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WHO WILL BE IMPACTED BY EMPLOYER PLAY-OR-PAY MANDATES IN THE CONGRESSIONAL HEALTH CARE REFORM BILLS

The Mandates Will Cost Businesses At Least \$52.7 billion Per Year And Put 15.4 Million Employees At Risk Of Unemployment Or Slower Wage And Benefit Growth

By D. Mark Wilson

Both health care reform bills that have passed out of committees in Congress contain a “play-or-pay” employer mandate. This includes the House health care reform bill, America’s Affordable Health Choices Act of 2009 (H.R. 3200),¹ and the Senate Health, Education, Labor, and Pensions Committee health care reform bill, the Affordable Health Choices Act (HELP Committee bill).² This report analyzes the impact these mandates would have on employers and employees. The key findings are:

- The employer mandates in these bills will impact between 509,000 to 1.4 million employers and 95.4 million to 104.6 million workers.
- The mandates will cost businesses at least \$49.4 billion to \$52.7 billion per year in added benefit costs.³
- The higher labor costs will put 5.2 million low-wage workers at risk of unemployment with the prospect of fewer job opportunities in the future. The costs will put another 10.2 million workers at risk of slower wage growth and cuts in other benefits.⁴
- Up to 382,000 low-wage unskilled workers are likely to lose their jobs.⁵
- Some of the cost of the mandates will be passed onto Americans in higher prices for the goods and services that they buy, which will have the greatest adverse impact on savers and those on fixed incomes.

The mandates are also likely to affect employees now being provided employment-based coverage. Although, according to the Congressional Budget Office, the employer mandate in H.R. 3200 will result in a *net* increase of 3.0 million workers with employment-based health insurance, or 1.7 percent, it will also cause 9 million mostly low-wage and part-time workers to lose their employment-based coverage.⁶

A DESCRIPTION OF THE HOUSE AND SENATE EMPLOYER MANDATES

Although the final details of the employer mandate are not available because health care reform legislation is still being developed in Congress, under H.R. 3200, the play-or-pay mandate includes the following requirements:

- Employers with more than \$250,000 in annual payroll must offer their employees qualifying health insurance coverage or pay an assessment into a Health Insurance Exchange Trust Fund.
 - If an employee does not accept the employer's offer of coverage because he or she is not a dependent covered by someone else's health insurance, or the person is covered by Medicaid, Medicare, or Military insurance, the employer does not have to "pay" for that employee.
- The health insurance offered must have an actuarial value equal to 70 percent of an "essential benefits package", as defined by the federal government, with annual cost sharing limits of \$5,000 for individual coverage and \$10,000 for family coverage.
- Employers would also be required to contribute at least 72.5 percent of the premium for individual health insurance and 65.0 percent of the premium for family coverage.
- Employers that do not offer the required minimum level of coverage and premium contributions to their employees and have annual payrolls of more than \$400,000 per year would have to pay 8 percent of each workers' wages into a Health Insurance Exchange Trust Fund. Employers with annual payrolls between \$250,000 and \$400,000 per year would have to pay 2 percent to 6 percent on a sliding scale.
- H.R. 3200 also requires employers to inform the federal government if they are going to offer health insurance to their workers or pay the 8 percent tax. Firms can make different choices for full-time employees, part-time employees, and separate lines of business.

Under the Senate HELP Committee bill the play-or-pay mandate would require:

- Employers with more than 25 employees have to offer them qualifying health insurance coverage or pay a fee.
- Employers would also be required to contribute at least 60 percent of the premium for health insurance coverage.
- Employers that do not offer the required minimum level of coverage and premium contributions to their employees would have to pay \$750 per year for each full-time worker (35 or more hours per week), and \$375 per year for each part-time worker. For employers subject to the assessment, the first 25 workers would be exempted from the fee.

BETWEEN 509,000 AND 1.4 MILLION BUSINESSES AND 95.4 MILLION TO 104.6 MILLION WORKERS WOULD BE COVERED BY THE HOUSE AND SENATE EMPLOYER MANDATES

Under H.R. 3200, approximately 1.4 million businesses with 104.6 million wage and salary employees would be covered by the play-or-pay mandate (see Table 1 below). Under the HELP Committee bill, approximately 509,000 businesses with 95.4 million employees would be covered by the play-or-pay mandate.

