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FINANCE COMMITTEE MAKES FLAWED EMPLOYER REQUIREMENT IN HEALTH REFORM BILL STILL MORE PROBLEMATIC

by Robert Greenstein and Judy Solomon

The health reform bill that the Senate Finance Committee approved this week, while a major step forward as a whole, contains a requirement that could inhibit the hiring of individuals from low-income families and would place cumbersome burdens on employers. The provision would require employers who do not offer health coverage to pay substantial amounts — apparently up to $4,000 per worker or more — for low- and moderate-income individuals employed at least 30 hours a week who receive subsidies to purchase coverage in a health insurance exchange. But firms would *not* pay anything for employees who do not receive subsidies because their family incomes are higher (or for other reasons). In essence, affected firms would pay a tax for hiring people from low- or moderate-income families.

The provision also would require many employers who *do* offer coverage to pay these fees. Such firms would be charged for full-time workers who receive subsidies because the coverage that the employer offers is not considered affordable for them or its benefits do not meet the bill's minimum benefit standard, or because some of a firm's full-time workers do not qualify for the firm's plan such as employees in the initial months on the job.

An employer responsibility requirement is an essential component of health care reform; it is necessary to ensure that firms do not drop coverage in substantial numbers and shift costs to taxpayers. But the particular employer provision in the Finance Committee bill would pose significant problems.

- By imposing a tax on employers for hiring people from low- and moderate-income families who would qualify for subsidies in the new health insurance exchanges, it would discourage firms from hiring such individuals and would favor the hiring — for the same jobs — of people who don't qualify for subsidies (primarily people from families at higher income levels).

- In particular, it could make it more difficult for low-income parents with children to be hired. Whether an individual qualifies for a subsidy in the exchange depends on whether the income of the worker's family falls below the income limit for a subsidy, and those income limits appropriately rise with family size. Hence, an individual with children — and especially a single parent (whose income is not supplemented by the wages of a second parent) — is much more likely to receive a subsidy than a single individual with the same income. Low-income single mothers trying to work rather than rely on welfare would be among those who could face greater barriers to employment. This problem will be still greater if employers are billed larger amounts for workers receiving subsidies for *family* health coverage than for workers receiving subsidies for *individual coverage*, an important detail that will not be clear until the bill's legislative language is available.

- It would provide an incentive for employers to convert full-time workers (i.e., workers employed at least 30 hours per week) to part-time workers.
- It would place significant new administrative burdens and costs on employers.

Two changes approved during the Finance Committee's deliberations make these problems worse. First, looking for a way to offset the costs of another change it wanted to make in another part of the bill, the Committee voted to *deny* employers the right to deduct the payments they would be required to make under this provision as business costs. Although employers can deduct the costs of health insurance premiums, they would be prohibited from deducting these payments. Second, the Congressional Budget Office's preliminary cost estimate of the Finance Committee bill says that employers would be charged the *sum* of the national average premium subsidy provided to those who get such subsidies *and the national average subsidy for cost-sharing assistance.* Previously, the average cost-sharing subsidy was not included in this calculation.

The result of these two changes is to make the cost to many employers of hiring people from low- and moderate-income families still greater, and thus to make the incentive to avoid hiring them (or to let them go first when a firm downsizes) stronger.

The Provision

Employers with more than 50 employees that do not offer health coverage would have to pay the cost of subsidies provided to full-time employees who purchase coverage through the new health insurance exchanges and qualify for subsidies because their family income is below 400 percent of the poverty line, currently $88,000 for a family of four.[1]

Many employers with more than 50 employees who do offer coverage also would be subject to the requirement. Workers who would have to pay more than 10 percent of their income for their share of the premium costs under their employer's plan could go into the exchange, as could workers whose employer offers a health plan that has an actuarial value of less than 65 percent and workers who fall into a category of employees that does not qualify for their employer's plan, such as workers who have not yet worked a sufficient number of months to be eligible for the plan (in firms that impose such waiting periods). Employers would then be billed for those workers who receive subsidies because their family incomes were below 400 percent of the poverty line.

[1] The provision would not apply to employees who work less than 30 hours per week, have a disability, or participate in a welfare-to-work program, or to subsidies provided for children in foster care.

The Amounts That Employers Would Be Charged

According to information provided to Senators on the Finance Committee by Committee staff at the outset of the mark-up, for workers receiving a subsidy for *individual* coverage in the exchange, an employer would be charged the average subsidy for individual coverage, while the employer would be charged the average subsidy for *family* coverage for workers receiving a subsidy for that type of coverage.

