Center on Budget and Policy Priorities

820 First Street NE, Suite 510
Washington, DC 20002

Tel: 202-408-1080
Fax: 202-408-1056

center@cbpp.org
www.cbpp.org

November 19, 2009

SENATE HEALTH BILL IMPROVES EMPLOYER RESPONSIBILITY PROVISION

Significant Problems Remain to Be Addressed in Conference

by Robert Greenstein and Paul Van de Water

The "employer responsibility" provisions of the health reform bill that Senate leaders unveiled yesterday reflect notable progress in lessening the disincentives that the Senate Finance Committee health bill would have created for employers to hire workers from low- or moderate-income families. Significant disincentives to hire or retain such workers remain, however, for a substantial number of employers, a matter that will require serious attention when the legislation goes to conference.

Like the Finance Committee bill, the employer provisions of the new bill also would have the unintended effect of creating incentives for some firms to convert some full-time positions into positions of just under 30 hours a week, because doing so could enable firms that do not offer coverage — as well as firms that offer coverage which is not affordable for a number of their low-income employees — to avoid having to make any employer responsibility payments at all.

How the New Employer Responsibility Provision Would Work

The new employer responsibility provision has three components: one related to firms that do not offer coverage; a second that applies to firms that offer coverage to their full-time employees (those employed at least 30 hours a week) but require employees to work for a specified period of time before they qualify for coverage; and a third that applies to firms in which some full-time employees who are offered coverage elect to purchase coverage through the health insurance exchange instead, either because they would have to pay more than 9.8 percent of their income for their employer's coverage or because the employer coverage falls short of a minimum coverage standard.

In all cases, firms with fewer than 50 full-time workers would be exempt from the new requirements, as they would have been under the Finance Committee bill. The requirements would take effect in 2014.[1] We now examine each of these three components of the new provision.

[1] The language of the bill is inconsistent as to whether the exemption applies to firms with fewer than 50 full-time workers or to firms with 50 or fewer full-time workers.

1. Firms that do not offer coverage

If a firm does not offer coverage and has *no* full time employees who receive a "premium credit" to help them buy coverage in the health insurance exchange, the firm would not owe anything. However, as long as a firm that doesn't offer coverage has at least one full-time employee who receives a premium credit, the firm would pay $750 a year for each of its full-time employees (i.e., for each individual who is employed at least 30 hours a week), without regard to how many of these employees receive premium credits. The $750 amount would be adjusted annually in years after 2014 to reflect the percentage increase in insurance premium costs nationally. These payments (and those described in the subsequent sections of this analysis) would not be deductible.

Assessment: Almost all firms that employ at least 50 full-time workers and do not offer coverage are likely to have at least one full-time employee who receives a premium credit to purchase coverage in the exchange. Under the bill, employees would be required to have insurance, and eligibility for the premium credits would extend up to 400 percent of the poverty line ($73,200 for a family of three, and $88,000 for a family of four). As a result, it is hard to see how a firm of this size would not have some number of employees who receive premium credits.

This means that nearly all firms of this size that do not offer coverage would pay a flat $750 for all full-time employees. Accordingly, such firms generally would not have an incentive to avoid hiring additional people from low- and moderate-income families.

Nevertheless, two significant concerns remain. First, a firm could lower the amounts it is required to pay by converting a number of its positions to just under 30 hours a week (and compensating for the reduction in work hours by hiring a modest number of additional employees). Second, a firm that had only a small number of full-time employees who were receiving premium credits might be tempted to try to replace these individuals with people from higher-income families, to lower these individuals' hours to just under 30 per week, or to contract out their functions. Those employees might also face a heightened risk of being among the first to be let go if the firm needed at some point to reduce the size of its workforce, such as during a recession.

2. Firms that offer coverage but require a waiting period for it

In a positive development, the new Senate bill would bar firms that offer coverage from imposing a waiting period of more than 90 days for new employees before their health coverage becomes effective. Firms with a waiting period of up to 30 days would not have to pay a fee for workers in their first month with the firm. Firms with waiting periods of between 30 days and 60 days would pay $400 for each full-time worker who is in the waiting period. Firms with a waiting period of 60 to 90 days would pay $600 for each full-time worker in the waiting period. These charges would *not* be related to whether any of these employees receive premium credits.

Assessment: This aspect of the provision poses no problems. Indeed, the requirement that waiting periods not exceed 90 days represents a significant policy improvement that would benefit people who are hired in the future by firms that currently impose longer waiting periods.

