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HOUSE LEGISLATION WOULD CAUSE 350,000 PEOPLE TO FORGO HEALTH COVERAGE AND COULD JEOPARDIZE HEALTH REFORM

By Judith Solomon and Robert Greenstein

The House is set to consider legislation this week that would make a change in the subsidies that health reform (the Affordable Care Act) provides to help low- and moderate-income people buy health insurance, causing 350,000 of them to forgo coverage and making it harder for health reform's insurance exchanges to work effectively.

The proposed change in the subsidies is designed to offset the cost of (1) a proposed repeal of health reform's excise tax on medical devices (as demanded by the medical device industry, which has waged a misleading campaign against it), and (2) proposed changes in flexible spending accounts (FSAs) and health savings accounts (HSAs) that do not represent either sound health policy or sound tax policy and would disproportionately favor higher-income people.[1]

The change in the subsidies to purchase insurance would substantially increase the repayment charges that the Internal Revenue Service would impose at tax time on many low- and moderate-income people who received subsidies to help them afford coverage during months of the year when their incomes were low, but whose incomes rose later in the year when they found a job or received a promotion or for another reason.

Consider a married couple with one child whose household income is 145 percent of the poverty line ($27,680 in today's dollars) from one spouse's earnings. The sponsor's job doesn't provide health coverage, and the family receives a subsidy to buy coverage in the exchange. At the start of September, the other spouse gets a job that does provide coverage and that raises the household's income for the year to 260 percent of poverty ($49,634 in today's dollars). The family enrolls in this employer's health plan and ceases to receive subsidies. Under the House provision, the family would owe about $2,100 to the IRS at tax time. The prospect of having to pay very large sums back to the IRS would likely deter many people from using the subsidies in the first place, causing them to remain uninsured.

Indeed, *for many families in such a situation, the amounts they would have 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*.

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[1] Paul N. Van de Water, "Excise Tax on Medical Devices Should Not Be Repealed: Industry Lobbyists Distort Tax's Impact," Center on Budget and Policy Priorities, Updated May 31, 2012, http://www.cbpp.org/cms/index.cfm?fa=view&id=3684.
Paul N. Van de Water, "Limitation On Use Of Tax-Advantaged Health Accounts Should Not Be Repealed," Center on Budget and Policy Priorities, June 5, 2012, http://www.cbpp.org/cms/index.cfm?fa=view&id=3789.

In the example above, the penalty would be about $330 if the family had forgone coverage for the first eight months of the year, as compared to the $2,100 or so they would owe to the IRS. That's why the Joint Committee on Taxation estimates the House provision would cause 350,000 people who would otherwise purchase coverage to forgo it instead.

Those who forego coverage would disproportionately be people who are healthier than average. As a result, the pool of people seeking coverage through the health insurance exchanges would be a somewhat sicker pool, which would push up premiums for insurance purchased through the exchanges and thereby weaken the exchanges' ability to function effectively. (This may be an unstated goal of the provision; some of health reform's Congressional opponents have said that if they cannot repeal the law outright, they will seek to pull out "threads" to try to unravel it.)

Congress already has acted twice since health reform's enactment in March 2010 to raise the amounts that households that receive health insurance subsidies can be required to pay to the IRS — thus raising the amount that the family in the example above would pay, from $400 (under the Affordable Care Act (ACA) as originally enacted) to $1,500. Those changes, which were used to finance two earlier pieces of legislation, have boosted families' potential repayment amounts by up to six times, which already will cause an estimated several hundred thousand people to forgo coverage.[2] Now, the legislation that the House is set to consider this week would go substantially further, raising the repayment amounts for many families enough to threaten the viability of health reform.

Congress Has Raised the Repayment Amounts Substantially

Under the ACA, people who are not 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 that they actually 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 the requirement to repay subsidies 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. In that case, the family would have to pay back the entire amount of any premium subsidies it received.

[2] Minority members of the House Ways and Means Committee issued a paper dissenting from the April 2011 legislation raising the repayment amounts. That paper cites an estimate from the Joint Committee on Taxation (JCT) that the change in that legislation would cause 266,000 people to forgo coverage. The pending legislation would cause an additional 350,000 people to forgo coverage, according to JCT.

Over the past year and a half, 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 and the timing of that income. Many families already face requirements to pay back very large amounts.

To offset the cost of repealing the medical device tax and providing bigger tax breaks through FSAs and HSAs, the House would now eliminate the repayment caps altogether, 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

If the caps on repayment are eliminated, the amounts that families would be required to repay in 2014 would, in many cases, be well over 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 will have to inform applicants of their potential obligation to repay subsidies if their income increases and may ask applicants to attest that they understand they may have to repay any subsidies they receive.[3] Those who are unemployed but expect to get a job during the year will have to be told that they will have to repay some or all of their subsidy if their income increases.

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 2022, an additional 350,000 people would forgo coverage because of the pending House 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 38 percent of the estimated $43.9 billion in savings credited to this provision comes from the reduction in the number of people who would enroll in coverage in the exchanges.[4]

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 everyone's premiums for insurance. The higher premiums, in turn, would lead

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[3] HHS issued its final rule on the determination of eligibility for advance payments of premium tax credits in March 2012. The preamble states that HHS intends to provide further guidance regarding attestations "that may be asked of individuals, which may include an attestation from a tax filer acknowledging that he or she understands the potential impact of reconciliation." 77 Fed. Reg. at 18356. (March 27, 2012)

[4] 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 2022. From this estimate, we calculated the percentage that the loss of enrollment in exchange coverage that would be caused by the proposed increase in the repayment amounts — 350,000 people according to JCT — would represent of total exchange enrollment that year. Using this percentage reduction, we determined the enrollment loss resulting from raising the repayment caps for each year from 2014 through 2021. 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 $16.8 billion (38 percent) of the savings attributed to increasing the caps are due to decreased enrollment in the exchanges.

additional healthy people to forgo coverage. The result would be "adverse selection" that could weaken the viability of the exchanges.

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 $330 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 appropriately 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 $1,500, already a dangerously high amount that is well out of line with the penalty the family would owe if it failed to obtain coverage in 2014.

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

More broadly, the fact that many families who had "played by the rules" and done nothing wrong — 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 eliminate limits on repayment amounts 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 may have appeared to have merit after the ACA was enacted but no longer do. 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 that a household will receive, but contains no specifics on how to do so, leaving that to the Secretary. How this would work wasn't initially clear. But HHS issued its final rule on the eligibility determination on March 27, 2012, and the rule *requires* applicants for subsidies to validate and update 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 amount. This rule also requires people who receive subsidies to report changes in income or other circumstances within 30 days. The preamble explains that "it is important for the Exchange to accept and identify changes to help ensure that an enrollee's eligibility reflects his or her true circumstances."[5]

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.

Some have questioned whether it is equitable to allow two households that end up with the same annual income to receive different amounts of premium tax credits over the year. Our example shows, however, that while such families might have the same *annual* income, their circumstances and ability to afford health insurance are very different over the course of the year. Families without

[5] 77 Fed. Reg. at 18371. (March 27, 2012)

a job for part of the year cannot pay the same amount for coverage in those months as a family with income that is steady throughout the year. The family in our example could not have paid for coverage during the first part of the year without the help that it received based on its income at the time, which was lower than its income at the end of the year.

Requiring very large repayments at tax time from people who accurately reported their circumstances but subsequently gained a job, had a child leave their home, or experienced 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 are likely to choose to remain uninsured rather than buy coverage. Going further in this direction could be exceedingly unwise and could threaten the viability of health reform itself.