Under H.R. 3200, 63.8 million workers in covered firms already would have employer-based health insurance in their own name and 16.7 million are dependents that have employer-based health insurance under another worker’s plan (see Table 2 below).⁷ Significantly, it is not clear how the employer mandate will affect the 7.7 million multiple jobholders.⁸ For example, will both employers have to offer health insurance to these workers?

Table 1: The Number of Firms and Workers Covered By The House and Senate Play-or-Pay Employer Mandates

	Firms	Employment	Avg. Firm Size	Avg. Payroll per Employee
H.R. 3200	1,376,000	104,647,000	76.0	\$42,900
Senate HELP Committee Bill	509,000	95,359,000	187.2	\$41,600

Note: These estimates are a static analysis based on the current health insurance status of the worker.

Source: The data on H.R. 3200 was prepared by the U.S. Census Bureau for Applied Economic Strategies. The data on the Senate HELP Committee bill was prepared by the U.S. Census Bureau for the Small Business Administration. Source: 2006 County Business Patterns.

Under the Senate Help Committee bill, 60.9 million workers in covered firms already would have employer-based health insurance in their own name and 14.5 million are dependents that have employer-based health insurance under another employee's plan (see Table 2 below).⁹

Most importantly, 34.4 million to 40.9 million employees (HELP Committee Bill and H.R. 3200 respectively) who are covered by a mandate do not have employment-based health insurance in their own name and would have to be offered qualifying insurance in order for their employer to avoid paying a penalty (see Table 2 below). This includes 12.3 million to 15.2 million employees that do not have any health insurance and 7.6 million to 9.0 million that have some other type of insurance coverage besides an employment-based plan.

Under the House bill, 42.8 million employees in covered businesses would be eligible to receive a credit for part of the cost of purchasing health insurance through the exchanges that would be created (36.7 million under the HELP Committee bill). (See Table 2 below.) Moreover, under the House bill 9.0 million of the workers in these covered businesses would be automatically eligible for Medicaid (10.4 million under the HELP Committee bill).

Table 2: The Number of Workers In Firms Covered By The House and Senate Play-or-Pay Employer Mandates

Health Insurance Status	Total For Row (000's)	Medicaid Eligible	Eligible for Exchange Subsidy	Not Eligible for Exchange Subsidy	Full-Time Full-Year	Part-Time Full-Year	Seasonal Workers
H.R. 3200							
<i>No Health Insurance</i>	15,216	3,906	8,448	2,862	8,679	1,677	4,861
<i>Employer-Based - Own Name</i>	63,761	2,219	24,988	36,548	54,905	2,136	6,722
<i>Employer-Based – Dependent</i>	16,670	252	5,294	11,126	7,798	2,894	5,978
<i>Other Private Health Ins.</i>	4,291	824	2,022	1,445	1,851	738	1,702
<i>Medicaid</i>	3,244	1,660	1,337	247	988	535	1,721
<i>Other Public Insurance</i>	1,465	125	706	635	878	166	421
<i>Column Subtotal</i>	104,647	8,985	42,792	52,870	75,100	8,144	21,403
Senate HELP Committee Bill							
<i>No Health Insurance</i>	12,301	3,955	6,034	2,314	6,891	1,415	3,995
<i>Employer-Based - Own Name</i>	60,934	3,595	23,094	34,245	52,568	1,993	6,374
<i>Employer-Based – Dependent</i>	14,495	326	4,495	9,674	6,883	2,463	5,148
<i>Other Private Health Ins.</i>	3,624	820	1,584	1,220	1,530	602	1,491
<i>Medicaid</i>	2,765	1,604	950	211	812	451	1,502
<i>Other Public Insurance</i>	1,240	140	563	537	774	135	330
<i>Column Subtotal</i>	95,359	10,442	36,734	48,177	69,469	7,057	18,833

Note: These estimates are a static analysis based on the current health insurance status of the worker.

Source: Applied Economic Strategies estimates based on U.S. Census Bureau 2008 ASEC Supplement data and 2006 County Business Pattern data. Columns and rows may not add due to rounding.

