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The House Health Fix: Even Higher Tax Penalties for Employers

John L. Ligon and Robert A. Book, Ph.D.

Under House Reconciliation Act of 2010 (H.R. 4872), employers will face even greater penalties than mandated by earlier versions of "health care reform" legislation, such as H.R. 3590. Specifically, employers with more than 50 workers that do not offer a "qualified" health plan or pay 60 percent of health insurance premiums would face an annual tax penalty of $2,000 per full-time worker.

Moreover, companies with 50 or more workers that hire from low- and moderate-income families who qualify for, and elect to accept, premium subsidies would have to absorb an additional $3,000 per employee per year tax penalty—even if those companies already offer health insurance.

Both of these penalties would dramatically affect the way companies direct their allocation of labor. For instance, these tax penalties would discourage companies from hiring new workers, particularly individuals who are likely to be in low-income families.

The Employer Mandate Penalties in H.R. 4872. To help pay for the massive price tag of the legislation, lawmakers have raised the tax burden that companies would face compared to H.R. 3590 (the Senate-passed health bill). H.R. 4872 would force companies to pay a tax penalty if that a business employs 50 or more workers as soon as one worker qualify for, and opts to accept, a health insurance premium subsidy. The definition of a large business as one with more than 50 employees will surprise many businesses that, until now, never realized they were such a large enterprise. Indeed, local restaurants and other similar service businesses can easily exceed the 50-employee threshold.

Essentially, companies with more than 50 workers that do not offer health insurance coverage—or pay at least 60 percent of the premiums for all full-time workers—will have to pay $2,000 per worker for all workers beyond the first 30 workers. Moreover, companies would face an additional tax penalty equal to $3,000 per full-time worker per year for every full-time worker that qualifies for a premium subsidy for health insurance coverage.

Changing the Way Businesses Hire. If the House reconciliation bill is enacted, there are three primary implications for businesses looking to hire low- and moderate-income workers.

First, employers would be faced with a $3,000 annual penalty for hiring a single parent—and are therefore likely to not hire such an individual. 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.[1]

Second, if the employer hires two people in different family situations for the same job at the same

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(202) 546-4400 • heritage.org

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pay, they could have vastly different health insurance options based on what their other family members are making. The employee 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.[2]

Third, if more than two-thirds 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 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.[3]

Higher Tax Burdens on Businesses. It is not certain exactly how many companies would be impacted by either mandate, yet a significant share of U.S. businesses could likely face one or both tax penalties and would therefore have to find a way to absorb the increase in the cost of doing business.[4]

Second, this bill would establish a strong disincentive to expand employment, particularly for firms looking to grow beyond the threshold of 50 workers per firm. For many companies in the U.S., the marginal cost—at minimum—of $40,000 could be strong enough to forego hiring an additional worker.[5] This penalty would impact medium-sized businesses as well, where a firm with 75 workers and subject to the employer penalty would have to absorb $90,000 in additional costs (or approximately 6 percent of the average annual payroll for a company with 75 workers in the U.S.).

Punitive Employer Tax Penalties Is Not Sound Policy. It is crucial that federal lawmakers keep in mind that mandating even higher employer tax penalties to pay for a massive federal health care reform bill would create a strong disincentive to hire those who need jobs the most and encourage many employers to lay off people with family members who have also lost their jobs. The bill would also punish companies who hire or retain those workers already and harshly punishes workers who have too many co-workers from low- and moderate-income families.

Moreover, this bill would create an even stronger disincentive for companies that want to expand employment. Altogether, altering these incentive

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1. Robert A. Book, "How the Senate Health Bill Punishes Businesses That Hire Low-Income Workers," Heritage Foundation *WebMemo* No. 2716, December 3, 2009, at *http://www.heritage.org/Research/Reports/2009/12/How-the-Senate-Health-Bill-Punishes-Businesses-That-Hire-Low-Income-Workers*.
2. *Ibid.*, p. 1.
3. *Ibid.*, p. 2.
4. A significant share of U.S. businesses could likely face one or both of these higher employer tax penalties. There are approximately 77,900 total businesses in the U.S. with (on average) 50–200 workers per firm that could likely face the $2,000 per employee tax penalty. Also, there are 116,000 total businesses with 35–49 workers on average per firm. It is uncertain how many workers qualifying for the premium subsidy would elect to accept the subsidy, yet it is likely that a large share of full-time workers would elect to receive the average (aggregated) payroll for businesses with at least 50 workers, which is roughly $40,428. These estimates use data from the Small Business Administration for the total number of firms with an average of 50 to 200 workers per firm statistics and health benefit offering rates. The 2009 Kaiser Family Foundation, Employer Health Benefits 2009 Annual Survey, September 15, 2009, p. 38, at *http://ehbs.kff.org* (March 19, 2010); and United States. Small Business Administration, Office of Advocacy, "Firm Size Data," 2006, at *http://www.sba.gov/advo/research/data.html* (March 19, 2010).
5. As an example, if a business expands from 49 to 50 full-time workers, then the marginal cost of this expansion will be $2,000 times 20 full-time workers, or $40,000.

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structures is harmful to businesses—of all sizes, yet particularly small- and medium-sized businesses—and they way they allocate labor. The net result could likely be higher unemployment, especially 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.

—John Ligon is a Policy Analyst, and Robert A. Book, Ph.D., is Senior Research Fellow in Health Economics in the Center for Data Analysis at The Heritage Foundation.