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## EXPLAINING HEALTH CARE REFORM: What Is An Employer “Pay-or-Play” Requirement?

To broaden coverage, some health reform proposals would require employers to offer coverage or pay to help finance subsidies for those without access to affordable coverage. These types of reforms are often referred to as “pay-or-play” policies. Employer pay-or-play proposals can vary in terms of the level of coverage required for compliance, the cost of the penalty to employers who do not offer, and whether small firms are exempt from the requirements.

Employer requirements are often an element of a “shared responsibility” approach to health reform, which calls on individuals, employers, and the government to work in tandem to increase insurance coverage. Both President Obama’s campaign proposal and Senate Finance Committee Chair Max Baucus’ white paper included an employer pay-or-play provision. The recently enacted health reform laws in Massachusetts and Vermont require employers over a certain size to offer and contribute to health insurance or pay a modest annual fee.<sup>1</sup>

### Purpose and Function of Employer Requirement

In the context of a health reform plan that aims to substantially increase the number of people insured by expanding on current sources of coverage, an employer requirement could serve a variety of functions, including:

- 1. Building on current system of coverage by broadening employer-sponsored coverage.** Employer-sponsored health insurance is the primary source of health insurance in the U.S., covering 61% of nonelderly people. Pay-or-play requirements build on the current employer group market by encouraging more employers to offer coverage and penalizing those that do not by requiring them to pay into a pool to help subsidize the cost of coverage for the uninsured. Although increasing costs continue to threaten the affordability of employer-sponsored insurance, those with an offer of coverage from an employer generally enroll.<sup>2</sup> Even in the context of reformed individual insurance markets, employer-sponsored insurance maintains support as it is the source of coverage familiar to most people in the U.S. Also, because over 80% of uninsured have connection to the workforce,<sup>3</sup> some see expanding employer-sponsored insurance as a desirable way to reach this population.
- 2. Helping to maintain employer coverage and minimize disruption for currently insured.** Many reform plans would provide new premium subsidies for health insurance sold to people not offered coverage at work. These subsidies are important for making coverage affordable for low and modest income families, but their availability could cause some employers to stop offering coverage so that their employees could qualify for the new subsidized coverage. A pay-or-play requirement reduces the likelihood that an employer will stop offering coverage because it imposes a penalty on firms that do not offer, providing a disincentive to firms that might otherwise decide to stop offering coverage. In addition, some previously non-offering firms may begin to offer coverage because they would rather use their funds to sponsor coverage than to pay the assessment.
- 3. Increasing coverage for small firms where offer rates are lowest.** Overall, 63% of firms with at least three employees offer health insurance to their workers. Almost all firms (99%) with 200 or more employees offer health insurance; the offer rate drops for smaller firms; with less than half of firms with 3 to 9 employees offering coverage.<sup>4</sup> Some analysts are concerned that the voluntary nature of employer health benefits places those firms that choose to offer insurance at a competitive disadvantage. An employer requirement attempts to pull more employers into the system by requiring that they offer health insurance or contribute financially.
- 4. Providing a “non-government” source of financing for new coverage.** Typically, firms that do not comply with the requirement must pay a fee. This payment can be used to offset the cost of offering subsidies to individuals without affordable insurance options. For example, some proposals include a fee defined as a percentage of payroll (e.g., 6%) which is used to pay for premium assistance for the otherwise uninsured. In Massachusetts, firms that do not provide coverage must pay a modest fee of \$295 per employee per year, with most of the revenue to support subsidies coming from state and federal sources.

## KEY QUESTIONS

### 1. What benefits must an employer offer to meet the pay-or-play requirement?

Having a pay-or-play requirement entails establishing a minimum amount of health benefits that an employer must offer to meet the requirement. There are several ways that the minimum could be expressed, including listing required benefits and cost sharing, setting a minimum value (often called an actuarial value) for the benefits that must be offered, or setting a minimum percentage of payroll or compensation that an employer must contribute towards employee health benefits. There could be a uniform requirement for all firms, or the requirement could vary by firm size, average wage, or firm profitability. Requiring employers to offer very comprehensive coverage would make some employers offer more benefits than they do today, increasing the amount that either employers or employees must pay in many instances. On the other hand, a requirement tied to a low level of coverage may not assure that employees have access to an adequate level of coverage.