Most of the employees in covered businesses who do not have employment-based health insurance are employed in restaurants (over 12%), department stores (over 3%), grocery stores (about 3%), colleges and universities (about 3%), the amusement industry (about 2%), nursing care (over 1.7%), and employment services (over 1.5%). (See Table 3 below.) Their median weekly earnings are between \$387 and \$400. They are disproportionately Hispanic women in families, ages 16 to 25, who are not citizens.¹⁰

Table 3: The Number of Workers In Firms Covered By The House or Senate Employer Mandates Who Do Not Have Their Own Employment-Based Health Insurance

Type of Worker	H.R. 3200 (000's)	Senate HELP Committee Bill (000's)
Women	21,792	18,762
Ages 16 to 25	12,429	9,191
Families	33,649	28,538
Not a U.S. Citizen	4,784	3,718
Hispanic	7,523	5,921
Black	5,233	4,613
Industry		
Restaurants	5,263	4,165
Department Stores	1,271	1,308
Grocery Stores	1,147	1,102
Colleges	1,101	1,102
Other Amusement	794	654
Nursing Care	673	654
Employment Services	614	551
Real Estate	600	448
Truck Transportation	573	448
Traveler Accommodation	550	448
Median Weekly Earnings	\$387	\$400
Total Number of Workers	40,886	34,425

Note: These estimates are a static analysis based on the current health insurance status of the worker.

Source: Applied Economic Strategies estimates based on U.S. Census Bureau 2008 ASEC Supplement data and 2006 County Business Pattern data.

THE CHANGE IN EMPLOYMENT-BASED COVERAGE UNDER AN EMPLOYER MANDATE

The Congressional Budget Office (CBO) estimates that under H.R. 3200, some firms would decide to no longer offer health insurance, and 3.0 million employees would lose their employment-based coverage, because from the employer's perspective it is more costly to "play" than to "pay" under the mandate, particularly for low-wage workers.¹¹ This finding is consistent with the fact that private-sector employers currently pay on average 10.3 to 12.0 percent of wages to provide health insurance, significantly more than the 8 percent firms would have to pay if they choose to no longer offer health insurance.¹²

The CBO also estimates that under H.R. 3200, 3.0 million low-wage employees who would be covered by employment-based insurance would instead choose to purchase insurance through the new exchanges with a subsidy.¹³ Another 3.0 million part-time employees would decline to enroll in their employer's health insurance and would instead purchase insurance through the new exchanges with a subsidy.¹⁴

Finally, the CBO estimates that under H.R. 3200, 12.0 million employees who are currently uninsured would enroll in their employer's health insurance coverage.¹⁵ This increase is primarily driven by two factors: 1) the individual mandate will increase the take-up rates for eligible employees who currently decline coverage for a variety of reasons; and 2) some employers will find it less costly to play than to pay, especially for higher-income employees, and begin to offer coverage to these employees.

Under the HELP Committee bill, there will be substantially different changes in coverage because employers that do not offer the qualified health insurance to their employees would only have to pay \$750 per year for each full-time worker, and \$375 per year for each part-time employee, substantially less than the 8 percent tax in H.R. 3200 and the cost of providing health insurance.

THE PLAY-OR-PAY EMPLOYER MANDATE WILL COST BUSINESSES AT LEAST \$49.4 BILLION TO \$52.7 BILLION PER YEAR

There are a number of costs to employers in H.R. 3200 and the HELP Committee bill that are related to the play-or-pay mandate, including: 1) the cost of *not* offering qualifying health insurance (the "pay" part of play-or-pay); 2) the cost of providing health insurance to workers who do not currently have coverage (the "play" part of play-or-pay); and 3) the increased cost of providing qualifying health insurance.

- According to the CBO, the cost of not offering qualifying health insurance and paying the tax is an average of \$23.3 billion per year.¹⁶
- The cost of providing 3.0 million more employees with qualified health insurance is \$11.3 billion to \$14.6 billion per year depending on what coverage (individual or family) the employees will enroll in.¹⁷

- The cost of increasing the share of the premium employers pay in order to meet the qualifying coverage standard under the House mandate will be an additional \$14.8 billion per year.¹⁸

Therefore, the total cost of the play-or-pay mandate on employers will be at least \$49.4 billion to \$52.7 billion per year.

THE PLAY-OR-PAY MANDATE WILL PUT 5.2 MILLION LOW-WAGE EMPLOYEES AT RISK OF UNEMPLOYMENT AND REDUCED JOB OPPORTUNITIES

Several factors affect the degree to which requiring employers to offer health insurance will impact prices, wages, employment, and profits.

