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Web Briefing for Journalists: How ACA's Employer Requirements and Related Provisions Affect Businesses and Workers
Kaiser Family Foundation
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INTRODUCER: I'll turn the webinar over to Rakesh Singh, KFF Vice-President for Communications. Please go ahead, sir.

RAKESH SINGH: Hello and welcome to the latest installment in our continuing web briefings for journalists, covering health reform. As the introducer said, I am Rakesh Singh, Kaiser Family Foundation's Vice-President of Communications. As always, today's session is brought to you by the Foundation's Media Fellowships Program. As a reminder, this briefing is recorded and you can view and listen to an archive version of today's program online, along with all previous sessions, at kff.org/newsroom.

Today's session focuses on the Affordable Care Act employer requirements and related provisions affecting businesses and workers. The employer mandate will first take effect in two weeks on January 1st when larger employers will be required to offer coverage to their workers or face penalties. In the December editing of the Kaiser health tracking poll just released today, the findings include that 6 in 10 Americans say they have a favorable view of the employer mandate provision, while 38-percent say they have an unfavorable view. But opinions on the employer mandate aren't necessarily fixed and, as with other elements of the ACA, the

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poll shows a partisan divide in perception of the employer mandate with 34-percent of Republicans reporting a favorable view compared to 78-percent of Democrats and 61-percent of independents. You can read more about the poll on the kff.org website.

We have two expert presenters whose full bios are available at kff.org. Gary Claxton and Larry Levitt are co-executive directors of the Foundation's program for the study of health reform and private insurance. After their brief presentations we will have a Q and A period from the questions you submit via the chat function on the webinar platform. Now let me turn it over to our first presenter, Gary Claxton.

GARY CLAXTON: Good morning and good afternoon, depending on where you are. I'm Gary Claxton, a vice-president here at the Foundation. As Rakesh said, we'll be talking about the employer responsibility provision of the Affordable Care Act. I'm going to begin by providing some background on existing employer practices that will try to give some context to the discussion. I'll be focusing on employers with 100 or more employees, because that's the group that's affected by the new requirements for 2015. Because the information we have comes from surveys; from our employer survey and from a large federal survey, the employer sizes do not match up precisely with the new requirement. Our survey and the federal surveys

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ask about the number of employees in firms, not the number of full-time equivalent employees, which is the trigger for the requirement. So what we have are approximations, but it's the best we can do for now.

I'm looking at the first slide and looking at the bars on the left. We see that almost all, 94-percent of employers with 100 or more employees, offer coverage to at least some of their workers. Of workers in the firms that offer benefits, on average 77-percent are eligible for health benefits, and of those who are eligible, an average of 81-percent accept the offer. Overall, that results in 62-percent of workers in firms with 100 or more employees offering health benefits being covered by their own firm.

If we look at the bars on the right we see that the numbers are not really different if we looked at firms with 50 or more employees. The difference in the offer rates here are not statistically significant.

So while the vast majority of large employers offer health benefits, there are parts of the economy where things are different. Slide 2 compares the same statistics for firms with a high percentage of lower-wage workers and firms with fewer lower-wage workers. For what we're doing here, low-wage firm means that at least 35-percent of the workers earn no more than $23,000, which is the 25-percentile of the wage

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distribution. Again, this is just for employers with 100 or more employees.

What we see is that what we are calling low-wage firms are much less likely to offer health benefits and even when they do, a lower percentage of the workers are eligible for coverage, a lower percentage of those workers actually enroll in coverage, take it up and then it results in a much lower percentage ending up being covered by their own firm; only 39-percent compared to 65-percent.

The next slide shows a similar comparison, but this time looking at statistics for a combination of retail and wholesale employers compared to all other industries. I picked retail and wholesale industries because they had the lowest overall offer rates in our survey. The offer rates are actually not statistically different between the retail wholesale firms and the other industries, the 87-percent and the 95-percent are not statistically different. But, within the firms that offer, the eligibility takeup and coverage percentages are al lower for the retail and wholesale workers than they are in the other industries.

What this does is show that while a lot of these large retail and wholesalers offer coverage to some of their employees, the real difference is that a fewer percent are made eligible and then, of those who are eligible, fewer still take

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it up, and so the overall coverage rate is about 13-percent lower. The differences are not as striking as we saw in the previous slide, but they are still meaningful.

