State Medicaid Choices and the Hidden Tax Surprises for Employers

Brian Haile, Senior Vice President of Health Policy, Jackson Hewitt Tax Service Inc.
George Brandes, Director of Health Care Programs, Jackson Hewitt Tax Service Inc.

JACKSON HEWITT® TAX SERVICE

Key Findings

- States that do not expand Medicaid for adults leave their large employers exposed to higher employer "shared responsibility" tax penalties under the ACA.
- The federal tax penalties to employers could total $1.03 billion to $1.55 billion each year in the 25 states that have not yet expanded Medicaid for adults. By way of example, the decision in Texas to forego the Medicaid expansion may increase federal tax penalties on Texas employers by $266 to $399 million each year. Likewise, employers in Pennsylvania may pay $52 to $77 million dollars each year in federal tax penalties if the state does not expand Medicaid for adults.
- Any projections of the "net" costs of Medicaid expansions should also reflect the very real costs of the shared responsibility tax penalties to employers in states that do not expand Medicaid.

Background and Context

While upholding other provisions of the Affordable Care Act (ACA) in June 2012, the U.S. Supreme Court ruled that the federal government could not compel states to expand Medicaid for certain low-income adults. Federal and state law prior to the enactment of the ACA generally limited Medicaid eligibility to very low income persons who are aged, blind, disabled, minor children, pregnant women and parents. Congress attempted under the ACA to force states to expand Medicaid to all categories of low-income adults under age 65 who were at or below 138% of the federal poverty level (FPL).[1] Under the Court's ruling in *NFIB v. Sebelius,*[2] though, states instead have the option rather than an effective requirement to expand Medicaid to such adult residents.

Coverage options for low income residents may be limited in states that do not expand Medicaid for adults. In drafting the ACA, members of Congress assumed that individuals under 138% FPL would be eligible for the Medicaid expansion. They consequently limited access to the premium assistance tax credits to eligible individuals between 100% and 400% FPL.[3] In states that do not expand Medicaid, then, otherwise-ineligible adults under 100% FPL will not be eligible for a subsidized coverage option under the ACA. Those between 100% and 138% FPL would be eligible for the premium assistance tax credits, but they may have to pay a monthly premium for coverage through a qualified health plan.[4] In effect, the decision to not expand eligibility for Medicaid leaves many people without insurance and others potentially eligible for the tax credits.

Federal tax penalties on employers are tied to state decisions about expanding Medicaid for adults. Employers will generally not face penalties for their employees who enroll in Medicaid.[5] Under the employer "shared responsibility" provisions of the ACA,[6] though, employers that offer health coverage and have 50 or more full-time equivalent employees must generally pay up to $3,000 in federal tax penalties for each full-time employee who enrolls in the premium assistance tax credits.[7] This shared responsibility provision also caps an employer's total liability at approximately $2,000 multiplied by the total number of full-time employees (minus 30).[8] While the U.S. Treasury delayed the implementation of the employer shared responsibility tax penalties by one year, it will begin to enforce and collect these new tax penalties in 2015.[9]

Some Governors have expressed concern about the future costs associated with an expansion of Medicaid in their states.[10] While the ACA ensures that the federal government will pay 100% of the costs of the Medicaid expansion through 2016, states that expand Medicaid for adults become responsible for some portion of the costs thereafter (starting at 5% in 2017 and rising to 10% of the total costs in and after 2020).[11] These costs have generated substantial discussion among state policy-makers with respect to the feasibility of such expansions of the Medicaid program.[12]

Paradoxically, state government efforts to constrain Medicaid cost growth in and after 2017 may lead to higher net taxes for employers in such jurisdictions beginning in 2015. If a state foregoes the Medicaid expansion, then eligible employees between 100–138% FPL may enroll in the premium assistance tax credits. In such circumstances, their employers may face the additional shared responsibility tax penalties discussed above.[13]

Methods

We used data from Current Population Survey 2012-13 from the U.S. Census Bureau to estimate the number of uninsured adults working full-time under age 65 by state who are between 100-150% FPL. To estimate the number of such individuals who may be eligible to enroll in the premium

tax credit programs, we assumed that:

1. Persons between 100% FPL and 150% FPL are equally distributed (i.e., they are equally likely to be at 124% FPL as 139% FPL);[14]
2. 46% of uninsured individuals who are employed full-time and earn between 100-138% FPL work for companies with 50 or more employees;[15]
3. 92% of the large firms at which the remaining employees work may offer some form of health coverage;[16] and
4. 93% of uninsured individuals who are not enrolled in employer-sponsored insurance (ESI) actually lack access to an "affordable" ESI offer as defined by the Internal Revenue Service.[17]

Assumptions (2) through (4) allowed us to adjust for the fact that some proportion of the uninsured adults between 100-138% FPL who work full-time are employed by either small employers or large firms that may offer affordable coverage.

Results

Applying these assumptions to these data, we estimate that approximately 967,000 full-time uninsured employees under age 65 could enroll in the premium assistance tax credits. If 100% of such employees were to enroll and no state were to expand Medicaid, the collective employer liabilities each year for the shared responsibility tax penalties would be between $1.93 and $2.90 billion dollars.

Clearly, though, some states are expanding Medicaid. Indeed, 26 states and the District of Columbia expanded Medicaid for adults under 138% FPL, and several others have a pending proposal or are considering Medicaid expansions.[18] If the 25 opposed and undecided states were to reject the Medicaid expansion and the eligible employees between 100-138% FPL were to enroll in the tax credits, then large employers in those jurisdictions may incur liabilities for the shared responsibility tax penalties of up to $1.03 million to $1.55 billion each year. For reference, we shaded in Table 1 the results for those states that have not yet expanded Medicaid to adults under 138% FPL.

Discussion

Our goal was to estimate the order of magnitude of the potential employer liabilities by state. While we acknowledge that data limitations require us to make simplifying analytical assumptions that affect the specific point estimates reported above, we believe these results to be directionally correct.[19]

We have been relatively conservative in our assumptions, though we understand that policy-makers may want to refine the estimates with state-specific data that they may have at their disposal but which are not freely available to the public. For precisely this reason, we have attempted to be fully transparent about our methods.

The actual liabilities that employers incur will depend on the "uptake" or participation rates among eligible employees in the new premium assistance tax credit programs offered through the new insurance exchanges. Because we seek to quantify potential employer tax liabilities, though, we do not adjust our estimates with assumptions about participation rates (which vary widely among experts[20]).

This analysis explicitly excludes employees who are currently insured through an employer. Data from the Current Population Survey in 2012–13 suggest that some 2.3 million adults are age 19-64, working full-time, are between 100-150% FPL, and have employer-sponsored health insurance.[21] It is unclear how many of these individuals may drop coverage (i.e., because such plans are unaffordable or do not provide minimum value) and migrate to the exchanges and the premium assistance tax credit programs. If this phenomenon were to become widespread, the potential employer shared responsibility tax penalties would only increase.

For the reasons discussed above, states that expand Medicaid may effectively lower the penalties for employers that do not provide health coverage. A state's decision to expand Medicaid is unlikely to have a material effect an employer's incentive to provide employee coverage for several reasons.[22] We acknowledge, though, that Medicaid expansions could theoretically alter the employer's calculus in the provision of health coverage—and policy-makers should at least be aware of this issue.

Conclusion

These estimates suggest that employers may pay substantially higher federal tax penalties under the ACA in states that do not expand Medicaid. These costs could exceed $1 billion across states that have not yet expanded Medicaid for adults under 138% FPL. Any projections of the "net" costs of Medicaid expansions should reflect the very real costs of these new federal tax penalties to employers in any particular state.