### 2. Is there a minimum employer contribution to premiums?

Pay-or-play proposals generally include a requirement for the employer to contribute a certain amount towards the cost of coverage. For example, Hawaii requires employers to pay at least 50% of the premium and, in Massachusetts, employers are required to pay at least one-third of the premium.<sup>5</sup> There are a variety of ways for altering the required contribution, including having a different percentage requirement for single and family coverage, varying the requirement with firm revenues, profits, or the number of employees.<sup>6</sup>

### 3. Should some firms be exempt from requirements?

Small employers are least likely to offer health benefits, and for this reason some pay-or-play proposals have exemptions for smaller businesses. For example, the Massachusetts health reform law excludes firms with fewer than 11 employees. An exemption based on firm size could be an effective

way to address concerns about the administrative burden on employers because many small firms do not currently offer and are less likely to have staff dedicated to human resources and employee benefits. To address concerns about financial burdens, an exemption based on financial factors, such as the average firm wage or percentage of low wage employees, could be an effective way to avoid imposing additional costs on the most financially vulnerable firms and employees. Because small firms are least likely to offer health benefits and represent a large proportion of businesses overall, a small firm exemption from a pay-or-play requirement will exclude the vast majority of firms that do not currently offer coverage.

### 4. What do employers that do not offer health insurance pay?

Under pay-or-play approaches, employers that do not offer health insurance that meets minimum requirements must pay an assessment, which is typically used to offset some of the costs of new subsidies for non-group coverage. There are numerous options for setting the size of the assessment and the basis for calculating it. The assessment could be based on the cost of health insurance or it could be expressed as a specified percentage of payroll, a specified amount per hour of work, or a specified amount per employee or per employer. In Massachusetts, employers with more than 10 employees must pay their “fair share” assessment of \$295 annually per uninsured employee, an amount considerably less than the cost of providing health insurance. Other proposals would establish a minimum percentage of payroll or hourly wage that employers must contribute toward health insurance. The City of San Francisco, for example, requires employers to contribute at least \$1.17 per hour worked toward health care of employees.<sup>7</sup> Proposals that provide for an assessment based on a percentage of payroll could base the assessment on average wages or could vary the percentage with individual wage levels.

**KEY QUESTIONS** (continued)

The amount that is assessed under a pay-or-play plan could have an important effect on the number of employers that continue to offer health insurance. Generally, a higher assessment would more strongly encourage employers to offer coverage, although higher assessments also would increase the financial burden on firms and employees in firms that do not offer.

**5. Should small employers be provided tax credits to encourage them to offer coverage?**

Both President Obama and Senator Baucus have proposed tax credits for small firms that offer health insurance. Currently eight states offer a tax credit to small firms offering health insurance.<sup>8</sup> Since many small firms offer coverage now, providing tax credits for offering coverage could be quite expensive unless the subsidies were well targeted to the smaller, lower wage firms that are least likely to offer today.<sup>9</sup>

**Conclusion**

Under comprehensive health reform, an employer requirement attempts to maintain a popular source of coverage and encourages employers to continue offering benefits in the context of other reform efforts, such as a reformed individual market or expanded public programs. Due to the substantial share of the population already covered by employer-sponsored health benefits and the fact that 80% of the uninsured are in the workforce, many view requiring employers to offer benefits as a key element to expanding health insurance coverage. An employer requirement can also discourage currently offering firms from dropping coverage if new subsidies become available for low- and moderate-income individuals not offered coverage at work.

Employer requirements have some critics, however. Opponents argue that pay-or-play approaches would impose a difficult burden on employers in hard economic times, and that assessments on firms that do not offer coverage would cause them to lower wages or reduce employment. Because non-offering firms tend to have workers with relatively low wages, there is a concern that the impact of employer requirements would fall primarily on workers with relatively low incomes.

Those considering employer requirements will need to balance the positive incentives they provide to preserve employer-sponsored coverage with the potential impacts on wages and employment in non-offering firms. The structure of an employer requirement—in particular, the details of what employers have to offer, the penalties for non-offering, and which firms are subject to the new rules—would significantly influence how it is perceived and what coverage options are available to workers.

