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How the Senate Health Bill Punishes Businesses That Hire Low-Income Workers

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Suppose you wanted to *prevent* single parents and people from lower-income families from getting a job. How about imposing a $3,000 tax penalty on any employer who hired such a person instead of an equally qualified, equally paid person from a higher-income family? Would that do the trick?

It would do the trick quite nicely—but since no decent person actually wants to make it hard to escape poverty, it's a really bad idea. But that is exactly what the Senate health care bill does.

The Senate health bill (H.R. 3590) introduced by Senator Reid (D–NV) contains provisions (Section 1513) that would impose a tax penalty on any company with more than 50 employees that hires someone who qualifies for, and opts to accept, a health insurance premium subsidy—a penalty of $3,000 per employee per year. And the qualifications for that taxpayer subsidy depend on the worker's family size and family income, not just the pay from that employer. A worker with more dependents would be more likely to qualify, and one with a working spouse or other family members would be less likely to qualify—and the IRS would be required to provide this family information to the employer.

Three Ways Workers Will Lose. If the bill is enacted, there would be three devastating results.

First, employers faced with the choice of hiring—for the same job at the same pay—say, a single parent of three, and a parent of two with a working spouse (or a teenager with working parents), the employer could face a $3,000 annual penalty for hiring the single parent—and is therefore likely to deny that person the job. Likewise, if one company lays off an employee with a working spouse, that could generate a $3,000 tax penalty for the *other* spouse's employer—unless the other employer lays off the other spouse as well.

Second, if the employer hires two people in different family situations for the same job at the same pay, they could have vastly different health insurance options based on what their *other* family members are making. The one with another working family member would have to take a plan from one of their employers and pay up to 40 percent of the cost or face substantial tax penalties; the one with no (or lower-paid) other working family members could choose either the employer's plan or any plan in the exchange—in the latter case, with a subsidy paid for by the other workers' taxes.

Third, if more than a quarter of the employees qualify for subsidies, the company would be paying the same tax penalty as if it had not offered a health plan in the first place. Faced with paying a hefty tax penalty whether they offer health insurance or not, many companies would drop their health plan, harming the remaining workers who do not qualify for subsidies. Those workers would be forced to buy

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health insurance on their own, paying 100 percent of the premium (instead of 40 percent or less through the employer), and paying with *after-tax* dollars. Even if the company raises pay by the amount they would have paid for health insurance (less the tax penalty), employees would now face income taxes on compensation that would otherwise be non-taxed health benefits.

How Would This Inequity Happen? This perverse result is the interaction of several provisions of the Senate bill.

- Section 1513(a) requires that employers with more than 50 full-time employees provide insurance approved by the Secretary of Health and Human Services to all full-time employees and pay at least 60 percent of the cost or pay a tax of $750 per employee per year. (That is the "applicable amount" in 2016. Before that it will be phased in; after that it will be indexed for inflation.)[1]
- However, even if the employer *does* offer such insurance, an employee might qualify for a subsidy based on family size, family income, and the dollar amount of the premium that the employee would have the pay (the remaining 40 percent or less).[2]
- Full-time employees who qualify for such a subsidy would be permitted to opt out of the employer's health plan and buy their own insurance through the new health insurance exchange, using the taxpayer-funded subsidy to pay part of the cost.[3]
- If an employee makes that choice, then the employer has to pay a tax penalty. The bill gives the amount of the tax penalty as "400 percent of the applicable amount"—that is, *four times* the per-employee penalty for not providing insurance at all—that is, $3,000 per such employee in 2016, subject to a cap of $750 times the total number of full-time employees. (An alternate reading of the bill is that it would be $750 times to total number of full-time employees, even if only a single employee opts to take a subsidy.)

Which Workers Are Affected? Whether an employee qualifies for the subsidy depends not on how much that employee is paid by that company but on the employee's total family income relative to the federal poverty level (FPL). Family income could be different because there may be other family members with jobs, or the employee might have another job also with a different employer.

The FPL depends on family size. For example, the FPL for 2009 is $10,830 for a family of one and $22,050 for a family of four. (These numbers are adjusted annually for inflation.) Subsidies would be available for families with incomes up to four times the FPL ($88,200 for a family of four) if the employee's share of the premium in the company plan were more than 9.8 percent of total family income.

In families with multiple employers, all employers might be subject to the $3,000 tax.

Mandatory Discrimination on the Job: Putting Low-Income Families Out of Work First. Given the same salary from a particular company, employees are more likely to qualify for subsidies if they have (a) larger families or (b) fewer working people in the family. For example, a single parent is more likely to qualify for a subsidy than a single childless person (who has a lower FPL) or a married person with a working spouse (who has a higher family income), let alone a working teenager with perhaps two working parents.

So suppose you are the employer and you have two job applicants: a single mother and a teenager with two working parents. You know that if your applicant gets a subsidy, you get hit with a $3,000 tax, with this tax increasing every year to match inflation. Which applicant do you hire?

One could argue that the company could take advantage of the provision in the bill[4] that allows the employer to pay a larger share of the premium for lower-paid employees. But doing so would require the employer to demand information

1. Patient Protection and Affordable Care Act of 2009, 111th Cong., 1st Sess., Section 1513(a), pp. 348–49, at *http://democrats.senate.gov/reform/patient-protection-affordable-care-act.pdf* (December 3, 2009).
2. *Ibid.*, Section 1513, p. 351.
3. *Ibid.*, Section 1411, pp. 245–48.
4. *Ibid.*, p. 26.

