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PROVISION IN HOUSE REPUBLICAN PAYROLL TAX BILL WOULD CAUSE 170,000 PEOPLE TO FORGO HEALTH COVERAGE AND COULD JEOPARDIZE HEALTH REFORM

By Judith Solomon and Robert Greenstein

The House Republican payroll-tax bill unveiled December 9 includes a change in the Affordable Care Act's subsidies that would cause 170,000 people to forgo coverage and make it more difficult for the health reform law's insurance exchanges to function effectively.

The provision in question would substantially increase the repayment charges imposed at tax time on many people who, under the health reform law, will receive subsidies to help them afford coverage during months of the year when their incomes are low but whose incomes increase later in the year because they have found a job, gotten a promotion, gotten married, or for another such reason. For example, consider a low-wage working mother with two children and income at 150 percent of the poverty line (a little under $28,000 in today's dollars and using today's poverty line) who received subsidies to purchase insurance for the first nine months of the year but married at the end of September, enrolled at that time in coverage through her husband's employer plan, and ceased receiving subsidies. If this couple's combined income for the year equaled a little over 350 percent of the poverty line, they would be required to *pay $3,200 to the IRS* when they filed their tax return under the House Republican bill.

The prospect of having to pay very large sums back to the IRS would deter many people from receiving subsidies in the first place and cause them to remain uninsured instead. Indeed, for many families, the amounts they could be required to repay to the IRS if they received subsidies would be *more than five times higher* than the penalty they would owe if they remained uninsured in 2014. (In the example just cited, the penalty would be about $500 if the mother had forgone coverage for the first nine months of the year, as compared to the $3,200 she and her spouse would owe to the IRS.) This is why the Joint Committee on Taxation estimates the House provision would cause 170,000 people who otherwise would purchase coverage to forgo it instead.

Moreover, those who would go without coverage would disproportionately be healthier-than-average people, and as a result, the pool of people seeking coverage through the health insurance exchanges would become a sicker pool. That would drive up premiums for insurance purchased through the exchanges and weaken the exchanges' ability to function effectively. This may, in fact, be a goal of the provision: some House Republicans have said that if they cannot repeal the health reform law outright, they will seek to pull out "threads" to try to make it unravel.

Congress already has acted twice since the ACA's enactment in March 2010 to increase the amounts that households who receive health insurance subsidies can be required to pay back to the

IRS. Those changes, which were used as offsets for two earlier pieces of legislation, have already increased families' potential repayment amounts by *up to six times* and are estimated to cause several hundred thousand people to forgo coverage.[1] The new House Republican proposal, when combined with these earlier changes, would raise the repayment amounts to such high levels that the viability of the health reform law could be in jeopardy.

Congress Has Already Raised Repayment Caps Substantially

Under the ACA, people who aren't eligible for Medicaid and lack access to affordable employer-sponsored coverage can receive subsidies to help them purchase private coverage if their income is below 400 percent of the poverty line. However, people whose income for the year as a whole turns out to make them eligible for a smaller subsidy than they received during the year (or for no subsidy) must pay back some or all of the subsidy they received when they file their income taxes, even if they received the correct subsidy amount based on their income in the months they got the subsidies. This provision of the ACA differs sharply from how most other means-tested programs work. Other programs base eligibility on current income; if a household's income rises during the year, it ceases to receive assistance or receives a reduced benefit, but it is not made to pay back the aid it received during its period of need.

To prevent this ACA repayment requirement from undermining the ACA's goal of covering people while they are out of work or otherwise in need and are uninsured, Congress, in crafting the ACA, limited the amount that a family can be required to pay back to $400 ($250 for an individual) unless the family's income ends up over 400 percent of the poverty line.

Over the past year, however, Congress raised the $400 cap sharply to secure offsets for other legislation: in December 2010, to help pay for extending Medicare physician relief for 2011; and in April 2011, to help pay for repeal of an ACA provision designed to curb business tax avoidance. As a result of these changes, the $400 cap has tripled for many families and increased for others by as much as six times, depending on the family's income for the year. Many families already face requirements to pay back very large amounts.

The new House Republican proposal would raise the caps further, with serious consequences for tens of thousands of families and potentially for health reform itself.

Repayment Amounts Would Often Far Exceed Penalty for Forgoing Coverage

Under the House Republican proposal, the amounts that families would be required to repay in 2014 would, in many cases, be more than five times the penalty they would face in 2014 under the ACA's individual mandate if they failed to obtain coverage. (The ratio is even wider when the individual's upfront share of premium costs is taken into account.) Health insurance exchanges would have to inform applicants, especially those who are unemployed or single but expect to get a

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[1] Minority members of the House Ways and Means Committee issued a paper dissenting from the April 2011 legislation raising the cap. That paper cites an estimate from the Joint Committee on Taxation that the change in that legislation would cause 266,000 people to forgo coverage.

job or marry during the year, that they could be required to repay some or all of their subsidy if their income increased.

