COMMITTEE ON WAYS AND MEANS

The Wrong Prescription: Democrats' Health Overhaul Dangerously Expands IRS Authority

Committee on Ways and Means Republican Report
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Highlights of New IRS Authority

- IRS agents verify if you have "acceptable" health care coverage
- IRS has the authority to fine you up to $2,250 or 2 percent of your income (whichever is greater) for failure to prove that you have purchased "minimum essential coverage"
- IRS can confiscate your tax refund
- IRS audits are likely to increase
- IRS will need up to $10 billion to administer the new health care program this decade
- IRS may need to hire as many as 16,500 additional auditors, agents and other employees to investigate and collect billions in new taxes from Americans
- Nearly half of all these new individual mandate taxes will be paid by Americans earning less than 300 percent of poverty ($66,150 for a family of four)

SPECIAL EXEMPTION

Democrats prohibit the IRS from imposing these taxes and penalties on illegal immigrants

INTRODUCTION

If H.R. 3590, the Senate Democrats' health care bill, is enacted, which could happen as early as this week, **Democrats will have vastly expanded the responsibilities of the Internal Revenue Service (IRS) and fundamentally altered the relationship between the IRS and taxpayers.**

Specifically, this report examines the Individual Mandate Tax (IMT) proposed in the Democrats' health care legislation. Under this provision, **Democrats make the IRS the chief enforcer for a new government-run health insurance system.**

One of the most troubling aspects of this new IRS authority is the newly granted power to collect additional taxes from Americans whose health insurance coverage is deemed to be insufficient to meet the definition of minimum coverage, as defined by federal bureaucrats, required to be purchased.

Disturbingly, **the IRS would be in charge of verifying that every American taxpayer has obtained acceptable health coverage for every month of the year**. If the IRS determines that a taxpayer lacks acceptable insurance for even a single month, then **the IRS would impose a new tax on that taxpayer**, even auditing the taxpayer and could assess interest and penalties on top of the tax. This is an unprecedented new role for the IRS – one that will inject the IRS even further into the lives of American families.

This report examines the details of the IRS's new powers and how this federal bureaucracy will scrutinize and exercise its enhanced authority over Americans. Key findings include:

- IRS agents verify if you have "acceptable" health care coverage;
- IRS has the authority to fine you up to $2,250 or 2 percent of your income (whichever is greater) for failure to prove that you have purchased "minimum essential coverage";
- IRS can confiscate your tax refund;
- IRS audits are likely to increase;
- IRS will need up to $10 billion to administer the new health care program this decade;
- IRS may need to hire as many as 16,500 additional auditors, agents and other employees to investigate and collect billions in new taxes from Americans; and
- Nearly half of all these new individual mandate taxes will be paid by Americans earning less than 300 percent of poverty ($66,150 for a family of four).

BACKGROUND

As widely reported, Democratic efforts to enact a government takeover of the health care system depend on enacting the Senate bill into law and then, if possible, making minor modifications to it through the reconciliation process. Thus, the Senate bill's provisions form the general framework for what eventually could become law. And the Senate bill would locate substantial pieces of the government takeover of health care within the IRS.

IRS AS SOCIAL WELFARE AGENCY

The 2009 National Taxpayer Advocate's report to Congress includes an extensive and ominous discussion on the risks and challenges involved in running social programs through the tax system. The report expresses concern that the IRS has neither the mission nor the expertise to perform such tasks. **"When social program delivery is grafted to traditional IRS activities, there arises a potential conflict with the IRS's traditional mission [of revenue collection],"** the report states.[1] The Taxpayer Advocate discusses these concerns in the context of refundable credits such as the earned income tax credit, but the analysis is especially timely considering that the IRS could soon be responsible for administering large portions of the nation's health care system – a social program that dwarfs any of the existing refundable credits. A case study of this is found in the IMT discussion below.

THE INDIVIDUAL MANDATE TAX

The Democrats' bill would add a new section 5000A to the Internal Revenue Code. **Subsection (a) of section 5000A would require that practically every American taxpayer obtain health insurance that qualifies as "minimum essential coverage."** Subsection (f) would define "minimum essential coverage" as one of ten types of health insurance:

1. Medicare
2. Medicaid
3. SCHIP
4. TRICARE for Life
5. Veterans' health care
6. A health program for Peace Corps volunteers
7. Eligible employer-sponsored plans
8. Individual market plans offered through State Exchanges
9. Grandfathered health plans
10. Other types of health insurance deemed acceptable by the Secretary of Health and Human Services and the Secretary of the Treasury.

An "eligible employer-sponsored plan" generally means a group health plan that provides medical care and is offered by an employer to an employee that meets certain requirements under current law and those yet to be determined by the federal bureaucrats.[2] To be offered through a State Exchange, an individual market plan must offer an "essential health benefits package," which would include a long list of health benefits.[3]

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[1] 2009 Annual Report to Congress, National Taxpayer Advocate, vol. 2, p. 87.

