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New Jersey Governor's Medicaid Fee Proposal Would Create Unintended Incentive for Job Discrimination, Harm Workers

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New Jersey Governor Phil Murphy's 2021 budget includes a proposal to raise revenue by levying a fee on employers of up to $725 a year for each employee, or dependent of an employee, who receives health coverage through Medicaid (known in the state as NJ FamilyCare). Although well intended, this proposal almost certainly would lead to discrimination in hiring and layoffs against people of color, single mothers, and possibly young workers, and cause other unintended harm to workers. Policymakers have sounder ways to improve workers' pay and health coverage and raise revenue by ensuring that corporations pay their fair share, without creating these risks for workers and their families.

The proposal would give employers a *significant, if unintended, financial incentive to avoid hiring or retaining* workers who receive — or are thought likely to receive — Medicaid or to have family members who are enrolled in Medicaid. Employers could try to identify which workers actually receive Medicaid. They also could avoid hiring workers they believe are more likely to be Medicaid-eligible or to have family members who are eligible. These new incentives for discriminatory practices would especially harm single mothers with children, people of color, and possibly young workers as well, because employers are likely to assume these groups would be considerably more likely to qualify for Medicaid, as explained below. People in multiple categories, such as single mothers of color, would be at greatest risk.

The proposal also could lead workers to forgo getting Medicaid coverage for their children or other family members out of fear of risking their job.

For their part, employers would have an incentive to press Medicaid-eligible workers to forgo Medicaid. They also would have an incentive to oppose state and federal efforts to improve Medicaid eligibility and enrollment. The measure could also lead to some loss of jobs and work benefits through outsourcing and automation as employers sought creative "workarounds" to avoid the new fee.

Background

The governor's 2021 budget proposes to levy a fee on employers for each worker or dependent enrolled in Medicaid. The fee per worker or dependent (such as a spouse or child) would be:

- $325 for employers with 50-250 employees who receive Medicaid;
- $525 for employers with 250-500 employees receiving Medicaid; and
- $725 for employers with 500 or more workers receiving Medicaid.

The budget estimates that the fee would raise $180 million annually. This estimate is likely very optimistic because it does not appear to reflect employers' expected actions over time to avoid hiring workers who receive Medicaid or to employ other strategies to avoid the tax, as discussed below.

The governor's 2020 budget contained a similar proposal, though with a considerably smaller fee of $150 per worker for employers with more than 50 employees receiving Medicaid. (The fee did not apply to workers' family members.) The prior proposal was not enacted.

Measure Would Exacerbate Employment Discrimination

The proposal would create perverse, discriminatory hiring incentives for employers, in part because it ignores the fact that wage rates for a given job do not vary by an employee's family size or by whether there is a second earner in the family, while Medicaid income eligibility limits do. Eligibility for Medicaid depends on factors beyond an individual worker's wages such as household size and composition, the income of other family members, and other sources of income.

The proposal thus would give firms a strong new financial incentive to reduce their fee by avoiding hiring people whom they view as more likely to be eligible for Medicaid or to have family members eligible for Medicaid. That's likely to include workers with children — particularly single parents, whose family income is usually significantly lower than that of married parents — because families with children qualify for Medicaid at considerably higher income levels than single workers do. For example, a single adult worker without children loses Medicaid eligibility at an income of $17,616, but parents in a family of four qualify until their income reaches $36,156, more than twice as much. The proposal likely also would incentivize employers to try to avoid hiring workers with significant health issues or disabilities, as they are more likely to receive Medicaid. It also may adversely affect younger workers, since the NJ FamilyCare income limit is higher for people under age 19 than for adults.[1]

Although the proposal stipulates that the fee would not apply to employees with a disability, that exception is likely to prove incomplete. Many adults with Medicaid coverage have serious physical disabilities or mental health conditions, but don't qualify for Medicaid based on a disability because their disability isn't severe enough to meet the strict standards for disability-based coverage. If the exception applies only to people who qualify for Medicaid specifically based on a disability, as seems most likely for administrative feasibility reasons, the fee would still affect people with a disability

[1] People under 19 are eligible for NJ FamilyCare coverage up to 355 percent of the federal poverty level, with Medicaid funding coverage for those with incomes up to 147 percent of poverty and the Children's Health Insurance Program (CHIP) funding coverage above that level. It is unclear whether the governor's proposal intends to distinguish between coverage for young workers financed through Medicaid and coverage financed through CHIP, or how any such distinction would be implemented when calculating the fee. Regardless, any such fine distinctions may be difficult for employers to track, so they might still discriminate against young workers because they are more likely to be eligible for NJ FamilyCare.

who qualify for Medicaid as a member of another eligibility category, such as a parent or under the Affordable Care Act's Medicaid expansion.