My last slide is based on data from the survey of income and program participation which is a large federal population survey. This slide shows the prevalence of the job-based coverage and offers a job-based coverage for workers at a point in time in 2010. We use 2010 data here because later years do not provide us information that allows us to identify people who are offered coverage and choose whether to accept it or not and then why they did not accept it.

The percentages shown here are for workers who report working a consistent amount of hours per week; those who say they have variable hours in a given week, which is about 10-percent of workers in these firms, are not included here.

What we see in the chart is that the prevalence of work-based coverage rises steadily as you move from 30 hours per week up to 40 hours a week and above. Right around the 30 to 32 hours per week mark, about one half of workers are either covered by their own job or are offered coverage at their job, but don't accept it.

As the hours per week grow, the percentage of people who are offered, but do not accept, starts to fall, while the percentage who are covered by their firm rises pretty steadily.

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We focused a bit on the 30 hours per week because, as Larry will say later, that is where the provision — that's the definition of full-time that's going to be relevant for determining who must be offered coverage under the employer responsibility requirement.

Also, in this slide, you can see that the percentage of workers in firms that do not offer to anyone also falls as you move from below 30 to 40 hours, from 22-percent of workers who usually work 30 to 32 hours per week down to 6-percent of workers who usually work 40 hours or more. And the percent who are not eligible for coverage because they are part-time is about 18-percent for workers who work 30 to 32 hours per week and falls to about 5-percent at 34 to 36 hours and 1 to 2-percent beyond that.

Now I'm going to turn it over to Larry to talk about the ACA and the employer responsibility requirement.

LARRY LEVITT: Thanks, Gary. Well, like with everything else related to the ACA, the employer requirement is not always easy or simple to understand so I'm going to start with a brief explanation of the mechanics of the employer requirement and then turn to how employers might be responding to it and what the effects may be to employer coverage and the federal budget.

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The first thing to know is that there are actually two separate requirements and penalties under the ACA, an A penalty and the B penalty, which refers to the sections in the law. So if you want to sound smart at a wonky cocktail party over the holidays, always refer to the A and B requirements rather than the employer mandate, generally.

Both of these were originally set to go into effect in 2014 this year, along with the other major provisions of the ACA, but were delayed by the Obama administration until January 1st 2015 for employers with 100 or more full-time employees and until 2016 for companies with 50 or more full-time employees. It's important to remember here that threshold is defined in terms of full-time equivalent employees. So, for the purposes of whether an employer is subject to the A and B requirement, hiring more part-time workers does not get an employer out of those requirements.

I'm going to first go through the A penalty which requires employers to offer coverage or pay the penalty. If an employer offers coverage to at least 70-percent of its full-time employees, then it does not owe the A penalty. A few things to note about this requirement; first, the 70-percent threshold is relatively easy to meet. So, generally, employers that are offering coverage now should comfortably meet that threshold, but the following year in 2016 it goes up to 95-

percent. So, for employers to meet the A requirement, they would have to offer coverage to 95-percent of their full-time employees, which is obviously a much higher bar to meet.

Second thing to note is that coverage has to be offered only to full-time workers which, as Gary noted, is defined as at least 30 hours per week. So any worker working less than 30 hours a week on average is not required to have coverage made available.

Third, coverage has to be offered to workers and dependent children, but not to spouses of workers. And, finally, there are very few requirements about what this coverage has to include. It does not have to necessarily include the essential benefits that apply to coverage offered in the individual or small-business market. It does have to cover preventive services and have a maximum out-of-pocket limit, but it does not have to cover any particular benefits or have any particular level of coverage.

So now on to the — oh, and I should back up for a second and say that if an employer does not meet this requirement and anyone of the employer's employees receive a tax credit in an ACA marketplace, then the penalty is calculated as follows. So the penalty is assessed monthly and it's calculated as the number of full-time employees that the employer has minus 80, times 2,084 divided by 12. And that

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2,084, which would've been $2,000 even in 2014 if the requirement had gone into effect, increases with premium growth over time and the formula changes slightly in 2016 when the requirement starts to apply to employers with as few as 50 employees and you take the number of full-time employees and subtract 30 rather than subtracting 80.

So, sorry for that math detour, but now onto the B penalty; even if an employer offers coverage, it may be subject to this B penalty. To avoid the penalty, the employer must offer coverage that satisfies two requirements. Generally speaking, these are what the worker pays for single coverage can be no more than 9.56-percent of the worker's wages and the coverage has to meet a generosity requirement, meaning that it has an actuarial value of at least 6-percent. What this means it that the coverage has to cover, on an average, 60-percent of an enrollee's health expenses, and that's roughly equivalent to a bronze plan in the ACA's marketplaces. That's also much less generous than what most employers offer today. So a relatively catastrophic level of coverage.

