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EMPLOYER REQUIREMENT IN BAUCUS HEALTH REFORM PLAN WOULD POSE LARGER PROBLEMS THAN PREVIOUSLY RECOGNIZED

Would Give Employers Incentives to Avoid Hiring Low-Income Parents and Could Lead to Increase in Child Poverty, and Would Place Burdens on Employers

by Robert Greenstein and Judy Solomon

With the release by Senator Max Baucus of his "Chairman's Mark" on health care reform, which will form the basis for decisions on health legislation by the Senate Finance Committee next week, the details of the plan's "free rider" requirement on employers have become clearer. The proposed measure would require employers who do not offer health coverage to pay substantial amounts for low- and moderate-income employees receiving subsidies to purchase coverage in a health insurance exchange. But, it would not require firms to pay anything for employees not receiving subsidies because their family incomes are higher (or for other reasons). It also would require employers who do offer coverage to pay if some of their workers receive subsidies, because the coverage the employer offers is not considered affordable for them or has benefits too skimpy to meet a minimum benefit standard.

An employer responsibility requirement is an essential component of health care reform; it is necessary to ensure that firms do not drop coverage in substantial numbers and shift costs to taxpayers. But the particular employer provision in Chairman Baucus' mark would pose a number of problems. As explained below, it would:

- Discourage the hiring of people from low- and moderate-income families who would qualify for subsidies in the new health insurance exchanges, and favor the hiring — for the same jobs — of people (primarily from families at higher income levels) who do not qualify for subsidies.

- In particular, make it considerably more difficult for low-income parents with children to be hired because the proposal would require employers subject to the requirement to pay much larger sums, which could amount to $5,000 or more per worker, for hiring people who receive subsidies for *family* coverage in the exchange. Low-income single mothers trying to work rather than rely on welfare could face significantly greater barriers to employment; since fewer of them likely would be hired, child poverty likely would increase.

- Place significant new administrative burdens and costs on employers.

The Provision

Employers with more than 50 employees that do not offer health coverage would have to pay the cost of subsidies provided to employees who purchase coverage through the new health insurance exchanges and qualify for subsidies because their family income is below 400 percent of the poverty line, currently $88,000 for a family of four.[1]

Many employers with more than 50 employees who do offer coverage also would be subject to the requirement. Workers who would have to pay more than 13 percent of their income for their share of the premium costs under their employer's plan could go into the exchange, as could workers whose employer offers a skimpy health plan that has an actuarial value of less than 65 percent. Employers would then be billed for those workers who receive subsidies because their family incomes were below 400 percent of the poverty line.

The Amounts That Employers Would Be Charged

For workers who receive a subsidy for *individual* coverage in the exchange, an employer would be charged the national average subsidy provided for individual coverage. For workers who receive a subsidy for *family* coverage, the employer would be charged the average subsidy for that type of coverage.[2]

The Kaiser Family Foundation reported this week that the average premium for family coverage in employer-based plans equals $13,375 in 2009. Using this figure, if the subsidy structure in the Finance Committee plan were in effect in 2009, the subsidy for family coverage for a worker at 150 percent of the poverty line could exceed $11,000, while the subsidy would be about $5,000 for a family at 350 percent of the poverty line.

Another source of information is a document that the Congressional Budget Office (CBO) produced for the Senate Finance Committee on September 10, based on the specifications for the Finance Committee plan as of September 5. The CBO estimates show in 2016 the average family premium for the low-cost "silver" health insurance plan — the plan to which the plan premium subsidies would be tied under the Chairman's Mark — would be about $15,000. The CBO estimates show that subsidies for family coverage for people between 133 percent and 350 percent of the poverty line would range from $4,200 to $13,600 in 2016, depending on where in that income range an enrollee's income fell. (Based on changes made in the Committee's specifications since September 5, these subsidy amounts likely would be modestly lower now, but the changes would not be large.)

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[1] The provision would not apply to employees who work less than 30 hours per week, have a disability, or participate in a welfare-to-work program, or to subsidies provided for children in foster care.

[2] The Baucus plan released today does not clarify whether there would be one amount that employers would be charged for all full-time workers who receive subsidies, irrespective of whether an employee's subsidy is for individual or family coverage, or whether employers would be charged the average subsidy for *individual* coverage for employees getting that type of subsidy and the average subsidy for *family* coverage for employees receiving that type of subsidy. We are informed that the Baucus plan takes the latter approach.

Since firms would have to pay the average subsidy for family coverage for workers receiving a subsidy for such coverage, employers would apparently be charged more than $5,000 — and probably well over that amount — for each worker they hire who receives such a subsidy.

There would be an upper limit on the charges. The amount that an employer would have to pay would be capped at $400 times the *total* number of people a firm employs (not the number of employees who get subsidies.)

Effects on Employer Hiring, Especially on Families With Children

The provision would make it more expensive for employers to hire workers from low- and moderate-income families than to hire workers from higher-income backgrounds to do the same job. As a result, it would inevitably affect hiring decisions.

Employers would have strong incentives to tilt hiring *toward* people who would be unlikely to receive subsidies and *away* from people who would need subsidies, especially subsidies for family coverage.

For example, employers would have incentives to favor prospective employees who have a spouse with a decent income (or who have health coverage through a family member), and teenagers whose parents make a decent living.

Employers who hire people with family incomes so low that they receive Medicaid (rather than subsidies for coverage purchased in the exchange) also would avoid a charge for such workers. Most jobs, other than jobs paying rather low wages, generally would lift people above the Medicaid income limit. So while this protection is helpful, its effect is limited.