- First, how much of the increased cost of employing workers can be passed on to consumers in the form of higher prices for the goods and services they purchase.
- Second, how much of the cost is borne by employees in the form of reduced wages, slower wage growth, or reductions in other benefits. There is substantial evidence that the cost of health insurance mandates will be shifted to employees, resulting in lower wages.¹⁹ Moreover, raising prices also reduces the real inflation-adjusted wages of employees. Firms can also shift the cost of the mandate to other employees who are not affected by the mandate (i.e., those already covered by employment-based health insurance).
- Third, how much of the increased cost is borne by shareholders and business owners in the form of lower profits and proprietor income.
- Fourth, how much can firms offset the higher cost of employing employees by increasing productivity without reducing the hours of work.

Impact on Prices

Since the beginning of 2008, when San Francisco mandated employers to offer health insurance to their workers or pay a fee to the city to fund health care, restaurants have explicitly passed through the cost of the mandate to consumers in the form of a health surcharge that is added to the restaurant bill as a separate flat fee or as a separate percentage of the bill (like a sales tax). Most importantly, any increase in prices associated with the enactment of a play-or-pay mandate would have the greatest adverse impact on savers and those on fixed-incomes.

If firms in the same industry and local market are mandated to provide health insurance and if the demand for their goods and services is not very sensitive to changes in price, then these firms could raise prices to offset the cost of the mandate. However, the ability of firms to raise prices will be constrained by the presence and degree of international competition they face and at what point in the business cycle the mandate is enacted (i.e., it will be more

difficult for employers to raise prices in a recession and recovery when consumers are increasing their savings and reducing their debt.). Moreover, the firms that provide health insurance prior to enactment of the mandate will gain a competitive advantage over those firms who do not currently provide health insurance and are subject to the mandate.

Impact on Employment

The play-or-pay mandate will put 5.2 million employees at risk of unemployment and fewer job opportunities and up to 382,000 workers could lose their jobs.²⁰ These employees are disproportionately likely to be single, Hispanic or Black, under 30 years-old, and not citizens. They are also more likely to be part-time or seasonal employees working in food preparation, sales, or transportation and material moving occupations.

In addition, the employers of another 10.2 million employees will see their labor costs rise because the employer will have to increase the share of the premium they pay in order to meet the qualifying coverage standard under the House mandate.²¹ This will put these employees at risk of slower wage growth, fewer hours of work, and reduced job opportunities.

CONCLUSION

The play-or-pay employer mandates that Congress is currently debating will impact 95.4 million to 104.6 million employees, and 509,000 to 1.4 million employers, including up to 1.0 million small businesses. The mandates will cost businesses at least \$49.4 billion to \$52.7 billion per year, and result in up to 382,000 low-wage unskilled employees losing their jobs. All told, 5.2 million low-wage employees will be at risk of losing their jobs or having their hours of work reduced, and they will likely have fewer job opportunities in the future. Another 10.2 million employees are at risk of slower wage growth and cuts in other benefits, and some of the cost of any play-or-pay mandate will be passed onto Americans in the form of higher prices for the goods and services they buy – an indirect tax on savers and those on fixed incomes.

¹ There are three different versions of the H.R. 3200 including: 1) the Ways and Means Committee bill, available at: <http://waysandmeans.house.gov/media/pdf/111/AAHCA09001xml.pdf>; 2) the Education and Labor Committee substitute available at: http://edlabor.house.gov/documents/111/pdf/markup/FC/HR3200-AmericasAffordableHealthChoicesActof2009/MILLCA_158.pdf; and 3) the “Blue-Dog compromise” available at: http://energycommerce.house.gov/Press_111/20090731/hr3200_ross_2.pdf.

² The Senate HELP Committee bill is available at: http://help.senate.gov/BAI09A84_xml.pdf and http://help.senate.gov/BAI09F54_xml.pdf.

³ Applied Economic Strategies LLC estimates; see analysis below.

⁴ *Id.*

⁵ *Id.*

⁶ Congressional Budget Office, *Additional Information Regarding the Effects of Specifications in the America's Affordable Health Choices Act Pertaining to Health Insurance Coverage*, July 26, 2009, available at:

www.cbo.gov/ftpdocs/104xx/doc10400/07-26-InfoOnTriCommProposal.pdf. The CBO also estimates that 12 million workers, likely higher-wage full-time year-round workers, will gain employment-based coverage.

⁷ Applied Economic Strategies estimate based on U.S. Census Bureau 2008 ASEC Supplement data.