If what an employer offers to an employee does not meet either of those requirements, the employee can apply for a marketplace tax credit depending on her income. If she does, the employer owes the B penalty.

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Now, here's the way the math works. If you take the number of workers who are actually receiving tax credits, so have actually gone to an APA marketplace and gotten a tax credit, and you multiply that for each month $3,126 divided by 12, and again that $3,126 is indexed to growth and premiums over time.

In no case can the employer ever have to pay more than what the A penalty would have been. So if a lot of an employer's workers receive tax credits and the employer has to pay the B penalty up for each of those workers, it can never exceed what the calculation of the A penalty would've been for that employer.

Now, how might employers respond to all of this? My guess is that the vast majority of employers will offer coverage that meets the minimum requirements and avoids both penalties. You generally need to offer health benefits to attract a quality workforce, and the tax preference for employer-provided health insurance which remains intact provides a strong incentive to offer coverage. But there are some cases, particularly in low-wage industries where employers may offer skinny coverage to some workers to avoid the A penalty, but take the risk that not many of those employees will go into the marketplace and trigger the B penalty.

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For example, this might be a plan with just preventive benefits that the employer offers to certain workers with no contribution required. The workers can enroll in that plan and satisfy the individual mandate with no premium contribution. Now they could get better coverage in the marketplace with a subsidy if they're lower-wage employees, but it would still cost them more than nothing, so it may be attractive to them. So if these workers being offered these offerings of skinny benefits take them and don't go into the marketplace to get a tax credit, then the employer owes no penalty under the B provision, even if that employer is offering only very skimpy coverage to those workers.

Some employers, and there's certainly been a lot of attention to this, might also shift their workforce so that more employees are working under 30 hours per week and therefore not subject to the coverage requirement. There are anecdotes that this is occurring, but there's very little evidence that is happening in big enough numbers to meaningfully shift employment to part-time workers overall.

Now, particularly over time, some employers may decide that it's easier and cheaper to not offer coverage at all and allow their workers to get coverage in the ACA marketplaces. This is most likely to be the case for small businesses not subject to the penalties in any case. It's almost most likely

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for very low-wage employers where the tax preference for employer coverage is more modest and the potential for those workers to get subsidies in the marketplace is greater based on their income.

Finally, some employers may drop coverage for spouses, since there's no requirement that the employer offer coverage to a worker's spouse. If spouses aren't offered employer coverage at all, they're eligible for ACA marketplace tax credits, so this scenario which may not sound attractive to workers and their families may end up making them better off in the end.

There's no systematic information yet on how employers are responding to this requirement, which is happening right now as employers hold open enrollment periods which are likely wrapping up for most employers. We do, however, have some models and simulations and projections of what may occur and the most relevant of these for policy discussions are the estimates from the Congressional Budget Office.

CBO estimates that by 2016 7 million fewer people will have employer coverage than would have been the case without the ACA. Now, this is a net effect taking several factors into account, including somewhat fewer employers overall offering coverage; CBO actually estimates that some employers that didn't offer coverage before will take it up, but other

employers and a large number of employers who did offer coverage before, will drop it over time. And, again, those are more likely to be small low-wage businesses.

More workers may be taking up coverage because of the individual mandate. As Gary discussed, not all workers who are offered coverage take up that coverage, but the individual mandate with the penalties ramping up quickly over the next couple years may induce more workers to take coverage.

Finally, some people may switch coverage out of employment-based plans, particularly into Medicaid where states have expanded eligibility and into the ACA marketplaces where those workers have the ability to do that because the coverage they're being offered does not meet the minimum requirements.

Now, the employer requirement has been one of the more politically controversial elements of the ACA, in spite of the fact that most of the public does support it, as Rakesh discussed, and there have been calls to repeal or alter it, and those are likely to continue as the Republicans take over a majority in the Senate. One of the challenges in any of these proposals is finding budget savings to offset the loss of revenue or increased cost that would result. Now, for example, CBO projects that employer penalties under both the A and B penalty will raise $139 billion in federal revenues over the next 10 years. If you repeal the requirement, you would lose

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those revenues and also face higher federal costs for subsidies and Medicaid.