Table 1: Estimated § 4980H Employer Tax Penalties by State Absent Medicaid Expansion

States in shaded rows have not yet expanded Medicaid to adults under 138% FPL

State	Uninsured Adults (age 18-64, working F/T, 100-138% FPL)	APTC-Eligible	Expanding Medicaid? (for adults 100–138% FPL)	Potential Employer Shared Responsibility Tax Penalties (Assuming $2,000 to $3,000 per employee)		
US	2,457,000	967,000		$ 1,934,000,000	to	$ 2,901,000,000
AL	39,000	15,000	Not at present	$ 31,000,000	to	$ 46,000,000
AK	5,000	2,000	Not at present	$ 4,000,000	to	$ 6,000,000
AZ	67,000	27,000	Yes	$ 53,000,000	to	$ 80,000,000
AR	34,000	13,000	Yes	$ 27,000,000	to	$ 40,000,000
CA	365,000	143,000	Yes	$ 287,000,000	to	$ 430,000,000
CO	34,000	14,000	Yes	$ 27,000,000	to	$ 41,000,000
CT	10,000	4,000	Yes	$ 8,000,000	to	$ 11,000,000
DE	4,000	2,000	Yes	$ 3,000,000	to	$ 5,000,000
DC	2,000	1,000	Yes	$ 1,000,000	to	$ 2,000,000
FL	214,000	84,000	Not at present	$ 169,000,000	to	$ 253,000,000
GA	89,000	35,000	Not at present	$ 70,000,000	to	$ 106,000,000
HI	3,000	1,000	Yes	$ 3,000,000	to	$ 4,000,000
ID	15,000	6,000	Not at present	$ 12,000,000	to	$ 18,000,000
IL	88,000	35,000	Yes	$ 69,000,000	to	$ 104,000,000
IN	29,000	11,000	Not at present	$ 23,000,000	to	$ 34,000,000
IA	14,000	5,000	Yes	$ 11,000,000	to	$ 16,000,000
KS	22,000	9,000	Not at present	$ 17,000,000	to	$ 26,000,000
KY	35,000	14,000	Yes	$ 28,000,000	to	$ 42,000,000
LA	53,000	21,000	Not at present	$ 41,000,000	to	$ 62,000,000
ME	4,000	1,000	Not at present	$ 3,000,000	to	$ 4,000,000
MD	28,000	11,000	Yes	$ 22,000,000	to	$ 33,000,000
MA	4,000	1,000	Yes	$ 3,000,000	to	$ 4,000,000
MI	54,000	21,000	Yes	$ 42,000,000	to	$ 63,000,000
MN	20,000	8,000	Yes	$ 15,000,000	to	$ 23,000,000
MS	22,000	9,000	Not at present	$ 18,000,000	to	$ 26,000,000
MO	38,000	15,000	Not at present	$ 30,000,000	to	$ 45,000,000
MT	10,000	4,000	Not at present	$ 8,000,000	to	$ 12,000,000
NE	14,000	5,000	Not at present	$ 11,000,000	to	$ 16,000,000
NV	27,000	11,000	Yes	$ 21,000,000	to	$ 32,000,000
NH	5,000	2,000	Not at present	$ 4,000,000	to	$ 5,000,000
NJ	66,000	26,000	Yes	$ 52,000,000	to	$ 78,000,000
NM	18,000	7,000	Yes	$ 14,000,000	to	$ 21,000,000
NY	87,000	34,000	Yes	$ 69,000,000	to	$ 103,000,000
NC	101,000	40,000	Not at present	$ 80,000,000	to	$ 120,000,000
ND	4,000	1,000	Yes	$ 3,000,000	to	$ 4,000,000
OH	72,000	29,000	Yes	$ 57,000,000	to	$ 86,000,000
OK	39,000	15,000	Not at present	$ 31,000,000	to	$ 46,000,000
OR	28,000	11,000	Yes	$ 22,000,000	to	$ 33,000,000

Table 1: Estimated § 4980H Employer Tax Penalties by State Absent Medicaid Expansion

