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Commentary: House GOP Proposed Penalty for Non-Coverage Fails on Several Fronts

By Sarah Lueck

The new House Republican health legislation would likely raise premiums and make the individual insurance market severely unstable by replacing the current requirement that people pay a penalty if they don't have health coverage with a far weaker and more problematic one.

The bill's sponsors call the new penalty a "continuous health insurance coverage incentive,"¹ but it can't come close to the current penalty in prodding people to get health coverage and maintain it over time. The proposed penalty would apply to far fewer people, wouldn't encourage healthier people to enroll, and, in the individual market, would likely promote "adverse selection" — as healthier people would be likelier to go without coverage, leaving a sicker and more expensive pool of enrollees and prompting insurers to raise premiums for those enrolled. All of this would destabilize the market and lead some insurers to stop offering coverage.

Specifically, the legislation would immediately eliminate the current penalty for not having health care coverage, retroactive to tax year 2016. If the bill became law in 2017, many people would likely drop out of the individual insurance market or avoid signing up for a plan in that market when they lose other coverage.² Adverse selection would come into play, with the people leaving likely healthier and the enrollees likely sicker.

Then, in 2018 and 2019, the new penalty would kick in. People who want a plan in either the individual or small-group insurance markets would have to show they had coverage for the prior 12 months without a gap of more than 63 days. If they couldn't prove this "continuous coverage," the insurer would be required to charge them a premium that's 30 percent higher than it would otherwise be. For 2018, the 30-percent surcharge would apply to anyone who tries to buy coverage in a "special enrollment period" (i.e., outside the regular open enrollment period) because they lose

¹ House Energy and Commerce Committee, American Health Care Act Section-by-Section Summary, http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/documents/Section-by-Section%20Summary_Final.pdf.

² Sarah Lueck, "Immediate Harm Even from 'Delayed' Health Reform Repeal, Urban Institute Finds," Center on Budget and Policy Priorities, December 7, 2016, <http://www.cbpp.org/blog/immediate-harm-even-from-delayed-health-reform-repeal-urban-institute-finds>.

other coverage or experience another life event. For 2019, the requirement to prove continuous coverage or pay a 30 percent higher premium would extend to all applicants — in either open enrollment or special enrollment periods in the individual and small-group markets.

The new penalty would greatly weaken the incentive to have coverage because it would apply much more narrowly. Today, virtually anyone with more than a short gap in coverage would owe a penalty with their tax return for the months they were uninsured. Under the House bill, many people would never pay a penalty, even if they went uninsured for long periods. Many people would never even know about the penalty. That's because it would apply to only a subset of people: those with coverage gap of 63 or more days and who then, within a year, try to enroll in a plan in either the individual or small-group insurance market. (The penalty also would apply to young adults who age off a parent's plan because they turn 26 and later enroll in individual or small-group coverage, but missed the first open enrollment period after they turn 26.)

The penalty would hit low-income people especially hard, likely blocking their access to coverage in the individual market if they've been uninsured. Coverage gaps are quite common, and 30-percent higher premiums would likely put individual-market plans beyond the reach of low-income people — particularly in 2020 and beyond, when the House bill replaces current marketplace credits to help buy coverage with a less generous flat tax credit.³

At the same time, the proposed penalty wouldn't give healthier people an incentive to enroll in coverage — whether they're losing it from another source or have been uninsured for a while. For example, if someone leaves a job with health benefits, he might be tempted to go without coverage for a time, particularly if he doesn't expect to need much health care and thinks he'll find another job with health benefits soon. Currently, if this person was uninsured for more than two months, he would generally owe a penalty with his tax return for each month he was uninsured. But under the GOP bill, the person could go without coverage for longer — one year, five years, ten years — and never pay a dime, as long as he eventually gets health benefits from somewhere other than the individual or small-group markets, like through a large employer.

As for adverse selection, the healthy person who lost his job with health benefits might decide during the next open enrollment period to shop for an individual-market plan. But when he does, he'd find that with a coverage gap of more than 63 days, he would pay \$133 per month for a plan that would have otherwise cost him \$100. If he still thinks he won't need health care services, he may decide to remain uninsured rather than pay the higher price for up to a year. If he later needed services, he'd be much more likely to enroll, even with the higher premium. Overall, that's likely to skew the market toward sicker people and that, as noted above, would prompt insurers to raise their premiums or stop providing coverage.

All told, the House bill's proposed penalty wouldn't promote continuous coverage and would likely discourage healthier people from enrolling. If House Republicans want to scrap the individual mandate for coverage and still make coverage affordable and accessible, they'll need to do better than this.

³ Tara Straw, "GOP Tax Credit Proposal No Substitute for the ACA's Flexible Credit," Center on Budget and Policy Priorities, March 2, 2017, <http://www.cbpp.org/blog/gop-tax-credit-proposal-no-substitute-for-the-acas-flexible-credit>.