As knowledge spread of the large year-end tax repayments that families could face, many people would — quite rationally — decide to remain uninsured. This is why the Joint Committee on Taxation projects that by 2021, an additional 170,000 people would forgo coverage because of the provision, on top of the several hundred thousand who will forgo coverage as a result of the big increases already made in the required repayment amounts in the legislation enacted in December 2010 and April 2011. Our analysis indicates that roughly half of the estimated $13.4 billion in savings credited to this provision in the House Republican bill comes from the reduction in the number of people who would enroll in coverage in the exchanges.[2]

As noted, because people who decided to forgo coverage would disproportionately be healthy individuals, the pool of people enrolling with the exchanges would be sicker on average, which would push up premiums for insurance. The higher premiums, in turn, would lead additional healthy people to forgo coverage. The result would be "adverse selection" that could undercut the viability of the exchanges.

For some families, the result also would be huge marriage penalties, as the example cited at the beginning of this analysis shows. Under the House provision, the family in that example would owe the IRS $3,200 as a result of getting married during the year.

Under the ACA as originally enacted, the repayment requirement for the family in our example would have been $400 — not out of line with the penalty the family would face for failing to have coverage in 2014. The $400 cap took into account the fact that the subsidies such a family received would have reflected its income and circumstances during the months it received assistance. But Congress's subsequent increases in repayment amounts raised the amount this family would owe to $2,500, already a dangerously high amount that is out of line with the penalty the family would owe if it failed to obtain coverage.

There are many such examples. For another, consider a married couple with one child that has income at 145 percent of the poverty line from one spouse's earnings. At the start of September, the other spouse gets a job that raises the household's income for the year as a whole to 260 percent of poverty. Under the House provision, the family would owe about $2,000 to the IRS at tax time. By contrast, if the family declined coverage, its penalty would be about $250 in 2014.

There would also be problems for people who received Christmas or year-end bonuses, only to find they now had to pay part of their health insurance subsidy back as a consequence.

More broadly, the fact that many families who had "played by the rules" and done nothing wrong

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[2] The Congressional Budget Office (CBO) has estimated enrollment in the exchanges and the average per-enrollee federal premium subsidy under current law for each year from 2014 through 2021. From this estimate, we calculated that the exchange enrollment loss in 2021 associated with raising the repayment caps — 170,000 people — represents 7.1 percent of total exchange enrollment that year. Using this same percent reduction, we determined the enrollment loss resulting from raising the repayment caps for each year from 2014 through 2020. For each year, we then multiplied that estimated enrollment loss by the CBO estimate of the average per-enrollee subsidy for that year to determine the federal savings associated with the enrollment loss. Using this method, we estimate that approximately $7 billion (52 percent) of the savings attributed to increasing the caps are due to decreased participation in the exchanges.

— receiving subsidies accurately based on their current incomes, promptly reporting changes in their incomes, and ceasing to receive subsidies (or receiving smaller subsidies) when their incomes increased — would nonetheless face large repayments would likely trigger widespread backlash against the ACA by many lower-middle and middle-income families. These people would have been required to buy coverage, only to find that they had to pay up to several thousand dollars in increased taxes to the IRS at the end of the year. The ensuing backlash could make repeal of the law more likely.

Those pushing to substantially increase the repayment limits have claimed that many households will receive subsides much larger than they are entitled to because the health insurance exchanges will base households' subsidy amounts on outdated income information from the households' prior-year's tax returns. Such charges, however, are off base. The ACA requires the Secretary of Health and Human Services to develop procedures to take changes in household circumstances into account when determining eligibility for, and the amount of, the subsidies a household will receive. HHS issued a proposed rule on August 17 specifically requiring applicants for subsidies to validate the information on their prior tax return; if their income has increased in the interim, the updated information must be used to determine their subsidy. The proposed rule also requires people who receive subsidies to report changes in income or other circumstances within 30 days.

In addition, separate provisions of the ACA provide for a full set of enforcement actions, including substantial fines, to be taken against households that receive excess subsidies due to misrepresentation or fraud.

Requiring very large repayments at tax time from people who accurately reported their circumstances but subsequently gained a job, got married, or had another such change later in the year (and reported that as well) does not represent sound policy. Congress has already raised the repayment limits to a danger point, at which a substantial number of healthy families and individuals likely will choose to remain uninsured rather than buy coverage. Going further in this direction would be exceedingly unwise and would threaten the viability of health reform itself.