One prominent proposal to alter the employer requirement is to change the threshold for full-time work from 30 to 40 hours per week. For that change, CBO projects that the cost to the federal budget would be $57 billion over 10 years; so again, savings or new revenues would have to be found to offset that. So I expect we will debate changes to the ACA's employer requirement as it begins to take effect, but actually enacting those changes may not actually be as easy as it first appears.

So, with that, I think we'll move on to any questions.

RAKESH SINGH: Alright. We are now ready to field your chat questions, so please submit them via the web platform. And, as a reminder, this will be our last session for the year, but we have upcoming plans for a session on what's going on with Medicaid expansion in states and as other issues arise related to the Affordable Care Act we'll plan future sessions.

So, as we await questions — alright. Emily Bazar [misspelled?] has a question for Larry. I have a question for Larry about the affordability test for employee coverage. And that's what she has written so far.

LARRY LEVITT: If I could say, while Emily may be writing more, the affordability test, and this is often frame

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as the employee contribution being no more than 9.5-percent of wages; first thing to know is that that 9.5-percent is indexed over time, so for 2015 the 9.5-percent becomes 9.56-percent and that percentage will grow over time. That percentage is applied to a worker's wages and compared to what a worker would have to pay for single coverage; so coverage only for that worker.

So this introduces what has sometimes been called the family glitch, where it might be that the worker's family would end up having to pay much more than 9.5-percent of the family's wages or income, but as long as the single coverage meets that affordability test, then any family members that are also offered coverage are excluded from getting tax credits in the marketplaces.

RAKESH SINGH: Okay. While Emily's working on a more detailed question, in the meantime Rick Newman [misspelled?] asks a more general question. Employers have had a long time to prepare for this. They're ready, right? And he follows up with, any likely disruptions or probably smooth implementation, question mark?

LARRY LEVITT: I'll start and then, Gary, feel free to jump in. I mean, one of the reported motivations behind delaying the employer requirements from 2014 to 2015 was complications associated with the reporting. To implement both

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the A and B penalties, there are certain IRS reporting requirements for employers. Those have since been worked out and there are draft forms available for employers to review, and this reporting will take place following 2015, so in 2016. And I think, you know, this certainly introduces some new administrative hassle for employers, but I think where the requirements have ended up it's not likely to be too burdensome, and I wouldn't expect too much in the way of complications or glitches.

I think the tax provisions affecting individuals, namely the individual mandate and the reconciliation of tax credits for people receiving subsidies are likely to be quite a bit more complicated.

GARY CLAXTON: Yeah, and this is Gary. I would just add that I mean, what employers are required to do here largely fits into what they already do. The kinds of changes they may make would be to extend what they do maybe to additional employee who are full-time, and keeping track of hours and the 30-hour threshold is something of an administrative issue that they'll have to get used to. But these are relatively large employers and probably will do that pretty easily.

LARRY LEVITT: And many employers are already — you know, particularly the mid-sized employers, outsource a lot of

this to payroll firms. So it's the payroll firms that are actually doing the tracking, not the employers themselves.

RAKESH SINGH: So we have a couple of questions about the family glitch. Emily follows up, but I thought the family glitch was for household income, not for individual worker's wages? And then another question from Paul Mullin [misspelled?], so what is the solution to the family glitch?

LARRY LEVITT: So I'll start again and then Gary should feel free to jump in. This is one of the things that is difficult to understand. So there are somewhat different requirements on employers and then the eligibility rules for the workers and their families in terms of getting subsidies in the ACA's marketplaces. For the family to get a subsidy, Emily's right that it is applied; that 9.56-percent is applied to the family's income. So family members would not be eligible for ACA marketplace tax credits if the cost of single coverage offered to the worker is less than 9.56-percent of income.

To ease the implementation of this for employers, because employers do not always know what a worker's income would be; they don't know what the spouse may be earning, employers have a safe harbor in that they can apply this test to just the worker's wages. So an employer is exempt from having to pay a penalty if they offer coverage where the

worker's contribution for single coverage is less than 9.56-percent of wages, but whether the family members can actually get coverage still relates to their income. Emily, please yell electronically if that didn't make sense.

RAKESH SINGH: And then a couple of questions about okay, what's the solution, or is the Obama administration going to address this?

LARRY LEVITT: I mean, the natural solution to this would be to have separate tests for single coverage and for family coverage so that family members could get ACA tax credits if what the family would have to pay for health insurance exceeded 9.56-percent of their income. That would certainly increase the cost of the subsidies and the administration's view is that it would require a legislative change.

