

Small Business Health Care Wish List: Repeal and Replace

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Altarum Health Policy Forum (2/8/11)

For small business to flourish the Patient Protection and Affordable Care Act (PPACA) must go away, and—equally importantly—the status quo that preceded it must never return. The laws of physics do not limit American health care to those two unacceptable choices. And, unfortunately, productive discussion of health care reform ends whenever a PPACA supporter begins a sentence with, “Does that mean you want to go back to the days when... ?” The answer is almost certainly “No,” and the question itself distracts us from more fruitful discussion.

To start a real dialogue that leads to real reform, here’s the small business position: The past was awful, the present lies somewhere between no-better and much-worse, and the future can be bright if sensible replace follows blessed repeal.

The Past: Unmourned

Small business holds little nostalgia for the status quo that went on life support March 23, 2010, and is now drawing to an unmourned close. For a full generation, the rising financial costs of health insurance have strained the capacity of small business to grow and create jobs. The administrative burdens of purchasing and managing policies are a serious distraction. The small-group insurance market is inefficient, and in many states, there is little competition or choice. (Several states have near-monopolies in the small-group market.) Tiny risk pools mean that small-group premiums can go through the roof if a single employee becomes ill.

Small businesses generally don’t have human resources departments, so the burden of decisions usually falls on the owner who, in most cases, has no special understanding of insurance. Between renewals, problems with employees’ coverage fall on the employer, distracting attention from running the business.

The small-business market is dynamic and depends heavily on the ability to find and hire good employees when the time is right. The old status quo limits this ability. A prospective employee may refuse an offer because changing jobs means leaving a trusted family doctor or giving up an important benefit in the prospect’s current policy.

In answer to the question (hopefully unasked): Small business does not wish to return to the days when (fill in the blank).

The Present: Unaffordable

The hopes of small business were dashed when PPACA headed from the Capitol to the White House. The past year has shredded claims that the new law would rein in health care costs—especially for small business. New administrative burdens (e.g., 1099s, employer mandated documentation, etc.) are suffocating. Competition and choice in the insurance markets began to decline almost immediately.

Portability will remain limited for most small-business employees purchasing in the group market—impacting the employers’ ability to hire the employees they need. In 2014, they’ll have access to

coverage, but a change of jobs may still mean changing doctors, hospitals, etc. For people with pre-existing conditions, the good news is that they'll have access to coverage; the bad news is that they may not be able to afford that coverage, and their employers may not be able to afford them.

The idea that PPACA will cut costs is dead. A month after the bill became law, the Congressional Budget Office issued caveats about pre-passage forecasts. Soon thereafter, the Centers for Medicare and Medicaid Services warned that: (1) Supposed Medicare savings were double-counted; (2) The long-term finances of the Community Living Assistance Services and Supports Act (CLASS Act) were financially unstable from the outset; and (3) Another round of "doc-fix" is likely to overturn implied Medicare savings. In January 2011, the CMS Actuary reiterated and amplified these concerns.

PPACA drops new costs directly or indirectly on small business. Multi-billion-dollar brand-name drug tax. A 2.3 percent medical-device tax. A 0.9 percent "Medicare" payroll tax. A 3.8 percent "Medicare" investment tax. A 10 percent tanning tax. An undetermined number of new federal benefit mandates are overlaid on existing state mandates (estimated at 2,156 in 2010). Perhaps 80 percent of small businesses (by administration calculations) will lose their current coverage because of hair-trigger grandfathering regulations. And nothing in the bill touches our ineffective, inefficient, intrusive malpractice system.

The infamous 1099 provision has now been decried by business owners, the IRS Tax Advocate, Republican members of Congress, Democratic members of Congress, and the President. The employer mandate even penalizes some employers who provide coverage. All Americans face the unprecedented individual mandate. Employee subsidies will trigger employer penalties and in the process, violate the financial privacy of both.

The fabled small business tax credit can, as advertised, offset "up to 35 percent" of a small firm's insurance costs. But only the smallest, lowest-paying businesses will get 35 percent. Most will get nothing. Those who get something will likely get less—perhaps much less—than 35 percent. The percentage erodes if a company hires more employees, pays more generous wages, uses part-timers, hires family members, or offers more-generous-than-average coverage. (e.g., 18 employees, average wage + average wage of \$38,000 = zero credit.) Most importantly, the credit automatically repeals itself by 2016.

Together, these shortcomings encourage businesses to downsize, to lay off employees, to shift from full-timers to part-timers, and to avoid hiring individuals who are likely to obtain subsidies and trigger penalties on the employer (a single mother for example?). Repeal is a necessity.

The Future: Undeterred

So how do we begin to make things better? We could start with items that small business asked for in the years leading up to PPACA and then add some new ones.

Begin by leveling the tax treatment of people buying insurance in the group and individual markets. The current tax code effectively locks individuals into employer-based plans, limits their portability, and disadvantages them when they become unemployed. It lessens the incentive for individuals to become smart, well-informed shoppers in insurance and provider markets.

Reduce the benefit mandates that drive up the cost of insurance. PPACA makes the problem worse by empowering the federal Department of Health and Human Services to lay an extra layer of mandates on top of the state-level mandates.

Enable employers to shift from defined-benefit to defined-contribution health insurance—similar to the shift from traditional pensions to 401(k)'s. Under a defined-contribution plan, employers could contribute tax-free toward their employees' health insurance purchases on the new health insurance exchanges. This would give employees the motive and power to apply competitive pressures on insurers.

Allow individuals to purchase health insurance across state lines, forcing insurers and regulators to compete against other states. Opponents of this idea fret about a “race to the bottom.” Those making this argument assume, rather than demonstrate, that people will opt to save a penny rather at the expense of their health. And they can't cite any state that represents the dreaded bottom to which reckless consumers will race. Idaho and Utah have few benefit mandates but excellent health care.

Fix medical liability laws. Our tort system fails to punish doctors who truly commit malpractice, and it punishes many who practice excellent medicine on patients who happen to suffer adverse events. This increases costs, pushes doctors into defensive mode, and frays doctor-patient trust.

Enable those who depend on the individual market (the self-employed, for example) to get insurance, even when they have pre-existing conditions. The PPACA accomplishes this by bludgeoning employers and individuals with mandates. There are less intrusive ways to accomplish this goal.

These ideas are just a start. We just saw Democrats and Republicans seated together at the State of the Union. Perhaps it's time that they do the same with health care.

Conclusion

The wheels began to fall off of PPACA as soon as it left Union Station in Washington. Big companies prepared for billions in new costs and revealed drawing-board plans to drop coverage. CBO and CMS undermined the law's numbers. Grandfathering became moot for most small businesses. Child-only policies vanished. A White House teleconference was warned “Don't ... say the law will reduce costs and deficit.” Some providers began layoffs. It is in the interest of both political parties now to devise a better choice than either PPACA or the pre-PPACA status quo. The challenge is to get it done—and soon.