The Kaiser Family Foundation reported last month that the average premium for family coverage in employer-based plans equals $13,375 in 2009. Using this figure, if the subsidy structure in the Finance Committee plan were in effect in 2009, the premium subsidy for family coverage for a worker at 150 percent of the poverty line could exceed $11,000, while the subsidy would be about $5,000 for a family at 350 percent of the poverty line. Subsidies for cost-sharing assistance, which would be available to households below 200 percent of the poverty line, would be in addition to these amounts.

Another source of information is a document that the Congressional Budget Office (CBO) produced for the Senate Finance Committee on October 9, based on the bill as it stood at that time following the Committee's "mark-up." The CBO estimates show that the average family premium in 2016 for the low-cost "silver" health insurance plan — the plan to which the premium subsidies would be tied under the Finance Committee bill — would be $14,700. The CBO estimates show that premium subsidies for family coverage for people between 133 percent and 300 percent of the poverty line would range from about $13,700 to $5,900 in 2016, depending on where in that income range an enrollee's income falls.

Since firms apparently would have to pay the average subsidy for family coverage for workers receiving a subsidy for such coverage, employers would be charged well over $5,000 for each worker they hire who receives such a subsidy.

Some subsequent information raises a question as to whether the statutory language for the Finance Committee bill, which is not yet available, will retain these separate charges for individual and family subsidies, or will simply use a single overall average figure for all subsidies when calculating the amounts employers are charged. If the latter approach is used, employers will be billed more than $4,000 for each worker receiving a subsidy in the exchange.[2]

There would be an upper limit on the charges an employer would face. The amount an employer would pay would be capped at $400 times the *total* number of full-time workers that a firm employs, including workers who do *not* get subsidies. Many firms that do not offer coverage would likely hit the cap. For many of those firms that *do* offer coverage but have some employees who would receive subsidies in the exchange, the percentage of employees getting subsidies likely would be too low to hit the cap, so the firm would be charged thousands of dollars for each worker it employed who received a subsidy.

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[2] The $4,000 figure is based on CBO estimates of the average premium subsidy amount. The average cost-sharing subsidy amount would be added to this figure, according to CBO's preliminary cost estimate issued on October 9.

Effects on Employer Hiring

The provision would make it more expensive for some employers to hire workers from low- and moderate-income families than to hire workers from higher-income backgrounds to do the same job. As a result, employers would have incentives to try to tilt hiring toward people who would be unlikely to receive subsidies and away from people who would need subsidies. For example, employers would have incentives to favor prospective employees who have a spouse with a decent income (or who have health coverage through a family member) as well as teenagers whose parents make a decent living.

Employers who hire people with family incomes sufficiently low that they receive Medicaid (rather than subsidies for coverage purchased in the exchange) also would avoid a charge for such workers. However, most jobs, other than those paying low wages, generally would lift people above the Medicaid income limit.

The incentives also would favor prospective employees who do not have children over those who do. Hiring parents would make it more likely that an employer would face substantial charges. A parent with children would be more likely to qualify for a subsidy — and hence to cause the employer to be charged — than a single individual or a person who is married but has no children because the income limit for subsidies would vary by family size. The income level up to which a worker would be eligible for a subsidy would be $43,320 (in 2009 dollars) for an individual, compared to $88,000 for a family of four. Second, as noted above, it appears that employers would face greater charges for workers who receive a subsidy for *family* coverage, although that is not certain.

This could be a problem for single parents trying to work and keep their children out of poverty. The 1996 welfare law limited welfare assistance for these mothers and pushed them to get a job. This provision could lessen their chances of doing so.

This differential treatment of workers based on their family income also might influence the decisions of some employers about which employees to let go when firms trim their workforces to cut costs, such as during a recession. Workers receiving subsidies through the exchange would cost a firm more to retain than other workers paid the same wage to do the same job.

Similarly, the provision would create an incentive for some firms to convert "full time" to "part time" jobs and to reduce the work hours of some employees to less than 30 hours per week. Employers would not pay anything for employees who receive subsidies if the workers are employed fewer than 30 hours a week.

Finally, because minorities are much more likely to have modest family incomes than non-minorities, a larger share of prospective minority workers likely would be affected.

Burdens on Employers

Robert Reischauer's Observations on the Administrative Burdens of the Provision

In a Center on Budget and Policy Priorities' briefing for journalists on this provision on August 5, Robert Reischauer offered the following assessment:

"Inevitably, there's going to be some administrative complexity added to our health system when we consider ways of getting resources from employers to help finance the health subsidies but, of all the play or pay options, this one [the "free rider" proposal] is probably the most complex and has the most disincentives for what one would hope to be efficient behavior.

