



Health Policy Brief

MARCH 9, 2011

Employers and Health Care Reform. The Affordable Care Act will assess taxes on companies that fail to offer their employees health coverage.

WHAT'S THE ISSUE?

To expand access and strengthen the employment-based health system, the Affordable Care Act of 2010 will require midsize and large companies to make payments to the federal government if they do not offer health insurance to their employees and dependents starting in 2014. This employer requirement is a controversial and high-profile element in the law.

Supporters maintain that the “play or pay” requirement will help strengthen the existing employment-based system by giving more workers access to improved health coverage. Critics say that the requirement will drive up businesses’ costs, and a handful of large employers have said that making the extra tax payments would be less expensive than continuing to provide health coverage to workers.

This brief examines the issues surrounding the employer requirement.

WHAT'S THE BACKGROUND?

The employer requirement was included in the Affordable Care Act to encourage more companies to provide health insurance coverage to their workers. Those who drafted the law hoped to build on and strengthen the employment-based system, which is the primary source of health coverage for most Americans (Exhibit 1).

Nearly 160 million people under age 65 in America obtain their health coverage through the workplace, primarily through larger employers, according to the Kaiser Family Foundation. Overall, according to a 2010 survey by the foundation, 69 percent of all US employers offered health insurance to their employees. Ninety-nine percent of companies with 200 or more employees offered coverage, a figure that drops steadily by size of firm. Only 59 percent of employers with three to nine employees offered coverage.

During the health care reform debates in 2009 and 2010, many lawmakers and President Barack Obama suggested that they would prefer that the American health insurance system was not tied so closely to employment. At the same time, they said that it would be too hard, and destructive, to sever this relationship, and instead favored shoring up the employment-based insurance system further.

WHAT'S IN THE LAW?

Under the Affordable Care Act, beginning in 2014 employers with at least 50 full-time employees (or equivalent full- and part-time workers) will have to provide “qualified” health insurance coverage to their full-time employees and their dependents. Qualified coverage means that plans are comprehensive (pay at least 60 percent of health care expenses) and affordable (cost less than 9.5 percent of employees’ household incomes).

50

Employee threshold

Starting in 2014, employers with at least this many employees must provide "qualified" health insurance coverage.

If employers don't offer qualified coverage, and if their employees purchase coverage instead through a new state insurance exchange with the assistance of federal subsidies, companies will have to make an "assessable payment" of up to \$2,000 for every full-time employee beyond the first 30 employees. The amount of the assessment will be adjusted annually to reflect the growth in national insurance premium costs.

OTHER ASSESSMENTS: If employers do offer coverage, but the coverage does not meet certain parameters, they may still have to pay assessments. First, employers will be assessed if a plan is judged not to be comprehensive. This means the coverage must have an "actuarial value" of at least 60 percent. In other words, the employer pays on average at least 60 percent of health care expenses and the employee pays on average 40 percent of these expenses through deductibles and copayments.

Second, employers will be assessed if the employees' premiums are considered unaffordable relative to their household incomes. Specifically, the employee's share of the premium must not exceed 9.5 percent of his or her annual household income.

Starting in 2014, if either of these two conditions is not met, the employer must pay a \$3,000 annual assessment for each employee who declines his or her employment-based insurance and obtains government-subsidized coverage through an exchange.

Lawmakers sought to balance the new requirement on businesses with the ability of these companies to comply. Small businesses with fewer than 50 full-time employees (or

equivalent full- and part-time workers) don't have to meet the requirement and are exempt from having to offer health insurance. What's more, as noted, companies with 50 or more full-time employees or equivalents that don't provide coverage to their workers are shielded from paying assessments on their first 30 employees. No payments will be assessed on part-time workers.

The law also encourages small companies to offer health insurance to their employees by making tax credits available for two consecutive years to firms with fewer than 25 employees whose average annual salaries are less than \$50,000. The amount of the tax credit is up to 35 percent of the employer's contribution to employee health premiums. (See the [Health Policy Brief](#) published January 14, 2011, for more information.)