GARY CLAXTON: There are a couple things here that ease the burden a little on families. One is, is that they define family coverage not to include spouses so that the employer offer only has to be to the worker and dependent children. If the employer decides not to offer to the spouse, then the spouse will not have an offer of coverage and can apply for a tax credit if the employer coverage seems unaffordable to the family. And then, in addition, some of the children in lower-wage families are going to be eligible for the child health

insurance program and their eligibility does not depend on whether or not they're offered employer-based coverage.

LARRY LEVITT: And, just to add, you know, it's not uncommon these days for, particularly smaller and mid-sized employers, to contribute a certain amount towards a single worker's health insurance and then require, if the worker wants to put their spouse or children on, to pay the full extra cost for family coverage. So technically there is an offer of coverage to the spouse and the children, but the family is paying the full extra cost of that family coverage.

That's the situation where with the family glitch the spouses would actually be better off not having an offer at all and being able to go to the marketplace. So while it seems like taking something away from worker's families, it might actually make those families better off.

RAKESH SINGH: We have a couple of questions related to the estimates of fewer people enrolling in employer coverage by 2016. Kelsey Dallas [misspelled?] asks can you repeat the explanation of why 7 million fewer people would enroll in employer coverage by 2016; that seems counterintuitive to me.

LARRY LEVITT: Sure. So what CBO — and, again, this is CBO's estimate, it's not necessarily truth; they have a more sophisticated crystal ball than most people, but it's still a crystal ball. So they estimate that 7 million fewer people

will have employer coverage in 2016 than would have been the case if the ACA had never happened. So sort of, in a parallel universe, compared to a parallel universe without the ACA, and it's the net effect of several factors. One is that somewhat fewer employers are expected to offer coverage overall and instead have their workers and their families gain coverage through the marketplaces or through Medicaid. So that would tend to decrease the number of people with employer coverage.

One factor that would tend to increase the number of people with employer coverage is that more workers are expected to take up coverage that's offered to them, in particular because of the individual mandate, and then something else that's expected to decrease coverage is that some people who don't have access to affordable coverage or coverage that meets the minimum value requirements may end up getting tax credits in the ACA marketplaces or lower-wage workers may end up getting coverage in Medicaid where the states have expanded.

So what CBO projects is that the net effect of those three factors is that 7 million fewer people will have employer coverage.

RAKESH SINGH: Mark Trombel [misspelled?] is asking if you could comment on evidence there is so far of employers dropping or adding coverage as ACA kicks in; how many low-wage firms dropping coverage?

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GARY CLAXTON: This is Gary. I don't think we have a lot of evidence on that yet. We'll start to get it over the next few months and next year. I think some of the stories we have seen are relating to part-time workers where some firms who were offering to part-time workers before have decided that they're no longer going to do that, which may make some sense because now those part-time workers who probably don't have high earnings will be eligible for tax credits in the marketplace and they may actually find coverage cheaper that way than they were at the employer, because most part-timers who get coverage at work only get a pro-rated employer contribution. So what they have to pay could be relatively high. So I think we've heard stories like that, Walmart and Trader Joe's come to mind, but otherwise it's a little bit early. I think we'll probably hear some more stories after the open enrollment for 2014 are over and people start to look at what happened.

LARRY LEVITT: I would add; I mean, I think, you know, first of all, the emergence of things like these skinny plans, which makes it easier for employers to meet the requirement and the fact that they only have to offer coverage to 70-percent of their workers to meet, at least, the A requirement in the first year, means that it's, you know, relatively easy for the vast majority of larger employers to avoid the penalties.

I think also the technical problems with the first year of the health insurance marketplaces likely gave some employers pause, even if they were thinking about dropping coverage, and maybe weren't quite willing to subject their employees to the marketplaces, at least as they seemed to be working last year. You know, as the marketplaces improve, that may create more opportunities for employers to drop coverage.

RAKESH SINGH: A related question about employer coverage estimates from Margot Singer-Katz [misspelled?]; what will be the best way to know what's happening with the number of people enrolled in employer coverage? Is the National Health Interview Survey Census the only source?

GARY CLAXTON: This is Gary. That will be one of the soonest and best sources. The large federal population surveys really are the best way to know to sort of track how many people have employer-based coverage, and CPS an SIFT have also been amended to ask whether or not people are offered coverage each year, so we'll have a better track of that.

