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Obamacare Loophole Allows Large Employers To Offer Bare-Bones Health Plans

By Joe G. Conley

On May 20, 2013, the *Wall Street Journal* reported that many large employers are looking to comply with the Affordable Care Act's ("ACA") employer mandate by offering bare-bones coverage that does not even cover hospitalization, surgery, X-rays, or maternity care. Insurance brokers are now marketing these stripped-down products, particularly to employers in low-wage industries.

This trend highlights a major loophole for large employers that the law's drafters may not have fully fathomed. Large-group plans (for employers with more than 100 employees) and self-insured plans are exempt from one of the most important provisions in the ACA—the requirement to cover a package of "essential health benefits" including ambulatory and emergency services, mental health care, and maternity and newborn care. Large-group and self-insured plans are only required to cover various preventive health services, such as immunizations, well-child visits, and various screenings. By contrast, small-group plans (for employers with 100 or fewer employees) must cover the full package of essential health benefits.

This loophole will prove attractive for large employers who do not want to pay for generous health benefits. But it has significant negative consequences for others.

First, it puts small- and medium-sized businesses at a competitive disadvantage relative to larger businesses that can offer stripped-down coverage and still avoid penalties under the ACA. Businesses with between 50 and 100 full-time employees, meanwhile, must either offer more pricier plans with generous benefits or pay hefty penalties.

This flaw in the ACA also hits low-wage employees of large employers who decide to offer only the kind of bare-bones plans described by the *Wall Street Journal*. Such employees often would be better off if their employer offered no coverage at all. If such an employee chooses to accept the bare-bones coverage, he is stuck with limited coverage for office visits and preventive services. He does not really have health insurance.

By way of example, if the employee were seriously injured in an auto accident, the bare-bones insurance would not cover the ambulance ride, would not cover the surgery, would not cover the hospital stay, and would not cover the rehabilitation. The employee undoubtedly would be left with a bill on the order of tens of thousands of dollars.

Our hypothetical employee could instead decline the employer-sponsored coverage and go out and purchase coverage on one of the new Health Insurance Exchanges (i.e., Marketplaces). However, assuming that the bare-bones coverage offered by the employer is "affordable" and offered "minimum value" (as defined by the ACA), the employee would not be eligible for a premium tax credit to buy insurance on an exchange. Under the ACA, if an individual is eligible for employer-sponsored coverage that is affordable and provides minimum value, he cannot receive a premium tax credit to defray the cost of premiums.

By contrast, if that same low-wage worker had been self-employed or worked for an employer who did not offer coverage, he likely would be eligible for a premium tax credit to buy coverage on an exchange. For the working poor, that premium tax credit can defray a large percentage of the cost of premiums. But our hypothetical unlucky worker—whose employer offers bare-bones but ACA-compliant coverage—would have to pay full sticker price to buy adequate health insurance an exchange.