

## Small Business Endangered by Health Insurance Reform

By Twila Brase and Linda Gorman<sup>1</sup>

### Brief Overview

This policy brief discusses some of the major tax and regulatory requirements that health care reform legislation under consideration by the U.S. Senate and the U.S. House of Representatives will impose on smaller businesses, including the expected impact on entrepreneurship and business expansion. The bills are H.R. 3962 in the House and H.R. 3590 in the Senate. *The full policy brief can be found at [www.cchconline.org](http://www.cchconline.org).*

### Major Findings

- Individual Mandate - All individuals must purchase health insurance as defined by the federal government or pay a significant tax penalty. Jail time is also possible for those who do not comply, according to the Internal Revenue Service.
- New Taxes - New taxes and assessments are imposed on business for failure to provide coverage, employee use of tax credits, waiting periods for insurance eligibility, funding for state health insurance exchanges, high-income individuals.
- Play or Pay - The House bill penalizes businesses that do not provide health benefits with taxes at 2 – 8% of payroll. These rates are not indexed for inflation.
- Limits Business Expansion - The House bill's tax on high-income individuals is expected to act as a *direct tax on business expansion* since many small business owners finance expansion using income reported on their individual tax returns. The tax includes a 5.4% increase in capital gains tax. In addition, high-income earners will pay the planned increase in the payroll tax at a higher rate: 3.4%.
- Minimum Contribution to Health Coverage - Both bills require that businesses offer, or pay for, at least part of the health insurance that individuals are required to buy. For example, the House bill has minimum contribution requirements.
- Definitions Matter - The definition of 'large employer' and 'small employer' are important. They determine which taxes, penalties, and requirements apply.
- Exemption for Certain Small Businesses - In the Senate bill, small employers that are growing larger can continue to qualify as small employers, which allows them the opportunity to be exempt from buying or running their own health plan.

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- Waiting Period Prohibited - The Senate Bill limits waiting periods for employee coverage to 90 days and fines employers who have 1-2 month waiting periods.
- Exposure to Tax - Most employees will be eligible for the Senate bill's tax credits, exposing certain employers to tax penalties if employees purchase their own insurance and apply for tax credits through the proposed state exchanges.
- Reporting Requirements - Both bills require government reporting of company and employee health insurance status, including details specific to each employee.
- HSAs and Whistleblowers - The Senate bill threatens health savings accounts. The House bill provides whistleblower protections to employees.
- Higher Costs - Health insurance premiums will rise as a result of new subsidies, new taxes, expanded coverage, expanded benefits, and regulatory requirements.
- Taxed by High Premiums - There appears to be no limit in the House bill on how much individuals with incomes higher than 400 percent of the federal poverty level could be required to pay for health insurance, potentially forcing middle and higher income people to bear the majority of all costs proposed in the House bill.
- Government Controls - Both bills gives government the power to define what constitutes acceptable health insurance, to determine how health care businesses operate, how physicians practice medicine, and who gets what medicine.

## **Conclusion**

The health insurance reform bills pending in Congress will impose on small businesses costly employee coverage mandates, government reporting requirements, various new taxes, burdensome regulatory requirements, and additional fees and penalties.

Health insurance premiums are expected to rise higher than under current law due to expanded government subsidies, imposed premium caps, government tax credits, and proposed new taxes on insurers, drug manufacturers and medical device companies.

Small businesses will be hit particularly hard by increased premium rates, the tax on high-earners, and regulatory requirements, leaving them with fewer compensatory options than large employers. To protect their businesses, small employers may choose to drop employee health insurance coverage, limit expansion of their operations, reduce employee wages, hire fewer workers or announce lay-offs.

While lower income people are protected with premium caps and subsidies, the House bill does not limit what middle and upper income people would be required to pay.

In conclusion, the House bill, HR 3962, and the Senate bill, HR 3590, propose to negatively impact small employers, business expansion, employees or small employers, and the largely unprotected and unsubsidized middle and upper class of America.