Our own employer survey, we will know what employers are offering and they'll tell us about the percent that are eligible, but with that kind of survey it's hard to pick up sort of small changes. It's not until there are sort of big changes that we start to see that part of it come through. The offer rate is pretty clean, but the eligibility rate is really

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their estimate and it takes — there has to be some movement before they start to change what they say there.

LARRY LEVITT: I would just add in sort of the subtext in what Gary said, but there are some private surveys out there, in particular Gallup, from the Urban Institute, from the Commonwealth Fund, that have provided very consistent estimates on the reduction and the number of Americans uninsured from 9 to 11 million after the implementation of the ACA. Unfortunately, those surveys are not very good at — I think they're quite good at tracking the number of people uninsured. They're not very good at tracking what kind of insurance people have, if they have it. You know, people are very often confused about where their coverage comes from or what it is. So, unfortunately, those surveys, while good at estimating the reduction in the uninsured, will not be very good at being able to tell whether there's any change in employer coverage.

RAKESH SINGH: So we have a couple of questions about the impact of a ruling on King versus Burwell. Marin Grup [misspelled?] writes if the Supreme Court rules next year that subsidies can only be offered in states with state-run exchanges, how does this affect the employer penalties since they're triggered by someone getting a subsidy? Go ahead and answer that and then we'll ask a —

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LARRY LEVITT: Sure. So I think as the question suggests, the King case would have a very significant effect on the employer requirements because both the A and B penalty are only triggered if a worker actually gets a tax credit, if one or more workers actually get a tax credit in an APA marketplace. If the plaintiffs in King prevail, in those states where subsidies can't flow, then the employer requirements, essentially, become moot. So this could play into the politics of whether a state might choose to create a state-based marketplace if the plaintiffs prevail in King, because a state choosing to create that marketplace would, in effect, be triggering the employer requirement as well.

RAKESH SINGH: And then the next question is what happens if a company has workers who both live in states that run their own exchange and employees in states that don't?

LARRY LEVITT: I'm thinking. Gary, do you have an immediate reaction?

GARY CLAXTON: I need you to say that again.

RAKESH SINGH: So what happens if a company has workers in states that do run their own exchange and also in states that don't run their own exchange, if the ruling comes down that the subsidies are invalid?

GARY CLAXTON: I mean, there's going to be a lot of chaos in the marketplace anyways, depending on how the ruling

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goes. I assume the Treasury would have to speak to that and try to make some sense of it.

LARRY LEVITT: My initial gut is that the employer requirement operates at the employer level, which can certainly cross state lines. The provision about whether a worker receives a tax credit or not might be dependent on states, but at the employer level, for those multi-state employers, it seems like even if the subsidies were not flowing as a result of the King suit, and the state was not running their own marketplace, if the employer crossed the state lines the employer penalties could still be triggered.

RAKESH SINGH: Are there other impacts of King versus Burwell on the employer mandate that you haven't already discussed?

LARRY LEVITT: No, I think those are the — and we could certainly get into broader implications of King. I mean, the really big implications of King would be in the individual market. You know, the immediate effect would be to stop the flow of subsidies to low and middle-income people, but there are series of effects that would cascade from there. The vast majority of those previously uninsured people receiving subsidies would end up being exempt from the individual mandate because coverage would no longer be affordable.

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It's highly likely that healthy people would drop out of the market as coverage became unaffordable, but sicker people would find a way to maintain coverage. So the risk pool in the individual market in those states would very likely deteriorate quickly. Insurers, as a result, would potentially drop out of the market or certainly ask for very large premium increases, and that would in turn cause healthier people to drop out, creating something of a death spiral. So I think it's highly likely that the individual market in those states not running their own marketplaces would essentially melt down.

RAKESH SINGH: So Richard Kirpner [misspelled?] has a question about the full-time employee thresholds. Have any other thresholds been floated for the changing definition; say 35 or 37.5 hours, or is the target 40? And what would be the challenge for changing that status for companies and employees after January 1st?

LARRY LEVITT: This is Larry. I'm not aware of any other formal proposals. There has been a congressional bill to change the threshold to 40 hours and, as I indicated, CBO has estimated that that would cost the federal budget $57 billion over 10 years. I think in some ways that might even be an underestimate. If you think, mechanically, how this would work, the vast majority of even full-time workers work right around 40 or even, in some cases if they're not paid for lunch

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hours, potentially just under 40 hours a week, so it would be very easy for an employer to adjust work hours ever so slightly to essentially exempt virtually their entire workforce from the requirement if the threshold were 40 hours a week.