States in shaded rows have not yet expanded Medicaid to adults under 138% FPL

State	Uninsured Adults (age 18-64, working F/T, 100-138% FPL)	APTC-Eligible	Expanding Medicaid? (for adults 100–138% FPL)	Potential Employer Shared Responsibility Tax Penalties (Assuming $2,000 to $3,000 per employee)		
PA	66,000	26,000	Not at present	$ 52,000,000	to	$ 77,000,000
RI	4,000	2,000	Yes	$ 3,000,000	to	$ 5,000,000
SC	38,000	15,000	Not at present	$ 30,000,000	to	$ 45,000,000
SD	7,000	3,000	Not at present	$ 6,000,000	to	$ 9,000,000
TN	61,000	24,000	Not at present	$ 48,000,000	to	$ 72,000,000
TX	338,000	133,000	Not at present	$ 266,000,000	to	$ 399,000,000
UT	14,000	6,000	Not at present	$ 11,000,000	to	$ 17,000,000
VT	2,000	1,000	Yes	$ 1,000,000	to	$ 2,000,000
VA	54,000	21,000	Not at present	$ 42,000,000	to	$ 64,000,000
WA	62,000	24,000	Yes	$ 49,000,000	to	$ 73,000,000
WV	13,000	5,000	Yes	$ 10,000,000	to	$ 16,000,000
WI	31,000	12,000	Not at present	$ 25,000,000	to	$ 37,000,000
WY	5,000	2,000	Not at present	$ 4,000,000	to	$ 5,000,000

About the Authors

Brian Haile is the Senior Vice President for Health Policy at Jackson Hewitt, the nation's second largest tax preparation firm. He is responsible for the planning and execution of the company's ACA programs. Prior to joining Jackson Hewitt, Mr. Haile served as the Director of the Insurance Exchange Planning Initiative of Tennessee; he previously served as the Deputy Director for the public employee group health plans in Tennessee and the Eligibility Chief for the District of Columbia's Medicaid program. Mr. Haile received both his Juris Doctor and undergraduate degree from Georgetown University, a Master's degree in Public Policy from the University of California, Berkeley and a Master's degree in Health Economics from the University of Cape Town (South Africa).

George Brandes is the Director of Health Care Programs at Jackson Hewitt, the nation's second largest tax preparation firm. His work focuses on the planning and execution of programs surrounding the Affordable Care Act that will help Jackson Hewitt customers access the new insurance affordability programs and exchange marketplaces. Prior to joining Jackson Hewitt, Mr. Brandes served as an Associate with the Insurance Exchange Planning Initiative of Tennessee, the small team charged with the state's contingency planning efforts related to federal health care reform. Mr. Brandes received his Master's degree in political economy from the London School of Economics, a Master's degree in European Politics from the Institut d'études politiques de Paris (Sciences Po Paris), and his undergraduate degree from Northwestern University.

About Jackson Hewitt Tax Service®

Jackson Hewitt Tax Service Inc. is an industry-leading provider of full service individual federal and state income tax preparation, with approximately 6,500 franchised and company-owned locations throughout the United States, including locations in Walmart stores nationwide, and Sears stores in the United States and Puerto Rico in the 2014 tax season. Jackson Hewitt Tax Service also offers an online tax preparation product at www.JacksonHewittOnline.com. For more information, or to locate your neighborhood Jackson Hewitt office, visit www.JacksonHewitt.com or call 1-800-234-1040. Jackson Hewitt can also be found on Facebook and Twitter. Most offices are independently owned and operated.

Endnotes

1 § 1902(a)(10)(A)(i)(VIII) of the Social Security Act (42 U.S.C. § 1396a) as added by § 2001(a)(1) of the ACA. While this provision references a 133% FPL income limit, a subsequent amendment at § 1902(e)(14)(I) by § 1004(e)(2) of the Health Care and Education Reconciliation Act (HCERA) of 2012 adds an additional five percent income disregard. For reference, the federal poverty level (FPL) is a construct that varies by household size: 138% FPL at the beginning of the initial open enrollment period in 2013 was $15,856 for a household of one and $32,499 for a household of four. See generally, U.S. Department of Health and Human Services, "Poverty Guidelines, Research, and Measurement," available at http://aspe.hhs.gov/poverty/index.cfm, accessed January 13, 2014.

2 132 S. Ct. 2566 (2012).

3 But see 26 CFR § 1.36B-2(b)(5) (explaining limited exception to this standard).

4 See FAQ #31 in Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, "Frequently Asked Questions on Exchanges, Market Reforms and Medicaid" (December 10, 2012), available at http://www.cms.gov/CCIIO/Resources/Files/Downloads/exchanges-faqs-12-10-2012.pdf, accessed January 13, 2014.

