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Repeal of Affordable Care Act Free Choice Voucher

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As you may have read, the 2011 budget "deal" includes a section (§1858 of H.R. 1473, Department of Defense and Full-Year Continuing Appropriations Act, 2011) that repeals the Affordable Care Act's "free choice voucher" requirement for certain employer-sponsored group health plans.

Who opposed the change? Why?

The Act contains two different penalties. One imposes a penalty on employers that do not offer employer-sponsored group health plan coverage to all full-time employees (that penalty is not affected by free choice vouchers).

The second penalty applies to an employer who offers a plan to all full time employees, but the plan is not "affordable." A plan is not "affordable" if either (1) the employee's share of the single coverage premium exceeds 9% of the employee's household income, or (2) the plan's share of health care expenses (the portion of health care expenses eligible for reimbursement AFTER reduction for all employee-owed copayments, co-insurance, and deductibles) is less than 60% of the total health care expenses eligible for reimbursement.

If an employer's plan falls prey to either of these shortcomings, then the employer owes a penalty equal to $3,000 times the number of bona fide full time employees who (1) are eligible for the new tax credit subsidy that will reduce the premium the employee must pay to acquire coverage under a health plan offered on the new exchanges, and (2) actually enroll in one of those plans. To be eligible for the subsidy, the employee's household income must be less than 140% of the federal poverty level.

Note that the penalty won't be incurred if those "poor" full time employees fail to enroll in an exchange plan. In addition, prior to this repeal, if an otherwise credit-eligible employee was also eligible for a free choice voucher and enrolled in an exchange plan and used the voucher instead of the credit, the penalty would not apply to that employee.

Who was eligible for the free choice voucher? Any employee who is otherwise eligible for the credit (i.e., the employee's household income does not exceed 400% of the poverty level) and whose required contribution for single coverage in the employer's plan would exceed 8%, but would not exceed 9.8% of household income.

Result: a subset of credit-eligible employees would be eligible for free choice vouchers. And, if that group elects not to participate in their employer's plan, they can enroll in an exchange plan but won't cost their employer any penalty money.

According to yesterday's New York Times, the repeal of free choice vouchers was included in the budget "deal" at the behest of the Business Roundtable, a group that represents the largest U.S. employers, and many unions. Both apparently feared the possibility of adverse selection. I suspect these plan sponsors were not concerned about the employer "pay or play" penalties in the Affordable Care Act: they must have decided that their plans are almost certainly going to meet the affordability test.

Therefore, these large employers sponsor self-insured plans and care about adverse selection. They fear that the voucher-eligible employees will be their youngest(er) employees whose presence -- and premium contributions -- are needed to subsidize the health care costs of older workers.

Note that smaller employers, and employers with relatively low-paid work forces, would have preferred free choice vouchers. They are likely to be fully insured; vouchers are cost neutral to those employers. Most importantly, smaller employers are more likely to find their plans can't meet the 60% prong of the pay or pay penalty affordability test (they sponsor high deductible health plans). Vouchers reduce smaller employers' exposure to the $3,000 penalty.

It does pay to lobby....