Employers also would have incentives to favor prospective employees who do *not* have children over those who do. Hiring parents would make it far more likely that an employer would face large charges, for two reasons. First, as explained above, employers would face much bigger charges for workers who receive a subsidy for *family* coverage. Second, a parent with children would be much more likely to qualify for a subsidy — and hence to cause the employer to be charged — than a single individual or a person who is married but has no children, because the income limit for subsidies would vary by family size. The income level up to which a worker would be eligible for a subsidy (in 2009 dollars) would be $43,320 for an individual, compared to $88,000 for a family of four.

For these reasons, an employer who does not offer coverage and has a position to fill that pays somewhere in the $25,000 to $75,000 range may try to screen out applicants with children, since the employer could be hit with an added charge of $5,000 or more for each such person the firm employs.

This would be a blow for many single parents trying to work and keep their children out of poverty. The 1996 welfare law limited welfare assistance for these mothers and pushed them to get a job. With this provision, the government would be lessening their chances of being able to do so.

This differential treatment of workers based on their family income also would likely influence employer decisions about which employees to let go when firms trim their workforces to cut costs, such as during a recession. Workers from low- and moderate-income families, especially those with children, would cost the firm significantly more to retain than other workers who are paid the same wage to do the same job.

Although this clearly is not intended, the proposal likely would have discriminatory racial effects on hiring and firing. Because minorities are much more likely to have low family incomes than non-minorities, a larger share of prospective minority workers would likely be harmed.

Burdens on Employers

The proposed requirement also would place new burdens on employers. It would likely be complicated and costly for firms to administer. It also would impose fees on some firms in a way that could make it more difficult for them to fully pass on the costs though offsetting reductions in employee compensation.

The Congressional Budget Office noted some of the administrative problems this proposal would cause in a recent report.[3] In a similar vein, Robert Reischauer, the President of the Urban Institute and a former CBO director, has said this proposal would result in "a rather large new administrative burden" and "an immense hassle on the administrative front" (see the box on page 5). Administrative complexities and burdens would arise for the following reasons:

- The health insurance exchanges would bill employers, presumably either monthly or quarterly, for employees who receive subsidies in the exchange. Employers consequently would need to maintain detailed, ongoing data exchange with the state health insurance exchanges. Worker turnover would complicate matters, because exchanges would inevitably bill firms for some people who no longer worked there. This would require employers to dispute various billing charges from the exchanges.

- Employers would not have to pay for employees who get a subsidy but have a disability or participate in a welfare-to-work program — or for children in foster care. The exchanges often would not know which subsidy recipients fall into these categories and would bill employers anyway. To escape these unwarranted charges, employers would have to challenge the charges and provide documentation.

- Another problem that the Congressional Budget Office identified in its analysis is that employers often would not know how much they owed until they received bills from the exchange, since employers may not know exactly which, or how many, of their employees were getting subsidies until the bills arrive. This would create some uncertainty and make financial planning more difficult for firms.[4]

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[3] Congressional Budget Office, "*Effects of Changes to the Health Insurance System on Labor Markets*," July 13, 2009. Emphasis added.

[4] CBO noted that the proposal "might also create greater uncertainty for firms because their liability would depend on whether workers chose a government subsidized plan, obtained other coverage, or became uninsured."

Robert Reischauer's Observations on the Administrative Burdens of the Provision

In a Center on Budget and Policy Priorities' briefing for journalists on this provision on August 5, Robert Reischauer offered the following assessment:

"Inevitably, there's going to be some administrative complexity added to our health system when we consider ways of getting resources from employers to help finance the health subsidies but, of all the play or pay options, this one [the "free rider" proposal] is probably the most complex and has the most disincentives for what one would hope to be efficient behavior.

"If we're talking about systems in which the employer that doesn't provide health insurance has to pay a set fee of "x" dollars or "y" percent of payroll to the subsidy-granting entity or to the exchange, those are fairly simple kinds of payments to work out and aren't particularly intrusive. When we think of going down to the individual level, which is in effect what the [free rider] proposal would do, it gets administratively horrendously complex as well as quite intrusive. We're in a situation in which we're trying to have an exchange figure out how much is owed to it for subsidies from hundreds, possibly thousands, of different firms. It has to accurately identify the workers with the firms and differentiate workers who have subsidies from those who don't.

"As you know, firms come and go, particularly smaller firms and firms that tend to hire substantial numbers of low wage workers. We know that the worker population in the low-wage workforce is more unstable than those in the high-wage workforce and so they're tending to shift in and out of jobs, possibly because of the fluctuation of the demand of the employer, possibly because of other unstable circumstances in their lives. The exchange is going to have to be sending bills to employers. These bills are undoubtedly going to have substantial lags built into them, in the sense that none of this can happen on a real time basis and you might get a quarterly bill for the subsidy amount from six months ago or nine months ago …. The firm is going to probably have problems with that bill, and not feel sure it's being charged correctly. There are likely to be disputes of one sort or another.

"In other words, it's going to be an immense hassle on the administrative front and one that we could reduce considerably by moving to one of the alternative forms of responsibility, such as those that depend on the entire wage bill of the firm or just the wage bill of those who don't have insurance coverage somewhere else …. We're almost guaranteeing that a rather large new administrative burden would be placed on both the exchange and on employers …"

Difficulty in Passing Costs Through

In its recent analysis of the effects of this and other employer responsibility proposals, the Congressional Budget Office noted that under traditional "play-or-pay" requirements where employers pay a relatively modest amount per worker for all workers, employers would generally be able to cover those costs by paying lower wages than they otherwise would. CBO noted that under the free rider proposal, where employers could pay much larger amounts per worker for a smaller number of workers (those receiving subsidies through the health insurance exchange), the employers might not be able to pass these much larger amounts through to the affected workers if those workers' pay were not far enough above the minimum wage level to absorb the full reduction.