Healthcare Law vs. Employee Privacy

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The new healthcare law will likely compromise the privacy of employees and their families. The free-rider provision will inadvertently reveal to employers some personal, even embarrassing, financial details about the family of any employee who receives premium credits (government health insurance subsidies).

Beginning in 2014, the new law will give certain middle- and lower-middle class households premium credits to help defray insurance costs. But when an employee receives a credit, this triggers a penalty that his employer must pay. (This is true for businesses with more than 50 employees.) Each subsidized employee can cost the employer thousands of dollars in penalties, so, the government will inform the employer which specific employees are receiving credits. With this information in hand, an employer can easily infer quite a bit about the earnings of the employee's spouse and other household members. Effectively, the free-rider structure forces the employee to choose between his privacy and the credit, which can amount to thousands of dollars per year. And it forces the employer's eyes into affairs that should be none of his concern.

Credits are only available to families whose household income is below 400% of the Federal Poverty Level and for whom a particular benchmark insurance plan in the new insurance exchanges costs more than 9.5% of household income. (That percentage drops as household income drops, but let's avoid that complexity here.) The employer knows how much his employee earns, and he can easily obtain the cost of the benchmark insurance policy. Find out how many people live in the employee's household, and he can also calculate 400% FPL for that family. With these data in hand, the employer already knows a great deal about how much the rest of the employee's family earns. Take for example, a mid-level manager married to a doctor. When this employee obtains a credit, his boss will now see clearly that the wife's medical salary has disappeared from the household. Maybe she was fired. Maybe there's an impending divorce and she has left. Maybe she is ill. Whatever has happened, the boss knows that all is not well in the employee's home. The employee may be deeply embarrassed that his diminished circumstances are known to the employer. And the employer may be equally embarrassed that he is privy to his employee's private life. (For those scratching their heads, I've provided a numerical example at the bottom.)

The structure of the free-rider provision will make it virtually impossible for an employer to avoid the intimate details of his employees' lives. Those details now impact his bottom line. Some analysts suggest that the problem goes even farther. The free-rider provision may give employers a financial motive to avoid hiring people who are likely to qualify for premium credits; some businesses might prefer, for example, to hire the wives of attorneys and investment bankers rather than single mothers. If so, the free-rider provision could have a disparate impact by race, age, gender, nationality, and other socioeconomic factors that have no relationship to the job.

An employee's pay and working relationships should depend on the quality of service that he provides to his employer - - not on extraneous details of his home life and on the perverse incentives of a badly designed subsidy mechanism. The free-rider provision has the potential to shatter bonds of trust between employers and employee s.

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Numerical example: Take an employee who earns $68,000 per year, whose wife is a physician, and who has two dependent children. For a family of four, 400% FPL equals $88,200. Let's suppose the benchmark family policy costs $10,000. One day, the government notifies the business that this employee is now receiving a credit. $10,000 is 9.5% of $105,263, so the family can't be earning more than that. The employee earns $68,000, so his wife can't be earning more than $37,263. Adding precision, the employer knows the family's income is below $88,200 (400% FPL), so the wife can't be bringing in more than $20,200 ($88,200 minus $68,000).Clearly, her medical income is gone from the household. The government's letter does not explicitly announce whether the doctor was fired or whether she has moved away in the course of a divorce. But her husband's employer can surmise that her income has vanished from his employee's home. This should be none of the employer's business, except that thanks to the free-rider provision, now it is.