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MANDATE – SORT OF

This week the Senate Finance Committee will attempt to approve a health care reform bill.

Senator Max Baucus (D-MT), Chairman of the Senate Finance Committee, issued a "Chairman's Mark" last week. One interesting thing about the mark is that it is not the legislative language of the bill. It is a "plain language" detailed summary of the bill. The summary runs 223 pages. As a result, there is still a lot of speculation about the fine print.

With the Chairman's Mark, we get our third version of an employer mandate, although that is not the way the Chairman sees it. On the subject of "shared" employer responsibility, the Chairman's mark starts out with this sentence: "Under the Chairman's Mark as under current law, an employer would not be required to offer health insurance coverage."

If you are saying "huh," so was I. I guess it is technically true. Of course, the proposal goes on to tell us what those employers that happen NOT to provide coverage have to do instead.

Before I can describe that, I have to back up and explain how an individual - who would be required to have health care coverage under the Chairman's mark - can obtain coverage.

The Chairman would create state "exchanges" or co-ops from which individuals (and small businesses) could obtain health care coverage. The Chairman's Mark provides a refundable tax credit for eligible individuals and families who purchase health insurance through the state exchanges. This tax credit for premiums will be refundable and payable in advance directly to the insurer. The tax credit will be available for individuals (single or joint filers) with Modified Adjusted Gross Incomes (MAGI) up to 300 percent of the Federal poverty level (FPL). (The MAGI is basically the adjusted gross income line from your Form 1040) (The 2009 Poverty Guidelines for the 48 Contiguous States and the District of Columbia for one person in the family - $10,830, for two - $14,570, for three - 8,310 ,or for 4 - $22,050 and so forth). The amount of credit is determined on a sliding scale. The credits are based on the percentage of income the cost of premiums represents, rising from three percent of income for those at 100 percent of poverty to 13 percent of income for those at 300 percent of poverty.

So, back to the employers that just happen to not provide health care coverage for their employees. All employers with more than 50 employees that do not offer coverage would be required to pay a fee for each employee who receives a tax credit for health insurance through a state exchange.

Here's my "favorite" part and I have not found a way to say this any other way: "For each full time employee (defined as working 30 hours or more each week) enrolled in a state exchange and receiving a tax credit, the employer would be required to pay a flat dollar amount set by the Secretary of HHS and published in a schedule each year. The flat dollar amount would be equal to the average tax credit in the state exchanges. These payments would not be linked to the individual, but would be contributed to a general fund. The assessment is capped for all employers at an amount equal to $400 multiplied by the total number of employees at the firm (regardless of how many are receiving the state exchange credit). The employer would pay the lesser of the flat dollar amount multiplied by the number of employees receiving a tax credit or a fee of $400 per employee paid on its total number of employees."

And yes, you could be offering health care to employees and if it does not meet specified criteria, you will be considered as not offering coverage. The mark states it terms of the employee. An employee, who is offered coverage that does not have an actuarial value of at least 65 percent of a "benchmark" plan specified by the law, or who is offered unaffordable coverage by their employer, is eligible for the premium tax credit. Unaffordable is defined as more than 13 percent of the employee's income.