"If we're talking about systems in which the employer that doesn't provide health insurance has to pay a set fee of "x" dollars or "y" percent of payroll to the subsidy-granting entity or to the exchange, those are fairly simple kinds of payments to work out and aren't particularly intrusive. When we think of going down to the individual level, which is in effect what the [free rider] proposal would do, it gets administratively horrendously complex as well as quite intrusive. We're in a situation in which we're trying to have an exchange figure out how much is owed to it for subsidies from hundreds, possibly thousands, of different firms. It has to accurately identify the workers with the firms and differentiate workers who have subsidies from those who don't.

"As you know, firms come and go, particularly smaller firms and firms that tend to hire substantial numbers of low wage workers. We know that the worker population in the low-wage workforce is more unstable than those in the high-wage workforce and so they're tending to shift in and out of jobs, possibly because of the fluctuation of the demand of the employer, possibly because of other unstable circumstances in their lives. The exchange is going to have to be sending bills to employers. These bills are undoubtedly going to have substantial lags built into them, in the sense that none of this can happen on a real time basis and you might get a quarterly bill for the subsidy amount from six months ago or nine months ago …. The firm is going to probably have problems with that bill, and not feel sure it's being charged correctly. There are likely to be disputes of one sort or another.

"In other words, it's going to be an immense hassle on the administrative front and one that we could reduce considerably by moving to one of the alternative forms of responsibility, such as those that depend on the entire wage bill of the firm or just the wage bill of those who don't have insurance coverage somewhere else …. We're almost guaranteeing that a rather large new administrative burden would be placed on both the exchange and on employers …"

The proposed requirement would place new burdens on employers. It would likely be complicated and costly for firms to administer. It also would impose fees on some firms in a way that could make it more difficult for them to fully pass on the costs though offsetting reductions in employee compensation.

The Congressional Budget Office noted some of the administrative problems this proposal would cause in a recent report.[3] In a similar vein, Robert Reischauer, the President of the Urban Institute and a former CBO director, has said this proposal would result in "a rather large new administrative burden" and "an immense hassle on the administrative front" (see the box on this page). Administrative complexities and burdens would arise for the following reasons:

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[3] Congressional Budget Office, "*Effects of Changes to the Health Insurance System on Labor Markets*," July 13, 2009. Emphasis added.

- Under the provision, the health insurance exchanges would bill employers, presumably either monthly or quarterly, based on the number of a firm's employees who receive subsidies in the exchange. Employers consequently would need to maintain detailed, ongoing data exchange with the state health insurance exchanges. Worker turnover and changes in workers' hours would complicate matters, because exchanges would inevitably bill firms for some people who no longer worked there or no longer worked at least 30 hours a week. This would require employers to dispute various billing charges from the exchanges.

- Moreover, while employers would not have to pay for employees who get a subsidy but have a disability or participate in a welfare-to-work program — or for children in foster care — the exchanges often would not know which subsidy recipients fall into these categories and would bill employers anyway. To escape these unwarranted charges, employers would have to challenge the charges and provide documentation.

- Another problem that the Congressional Budget Office identified in its analysis is that employers often would not know how much they owed until they received bills from the exchange, since employers may not know exactly which, or how many, of their employees were getting subsidies until the bills arrive. This would create some uncertainty and make financial planning more difficult for firms.[4]

- Finally, employers could, as a result of the provision, face the filing of discrimination complaints that would have to be litigated or otherwise resolved. Consider, for example, a circumstance in which a firm has two employees that perform the same job and are paid the same wage, but one gets a subsidy in the exchange (because there is no second earner in the family and its family income is modest) while the other employee is covered through a spouse. If the firm hits hard times and must lay off a workers and it lays off the one receiving the subsidy, there could be a potential for the firm to be hit with a discrimination complaint.

Difficulty in Passing Costs Through

In its recent analysis of the effects of this and other employer responsibility proposals, the Congressional Budget Office noted that under traditional "play-or-pay" requirements where employers pay a relatively modest amount per worker for all workers, employers would generally be able to cover those costs by paying lower wages than they otherwise would. CBO noted that under this proposal, where employers could pay much larger amounts per worker for a smaller number of workers (i.e., those receiving subsidies through the health insurance exchange), the employers might not be able to pass these much larger amounts through to the affected workers if those workers' pay was not far enough above the minimum wage level to absorb the full reduction.

[4] CBO noted that the proposal "might also create greater uncertainty for firms because their liability would depend on whether workers chose a government subsidized plan, obtained other coverage, or became uninsured."