I mean, there are many more workers around that 40-hour threshold than there are around the 30-hour threshold, but it would be relatively simple for employers to avoid the requirement with a 40-hour threshold.

GARY CLAXTON: And administratively I assume they would count hours pretty much the way they do now, so in some ways it probably would be easier for employers to count people above and below a fairly high amount, as opposed to a lot of the people who are, you know, working at variable or 30 to 35 hours. So it probably would be easier for employers to do it, but as Larry said, it would cost money.

RAKESH SINGH: Paul Mullin, returning to the chart of lower income industry takeup rates, to what extent is the lower takeup rate related to women using spousal coverage and to what extent are they just going uninsured? Do we know that?

GARY CLAXTON: No, we don't know that. We could do some work to try to learn more about it from some of the federal surveys, but from the employer survey we don't know about that. And it's a little bit hard to do because in an employer survey you don't know much about the family members of

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the workers and from the population-based surveys you can sort of know the employer's size, assuming the employee knows about that, but you really don't know much about the other workers in the firm so you don't — you kind of have to guess what kind of firm it is. You may know its industry, but you don't know the relative wages or anything else. So one of the hardest parts about making estimates in this whole field has been trying to figure out what kind of people work in what kinds of firms and who their coworkers are, which is what we would have to know to answer your question.

RAKESH SINGH: Okay. Wayne Howman [misspelled?] has another question about the CBO projection. With fewer companies expected to offer coverage, does that mean that the penalty is viewed as a much more palatable option, and is that penalty expected to increase in future years, much like the individual mandate penalty, to support more companies to offer coverage?

LARRY LEVITT: Well, there certainly are some companies subject to the penalties that may drop coverage, making a calculation that it's more advantageous for them and for their workforce to give up the tax preference for employer coverage pay the penalty and essentially compensate their workers for what was previously provided in the form of compensation in the form of health benefits and allow those workers to get tax

credits on the marketplaces. But I think, in general, the likelihood of employers dropping coverage is much higher among smaller businesses that aren't subject to the penalties at all. So there the calculation is much simpler where the employer is trading off the need to attract quality workers and offer them a tax preference in the form of health benefits versus the ability of those workers to get tax credits in the ACA marketplaces. So I think most of the dropping is likely to incur among employers too small to face the penalty.

GARY CLAXTON: Yeah, sometimes I think people make it a little — too easily think about that an employer can just drop coverage and pay $2,000 or $3,000, and there are a couple of additional things that go with that. One is the $2,000 or $3,000 are not tax-deductible as a business expense to the firm, which is unlike paying wages or paying health insurance for your employees.

Second, if you pay the $2,000 or $3,000, your worker gets nothing for it. If you get them $2,000 or $3,000 worth of health insurance, you meet the requirement and they get something for it and, generally, you would like to use $3,000 to compensate your employees as opposed to give it to the government and not get a tax deduction for it. So I think a lot of people sort of talked that way when the last first

passed, but on further analysis they probably would try to find a way to make it work.

LARRY LEVITT: And just to answer the second part of the question, the employer requirement ramps up quite significantly in 2016 when it begins to apply to employers with 50 to 100 FTEs and the 70-percent threshold for being counted as an offering employer goes up to 95-percent. But, other than that, the penalties themselves just inflate over time modestly as premiums go up. It's very different from the individual mandate penalty which was quite modest in 2014, ramps up significantly in 2015 and then again in 2016.

RAKESH SINGH: One quick question related to Margot's question about best sources for tracking enrollment in employer coverage. Paul Mullin asks what about the National Association of Insurance Commissioner's quarterly reports by plan?

LARRY LEVITT: We have used those quarterly NAIC reports to look at changes in the individual market. They're a little trickier to use to look at changes in the employer market because they only count insured coverage. So they only count coverage where the employer is buying insurance from an insurance company. They don't count self-funded coverage, so it's very hard to tell whether any changes in the NAIC's tabulation are due to changes in the overall availability of coverage or simply employers shifting from insurance plans to

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self-funded arrangements. And there's certainly some reason to believe that employers may be doing that as a result of the ACA.

There is a premium tax that the ACA puts into place. For small businesses they have to offer the minimum essential benefits. If they buy insurance, if they self insure, they don't have to provide those essential benefits. And for small employers, self funding also takes them out of the insurance market rules. So if you're an employer with a very young and healthy workforce, you may save quite a bit of money by self insuring rather than buying insurance.