[2] For example, an employer-sponsored plan is not "eligible" if it consists solely of excepted benefits such as disability insurance, workers' compensation, liability insurance, and limited medical benefits such as dental, vision, and long-term care coverage. See IRC sec. 9832(c).

[3] The full list, plus a grant of discretion to the Secretary of Health and Human Services to add to that list, can be found in H.R. 3590, sec. 1302(b). CBO, in a November 30, 2009, letter to Senator Evan Bayh (D-IN), confirmed

The legislative language of the Senate bill states that **the IRS is supposed to regulate "economic and financial decisions about how and when health care is paid for, and when health insurance is purchased."**[4] The language also concludes that the result of compelling every American to purchase health insurance coverage would be to "add millions of new consumers to the health insurance market."[5] In other words, the individual mandate would create millions of captive customers for health insurance companies, with the IRS acting as the enforcement agency for those companies.

AMOUNT OF TAX

Taxpayers who fail to prove to the IRS that they had maintained "minimum essential coverage" during each month of the year would have to pay a new IMT when they file their federal income tax returns. The IMT would be phased in over a period of several years, going into full effect in 2016 and beyond. For 2016, the IMT would equal the **greater of—**

- **$750 per person (up to a maximum of $2,250 per household)**,[6] or
- **2% of household income**.[7]

The IMT, however, could not exceed the national average premium for qualified health plans that provide a "bronze" level of coverage.[8] The $750 and $2,250 amounts would be indexed for inflation after 2016. "Household income" would mean "modified gross income", which would be a measure of income narrower than gross income but broader than adjusted gross income. The IMT would apply on a monthly basis: taxpayers would pay 1/12th of the amount calculated under the rules above for each month of the year that they do not satisfy the "minimum essential coverage" requirement.

Certain exceptions would apply. For instance, a hardship exemption provides that a taxpayer would not have to pay the IMT if the taxpayer's share of health insurance premiums exceeds 8% of income. The Democrats' bill also would provide exemptions for religious conscience, members of a health care sharing ministry, those below the poverty line, members of Indian tribes, incarcerated individuals, and – as discussed below – illegal aliens.

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these added mandates will increase the costs of health insurance premiums for families in the individual market by 10-13% above and beyond expected increases under current law.

[4] H.R. 3590, sec. 1501(a)(2)(C), as amended by sec. 10106(a) of the bill.

[5] *Ibid.*

[6] For children under the age of 18, the flat penalty would be half this amount, or $375 in 2016. IRC sec. 5000A(c)(3), as added by H.R. 3590, sec. 1501(b).

[7] According to summaries circulating this morning, the reconciliation bill, if enacted, would change these figures to $695 per person, $2,085 per household and 2.5% of household income.

[8] Bronze-level coverage means that the plan is designed to provide actuarial benefits equal to at least 60% of medical costs under the plan. H.R. 3590, sec. 1302(d)(1)(A).

As with federal income taxes generally, **the IRS would be responsible for enforcing the IMT**. That means the IRS could audit and assess interest and penalties on taxpayers who the IRS determines did not purchase government-approved health care insurance or pay the IMT.

According to a November 20, 2009 analysis by the Congressional Budget Office and Joint Committee on Taxation, **nearly half (46%) of the IMT collected by the IRS would be paid by households earning less than 300% of the Federal Poverty Line ($66,150 for a family of four)** – violating the President's pledge not to raise taxes on families earning less than $250,000 per year.

REQUIRED DATA REPORTING TO THE IRS

To assist the IRS with enforcing the IMT, the Democrats' bill would require that everyone who provides health insurance to an individual send an information return (like the current Form 1099) to both the IRS and the individual taxpayer with information about the taxpayer and the type of coverage, including the portion of premiums paid by the employer.[9] Thus, **the IRS would be charged with tracking the monthly health insurance status of roughly 300 million Americans**.

IRS EXPANSION

Although it is impossible to know exactly how many new employees the IRS would have to hire to enforce the individual mandate and other provisions of the Democrats' health care bill, the IRS's own data, plus reasonable assumptions about costs and program responsibilities as described below, suggest that **the number of additional examiners, agents, and other employees could reach 16,500**.

First, assume that the **IRS budget would grow by the $10 billion** that CBO indicates could be necessary.[10] While there might be some early-year start-up costs to prepare for the added workload, most of the costs would accrue in the last six years of CBO's ten-year budget window, when the individual mandate and other provisions, which present the bulk of the new enforcement responsibilities, take effect. Thus, for this analysis, assume that $1 billion total will be spent by the IRS in the first four years to prepare for the mandate with the spending increasing to $1.5 billion per year in each of the last six years.[11]

Second, in the last year for which actual IRS data is available, fiscal year 2009, the IRS employed the equivalent of 92,577 people, nearly half of whom worked directly in examinations

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[9] IRC sec. 6055(b)(2), as added by H.R. 3590, sec. 1502(a).

