

Texas Business and ObamaCare

by The Honorable Arlene Wohlgemuth & Spencer Harris

The Patient Protection and Affordable Care Act (ObamaCare) attempts to provide comprehensive and universal insurance coverage for the nation. In order to accomplish this goal, it imposes numerous new requirements on our state's businesses. These requirements pose significant burdens on Texas business.

The employer mandate is the most significant of these. Many businesses are required to offer their employees minimum essential benefits coverage as defined by ObamaCare. To stay compliant with federal law businesses must monitor employee household income relative to plan costs, total employee out of pocket costs, and exchange information.

These burdens are not, however, uniform for all businesses. The law differentiates between those businesses with fewer than 50 employees and those with 50 or more employees. The biggest difference between these two groups is the applicability of the employer mandate and the costs associated with the employer mandate for companies with 50 or more employees. This combined with the various other burdens create a significant disincentive for growth for small businesses to grow past 49 employees. It is also overly burdensome for businesses above the 50 employee threshold but too small to absorb the cost of all of the new requirements. These requirements could shape the future of Texas economic development in such a way that only two types of businesses remain: those small enough to be exempt and those large enough to afford the requirements of ObamaCare.

Employer Mandate

Any business in Texas with more than 50 employees is required to offer the minimum essential coverage of health insurance to each employee. The cost of health insurance is significant. The average cost of a health insurance policy has doubled over the last decade. In 2010, the average employer contribution to an individual health insurance policy in Texas was \$3,951,¹ and the average employer con-

tribution to a family health insurance policy was \$10,026.² Under ObamaCare, if a company does not offer coverage, it is assessed a \$2,000 fine for each employee after the first 30.

A large employer is not assessed a penalty for an employee that is offered an employer-sponsored insurance policy that meets the minimum essential benefits coverage and does not exceed 9.5 percent of the employee's household income. An employer who offers coverage, that does not meet these qualifications, whose employees attain coverage through the exchange and are eligible for subsidies, is assessed a penalty of the lesser of \$2,000 annually for all employees after the first 30 employees or \$3,000 annually per employee that receives subsidies. The tax credits and cost sharing reductions in the exchange are applicable to the majority of employees since eligibility goes as high as 400 percent of the Federal Poverty Limit (FPL) or \$88,200 a year for a family of four.

Businesses with fewer than 50 employees are not subject to the employer mandate. Instead, small businesses are encouraged to provide coverage for their employees with a small business tax credit for employers with 25 employees or fewer. From 2010 to 2014, the tax credit will be worth up to 35 percent of the employer's contribution to employee coverage. In 2014, employers will be eligible for a tax credit worth up to 50 percent of their contribution for two years. In order to qualify for the full tax credit in 2014, employers must pay at least half of the cost of coverage, purchase insurance through a health benefits exchange, have no more than 10 employees, and have an average wage of \$25,000. The amount of the tax credit is gradually reduced as the firm's average wage or workforce grows. However, the tax credit only lasts until 2017 preventing small business owners to plan long term growth.

An even greater impediment to growth and hiring for small businesses is the marginal cost of hiring your 50th employee and triggering the employee mandate. For a company that does not offer coverage, the minimum cost

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to a Texas business for hiring their 50th employee would be \$40,000 if they drop all coverage and pay the fine. For a low wage worker making \$20,000 this is a 200 percent marginal cost increase over the employee's base compensation for that one employee before considering new compliance costs. The marginal cost for small business is a great disincentive to expansion over 50 employees.

Administrative Burden

The law itself is over 900 pages and, since passage, over 6,500 pages of regulations, notices, and corrections have been released. Under ObamaCare, businesses are required to report to their employees' information on the existence of an insurance exchange. Large employers must also certify to the IRS that they offered minimum essential coverage, the months it was available, the lowest cost plan available, and the identification of each employee that is enrolled in the plan. This is to be followed by a written statement to every employee that is being identified on the certification reporting.

In order to be compliant in offering minimum essential coverage, employers must verify that the employee's share of the cost of insurance does not surpass 9.5 percent of their *household* income. This requires that an employer verify the worker's income along with the income of their spouse and any other outside income from investments unrelated to their work. The level of financial knowledge employers must gather from their employees is startling. Not only is this requirement overly burdensome to employers it also verges on an invasive violation of privacy for their employees.

Medicaid Burden

ObamaCare provides for a major expansion of Medicaid in 2014 covering every individual in the country up to 133

percent of FPL (138 percent when factoring in the 5 percent income disregard). Foundation estimates show that this expansion will require \$30.7 billion in general revenue (GR) to the State of Texas in the 2014-15 biennium.³ This is a significant increase over previous biennia, and it will require the state to find the GR.

The state does not yet know how it will pay for this expansion in Medicaid. If the economy picks up, or the state gets a better match rate from the federal government, or unexpected savings are found, the burden could be less. However, the potential for increased taxes to finance these costs is a barrier to business growth.

Conclusion

Much of ObamaCare is out of the state's purview, but Medicaid is not. Medicaid is unsustainable in the long term, and needs reform. While Texas has passed a Health Care Compact and instructed HHSC to submit a waiver request seeking positive reforms, it is unlikely that either of these can be implemented in time to reduce the cost the state faces under the expanded Medicaid program in ObamaCare in the next biennium.

Under ObamaCare, the employer mandate creates such a barrier at the 50 employee threshold that it is unlikely that most businesses will seek expansion beyond that size after 2014. The rising cost of business driven by compliance, employee coverage, and penalties will force many medium size businesses to either merge with one another to gain economies of scale, sell their business to larger competitors, or shut down completely. The future of Texas business under ObamaCare is one where small businesses stay small, large businesses stay large, and growth is muted. ★

¹ "Texas: Average Single Premium per Enrolled Employee For Employer-Based Health Insurance, 2010," State Health Facts, accessed 10 Jan. 2012.

² "Texas: Average Family Premium per Enrolled Employee for Employer-Based Health Insurance, 2010," State Health Facts, accessed 10 Jan. 2012.

³ Dr. Jagadeesh Gokhale, Texas Public Policy Foundation, "Final Notice: Medicaid Crisis" (2010).