## Resources

- Baicker, K. & Levy, H. "Employer Health Insurance Mandates and the Risk of Unemployment," NBER Working Paper, No. 13528, November 2007: <http://www.nber.org/papers/w13528>
- Burkhauser, R. & Simon, K. "Who Gets What from Employer Pay or Play Mandates?" NBER Working Paper, No. 13578, October 2007: <http://www.nber.org/papers/w13578>
- Congressional Budget Office – Budget Options, Volume 1: Health Care: <http://cbo.gov/ftpdocs/99xx/doc9925/12-18-HealthOptions.pdf>
- Kaiser Commission on Medicaid and the Uninsured – Approaches to Covering the Uninsured: A Guide: <http://www.kff.org/uninsured/upload/7795.pdf>
- Kaiser Commission on Medicaid and the Uninsured – Massachusetts Health Care Reform: Two Years Later: <http://www.kff.org/uninsured/upload/7777.pdf>
- Kaiser Commission on Medicaid and the Uninsured – President Obama's Campaign Position on Health Reform and Other Health Care Issues: <http://www.kff.org/uninsured/kcmu112508oth.cfm>
- Kaiser Commission on Medicaid and the Uninsured – Vermont Health Care Reform Plan: <http://www.kff.org/uninsured/upload/7723.pdf>
- Kaiser Family Foundation/Health Research & Educational Trust – Employer Health Benefits Survey, 2008: <http://www.kff.org/insurance/7790>
- Lambrew, J. & Gruber, J. "Money and Mandates: Relative Effects of Key Policy Levers in Expanding Health Insurance to All Americans," *Inquiry* 43(4), 333-344: [http://www.kaiseredu.org/topics\\_im.asp?id=892&imID=3&parentID=61](http://www.kaiseredu.org/topics_im.asp?id=892&imID=3&parentID=61)
- Senate Finance Committee – Expanding Health Care Coverage: Proposals to Provide Affordable Coverage to All Americans: <http://www.finance.senate.gov/sitepages/leg/LEG%202009/051109%20Health%20Care%20Description%20of%20Policy%20Options.pdf>
- Senator Max Baucus White Paper – Call To Action: Health Reform 2009: <http://finance.senate.gov/healthreform2009/finalwhitepaper.pdf>

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<sup>1</sup> In Massachusetts the law applies to employers with more than 10 employees (more information is available at <http://www.kff.org/uninsured/upload/7777.pdf>). The law in Vermont applies to employers with more than 9 employees (more information is available at <http://www.kff.org/uninsured/upload/7723.pdf>).

<sup>2</sup> Kaiser Family Foundation/Health Research & Educational Trust, "Employer Health Benefits Survey, 2008," available at <http://www.kff.org/insurance/7790>.

<sup>3</sup> Kaiser Commission on Medicaid and the Uninsured, "The Uninsured: A Primer," October 2008, available at <http://www.kff.org/uninsured/upload/7451-04.pdf>.

<sup>4</sup> Kaiser Family Foundation/Health Research & Educational Trust, "Employer Health Benefits Survey, 2008," available at <http://www.kff.org/insurance/7790>.

<sup>5</sup> Massachusetts Commonwealth Connector, Employer Obligations, <http://www.mahealthconnector.org/portal/site/connector/menuitem.50596a4574af0ace505da95c0ce08041/>

<sup>6</sup> Senator Baucus White Paper, Call to Action: Health Reform 2009, November 2008, available at <http://finance.senate.gov/healthreform2009/finalwhitepaper.pdf>.

<sup>7</sup> *Golden Gate Restaurant Association v. City and County of San Francisco*. United States Court of Appeals for the Ninth Circuit, Court Opinion. September 2008, available at <http://www.ca9.uscourts.gov/datastore/opinions/2008/09/29/0717370.pdf>.

<sup>8</sup> Kaiser Family Foundation, "State Tax Credits for Private Health Insurance, Targeting Individuals and Small Employers," January 2009, available at [Statehealthfacts.org](http://Statehealthfacts.org).

<sup>9</sup> Gruber, J. "Taxes and Health Insurance," NBER Working Paper, No. 8657, December 2001.

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