5 Under § 4980H(a) of the Internal Revenue Code, employers with 50 or more full-time equivalent employees will be liable for employer shared responsibility tax penalties if they do not offer coverage and at least one of their employees is eligible for a premium tax credit. In this sense, employers could face penalties for employees who enroll in Medicaid—but the penalty is unrelated to the employee's enrollment in the Medicaid program and is instead triggered by another employee who enrolled in the tax credit program. See n. 8 and n. 16 infra.

6 § 4980H of the Internal Revenue Code (IRC) as added by § 1513(a) of the ACA, as amended. See generally Congressional Research Service Report R41159, "Summary of Potential Employer Penalties Under PPACA" (July 22, 2013), available at http://www.fas.org/sgp/crs/misc/R41159.pdf, accessed January 13, 2014.

7 Employees eligible for coverage through their employer may still qualify for the premium assistance tax credits if their employer plan is "unaffordable" in that it costs more than 9.5% of the employee's household income or the plan does not provide "minimum value" (e.g., the plan's deductible and other cost-sharing are too high). § 36B(c)(2)(C) of the IRC as added by § 1501(a) of the ACA, as amended; 26 CFR § 1.36B-2(c)(3). See generally, Congressional Research Service Report R41137, "Health Insurance Premium Credits in the Patient Protection and Affordable Care Act (ACA)" (July 31, 2013), available at https://www.fas.org/sgp/crs/misc/R41137.pdf, accessed January 13, 2014.

8 Stated differently, large employers that offer coverage to employees would pay $3,000 per full-time employee enrolled in the credit up to a maximum of $2,000 multiplied by the total number of full-time employees minus 30. A helpful flow chart in this regard is available from the Kaiser Family Foundation at http://kff.org/infographic/employer-responsibility-under-the-affordable-care-act/. Note that large employers that do not offer coverage are subject to a different set of related penalties under § 4980H(a) of the Internal Revenue Code; however, the proportion of employees working at such firms is relatively low. See n. 5 supra and n. 16 infra.

9 IRS Notice 2013-45, July 9, 2013, (noting that "…no employer shared responsibility payments will be assessed for 2014."), available at http://www.irs.gov/pub/irs-drop/n-13-45.pdf, accessed January 13, 2014.

10 See, e.g., Press Release, Gov. Corbett Announces Next Step of Healthy Pennsylvania (December 6, 2013), available at http://www.pa.gov/Pages/NewsDetails.aspx?agency=Governors%20Office&item=15063, accessed January 13, 2014; Letter from Governor Bill Haslam to Secretary Kathleen Sebelius (December 9, 2013), available at http://www.tennessean.com/assets/pdf/DN216193129.pdf, accessed January 13, 2014; Statement from Utah Governor Gary Herbert on Medicaid Waiver (December, 2013), available at http://garyherbert.com/issues/medicaid-waiver/, accessed January 13 2014; Letter from Governor Mike Pence to Secretary Kathleen Sebelius (November 15, 2013), available at http://www.in.gov/activecalendar/EventList.aspx?fromdate=11/1/2013&todate=11/30/2013&display=Month&type=public&eventidn=145828&view=EventDetails&information_id=190824, accessed January 13, 2014; Letter from Governor Bob McDonnell of Republican Governors Association to President Barak Obama (July 10, 2012), available at http://www.rga.org/homepage/rga-letter-on-medicaid-and-exchanges-to-president-obama/, accessed on January 13, 2014.

11 § 1905(y) of the Social Security Act (42 U.S.C. 1396d) as added by § 2001(a)(3)(B) of the ACA and amended by § 1201(1)(B) of the HCERA.

12 See, e.g., Bovbjerg, Randall, Barbara A. Ormond, and Vicki Chen, "State Budgets under Federal Health Reform: The Extent and Causes of Variations in Estimated Impacts," Kaiser Family Foundation Issue Brief, February 2011, available at http://www.kff.org/healthreform/8149.cfm, accessed January 13, 2014.

