The Daily Dish

The ACA Congressional "Bailout"

DOUGLAS HOLTZ-EAKIN | AUGUST 1, 2017

Eakinomics: The ACA Congressional "Bailout"

As noted in yesterday's Eakinomics, in the aftermath of the failed Senate vote on health care reform, President Trump tweeted "if a new HealthCare Bill is not approved quickly, BAILOUTS for Insurance Companies and BAILOUTS for Members of Congress will end very soon!" Yesterday's Eakinomics focused on the Cost Sharing Reduction (CSR) funds that the president (mistakenly) labeled a bailout for insurance companies. Today we take a look at the saga of Congress and its staff continuing to receive employer contributions for their health insurance even after moving to the Affordable Care Act (ACA) exchanges in 2010.

The basic issue is quite simple. The ACA says: "Notwithstanding any other provision of law, after the effective date of this subtitle, the only health plans that the Federal Government may make available to members of Congress and congressional staff with respect to their service as a member of Congress or congressional staff shall be health plans. (I) created under this act (or an amendment made by this act); or (II) offered through an exchange established under this act (or an amendment made by this act)."

In English, Congress and its staff must use Obamacare.

But this creates a dilemma, as neither Congress nor most of its staff is poor enough to receive ACA subsidies, which in any event aren't even close to enough to match the contribution of the government to their coverage under the Federal Employee Health Benefits Plan (FEHBP). Obamacare wasn't intended to disrupt employer-sponsored insurance (ESI), which is exactly what FEHBP coverage is, but voting to exempt Congress from the ACA would be too self-serving. Congress was stuck.

The Obama Administration solved this for Congress, with the Office of Personnel Management (OPM) ruling in August 2013 that subsidies would be available for Members of Congress and their staff enrolling in health exchange plans. The decision was enormously controversial at the time (OPM had initially concluded it did not have the authority for such a ruling), leading to the possibility that it would be easy to re-open and reverse.

Clearly, any such decision would inflict tremendous hardship on congressional staff, so it is a serious threat. Whether it is an effective strategy to get comprehensive reform legislation, at best, remains to be seen.