



Employer Responsibility in Health Care Reform:

Potential Effects on Low- and Moderate-Income Workers

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Introduction

Leading health care reform proposals all require individuals to obtain health care coverage, but differ in how they would require employers to share in the costs of coverage for their employees. This report reviews the employer responsibility requirements in the leading proposals—often referred to as “play-or-pay” provisions—and makes recommendations on how to best structure such a requirement to ensure that relatively low-paid workers are not negatively impacted by them.

The Impact of “Play-or-Pay” Requirements on Employer-Based Coverage and Low-Paid Workers

All three of the leading health care reform proposals—the Senate Health, Education, Labor and Pensions (HELP) Committee’s Affordable Health Choices Act; the House “Tri-Committee” Affordable Health Choices Act; and the America’s Healthy Future Act proposed by Senate Finance Committee Chairman Max Baucus¹—would require individuals to obtain health insurance. Individuals could meet the requirement by purchasing or obtaining coverage through an employer, a public program (such as Medicare or Medicaid), or independently through health insurance exchanges established by the bills. Individuals who do not obtain coverage would be subject to a financial penalty, with some exceptions. All three proposals also include “play-or-pay” provisions that require employers to share in the costs of expanding health insurance coverage to some extent.

About 58 percent of Americans—some 176 million people—were covered by an employment-based health insurance plan for some or all of 2008.² Absent an effective requirement requiring employers to share in the costs of health insurance for their employees, a mandate that individuals obtain coverage would lead many employers to eliminate or cut back on the health insurance coverage that they provide to their employees. For example, earlier this year, the Congressional Budget Office estimated that an initial version of the Senate HELP bill that did not include a play-or-pay requirement would result in a 10 to 11 percent decline in the number of people with an employer-based health plan (compared to the trend in coverage projected under current law).³ A CBO analysis of a later version of the bill that included a play-or-pay requirement projected no decline in the number of people with employer-based coverage.⁴

1 The House bill is H.R. 3200. It was introduced on July 14, 2009 and considered separately by three committees in the House—Energy and Commerce, Ways and Means, and Education and Labor—between then and the end of July. Amendments made by the committees have resulted in some differences between the versions of H.R. 3200 approved by each of the committees. The Senate HELP Committee approved its bill on July 15, 2009. The Baucus proposal was released as a Chairman’s mark on September 15, 2009, and is scheduled for mark-up by the Finance Committee on September 22, 2009.

2 Carmen DeNavas-Walt, Bernadette D. Proctor, Jessica C. Smith, “Income, Poverty, and Health Insurance Coverage in the United States: 2008,” U.S. Census Bureau, September 2009, Table C-1.

3 Congressional Budget Office, Preliminary Analysis of HELP Committee’s Insurance Proposal, June 15, 2009, <http://www.cbo.gov/ftpdocs/103xx/doc10310/06-15-HealthChoicesAct.pdf>.

4 Congressional Budget Office, Preliminary Analysis of Title I of the Affordable Health Choices Act, July 2, 2009, <http://www.cbo.gov/ftpdocs/104xx/doc10431/07-02-HELPltr.pdf>.

Legislation that results in a decline in employer-based coverage is not necessarily a negative for workers. Economists generally agree that employees bear the costs of employer-provided health insurance, and receive lower wages and/or other forms of compensation as a result. Thus, plans that provide a guarantee of affordable health insurance coverage outside of an employee-employer relationship can provide a net benefit to low- and middle-income workers, and society as a whole, depending on how they are structured. But, at least in the current political environment in the United States, there is a widely held preference for reforming health care in a way that does not significantly reduce employer-based coverage.

However, play-or-pay requirements can have other impacts that may be problematic for some workers. In particular, because the costs of such requirements are largely passed through to employees, such requirements can reduce wages and other forms of compensation. This is likely to be most problematic for workers who already receive low wages and compensation, particularly those who have health insurance coverage through Medicaid, CHIP, or some other source of publicly subsidized coverage.

In addition, some argue that play-or-pay provisions could reduce the hiring of workers at or near the minimum wage. According to the Congressional Budget Office:⁵

Because employees largely bear the cost of health insurance or play-or-pay fees in the form of lower wages, the effects of those provisions on employment and hours worked is likely to be relatively minor. However, a play-or-pay requirement could affect the amount of work available for certain categories of workers. In particular, a play-or-pay provision could reduce the hiring of low-wage workers, whose wages could not fall by the full cost of health insurance or a substantial play-or-pay fee if they were close to the minimum wage.