[10] Congressional Budget Office, "H.R. 3590, Patient Protection and Affordable Care Act," p. 5 (March 11, 2010).

[11] One of the bills' many shortcomings is that it does not provide for future IRS appropriations that will be necessary to implement it. Thus, the estimates to follow could vary, up or down, depending on the actual appropriations provided to the IRS by future Congresses.

and collections.[12] In total, the IRS had payroll and benefit expenses of $8.371 billion, implying that costs per worker were $90,427. If the $1.5 billion in annual funds are used for the payroll and benefits of a similar mix of employees, the IRS could add more than 16,500 additional agents, auditors, examiners, and administrative support personnel to enforce large portions of the nation's health insurance system.

Some might argue that figure over-estimates the number of employees that would be hired, because it includes only payroll and benefit costs and does not include other costs that would be incurred, including office overhead. However, note that the IRS total budget in fiscal year 2009 was $11.708 billion, meaning that, when all costs are included, IRS total spending averaged $126,474 per employee. Thus, critics of the 16,500 figure might argue that any new employees should be assumed to cost as much as the average member of the existing workforce and that the $1.5 billion per year would "only" support hiring slightly more than 11,800 new IRS employees.[13]

INCREASED AUDITS AND CONFISCATED REFUNDS

In a March 16, 2010 hearing held by the Oversight Subcommittee of the House Ways and Means Committee, Rep. Peter Roskam (R-IL) noted that the IRS's enforcement of **the individual mandate could lead to increased IRS audits**. In response, National Taxpayer Advocate Nina Olson warned, "They can… **offset people's refunds.** Now, 80 to 85 percent of taxpayers get refunds in their income tax returns. **So, if you're expecting something, you may not get it.**"

EXEMPTION FROM TAX FOR ILLEGAL ALIENS

The Democrats' legislation specifically would **exempt two groups of people from the IMT: illegal aliens and incarcerated individuals**. The latter group receives taxpayer-funded health care in prison. The specific exemption for illegal aliens, however, raises a concern. Democrats might argue that because illegal aliens are ineligible for tax credits or Medicaid coverage under the legislation (though the verification requirements are inadequate), they should not be required to pay the IMT. If, however, as Democrats claim, the IMT prevents uninsured people from abusing "free" emergency room care that Americans ultimately subsidize, then it is legitimate to question why illegal aliens should be exempt from this tax penalty. Many of the millions of

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[12] Figures in this section are all from the IRS Data Book for 2009, which can be found at: http://www.irs.gov/pub/irs-soi/09databk.pdf. As a result of part-time and seasonal workers, the total number of people who worked for the IRS at one point or another during the year was actually 105,814; the 92,577 figure is the number of Full Time Equivalents, or FTEs, a common measure of workforce size.

[13] It is likely the number would lie somewhere in between the two sets of figures. There would be some additional overhead costs for the new employees, such as computers and telephone services. But there could also be fixed costs that are not as affected by additional workers (e.g., the agency may already have extra office space so does not need to rent additional square footage for each additional worker). A specific analysis of fixed and marginal costs is beyond the scope of this report. Regardless, we do not think many Americans will find comfort in the fact that the bill might result in "only" another 11,800 employees at the Internal Revenue Service.

illegal aliens in the United States avail themselves of emergency room care and **under the Democrat bill these illegal aliens would continue to do so without paying the same penalty that uninsured Americans must pay**.

ADDITIONAL EXPANSIONS OF IRS POWERS

Beyond the individual mandate tax, the Democrats' bill would delegate substantial authority to the IRS to enforce and administer numerous other critical components of the nation's health insurance system. This report, however, does not investigate in detail the other opportunities Democrats give the IRS to interfere in Americans' lives. These additional powers would include (but are not limited to):

- Assessing new taxes and penalties on employers for failing to offer "affordable" (as defined by the federal government) health insurance;
- Sending nearly one-half trillion dollars in tax collections directly to health insurance companies;
- Verifying information on small businesses (including wage levels, number of employees, etc.);
- Revealing otherwise confidential taxpayer information to the Department of Health and Human Services; and
- Expanding oversight of not-for-profit hospitals to ensure they live up to their "charitable missions" by doing a "charitable needs assessment" once every three years.

CONCLUSION

Much of the opposition to the Democrats' massive health care overhaul plan has focused on its large tax increases, steep Medicare cuts, and dangerous interference in the doctor-patient relationship. Far less attention has been paid to Democrats' plans to grant massive new powers to the IRS, backed up by billions of dollars in additional taxpayer fund for the hiring of thousands of new IRS agents, examiners, and other personnel.

This report's extended discussion of just one aspect of that legislation – the creation and enforcement of a new IMT – demonstrates how the expanded powers and reach of the IMT will become all too familiar to American families and employers if H.R. 3590 is passed by the House and signed by the President.