3. **Firms with workers who are offered coverage but elect to purchase coverage in the exchange with a premium credit**

Under the new Senate bill, as under the Finance Committee bill, employees offered coverage through their employer would be barred from purchasing coverage in the exchange as long as the employer-based coverage met a minimum coverage standard (it would need to have at least a 60 percent actuarial value) and the worker did not have to pay more than 9.8 percent of income for the employee share of the premium. If an employee would have to pay more than 9.8 percent of income or the employer plan did not meet the basic coverage standard, the employee could go to the exchange and receive a premium credit to buy coverage there if the employee's household income was below 400 percent of the poverty line.

Under the new Senate bill, employers would pay a large amount — $3,000 per year — for each full-time worker who is offered employer coverage but receives a premium credit to buy coverage in the exchange. (The total amount that an employer would have to pay would be capped at an amount equal to $750 times the total number of full-time workers the firm employs. Both the $3,000 amount and the $750 amount would be adjusted annually in years after 2014 to reflect the percentage increased each year in health insurance premium costs.)

Assessment: Most firms that offer coverage should meet the 60 percent actuarial standard for coverage. But a substantial number of low-wage workers at these firms likely would be charged more than 10 percent of income for the employee share of the premium — especially low-wage workers who do not have a second earner in their family, such as low-wage single mothers. As a result, the number of low-wage employees who are offered coverage but receive a premium credit to purchase coverage in the exchange could be substantial.

Because a firm would incur this $3,000 charge *only* for those workers who receive a premium credit, this aspect of the provision retains a strong incentive for affected firms to minimize the number of people from low- or moderate-income families whom they hire, to reduce the number of hours of such people to under 30 per week, and/or to contract out certain aspects of the firm's operations that involve work that pays low wages. This aspect of the provision is quite similar to the problematic Finance Committee provision.

This component of the provision apparently was included to deter firms that offer coverage from raising the employee share of the premium costs and thereby inducing lower-income employees to leave the employer's plan and buy insurance in the exchange with the help of a subsidy. That goal could largely be accomplished, however, *without* creating a disincentive for firms to hire or retain workers from lower-income families by including basic standards for employer-sponsored coverage in the legislation, as both the House-passed bill and the bill that the Senate Health, Education, Labor and Pensions Committee passed would do. The new Senate bill, like the Finance Committee bill, lacks such minimum standards for employer plans.

Comparison to Employer Requirements in the House Bill

The new provision is very different from the House bill's employer requirements, under which firms that elect not to provide health coverage would pay a flat percentage of their payroll (2 percent of the payroll of non-covered employees for firms with payrolls between $500,000 and $585,000, 4 percent of payroll for firms with payrolls of $585,000 to $670,000, 6 percent of payroll for firms with payrolls of $670,000 to $750,000, and 8 percent of payroll for firms with payrolls larger than $750,000). The House provisions would *not* create incentives for firms either to try to minimize the hiring of workers from lower-income families or to convert full-time positions into jobs of less than 30 hours per week.[2]

The employer requirements in the House-passed bill would raise $135 billion over ten years, according to the Congressional Budget Office. The Senate provision would raise $28 billion, about one-fifth that amount.

There will need to be vigorous discussion of these issues in conference, where there should be opportunity to make changes in the Senate bill's employer-requirement provision.

Conclusion

With respect to firms that do *not* offer insurance, the employer responsibility requirement in the new Senate bill represents a significant improvement over the deeply problematic Senate Finance Committee provision, although some problems remain. With respect to firms that offer coverage that is not affordable for lower-income employees, the significant problems with the Finance Committee provision largely remain. The new bill does make a significant improvement with respect to waiting periods for coverage in employer-sponsored plans.

Further progress on this matter does not appear possible on the Senate floor. If the Senate approves the legislation, changes will be needed in the conference between the Senate and the House to address the significant problems in this area that remain.

[2] In addition to charging employers that do not offer coverage, the House bill requires employers that do offer coverage to contribute up to 8 percent of the employer's average wage for each employee who declines the employer's offer because the employee's share of the premium would exceed 12 percent of income. This "contribution in lieu of coverage" would not discourage the hiring of workers who receive a subsidy through the exchange because it would generally be less than the cost of the share of the health insurance premium that the employer would have to pay for higher-income workers who obtain coverage through the employer.