As CBO goes on to explain, the impact of a play-or-pay provision on workers will depend on how it is structured, with “larger play-or-pay fees tend[ing] to have a greater effect on employment” and fees that are limited to full-time workers tending to “increase incentives for firms to replace full-time employees with more part-time or temporary workers.” In another document, CBO notes that any negative impact of a play-or-pay requirement on the employment of workers at or near the minimum wage is “likely to be small.”⁶

The bulk of the research reviewed by CBO suggests that the negative impact of a sensible play-or-pay requirement on low-paid workers is likely to be so small that it will be offset by the much larger gains to such workers of providing affordable, near-universal health insurance coverage. In this respect, such provisions are similar to increases in the minimum wage, which, in the real world, boosts the income of poorly compensated workers, while having few, if any, of the grim effects on employment predicted by neo-classical economic theory.

5 Congressional Budget Office, *Effects of Changes to the Health Insurance System on Labor Markets*, July 13, 2009, p. 4, <http://www.cbo.gov/ftpdocs/104xx/doc10435/07-13-HealthCareAndLaborMarkets.pdf>.

6 Congressional Budget Office, *Supplemental Information on Potential Effects of the Affordable Health Choices Act*, Letter to the Honorable Michael B. Enzi, September 10, 2009, http://www.cbo.gov/ftpdocs/105xx/doc10553/09-10-Response_to_Enzi_for_Web.pdf.

Play-or-Pay Provisions in Pending Health Care Legislation

The three leading reform proposals all require employers to share in the costs of health insurance coverage to some extent. Both the House and Senate HELP bills include play-or-pay provisions that require employers to pay an assessment if they do not offer insurance to some or all of their employees.

- The Senate HELP bill would require employers who do not offer coverage (and contribute at least 60 percent of the premium cost) to pay \$750 for each uninsured full-time employee and \$375 for each uninsured part-time employee. Employers with 25 or fewer employees would be exempt from the requirement to offer coverage and any assessment. For larger employers, there would be no assessment for the first 25 uninsured employees.
- The House bill would require employers who do not offer coverage (and contribute at least 65 percent of the premium cost of family coverage and 72.5 percent of individual coverage) to pay 8 percent of their payroll into a Health Insurance Exchange Trust Fund. The assessment would be reduced for employers with annual payrolls of less than \$400,000 (\$750,000 in the version of the bill approved by the House Energy and Commerce Committee), and eliminated completely for employers with payrolls below \$250,000 (\$500,000 in the Energy and Commerce Committee version).
- The Baucus bill also includes a play-or-pay requirement, but it is significantly different from the requirements in the other two bills, and manages to be both more limited and more complicated than the other requirements. Under the Baucus bill, all employers with more than 50 employees that do not offer coverage would be required to pay an assessment to the federal government for each *full-time* employee (defined as more than 30 hours a week) who receives coverage that is *subsidized through the individual tax credit* created by the legislation. This assessment would not apply to uninsured part-time employees or employees who receive other forms of publicly subsidized coverage, such as Medicaid or the Children's Health Insurance Program. For each full-time employee enrolled in a state exchange and receiving a tax credit, the employer would be required to pay a flat dollar amount equal to the average tax credit provided to people insured through the state exchanges. The total amount an employer would be required to pay would be capped at \$400 multiplied by the total number of employees, including those who do not receive tax credits and/or are covered through Medicaid or other public programs.

To assess the potential impacts of the varying play-or-pay provisions, it is important to understand how the bills would subsidize the purchase of health insurance by people who do not receive employer-based coverage or are not covered through a public program. All of the bills would expand public programs and provide tax credits to individuals to ensure coverage is affordable outside of an employer-based plan.

- The House bill would expand eligibility for Medicaid to all individuals with incomes up to 133 percent of the poverty line. Individuals who purchase coverage through the health

insurance exchange established by the legislation and have incomes of less than 400 percent of the poverty line would be eligible for a premium credit. (See **Table 1** for various multiples of the federal poverty line.)