GARY CLAXTON: Also, the NAIC data won't tell you very much about whether it's more employers doing something or more employees and the same employers taking up coverage. It's not a very good way of looking at what's happening at the firm level. Just it's some overall numbers and, as Larry said, those numbers are pretty flawed because of the self-funding issue.

RAKESH SINGH: Question from Rick Newman [misspelled?]; since Larry brought up the individual mandate, when will we begin to see action on that; starting around April 15th, tax filing deadline?

LARRY LEVITT: Well, I think I guess I would differentiate between action and date. I think we're seeing

action on it right now. You know, we've just gone through open-enrollment periods for employers and I think it's likely that the individual mandate has had an effect on employee takeout. We already have one public report of that from Walmart which said it saw a significant increase in the number of workers taking up coverage. I think it's also likely having an effect on people who are uninsured making decisions about whether to sign up in the ACA marketplaces.

When we'll have data on that, I think, is a different question. You know, the individual mandate will first bite when people file their taxes between now and April 15th. You know, what kind of data that IRS will release, I have no idea.

RAKESH SINGH: Emily Baker is back with one follow-up question. What about the spouse thing? Does that mean spouses aren't subject to the family glitch of the employer, if the employer doesn't offer coverage to spouses at all? So the kids still end up screwed, it sounds like, to be frank.

LARRY LEVITT: Right. So the eligibility for tax credits in a marketplace under the ACA are based on income, obviously, but also based on whether you have an offer of employer coverage available. So if you have an offer available, in the case of these spouses no matter how much you have to pay for it, assuming the single coverage is affordable, then you are ineligible for a tax credit. So if the spouse is

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simply not offered coverage; so if the employer offers coverage to the worker and the dependent children, but does not make it available to the spouse at any cost, then the family glitch does not apply and the spouse is eligible for a tax credit in the marketplace.

RAKESH SINGH: Rick Newman —

GARY CLAXTON: And, Rakesh, just to —

RAKESH SINGH: Oh, yeah, go ahead.

GARY CLAXTON: Just as I said, to the children, while they're not eligible for tax credits and so they're caught in the family glitch, for those with incomes that are modest they still may be eligible for the Child Health Insurance Program and they're not disqualified by their offer of health insurance through the employer from that. So some of those children will be able to still enroll in CHIP if the employer coverage is something that the family can't afford, even though it meets the formal test of affordability.

RAKESH SINGH: And Rick Newman wanted to clarify his question; by action, he meant enforcement, actually enforcing the penalty against the individuals who don't comply.

LARRY LEVITT: Yeah. I mean, that's a tough question. The IRS has much more modest enforcement authority with respect to the individual mandate penalty than with respect to other types of taxes. So, you know, for the most part, many people

will end up paying the individual mandate, but the ability of the IRS to actually make people pay it is pretty modest.

RAKESH SINGH: And we have a question that can serve as a good wrap-up question, unless there are other questions, and that is if you can sit down with an HR manager owner of an affected business, what three things would you say as an elevator summary that they should worry about? And, as you think about that, let me just remind folks that this session is being recorded and should be up on the website by tomorrow, if not earlier, and we will be doing future sessions; one updating the status of state's Medicaid expansion positions. The speakers are available for comment post webinar. Just get in touch with us in the communications department and we can connect you with them. Additionally, resources can be found at kff.org and you can keep up with KFF online via our e-mail subscription or social media. Larry, Gary, do you have any closing thoughts on that question or just in general?

LARRY LEVITT: I mean, I would tell an HR manager, and I think employers in general, who will look at employer-provided health insurance much as they always have, which is as a tool for attracting a quality workforce and providing tax-sheltered compensation through health benefits. So I think, you know, employers certainly have to pay attention to the ACA requirements and an HR manager in an industry that tends to

have a very low-wage workforce may find themselves very affected by it, but in general, employers are going to continue to do much of what they've always done in terms of providing health benefits.

RAKESH SINGH: Gary?

GARY CLAXTON: Yeah, I don't have anything to add to that.

RAKESH SINGH: Great. Well, thank you very much for participating in this web briefing and, once again, please get in touch with us if you have follow-up questions. You can follow Larry, he has a Twitter account, and often posts insights, and we can obviously put you in touch with both Larry and Gary with your follow-up questions as well. Happy New Year, Happy Holidays and we'll be seeing you in 2015.

[END RECORDING]

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