

# THE REAL WORST POLICY IN THE BILL

Ezra continues to claim that the worst employer incentive in MaxTax is the way it fines employers for not covering employees.

Max Baucus's bill retains the noxious "free rider" provision on employers. Rather than a simple employer mandate that forces every employer over a certain size to provide health-care insurance or pay a small fee, the free rider approach penalizes employers \$400 for hiring *low-income workers who are eligible for subsidies*.

[snip]

This isn't just the worst policy in the bill. It's one of the worst policy ideas I've ever seen. It creates a huge incentive to build a workforce that entirely excludes low-income workers.

Now before we get into whether this really is the worst incentive or not, let me correct something Ezra said. He said:

The employer doesn't just pay \$400 per low-income employee. He pays "\$400 multiplied by the total number of employees at the firm (regardless of how many are receiving the state exchange credit)." The bill actually gives an example of how this works: Employer A has 100 employees and does not offer health-care coverage. Thirty of the employees receive subsidies on the exchange. Employer A doesn't pay \$400 x 30 employees, but \$400 x 100 employees, for a total of \$40,000.

But that's not what the MaxTax does or says. Here's what MaxTax says [update: Ezra has now amended his post to reflect this difference.]

The employer would pay the lesser of the flat dollar amount multiplied by the number of employees receiving a tax credit or a fee of \$400 per employee paid on its total number of employees.

For example, Employer A, who does not offer health coverage, has 100 employees, 30 of whom receive a tax credit for enrolling in a state exchange offered plan. If the flat dollar amount set by the Secretary of HHS for that year is \$3,000, Employer A should owe \$90,000. Since the maximum amount an employer must pay per year is limited to \$400 multiplied by the total number of employees (for Employer A, 100), however, Employer A must pay only \$40,000 (the lesser of the \$40,000 maximum and the \$90,000 calculated fee).  
[my emphasis]

So Ezra's (and Baucus') hypothetical employer would pay just \$40,000. But say Employer B had just 5 employees who were subsidized, out of the same 100 employee firm. Employer B would pay \$15,000, which brings it closer to the costs an employer might incur trying to preferentially hire an employee who might already have health care.

Ezra's point still holds—to a degree. Both employers have an incentive to avoid hiring low income workers **for whom they might be fined**.

But that last bit is key: **not every low income worker will get an employer fined**. In fact, as I've pointed out, MaxTax actually includes **an even bigger incentive** for employers to hire very low income workers—and make sure they remain very low income. That's because MaxTax does not penalize employers whose employees opt out of their health care by enrolling in Medicaid instead. With the Medicaid eligibility raised to 133% of poverty, it would be a very easy thing for a company like Wal-Mart to ensure its employees remain eligible for Medicaid. And,

unlike a few of the scenarios that Ezra describes (such as preferring undocumented workers who can't be enrolled in the exchange), this one is completely legal. So with the Medicaid provisions, the biggest incentive is for an employer to employ as many employees as possible who qualify for Medicaid, because it's the one way for a large employer to get the federal government to pay for the employer's health care for free.

Mind you, the employer would have to offer some kind of insurance to get this big bonus. But given the captive terms which MaxTax puts employees in, any employer who puts their mind to it can offer an insurance option not only priced precisely to ensure that no employee can opt-out for subsidized exchange coverage (thereby completely eliminating the risk Ezra points to), but priced in such a way as to make Medicaid a far more attractive option.

And this scenario is not far-fetched. It is, in fact, what Wal-Mart already does in states where Medicaid laws permit. This would just institutionalize it on the national level and make it easier for Wal-Mart to manage staffing in such a way as to ensure its employees remain eligible for Medicaid. And given that ensuring low wages is much easier to do on a large scale than trying to game which relatively low wage worker (teenagers and spouses) might already have healthcare, forcing employees onto Medicaid is probably by far the cheapest way for employers to avoid any significant costs to comply with MaxTax.

The reason I say this is a worse policy than the one Ezra points to is that it is much easier to pull off while staying within the law and its got a bigger upside for employers. More importantly, it means the one employer action for which MaxTax provides the biggest incentive is to create huge numbers of jobs guaranteed to keep those working in them in poverty.

The Wal-Mart bonus included in MaxTax would likely set off a race to the bottom among

employers—to shift as much of its work force as possible into Medicaid-eligible shit jobs. MaxTax is a Democratic bill rewarding employers for keeping its employees in poverty, and it would accelerate the impoverishment of America's workers.

Now, ultimately, MaxTax's entire treatment of workers creates several different incentives, all of them perverse. Employers can minimize costs under MaxTax by:

- Ensuring entry-level workers never make more than 133% of the poverty level (my concern—one large employers are likely to choose)
- Avoiding hiring the workers most likely to qualify for subsidies (Ezra's concern—something more manageable for smaller sized employers)
- Using employees—who under MaxTax terms will be auto-enrolled in employer programs with limited options to get out—as profit centers for horrible health care that nevertheless meets MaxTax's crappy requirement levels for healthcare (also a choice for larger employers)

Employers may well employ a mix of these strategies so as to fulfill the requirements of MaxTax with the fewest costs. And, I suspect Ezra would agree, the entire employer requirement would need to be totally reworked to be even minimally acceptable.

But as bad as the MaxTax disincentives to hire some kinds of low wage workers are, the incentives are actually much bigger to hire very low wage workers—but to ensure they remain poor. And both are recipes for disaster for American workers.