MANY COMPANIES FACE PAYMENTS: A study by the Mercer consulting firm found that 38 percent of US employers may face paying assessments starting in 2014, because their coverage might not be considered affordable for at least some of their employees. The study, based on a 2009 national survey, found that smaller firms were more likely than larger employers to face payment of assessments because large companies tend to pay their employees higher salaries and also to charge them lower premiums for health insurance coverage. The Mercer study projected that 31 percent of all employers with 500 or more employees and 20 percent of those with 20,000 or more employees could face payment of the assessments.

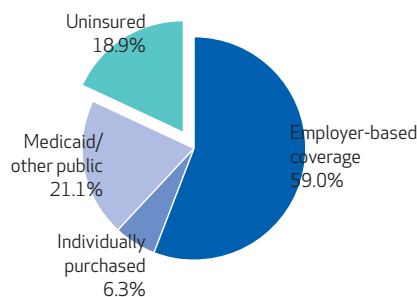
Beyond the employer provision described above, there are other provisions in the Affordable Care Act that affect employers. These include the following:

"FREE-CHOICE VOUCHERS": Employees who earn less than four times the federal poverty level (in 2011, \$43,560 for an individual and \$89,400 for a family of four) and whose share of the premium is between 8 percent and 9.5 percent of his or her household income, can choose to enroll in an exchange instead of the employer plan. The employer must issue the employee a "free-choice voucher" equal to the amount the employer would have paid under the employer's plan.

AUTOMATIC ENROLLMENT: Employers with more than 200 workers must automatically enroll their employees into their health insur-

EXHIBIT 1

Health Insurance Coverage of the US Nonelderly Population, 2009



SOURCE Employee Benefit Research Institute estimates of the US Census Bureau's Current Population Survey, March 2010. **NOTES** Nonelderly means under age 65. Data do not total to 100% because individuals may receive coverage from more than one source.

\$2,000

Assessable payment

If employers don't offer health insurance coverage, they face up to \$2,000 in payments for each full-time employee beyond the first 30.

“Lawmakers sought to balance the new requirement on businesses with the ability of these companies to comply.”

ance plans, and allow for employees to opt out of coverage.

TAX ON HIGH-VALUE HEALTH PLANS: Beginning in 2018, “Cadillac” or high-value health plans will be subject to a 40 percent excise tax on premium amounts exceeding \$10,200 for single coverage and \$27,500 for families. The calculation includes employee contributions to flexible spending accounts and health savings accounts.

WHAT'S THE LIKELY IMPACT?

Supporters say the employer requirement will encourage companies that already offer insurance programs to continue providing coverage, and will encourage companies without such programs to start offering them. But critics of the requirement worry that it will be harmful. They particularly express concern about companies where the employee population is just below the threshold of 50 full-time employees (or equivalent full- and part-time workers). Although empirical data are lacking, they say these firms may decide against hiring more workers even if they are needed.

Some critics also worry that the law might erode the employment-sponsored insurance model should employers cease to offer coverage once state-run insurance exchanges open in 2014.

ESTIMATES OF IMPACT VARY: There have been varying estimates of the impact of the law on how employers and employees will react and how coverage may shift. Some supporters point to Massachusetts, where an employer health insurance requirement went into effect in July 2007. There the number and percentage of people having employment-based coverage increased in 2007 and 2008, but slipped back in 2009, possibly because of the recession.

The Congressional Budget Office (CBO) and the Joint Committee on Taxation estimated that provisions of the Affordable Care Act, including the employer requirement, will result in 3 million fewer people having employer-provided coverage in 2019. This would be the net result of a series of big changes.

First, the CBO estimates that 6–7 million people would acquire employer coverage for the first time because the requirement would increase workers' demand for coverage through their jobs. Second, another 1–2 million who currently have employment-based

coverage would instead move to the exchanges because the coverage would be more affordable. Third, about 8–9 million others covered under an employer plan under current law would lose employer coverage because firms would choose to no longer offer coverage. These firms are likely to be smaller companies employing lower-wage workers who would be eligible for exchange subsidies.

In addition, according to the CBO, employers will pay about \$52 billion in additional assessments between 2014 and 2019. Under the law, that money will be put toward the new subsidies for millions of workers and their families to defray the cost of purchasing health coverage through the exchanges.