- The Senate HELP bill would expand eligibility for Medicaid to all individuals with incomes up to 150 percent of the poverty line. Individuals who purchase coverage through the health insurance exchange established by the legislation and have incomes of less than 400 percent of the poverty line would be eligible for a premium credit.
- The Baucus bill would expand eligibility for Medicaid to all non-elderly individuals and families with income below 133 percent of the poverty line. Individuals and families with incomes between 100 and 400 percent of poverty who enroll in health insurance plans offered through a state exchange would be eligible for a new health insurance tax credit.⁷

TABLE 1
Multiples of the Federal Poverty Line (FPL), 2009

Household Size	100% of FPL	150% of FPL	400% of FPL
1	\$10,830	\$16,245	\$43,320
2	\$14,570	\$21,855	\$58,280
3	\$18,310	\$27,465	\$73,240
4	\$22,050	\$33,075	\$88,200
5	\$25,790	\$38,685	\$103,160

One way to assess the relative size and potential impact of the various play-or-pay provisions is to determine how much employers would pay in penalties. As **Table 2** shows, according to CBO, under the Baucus provision, the federal government would collect approximately \$27 billion in penalty payments from employers between 2010 and 2019, including \$6 billion in penalties in 2019.⁸ By comparison, the House provision would collect an estimated \$163 billion in penalty payments between 2010 and 2019, including \$33 billion in 2019. Penalties under the Senate HELP provision would fall in between Baucus and the House bills, totaling \$52 billion between 2010 and 2019, including \$9 billion in 2019.

TABLE 2
CBO Estimates of Employer Penalties under Play-or-Pay Provisions (in Billions)

	2013	2014	2015	2016	2017	2018	2019	2010-19
House	\$7	\$16	\$21	\$26	\$29	\$31	\$33	\$163
Senate HELP	\$4	\$5	\$7	\$8	\$9	\$9	\$9	\$52
Baucus Proposal	\$1	\$2	\$3	\$4	\$5	\$5	\$6	\$27

As a practical matter, none of these amounts are particularly large when compared to total compensation for employees in the private sector (nearly \$6.5 trillion in 2008) or private-sector

7 The Children's Health Insurance Program (CHIP) would be changed to a "wrap-around" program providing supplemental benefits to children who are enrolled in an exchange plan and live in families with incomes below 250 percent of the poverty line.

8 Preliminary Analysis of the Insurance Coverage Specifications Provided by the Senate Finance Committee, September 15, 2009, http://finance.senate.gov/sitepages/leg/LEG%202009/091609%20CBO_Analysis.pdf.

employer contributions for government social insurance (\$472.7 billion in 2008).⁹ For example, if these amounts are adjusted upward by an average of 5 percent per year for inflation and economic growth, the penalties projected in the House bill in 2019 would be roughly equal to 0.3 percent of total compensation and 4 percent of employer contributions for government social insurance. Moreover, these additional costs would likely be completely offset by gains to employers as a result of increased productivity and greater economic competitiveness.

The impact of the largest of the three play-or-pay requirements—the 8 percent of payroll fee in the House bill—would have little or no impact on the hiring of low-wage workers. As CBO explains:¹⁰

... the impact of the [House] proposal on low-wage workers would probably be small because studies suggest that moderate increases in the minimum wage generally have limited effects on employment. An 8 percent increase in the cost of hiring a worker making the minimum wage—which just increased to \$7.25 per hour—would amount to roughly \$0.60 per hour, which is also about the size of the increase in the minimum wage that just took effect.

While the size of the Baucus play-or-pay provision is considerably smaller in economic terms than the House or Senate HELP provisions, it has significant drawbacks in terms of efficiency and equity. The biggest problem with the Baucus provision has to do with its limitation to uninsured full-time workers. This creates an incentive for low-wage employers to increase the hiring of part-time and temporary workers and reduce the hiring of full-time ones.

Research conducted on Hawaii's employer mandate to provide coverage to full-time employees suggests that "employers' primary response to the mandate was increased reliance on the exempt class of workers who are employed for fewer than 20 hours per week."¹¹ Both the Senate HELP and House provisions avoid creating this kind of perverse incentive by applying play-or-pay to all employees.

Some may argue that the Baucus provision is preferable to the House and Senate HELP provisions because it attempts to more closely target the "pay" requirement of play-or-pay on "free riders"—that is, to specific firms that shift costs to taxpayers generally by not providing coverage to employees with incomes between 100 and 400 percent of the federal poverty line who are eligible for subsidized premium assistance. By contrast, the House and Senate HELP bills would impose penalties on all employers who fail to provide health insurance, even if all of their employees are paid more than 400 percent of the poverty line and are ineligible for public subsidies.