The proposal could thus place a significant obstacle in the path of job applicants who are single mothers or people with disabilities (and possibly young workers as well) — especially job applicants who are people of color, whom employers may assume are likely to have lower household incomes. It would likely also affect firms' decisions regarding whom to lay off first when business slows.

Adding to this concern, studies show that people often substantially overestimate the degree to which people of color disproportionately qualify for Medicaid and other benefit programs.[2] This likely would exacerbate the proposal's impact in incentivizing racially discriminatory hiring practices.

Addressing discriminatory employment practices resulting from the measure would not be simple. Anti-discrimination laws are already on the books but typically are inadequately enforced. Hiring discrimination is hard to prove and remains prevalent today despite legal bans. While employers aren't supposed to ask directly about a job applicant's marital status or dependents, this information frequently emerges in interviews and even more so after workers are hired. Prospective employers can also make assumptions (which may or may not be correct) about an applicant's household income based on race, gender, or neighborhood of residence. Creating new incentives for employers to discriminate would be particularly unwise at a time when federal enforcement of labor laws has significantly weakened under the Trump Administration.[3]

Other Employer Responses Could Also Harm Workers

Employers might try to avoid the proposed fee in other problematic ways. For example:

- Because the fee is based on Medicaid *enrollment,* not eligibility, employers could pressure employees not to enroll themselves or their family members despite being eligible for it.
- Employers could resist state or federal efforts to increase Medicaid eligibility and enrollment among those who are uninsured.
- Employers could engage in "workplace fissuring" — that is, using more independent contractors or outsourcing low-wage workers' functions to small businesses that aren't subject to the fee. Any rules meant to prevent this would likely be complex and difficult to apply effectively on a large scale.

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[2] Like the general population, employers may hold stereotypes that lead them to overestimate the likelihood of Black job applicants or workers being eligible for or receiving various public benefits, relative to white workers. See "HuffPost: Government programs," Huffington Post, January 17-18, 2018, http://big.assets.huffingtonpost.com/tabsHPGovernmentprograms20180116.pdf.

[3] Margot Roosevelt, "Trump makes wage-theft lawsuits harder," *Los Angeles Times*, January 14, 2020, https://www.latimes.com/business/story/2020-01-14/la-fi-california-joint-employer-labor-franchise-rule. The Trump Administration has also eliminated a rule mandating corporate disclosure of pay disparities by race and gender, helped overturn a law requiring federal contractors to meet basic labor and safety standards, undercut wage theft enforcement by allowing employers to "self-audit" violations, and appointed anti-union members to the National Labor Relations Board. See Celine McNicholas, Margaret Poydock, and Lynn Rhinehart, "Unprecedented: The Trump NLRB's attack on workers' rights," Economic Policy Institute, October 19, 2019, https://www.epi.org/publication/unprecedented-the-trump-nlrbs-attack-on-workers-rights/.

- Employers could further automate work processes and cut low-wage jobs, such as cashiers.

Alternatives Available That Do Not Create Same Risks of Unintended Harm

New Jersey has better ways to improve the quality of life for workers and their families, to raise revenue from large, profitable corporations if more revenue is needed, and to ensure that large corporations do not shirk their responsibilities. These include:

- *Directly raising taxes on large corporations and wealthy households* and investing the resources in measures that benefit workers and their families, as other parts of the governor's budget would do. The budget contains various sound revenue-raising measures, including capping a corporation's total corporate tax breaks and enacting a millionaire's tax. Not all of the budget's revenue proposals are likely to be enacted; the focus should be on these sound measures. Also, a requirement that employers above a certain size provide health coverage to their workers or pay a penalty might, if carefully designed, advance the objectives of the governor's Medicaid proposal while avoiding much of the proposal's unintended harm.
- *Raising workers' wages, fringe benefits, and bargaining power* through labor-law reforms, and adequately funding labor rights and anti-discrimination enforcement.[4]
- *Investing in measures that can help workers, families, and the New Jersey economy.* For example, the budget proposes investments in areas such as transportation, education, and economic security programs, such as expanding refundable tax credits for workers paid modest wages.

[4] For examples of potential measures for states to consider, see National Employment Law Project, "A State Agenda for America's Workers: 18 Ways to Promote Good Jobs in the States," December 2, 2018, https://www.nelp.org/publication/state-agenda-americas-workers-18-ways-promote-good-jobs-states/.