cadillac Tax proposed by HR 3590 and effective in 2013 would generate $149 billion in revenue for the 10 year period 2010 – 2019. (Recall that the CBO overall score for the Affordable Care Act was a reduction in deficits for the period 2010 – 2019 of $139 billion, so without the Cadillac Tax, the scoring would have showed an increase in deficits.) The CBO estimated that the amount for 2019 alone would be $35 billion, and expected the tax revenue to increase by 10% to 15% per year for the next decade. Revised estimates after HR 4872 delayed the effective date to 2018 show revenues of only $32 billion for the two years 2018 – 2019. The compares to the original CBO estimate for those two years of $65 billion. The Joint Committee on Taxation estimated revenues of only $9.4 billion for 2018 – 2019, but still estimated significant revenue of $82.4 billion for the period 2020 – 2025. After HR 2029 pushed the effective date to 2020, the estimate of federal revenue from the Cadillac Tax for 2010 – 2019 became $0. So, in five short years, from 2010 to 2015, the estimated impact of the Cadillac Tax on Federal revenue dropped from $149 billion to $0.

Although HR 1628 never became law, the estimated impact of a delay in the effective date of the Cadillac Tax to 2026 is instructive. The new revenue estimate for the period 2020 – 2025 obviously became zero. But the CBO estimated the lost revenue for the period 2020 – 2025 to be only $14.5 billion. CBO's original estimate for this time period based on their 10% to 15% annual growth rate was almost $300 billion, and the Joint Committee on Taxation's estimate was over $82 billion. Circumstances change and estimates must be adjusted accordingly, but the size of these changes makes it unlikely that such estimates can be relied upon to make policy decisions.

Voting Records

Legislation often includes multiple provisions that address different aspects of an issue, or perhaps even provisions that are seemingly unrelated to the main purpose of the legislation. This makes analysis of voting records problematic. Legislation that includes changes to the Cadillac Tax provision may also make changes to other portions of the Affordable Care Act or regulations relating to other aspects of the healthcare industry. Therefore, reviewing selected voting records on bills that include changes to the Cadillac Tax is not intended to provide statistical evidence, but rather anecdotal evidence upon which reasonable observers may opine.

Table 1 shows the votes for 53 Senators who voted on both the Affordable Care Act that created the Cadillac Tax and on HR 2029 that weakened the Cadillac Tax and delayed its effective date to 2020. Of the 29 Senators that voted to create the Cadillac Tax in 2010, 24 (83%) voted to delay its implementation until 2020. Perhaps even more indicative of the true legislative intent, Table 2 shows the votes for 53 Senators who voted on both the Affordable Care Act and the Heller Amendment, which would have repealed the Cadillac Tax. Of the 30 Senators that voted yes on the creation of the Cadillac Tax, 25 (83%) voted to repeal it just five years later.

Similar results may be seen when comparing votes in the House of Representatives. Table 3 shows the votes for 214 Representatives who voted on both the Affordable Care Act and also on HR 2029. Of the 117 Representatives who voted yes on the creation of the Cadillac Tax, 104 (89%) voted to delay its implementation until 2020. Cynics might conclude that the Cadillac Tax was never intended to take effect, and that Congress may have included it in the Affordable Care Act in order to make the initial 10-year scoring be positive. This illustrates the problem with making decisions based on 10-year projections when laws can be changed by new representatives, or even by the same representatives, with very little accountability.

Table 4 shows voting results for Representatives who voted on both the Affordable Care Act and HR 1628, the American Health Care Act of 2017, which included a proposal to delay the effective date of the Cadillac Tax to 2026. The yes/no votes seem consistent over time in regards to the Cadillac Tax, that is, Representatives who voted to create the Cadillac Tax in 2010 voted no on delaying it to 2026, and Representatives who voted no to the creation of the Cadillac Tax in 2010 voted yes on delaying its implementation. However, what is noteworthy is the stark partisan divide. The Democrats were in the majority in 2010 when the Affordable Care Act was passed, and Republicans were in the majority in 2017 for the vote on HR 1628. Of the 96 Democrats who voted yes on the Affordable Care Act, all 96 voted no on the Republican sponsored bill HR 1628. Of the 92 Republicans who voted no on the Affordable Care Act, 82 (89%) voted yes on HR 1628. Representatives seem to be voting for their Party rather than on the merits of the legislation.

Conclusion

The information discussed above supports the conclusion that the Federal Government should not be involved in the business of insurance based on the following observations:

- Estimates of the financial impact of regulations and programs are unreliable and change dramatically over short periods of time

- Senators and Representatives who want to be re-elected have an incentive to promise benefits and delay paying for them
- Partisanship: making policy decisions based on which political party is in power rather than on sound economic and financial principles is ineffective and inefficient
- Legislating via reconciliation makes it virtually impossible to comprehend or consider everything that is being voted on in Congress. For example, combining funding for Agriculture, Commerce, Defense, Homeland Security, Education, etc. into one bill that also changes the Cadillac Tax creates complexities and information overload which may cause some Congressmen to focus on only one issue when voting, or to simply vote along party lines.

The history of the Cadillac Tax legislation and a review of Congressional voting patterns indicate that the inclusion of the Cadillac Tax in the Affordable Care Act is a procedural tactic to meet budget reconciliation rules and will likely never raise significant revenue. The lack of fiscal accountability, the reality of almost constant campaigning for re-election, and increasing partisanship in Congress, help explain why the Federal Government should not be in the insurance business.

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Table 1: Voting in the Senate (Dem = Democrats; Ind = Independents; Rep = Republicans)			
		Vote on HR 2029 (Delay Cadillac Tax to 2020)	
		Yes	No
Vote on Affordable Care Act	Yes	24 Dem/Ind 0 Rep	5 Dem/Ind 0 Rep
	No	0 Dem/Ind 14 Rep	1 Dem/Ind 9 Rep

Table 2: Voting in the Senate
(Dem = Democrats; Ind = Independents; Rep = Republicans)

		Vote on Heller Amendment (Repeal Cadillac Tax)	
		Yes	No
Vote on Affordable Care Act	Yes	25 Dem/Ind 0 Rep	5 Dem/Ind 0 Rep
	No	0 Dem/Ind 22 Rep	0 Dem/Ind 1 Rep

Table 3: Voting in the House of Representatives
(Dem = Democrats; Ind = Independents; Rep = Republicans)

		Vote on HR 2029 (Delay Cadillac Tax until 2020)	
		Yes	No
Vote on Affordable Care Act	Yes	104 Dem/Ind 0 Rep	13 Dem/Ind 0 Rep
	No	1 Dem/Ind 69 Rep	0 Dem/Ind 27 Rep

Table 4: Voting in the House of Representatives
(Dem = Democrats; Ind = Independents; Rep = Republicans)

		Vote on HR 1628 (Delay Cadillac Tax until 2026)	
		Yes	No
Vote on Affordable Care Act	Yes	0 Dem/Ind 0 Rep	96 Dem/Ind 0 Rep
	No	0 Dem/Ind 82 Rep	1 Dem/Ind 10 Rep