However, this attempt to narrowly target free riders will result in a lottery-like penalty system that is difficult to rationalize. Most families have incomes below 400 percent of the federal poverty line—\$88,200 for a family of four in 2009, compared to a median household income of \$50,303 last year. Whether or not an employee is eligible for a subsidy depends both on the income they receive from

9 See Table 6.2D, Compensation of Employees by Industry, National Income and Products Accounts and Table 6.10D, Employer Contributions for Government Social Insurance by Industry.

10 Letter to the Honorable Dave Camp from the Congressional Budget Office, July 26, 2009, <http://www.cbo.gov/ftpdocs/104xx/doc10400/07-26-InfoOnTriCommProposal.pdf>.

11 Tom Buchmuller, John DiNardo, and Rob Valletta, Employer Health Benefits and Insurance Expansions: Hawaii's Experience, Federal Reserve Bank of San Francisco, June 29, 2009, <http://www.frbsf.org/publications/economics/letter/2009/el2009-21.html>.

their employer and the amount of income of other family members. Because employers cannot legally base decisions to hire or fire on the income of other members of a potential hire's family,¹² they have only partial control over the precise extent to which they "free ride." Thus, two employers with identical numbers of employees, compensation costs and profits, could end up paying widely different amounts in penalties based on a fact—the income of other members of an employee's family—over which they have no control and may have no knowledge.

A related issue that limits the targeting precision and equity of the Baucus provision is that it excludes employees with incomes under 150 percent of the poverty line who receive insurance that is publicly subsidized through Medicaid and other public programs. Thus, there is no penalty for one major category of free-riding, one that is likely associated with the lowest-paying employers. There is no sound economic basis for this distinction.

Finally, the Baucus provision is also considerably less efficient than the other two provisions because it would be much more costly to administer per dollar of revenue realized. As former CBO director Robert Reischauer explains:¹³

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 [Baucus] 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.

These inefficiencies would be compounded by the likelihood that the Baucus provisions would result in a massive increase in costly discrimination lawsuits and complaints filed by potential job applicants and terminated employees with family incomes below 400 percent of the federal poverty line.

12 Title VII prohibits employment practices that have the effect of discriminating against individuals because of their race, color, national origin, religion, or sex, even if the practices are not motivated by any intent to discriminate on the basis of race or other protected categories. Given existing racial, ethnic, and gender disparities in income, there is little question that employers who base hiring decisions on the income of family members of a potential employee would violate Title VII. Title VII also prohibits decisions to hire based on whether or not someone is a sole income earner in a two-parent family or a single parent, if the decisions have a disparate impact.

13 Remarks of Robert Reischauer at August 5, 2009 press briefing, quoted in Robert Greenstein and Judith Solomon, "Employer Requirement in Baucus Health Reform Plan Would Pose Larger Problems than Previously Realized," Center on Budget and Policy Priorities, September 16, 2009.

Conclusion

If the main goal is to hold costs to employers down, the kind of broader-based assessment included in the Senate HELP and House bills could be adjusted to reduce the penalty. In the case of the Baucus bill, this should include extending the penalty to all uninsured employees without making any distinction on the basis on subsidy receipt or part-time/full-time status.

However, minimizing employer costs needs to be weighed against other more important health-reform goals, including ensuring that coverage is both universal and affordable. The biggest problem with the Baucus bill taken as a whole is that it would impose relatively greater costs on working- and middle-class families than the House bill, and cover several million fewer Americans than House bill.

For example, under the House bill for families with incomes between 300 to 400 percent of the poverty line, premium contributions would be limited to 9 to 11 percent of income (10 to 12 percent in the House Energy and Commerce version); by comparison, the Baucus bill would cap premiums for such families at 13 percent of income. According to CBO, the average subsidy in 2019 for individuals who purchase health insurance through the exchange would be \$6,000 under the House bill and \$5,000 under the Baucus bill. In addition, about 8 million more people would remain uninsured under the Baucus bill than under the House bill. Thus, health insurance generally would be less affordable for many working- and middle-class families—as well as less universal—under the Baucus bill than under the House bill.