

Obamacare Bombshell: Did the Government Underestimate the Costs of PPACA's Exchanges by Hundreds of Billions?

Forbes By **Avik Roy**
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In June, I wrote several pieces about a survey of employers published in the *McKinsey Quarterly*, which found that 30 percent of employers “definitely or probably” planned to stop offering health insurance after 2014, due to provisions from the Affordable Care Act. One of the disingenuous talking points used by the White House to rebut the survey was the claim that “the McKinse



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of studies they ignore echo the McKinsey findings.

The new study by Burkhauser, *et al.*

Now, there's a new study that suggests that employer dumping under Obamacare could be significant, leading to an explosion of the law's costs and thereby the federal debt. [A working paper](#) by economists [Richard Burkhauser](#) and Sean Lyons of Cornell and [Kosali Simon](#) of Indiana, published by the National Bureau for Economic Research, examined various reasonable assumptions regarding the behavior of employers under the law.

Burkhauser and colleagues found that, in a worst-case scenario, the number of people covered by Obamacare's subsidized exchanges could be more than double the estimates of the Congressional Budget Office and the Joint Committee on Taxation. "In the most dynamic case (broad affordability and maximum change in premiums)...Exchange coverage increases from 10.23...to 22.89 percent" of the privately-insured workforce. This would lead to worst-case of \$48 billion a year in additional federal spending, according to a version of the study published by the [Employment Policies Institute](#).

How could this be? When Burkhauser and colleagues sent their original study to the Employment Policies Institute, they were asked a relevant question by Michael Saltsman, a research fellow there. "We go to EPI," Burkhauser told me, "and Mike Saltsman, who was the EPI guy working with us, asked us: 'How come [your estimate] is different from the CBO?' We said, we weren't sure. We didn't know why our numbers were so different than the CBO's...I have tremendous respect for the Ph.D. economists at CBO who do the numbers...those people are first rate."

A new strategy for employer dumping: offer coverage that the government considers "unaffordable"

It all comes down to what appears to be a tweak used by the Joint Committee on Taxation that gave the new health law a favorable fiscal score. (While commentators tend to focus on the role of the Congressional Budget Office in scoring legislation, the [Joint Committee on Taxation](#) takes the lead on scoring changes to the tax code.) Bear with me while I try to explain what they did.

As you probably know if you read this blog, Obamacare attempts to expand coverage to the uninsured through two primary mechanisms: (1) expanding Medicaid's eligibility requirements; (2) creating state-sponsored exchanges in which individuals can purchase insurance, and benefit from a sliding scale of federal subsidies based on their income.

In order to prevent employers from dumping their workers into the exchanges, the law fines employers at \$2,000 times the



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number of total employees less 30 if they don't offer health insurance to all of their employees. In addition, the law fines employers at a lesser rate—\$3,000 on a case-by-case basis—for each employee who has not been offered “affordable” coverage and ends up getting coverage through the exchanges.

As the McKinsey consultants pointed out in their write-up of their employer survey, this affordability provision provides employers with an [interesting strategy](#): they can offer insurance to their workers, but make the premiums “unaffordable,” so that workers are still eligible for the exchanges, and pay the lower \$3,000 fines for each of those workers only, instead of the much larger fine of \$2,000 times the entire number of employees less 30.

Indeed this appears to be the best way for employers and their workers to milk the Obamacare teat: not so much by giving up on providing coverage, but by providing “unaffordable” coverage to lower-income workers, with their mutual consent, because those workers can then sign up for more generous coverage under the exchanges.

How does Obamacare define “unaffordable” employer coverage?

Here's where the technicality comes in: how does the government define “unaffordable?”

Section 1513 of PPACA fines “any applicable large employer [who] fails to offer its fulltime employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer sponsored plan.” In other words, employers must not only offer coverage to their workers, but also to workers' families.

But employers can't just provide any old sort of coverage; it has to be “affordable” coverage. So Section 1401 of the law [§1401\36B(c)(2)(C)(i)] states that employer-sponsored coverage is “unaffordable” if the required premium “exceeds 9.5 percent of the applicable taxpayer's household income.”

Let's try a real-world example. Take a couple in which a husband makes \$50,000 a year, and his wife is a homemaker, for a total of \$50,000 in household income. If the husband's employer requires a premium for a family plan that exceeds \$4,750 (9.5% of \$50,000), the plan is considered “unaffordable” by the government. Given that most family health plans cost more than \$4,750 a year in premiums, this definition could encompass a whole lot of people, triggering massive government subsidies.

JCT tweak makes federal costs vanish

It appears, however, that the “real-world example” I just described isn't real. Instead, the JCT used a narrow, and therefore

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more fiscally favorable, interpretation of the affordability language when they scored the final bill [in a joint CBO/JCT report dated March 20, 2010](#). JCT defined “unaffordable” coverage as a *self-only* policy for an *individual* worker, in which the premiums exceeded 9.5 percent of household income. Because the average cost of an individual-only plan is about one-third that of a family plan, this tweak makes it *three times as hard* for an employer-sponsored plan to be deemed as “unaffordable.”

The reasoning behind the JCT's narrow interpretation is not obvious, given that Section 1513 requires employers to provide coverage both to employees and their dependents. In addition, the JCT's narrow point of view wasn't apparent at the time that PPACA was being voted upon, because on the day the final vote took place in the House, the JCT told Congress something different.

In a report the JCT published [on March 21, 2010](#), the Committee used the more straightforward, broader definition of “unaffordability” that took into account the family plan example I described above. However, [on May 4, 2010](#), several weeks after PPACA was signed into law, JCT issued a correction, stating that the March 21 interpretation was wrong, and should be replaced with “self-only coverage.”

However it came about, this subtle, technical tweak was extremely consequential. Late in the evening of March 21, 2010, the House of Representatives passed the Patient Protection and Affordable Care Act, with a number of skeptical Democrats voting with their leadership in the final hours, persuaded that PPACA had been certified by the CBO as deficit-neutral. Without the JCT tweak, PPACA would have been sunk by an additional 10-year cost of \$150 to \$500 billion. Instead, Democrats used the favorable CBO estimate to claim that Obamacare was fiscally responsible.

Has the CBO overestimated the law's coverage expansion?

This tweak isn't just a problem for conservative opponents of Obamacare, but also for its liberal advocates. If the JCT interpretation is correct, then millions of people who thought they were gaining coverage under the law—spouses and dependents of employed Americans—won't. If the JCT is wrong, either the CBO's estimates of PPACA's exchange costs are too low, or its estimates of the law's expansion of insurance coverage are too high. Increasing the law's costs will upset conservatives, but decreasing the law's coverage expansions will upset progressives. Congress needs to get to the bottom of this.

This grenade may end up exploding in Kathleen Sebelius' hands, because Sebelius will have to issue regulations that clarify these provisions. Says Burkhauser, “This is the dilemma. If the HHS Secretary decides that they really did mean single cov-

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erage, then you’re going to have several million [people who aren’t going to get coverage under the law]. The family’s [breadwinner] is given affordable coverage, but the families can’t get onto the exchange rolls. This is going to be unpopular.”

Fiscal chicanery is nothing new, and its role in the passage of Obamacare has been widely documented. But the problem of employer dumping onto the exchanges is the law’s most serious, and the one that presents the greatest danger to the law’s fiscal stability. No matter whose side you’re on, this problem requires serious attention.

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