

Does the Health Reform Law Really Create an Employer Mandate?

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By Bill Leonard

Does the health care reform package passed by Congress on March 21, 2010, actually require that employers offer health benefits to workers? You could call it a matter of semantics.

In the strictest sense, the reform measure won't force employers to provide health insurance to their workforces. However, a fairly steep penalty for businesses that don't offer health care coverage strongly resembles what many might call a federal mandate. And many business groups are concerned.

"Technically, it's not a mandate because it gives employers a choice. Still, businesses will be faced with the issue of what it really costs them to comply, and employers will be weighing the option of whether they should offer or cut health care benefits to employees," said Gregory Robertson, a partner in the Richmond, Va., law office of Hunton & Williams. "Our clients are very interested in this issue, and we've been getting calls all day asking what the health care reform means to them as employers. Right now, it's too early to tell exactly what the impact will be" because the details of the reconciliation bill were still being finalized in the Senate.

Most of the provisions of the law, including the "mandate" on employers, won't take effect until Jan. 1, 2014. Many issues surrounding how the bill is enforced and how employers will comply with these changes have yet to be decided.

"The regulatory process after the legislation becomes law will be another significant piece of the puzzle of what this reform legislation really will mean to employers and what it will take businesses to comply," Robertson said.

Under the reform measure, a penalty of \$2,000 per employee would apply to companies with 50 or more employees that don't offer health benefits. The reform legislation won't have much of an impact on large and mid-sized companies that already provide health care benefits to their employees, unless the value of the benefits reaches what some have dubbed "Cadillac" levels.

Companies with fewer than 50 workers would be exempt from the per-employee penalty. However, these employers could be eligible to receive tax incentives and credits for offering health care coverage. And if all these provisions and requirements aren't confusing enough, employers with 50 or more workers that do provide health insurance benefits could be subject to the penalty if just one employee applies for a federal subsidy to help pay for their health care insurance.

A worker who earns up to four times the national poverty level (\$10,800 for individuals and \$22,000 for families) can choose to opt out of their employer's health care plan—if out-of-pocket expenses for the plan cost more than 8 percent of the employee's annual income. Employers would have to give any employee opting out of the company health plan a voucher equivalent to the amount that the business pays to provide coverage for its health plan participants.

Even after the voucher is offered, workers would still have the option to refuse the company support and apply for a federal subsidy to help defray the cost of purchasing health care insurance. Employers will want to avoid this possibility, because once an employee applies for the federal subsidy, the company will be notified that it faces the \$2,000-per-employee penalty.

When the legislation passed the Senate in 2009, the penalty was \$750 per worker, but that was increased in a reconciliation bill approved by the House of Representatives. The reconciliation bill, if passed by the Senate and signed by the president, would account for the \$1,250-per-employee increase in the penalty that employers would have to pay.

The approach drew some strong reactions from several business groups that have opposed passage of the health care reform package.

"This legislation is loaded with mandates and expensive punishments. Despite their claims, Congress has not looked out for the needs of small business. But they've been keeping an eye on your wallets, because small business will be the big payer in this reform bill," said Donald A. Danner, president and CEO of the National Federation of Independent Business. "Plain and simple, the legislation forces small companies with 50 or more employees to provide health insurance, whether they can afford it or not."

Other groups claim that the mandate, penalties and extra taxes that employers must pay under the health reform measure will cripple the nation's economic recovery and stop businesses from hiring new workers.

"Manufacturing has lost 2.2 million jobs since December 2007; this is no time to place additional burdens on America's job creators," said John Engler, president of the National Association of Manufacturers. "America's manufacturers will continue to advocate for real health care reform that lowers costs, improves care and does not impede our ability to create jobs, grow our economy and remain competitive in a global market."

"This health reform legislation fails to fix what is broken and risks breaking what already works," said Thomas J. Donahue, president and CEO of the U.S. Chamber of Commerce. "It will drive up health care costs and make coverage less affordable for businesses and families. The legislation will further expand entitlements and explode the federal deficit, and raises taxes by a half a trillion dollars at the worst possible time. American jobs and growth are at risk...."

Some business groups took a more measured approach in their response to the reform measure that passed the House. James A. Klein, president of the American Benefits Council in Washington, D.C., said the legislation includes some positive provisions, including the expansion of health care coverage to millions more Americans.

"But several aspects of the legislation will inevitably increase, rather than mitigate, health care costs, and the overall financial integrity of the measure depends on future Congresses and presidents making very tough political decisions," Klein said. "For all stakeholders there are many unknowns. We urge the Senate to make much-needed improvements to the new law—starting this week as it considers the budget reconciliation measure. It is essential that health reform be done right at this critical stage in the legislative process."

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