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EMPLOYER REQUIREMENT IN BAUCUS HEALTH PACKAGE WOULD HAVE UNINTENDED EFFECT OF DISCOURAGING HIRING OF LOW-INCOME AND MINORITY WORKERS

by Judith Solomon and Robert Greenstein

While an employer responsibility requirement is an essential component of health care reform, a proposal included in the new health reform package that Senator Max Baucus unveiled this weekend would have serious consequences, particularly for low-income and minority workers and women.

Under the proposal, employers who do not offer health coverage would have to pay the full cost of the subsidies provided to employees who purchase coverage through the new health insurance exchange and qualify for a subsidy because their family income is below 300 percent of the poverty line.[1] But employers would *not* have to contribute to the health insurance costs of employees with higher family incomes. The new requirement would apply to firms with 50 or fewer employees.

Many employers that *do* offer coverage also would be subject to this requirement. Workers who would have to pay more than 13 percent of their income for their share of the premium costs under their employer's plan, and who have family incomes below 300 percent of the poverty line, could receive a subsidy to purchase coverage through the exchange. Their employers, however, would then be billed for those subsidies.

As a result, firms that offer coverage generally would be worse off under this provision than under the "play-or-pay" provisions of the House health care bill or the bill that the Senate Health, Education, Labor, and Pensions Committee has approved.

The Proposal's Deep Flaws

The proposal has serious flaws, including the following:

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[1] The provision would not apply to employees who work less than 30 hours per week. The total amount that an employer would pay would be capped at the firm's total number of employees times $400. (Most firms required to make payments would likely be below the cap, especially since they would have an incentive to hire fewer workers who would qualify for subsidies.) Employers would not be charged for employees who are enrolled in Medicaid, have a disability, or participate in a welfare-to-work program, or for subsidies for children in foster care.

Biasing Hiring and Firing Decisions Against Low-Income Workers

- The proposal would make it considerably more expensive for employers to hire workers from lower-income families than workers from higher-income backgrounds to do the same job. As a result, it would distort hiring decisions. Employers would have strong incentives to tilt hiring toward people who have a spouse with a good income (or have health coverage through a family member), teenagers whose parents make a decent living, and people without children (since the eligibility limit for the subsidies in the new health insurance exchanges will increase with family size). Low-income women with children in one-earner families would be particularly disadvantaged.

  While language could be included to try to ban such discriminatory effects, it would be virtually impossible to enforce effectively. It would be extremely difficult to prove in court that an employer has passed over one applicant and hired another because of the health surcharge that employers would face if they hired people receiving health insurance subsidies. Moreover, most low-income job applicants who do not get hired could not afford to hire attorneys to initiate legal proceedings. For the tiny number that might be able to institute proceedings, the legal complaint likely would take months and, more likely, years to adjudicate. In short, the fact that low-income workers would cost an employer up to several thousand dollars more to perform the same job could not easily be overcome.

- This differential treatment of workers based on their family income also would likely influence employer decisions about which of their employees to let go when they trim their workforces to cut costs, such as during a recession. Workers from low-income families would cost the firm significantly more to retain than other workers who are paid the same wage to do the same job.

- Although this clearly is not intended, the proposal likely would have discriminatory racial effects on hiring and firing. As noted, it would discourage the hiring of lower-income people. And since minorities are more likely to have low family incomes than non-minorities, a larger share of prospective minority workers would likely be harmed.

Leading to the Loss of Jobs

The proposal also would likely lead to a greater loss of jobs than a more traditional "play-or-pay" requirement.

- In a recent analysis of the labor-market effects of this and other proposals to require employers who don't offer coverage to contribute to the costs of insurance, the Congressional Budget Office explains that under traditional "play-or-pay" requirements — where employers who don't offer coverage would pay a modest dollar amount per worker or a modest percentage of payroll — employers generally would be able to cover those costs by paying lower wages than they otherwise would (as employers who offer coverage already do). But under a proposal to make employers who don't offer coverage pay much larger amounts per worker for a smaller number of workers — i.e., for low-income workers who receive subsidies through the health insurance exchange — the employers might not be able to pass these much larger amounts through to the affected workers, because those workers' pay would already often be near the minimum wage level. CBO noted that this proposal "*could therefore have a much larger impact on*

Employers Generally Will Be Able to Discern Which Job Applicants Are More Likely to Be Low-Income

Employers generally will be able to tell whether some job applicants are more likely than others to have low family income and thus to be eligible for health insurance subsidies. For starters, employers often know who is a single parent and who is married; it's often easy to discern that in an interview. If the prospective employee is a single parent, the wage the employer would pay will generally be the family's sole income. If the wage is modest, the chances will be substantial that the single parent will qualify for a health insurance subsidy and hence cost the employer considerably more.

The employer also will know the applicant's home address. Applicants living in housing projects or poor parts of town will be more likely to be low-income than people living in more affluent neighborhoods.

The employer will know the applicant's race. The combination of race and address for different applicants will correlate with different likelihoods of being low-income.

Finally, for individuals whom an employer has hired, the employer will know exactly which ones he or she has to pay extra for, because the employer will be billed for them by the government or the health insurance exchange. This could influence employer decisions on which employees to let go when employers are reducing their workforces, since these employees will cost more than others to do the same work.

employment than a substantially smaller play-or-pay fee affecting a broader base of workers. Moreover, the employment loss would be concentrated disproportionately among low-income workers who employers expected would be more likely to obtain subsidies from the government (for example, unmarried individuals who do not receive family coverage through a spouse's job)."[2]

- Employers also would have incentives to replace lower-paid, less-skilled workers with machines and a smaller number of higher-paid workers to operate the technology; in some cases, the addition of a health surcharge applied to lower-wage workers but not to more highly-paid workers could tip the balance for employers in this direction.

Creating Administrative Complications for Employers

As the Congressional Budget Office noted in its recent report, the proposal also raises serious administrative concerns, because it would be complicated to administer.[3]

- Employers would need to maintain ongoing data exchange with state health insurance exchanges. Worker turnover would further complicate matters, and likely lead employers to dispute various billing charges from the exchanges.

- In addition, as CBO warns in its analysis, employers may not know how much they owe until they receive bills from the exchange, which could create uncertainty and make financial

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

[3] CBO, *Ibid.*

planning more difficult for them.[4]

Moreover, the monthly or quarterly billing of employers by the exchange would constantly remind them how much these employees are costing them as compared to other employees, something that would be intrusive and not helpful to these individuals' job tenure.

In short, while both a traditional employer mandate and a provision such as this one may have some effect on the total size of an employer's workforce, the provision discussed here would affect employers' decisions *on which people to hire* while a more traditional play-or-pay provision would not. Under a traditional employer mandate, an employer would not have to pay several thousand dollars more to hire a person from a lower-income family than someone from a middle- or upper-income family to do the same job.

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[4] CBO stated that this 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."