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about the income of other family members and other jobs and to provide different benefits for the same job based on the employment status of other family members.

Even so, the increased share of the premium could end up costing even more than $3,000, and the company might have to cut the employee's pay to make up for the higher premium "covered" by the employer.

Chances are that it would be easier—and cheaper—to simply replace the employee with another who does not qualify for the subsidy.

Punishing Employees for Having Low- and Moderate-Income Co-Workers. If a company hires "too many" employees who qualify for subsidies, it could be even worse for their co-workers who do not qualify. If at least one-quarter of employees qualify for the subsidy, the company will pay the same tax penalty regardless of whether or not it offers health insurance to its remaining employees—so it might as well drop the company health plan entirely. In that case, all workers would be required to purchase insurance on their own.

The end result could be financially devastating. Workers without the subsidy, instead of paying at most 40 percent of the cost of an employer-sponsored plan on a pre-tax basis, would have to pay 100 percent of the cost of a "qualified" plan in the new government-sponsored exchange (or remain uninsured and face tax penalties)—and in addition, will have to pay income and payroll tax on the entire premium.

The Congressional Budget Office has estimated that the average premium for a family health plan purchased through the exchange would be about $15,200 (and even more for the "public option").[5] Depending on the worker's tax bracket, the net pre-tax cost of a $15,200 health plan could range from $18,200 (for a worker in the 10 percent income tax bracket paying FICA but no state income tax) to well over $26,000 in the highest tax bracket (even higher with state income taxes). By contrast, the same plan purchased through an employer[6] would have a pre-tax employee share of at most $6,080.

This means that if a company hired "too many" workers from low-income families, it could cost the *other* workers $12,000 to $20,000 or more per year.

Hurting Those Who Need Help the Most—and Everyone Else. The Senate health care bill discourages companies from hiring those who need jobs the most and encourages employers to lay off people with family members who have also lost their jobs. The bill punishes employers who hire or retain those workers anyway and harshly punishes employees who have "too many" co-workers from low- and moderate-income families.

The net result would be higher unemployment for low- and moderate-income families and higher health insurance costs for their co-workers—the exact opposite of what the bill's proponents claim is their goal.

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5. Congressional Budget Office, "An Analysis of Health Insurance Premiums Under the Patient Protection and Affordable Care Act," November 30, 2009, p. 23, at *http://www.cbo.gov/ftpdocs/107xx/doc10781/11-30-Premiums.pdf* (December 3, 2009).
6. *Ibid.* The CBO report estimates that the average employer-sponsored plan would have a higher premium and higher benefits. Here the effect of the same plan with the same premium purchased through an employer is calculated in order to make a valid "apples-to-apples" comparison.

APPENDIX: WHAT THE BILL SAYS

Several people who have heard this analysis have quite reasonably found it difficult to believe. It is indeed hard to imagine that these provisions would serve any legitimate purpose, though no doubt the authors of the bill had some purpose in mind.

However, to remove any doubt, the relevant provision of the bill is reproduced below. This is from Section 1503 of H.R. 3590, Amendment in substitute introduced by Senator Reid (D–NV) on November 18. The following appears on pages 350–352 of the PDF version of the bill and amends chapter 43 of the Internal Revenue Code of 1986, Section 4980H(c) to read[7]:

(c) LARGE EMPLOYERS OFFERING COVERAGE WITH EMPLOYEES WHO QUALIFY FOR PREMIUM TAX CREDITS OR COST-SHARING REDUCTIONS.—

(1) IN GENERAL.—**If—**

(A) an applicable large employer offers to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan (as defined in section 5000A(f)(2)) for any month, and

(B) **1 or more full-time employees of the applicable large employer** has been certified to the employer under section 1411 of the Patient Protection and Affordable Care Act as having **enrolled for such month in a qualified health plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid with respect to the employee,**

then there is hereby imposed on the employer an assessable payment equal to the product of the number of full-time employees of the applicable large employer described in subparagraph (B) for such month and 400 percent of the applicable payment amount.

(2) OVERALL LIMITATION.—The aggregate amount of tax determined under paragraph (1) with respect to all employees of an applicable large employer for any month shall not exceed the product of the applicable payment amount and the number of individuals employed by the employer as full-time employees during such month.

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) APPLICABLE PAYMENT AMOUNT.—**The term 'applicable payment amount' means, with respect to any month, 112 of $750.**

(2) APPLICABLE LARGE EMPLOYER.—

(A) IN GENERAL.—The term 'applicable large employer' means, with respect to a calendar year, an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year.

Elsewhere in the bill, the "applicable payment amount" is phased in prior to 2016 and indexed for inflation thereafter.

So to summarize: If a company has employees who are eligible for subsidies, the company pays four times $750 (or $3,000) per full-time employee who chooses to accept the subsidy, subject to a cap of $750 times the total number of full-time employees.

Therefore, if more than 25 percent of the company's employees get subsidies, the company pays the same tax as if it did not offer insurance at all—so it would be cheaper to drop its health plan entirely.

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7. Boldface added.

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