⁸ Bureau of Labor Statistics, *Employment Situation: June 2009*, available at: www.bls.gov/news.release/empsit.t13.htm.

⁹ Applied Economic Strategies estimate based on U.S. Census Bureau 2008 ASEC Supplement data.

¹⁰ The Census Bureau codes survey respondents as: 1) Native Born Citizens; 2) Native, Born Abroad Citizens; 3) Foreign Born, Naturalized Citizens; and 4) Foreign Born, Not A U.S. Citizen. The Census Bureau It makes no distinction about the legality of noncitizens and none should be inferred by this text.

¹¹ Congressional Budget Office, *Additional Information Regarding the Effects of Specifications in the America's Affordable Health Choices Act Pertaining to Health Insurance Coverage*, July 26, 2009, available at: <http://www.cbo.gov/ftpdocs/104xx/doc10400/07-26-InfoOnTriCommProposal.pdf>.

¹² Bureau of Labor Statistics, *Employer Costs for Employee Compensation, March 2009*, available at: www.bls.gov/news.release/pdf/ecec.pdf; and Congressional Budget Office, *Additional Information Regarding the Effects of Specifications in the America's Affordable Health Choices Act Pertaining to Health Insurance Coverage*, July 26, 2009.

¹³ Congressional Budget Office, *Additional Information Regarding the Effects of Specifications in the America's Affordable Health Choices Act Pertaining to Health Insurance Coverage*, July 26, 2009.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ The Congressional Budget Office, *H.R. 3200, America's Affordable Health Choices Act of 2009*, July 17, 2009, available at: <http://www.cbo.gov/ftpdocs/104xx/doc10464/hr3200.pdf>.

¹⁷ Applied Economic Strategies estimate based on the CBO estimate of \$5,000 per year for individual health insurance and \$12,000 per year for family coverage, times the share of the insurance premium that employers would be required to pay under the H.R. 3200 mandate, times the share of the 3.0 million workers who are individuals, family heads, and dependents. The share of workers who are individuals, family heads, and dependents was estimated from Census data on workers who report having no health insurance coverage.

¹⁸ Applied Economic Strategies estimate based on CBO and Kaiser Family Foundation, *Employer Health Benefits 2008 Annual Survey*, Exhibit 6.11. The share of workers who are individuals, family heads was estimated from Census data.

¹⁹ See: Phillip Cryan, *Will A "Play-or-Pay" Policy For Health Care Cause Job Losses?* Institute for America's Future and the Economic Policy Institute, June 2009; Katherine Baicker and Helen Levy, *Employer Health Insurance Mandates and the Risk of Unemployment*, NBER, Working Paper 13528, October 2007; Craig Olsen, *Do Workers Accept Lower Wages in Exchange for Health Benefits?*, *Journal of Labor Economics*, Vol. 20, No. 2, Pt. 2, 2002; Norman Thruston, *Labor Market Effects of Hawaii's Mandatory Employer-Provided Insurance*, *Industrial and Labor Relations Review*, October 1997; Price Fishback and Shawn Kantor, *Did Workers Gain from the Passage of Workers' Compensation Laws*, *Quarterly Journal of Economics*, August 1995; Jonathan Gruber, *The Incidence of Mandated Maternity Benefits*, *American Economic Review*, June 1994; Jonathan Gruber and Alan Kruger, *The Incidence of Mandated Employer-Provided Insurance: Lessons from Workers' Compensation Insurance*, *Tax Policy and the Economy*, Vol. 5, 1991; and Lawrence H. Summers, *Some Simple Economics of Mandated Benefits*, *The American Economic Review* Vol. 79, No. 2, May 1989.

²⁰ Applied Economic Strategies LLC estimates based on methodology used in: Phillip Cryan, *Will A "Play-or-Pay" Policy For Health Care Cause Job Losses?* Institute for America's Future and the Economic Policy Institute, June 2009; and Katherine Baicker and Helen Levy, *Employer Health Insurance Mandates and the Risk of Unemployment*, NBER, Working Paper 13528, October 2007. See the Methodology section.

²⁰ The Congressional Budget Office, *Effects of Changes to the Health Insurance System on Labor Markets*, July 13, 2009.

²¹ Kaiser Family Foundation, *Employer Health Benefits 2008 Annual Survey*, Exhibit 6.11.