13 See e.g., Wayne, Alex, "Refusal to Expand Medicaid May Cost Employers $1 Billion," Bloomberg News, March 13, 2013; Radnofsky, Louise, "In Medicaid, a New Health-Care Fight," Wall Street Journal, February 11, 2013, p. A1; Millman, Jason, "Lack of Medicaid expansion could penalize employers," Politico, August 29, 2012.

14 Using this assumption, the proportion of the population below between 100% FPL and 138% FPL would be represented as: # uninsured, full-time employed between 100-150% FPL * (138-100) / (150-100).

15 Avalere Health analysis of the Current Population Survey, Annual Social and Economic Supplement, United States Census Bureau, 2012.

16 Among employees that work at firms with 50+ employees that also have a majority of low-wage workers, 92.2% work at firms that offer health coverage. Agency for Healthcare Research and Quality, Center for Financing, Access and Cost Trends. 2012 Medical Expenditure Panel Survey-Insurance Component, Table I.B.2 (2012): Percent of private-sector employees in establishments that offer health insurance by firm size and selected characteristics: United States, 2012, available at http://meps.ahrq.gov/mepsweb/data_stats/summ_tables/insr/national/series_1/2012/tib2.htm accessed January 13, 2014. Employers that offer health coverage would not be subject to broader penalties under § 4980H(a) of the Internal Revenue Code, but they would be subject to penalties for a smaller subset of employees under § 4980H(b).

17 Matthew Buettgens, Stan Dorn, Habib Moody, "Access to Employer-Sponsored Insurance and Subsidy Eligibility in Health Benefits Exchanges: Two Data-Based Approaches," Washington, DC: Urban Institute, December 13, 2012, available online at http://www.urban.org/publications/412721.html, accessed January 13, 2014.

18 Kaiser Family Foundation, "Status of State Action on the Medicaid Expansion Decision, as of December 11, 2013," available at http://kff.org/health-reform/state-indicator/state-activity-around-expanding-medicaid-under-the-affordable-care-act/, accessed January 13, 2014. We treat Michigan as having expanded Medicaid for adults under 138% FPL even though it will implement its expansion on April 1, 2014. We treat Wisconsin as not having expanded the program because it does not enroll adults between 100-138% FPL in the Medicaid program. At the time of publication, Medicaid proposals from Indiana and Pennsylvania were under federal review; we have, therefore, treat them as not having yet expanded Medicaid for adults for purposes of this analysis.

19 We published an earlier analysis in March 2013 entitled "The Supreme Court's ACA Decision and Its Hidden Surprise for Employers" in which we used similar methods. In the present study, we (a) updated estimates using more recent data from the Current Population Survey and the Medical Expenditure Panel Survey; (b) reflected the actual rather than projected decisions by states regarding the Medicaid expansion for adults; and (c) adjusted for uninsured individuals who are not enrolled in employer-sponsored insurance (ESI) and actually lack access to an "affordable" ESI offer as defined by the Internal Revenue Service. See n. 17 supra. Even with these updated estimates for inputs and modified approach, our results are comparable to those in our earlier report.

20 Regarding participation rates, see, e.g., Sommers, Ben et al., "Understanding Participation Rates in Medicaid: Implications for the Affordable Care Act," ASPE Issue Brief: March 2012, available at http://aspe.hhs.gov/health/reports/2012/medicaidtakeup/ib.shtml, accessed January 15, 2014; Remler, Dahlia and Sherry Glied, "What Other Programs Can Teach Us: Increasing Participation in Health Insurance Programs," American Journal of Public Health, January 2003; 93(1): 67–74.

21 U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplement, 2012-13.

22 We believe this to be true for several reasons. First, employer plans cover a much broader group of employees than just those 100-138% FPL. Second, the employer's tax benefits for providing compensation in the form of health benefits remain intact. Third, an employer may not be able to accurately forecast the effect of the Medicaid expansion on the firm because the employer lacks complete information about each employee's household size and income (and cannot therefore estimate the number of employees who fall between 100% and 138% FPL).