ENROLLMENT MIGHT INCREASE: A recent analysis by the Urban Institute found that enrollment in plans at companies with more than 1,000 employees would increase 2.2 percent, and that small and midsize employers would see little change in enrollment. Employer premium contributions would fall by 7.9 percent per person at small firms and by 1–3 percent at medium and large firms. Overall, average employer premium contributions would decline by 3.9 percent, according to the analysis.

Other assessments are less sanguine. A recent national survey of employers by Market Strategies International, a market research and consulting firm, forecasts a 10 percent reduction in the number of workers offered employer-sponsored health benefits by January 2014. According to the survey, 13 percent of workers would lose access to employer-sponsored health benefits and 3 percent would gain benefits, for a net loss of 10 percentage points.

“PAY AND WALK AWAY”: Among companies of all sizes currently offering benefits, 76 percent reported they would continue to do so in January 2014. Of the rest, 15 percent reported they would offer coverage to at least some full-time employees, and 9 percent said they would stop offering coverage altogether. Among firms with 200 or more full- and part-time equivalent employees, 7 percent planned to drop coverage. “For some large firms, in particular, there is a desire to pay and walk away,” said Susan McIntyre, senior vice president of Market Strategies International's health care division, in a statement.

Among companies currently not offering health care benefits, the Market Strategies International survey found that 28 percent

7%

Will drop coverage

One national survey found 7 percent of large firms (200 employees or more) planned to drop coverage in 2014.

About Health Policy Briefs

Written by
Jennifer Haberkorn
(Haberkorn is a staff writer for *Politico* specializing in health care reform issues.)

Editorial review by
Mark A. Hall
Professor of Law and Public Health
Wake Forest University School of Law

Paul Fronstin
Director
Health Research and Education
Program
Employee Benefit Research Institute

Ted Agres
Senior Editor for Special Content
Health Affairs

Susan Dentzer
Editor-in-Chief
Health Affairs

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would begin to do so in January 2014, 19 percent would offer benefits to at least some full-time workers, and 53 percent would not offer benefits.

TEMPTED TO DROP COVERAGE: The math could make the idea to drop coverage tempting. In 2010, the average annual premium cost for employer-based coverage was \$5,049 for a single person and \$13,770 for a family, although employers generally do not pay the entire cost. Many employers might consider paying \$2,000 or \$3,000 in assessments to be more cost-effective. On the other hand, many large employers say they view offering health coverage to be an important part of their overall compensation strategy, and necessary to attract the best workers.

It is possible that employers will watch closely to see how their peer companies respond. In a July 2010 survey by Fidelity Investments, 65 percent of large employers said they were not seriously considering eliminating health care benefits because of the new law. But when asked what they would do if others dropped coverage, 36 percent said they too would consider eliminating coverage. Another 36 percent said they would not drop coverage and the remaining employers were unsure.

WHAT'S NEXT?

Many Republican lawmakers oppose the employer requirement and would like to repeal

it. Sen. Orrin Hatch (R-UT) has introduced the American Job Protection Act (S 20) to repeal the requirement, arguing that it will force layoffs and increase taxes on businesses. His proposal has support from more than 20 Senate Republicans. Hatch's proposed legislation has also been endorsed by the US Chamber of Commerce, the National Retail Federation, Americans for Tax Reform, the National Federation of Independent Business, the International Franchise Association, and the National Restaurant Association.

The House Committee on Education and the Workforce held a hearing on the employee requirement on February 9, 2011, and lawmakers there are expected to introduce similar legislation to repeal the measure. Some Democrats have voiced support for altering the legislation, by making the assessments either more or less stringent. But no Democrat has yet proposed legislation to do so.

Although Republicans have a sufficient majority in the House to repeal the employer requirement, the Democratic-controlled Senate is likely to block any such effort. Even in the unlikely event that Republicans were to garner enough support in both houses of Congress to repeal the requirement, President Obama would be likely to veto the measure.

As with the Affordable Care Act overall, the employer requirement is likely to be a subject of debate in the forthcoming 2012 elections. ■

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