Access to Employer-Sponsored Insurance and Subsidy Eligibility in Health Benefits Exchanges: Two Data-Based Approaches

Matthew Buettgens
Stan Dorn
Habib Moody

Health Policy Center
Urban Institute
2100 M St. NW
Washington, DC 20037

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Urban Institute

Executive Summary

To qualify for subsidies in health insurance exchanges (HIX) established by the Patient Protection and Affordable Care Act (ACA), consumers must meet several requirements. One requirement is that consumers may not be offered employer-sponsored insurance (ESI) that the ACA classifies as affordable. Such coverage is defined as costing no more than 9.5 percent of household income for a single adult. Determining whether consumers have access to such affordable coverage is a potentially difficult task for an HIX.

Under the ACA, eligibility must be determined, whenever possible, based on data matches with reliable sources of information. Only if data matches prove insufficient may consumers be asked for documentation. This approach seeks to reduce paperwork burdens on applicants, lower HIX administrative costs, prevent eligibility errors, and increase program participation by eligible consumers.

However, there are no simple data matches when it comes to determining access to affordable ESI. The Center for Consumer Information and Insurance Oversight (CCIIO) has rightly concluded that, in terms of ESI, "data sources that contain all the information Exchanges will be seeking to verify do not currently exist." CCIIO therefore proposes that, if applicants attest, under penalty of perjury, that they are not offered affordable ESI, and available data neither confirm nor disprove the attestation, the applicants can qualify for subsidies, but some will be audited after enrollment to verify the absence of affordable ESI offers. This approach will be used on an interim basis until new data sources become available that allow rapid, automated, advance verification that applicants are not offered affordable ESI.[1]

In this paper, we use the Urban Institute's Health Insurance Policy Simulation Model (HIPSM) to develop two strategies through which HIXes can implement this CCIIO policy by focusing audits on the consumers who are most likely to be ineligible:

- If an HIX builds on existing information sources to develop a comprehensive database that identifies all of the state's employers that sponsor ESI for any of their workers, the HIX could eliminate any need to conduct audits for the vast majority of subsidy-eligible workers. Instead, the HIX would focus audits on the small proportion of enrollees who are potentially ineligible.
- Alternatively, an HIX could structure eligibility determination based on the applicant's attestation about receipt of ESI at the time of subsidy application. Among people who do not *receive* ESI, information that suggests their relative likelihood of being *offered* ESI would target audits.

In effect, these strategies focus on two different facts as the touchstones to eligibility determination: namely, whether an employer sponsors coverage; and whether an applicant receives ESI.

Touchstone 1: Employer sponsorship of coverage for any workers

This first strategy could be employed by an HIX that uses either Medicaid's third-party-liability (TPL) system or Medicare's coordination-of-benefits (COB) system to develop a comprehensive and current list of all employers within the state that sponsor ESI for any of their workers. ***We find that between 71 and 76 percent of all subsidy-eligible adults will qualify because neither they nor their spouses work for a firm that sponsors ESI***. Accordingly, if the HIX can identify which applicants work for firms that

[1] Center for Consumer Information and Insurance Oversight, *Verification of Access to Employer-Sponsored Coverage Bulletin*, April 26, 2012.

do not sponsor ESI, the HIX can avoid audits for more than 7 in 10 subsidy-eligible adults. Audits would then focus only on the minority of subsidy recipients who work for sponsoring firms.

Touchstone 2: Receipt of ESI

A different approach could be used by any HIX, whether or not it develops a comprehensive list of firms that sponsor coverage. Under this second approach, the applicant would be asked whether, at the time of the application, he or she receives ESI.

Applicants *not receiving ESI* could be targeted for audits based on their relatively likelihood of *being offered ESI*. Our HIPSM results show how this likelihood varies according to such factors as approximate firm size, wages, modified adjusted gross income, marital status, and the presence of dependent children in the home.

For consumers who do not receive ESI, CCIIO's policy of basing eligibility on attestations when relevant data are unavailable makes sense. Even among income-eligible consumers who work for firms that sponsor ESI, fewer than 27 percent are ineligible for subsidies because of affordable ESI offers.

When applicants report that they receive ESI, by contrast, CCIIO's policy could be modified. Asking such consumers to provide information about their ESI before they receive subsidies would shield them from unique risks. If people shift out of ESI into HIX coverage based on findings of subsidy eligibility that later turn out to be false, they would need to repay some or all of the Advance Payment of Tax Credits they received. Assessed as federal income tax liability, such debts could amount to a considerable sum. Further, if these consumers' ineligibility for subsidies is discovered mid-year, they could not return to their employer plan until the company's next open enrollment period. Without subsidies from either employers or the federal government, many might find insurance unaffordable and be forced to drop coverage.

Preventing such results by asking consumers for advance documentation of unaffordable ESI offers should not impose a significant aggregate burden on employers, because few ESI recipients are likely to apply for subsidies. Consumers likewise should not be heavily burdened; federal law has long required firms to furnish coverage information to insured workers who ask for it.

If CCIIO lets HIXes request advance verification from consumers who state that they are enrolled in ESI, this second approach would thus proceed as follows:

- The HIX asks whether the applicant receives ESI.
- If the applicant receives ESI, he or she must document the absence of an affordable ESI offer before qualifying for subsidies.
- If the applicant does not receive ESI, the applicant can qualify without providing such documentation. However, the HIX may need to ask additional questions (e.g., about the approximate number of workers at the applicant's company) to help target audits.
- Applicants who do not receive ESI are targeted for post-enrollment audits based on characteristics that indicate each consumer's relative likelihood of being offered ESI.

In future years, HIXes may gain real-time access to data sources that show whether particular individuals are offered ESI that meets the ACA's standards for affordability and minimum value. In the meantime, the approaches described here offer reasonable strategies for responsible states and HIXes to limit subsidies to consumers who meet eligibility requirements that involve access to ESI.

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Introduction

The Patient Protection and Affordable Care Act (ACA) establishes a new system of subsidies for citizens and lawfully present immigrants with incomes between 138 and 400 percent of the federal poverty level (FPL).[2] To qualify, such consumers must be ineligible for Medicaid and the Children's Health Insurance Program (CHIP), under 65 years of age, and not be offered employer-sponsored insurance (ESI) that meets certain threshold tests of affordability and minimum value. These subsidies, which include tax credits that help pay premiums and, for the lowest-income consumers, cost-sharing subsidies that reduce out-of-pocket payments, may be used only in a health insurance exchange (HIX).[3] They are first available in 2014.

An ESI offer precludes subsidy eligibility under the ACA if the coverage is—

- Affordable, which means that worker-only insurance is available at a cost that does not exceed 9.5 percent of household income; and
- At least of minimum value, which means that actuaries could certify that, for an average population, the employer plan can be expected to pay at least 60 percent of all health care costs within service categories that the employer chooses to cover.[4]

To streamline enrollment and retention, the ACA requires that, whenever possible, eligibility must be verified through data-matches, rather than by asking consumers for documentation. This approach seeks to streamline and thus increase enrollment by eligible consumers while reducing administrative costs and preventing eligibility errors. Accordingly, federal and state policymakers have been wrestling with the question of how to use data matches to verify that otherwise eligible consumers are not offered disqualifying ESI.

According to a bulletin from the Centers for Medicare and Medicaid Services (CMS), the Center for Consumer Information and Insurance Oversight (CCIIO) is considering the following, four-part approach through which HIXes will determine whether subsidy applicants are offered ESI that precludes eligibility:[5]

[2] This analysis assumes that states implement the ACA's Medicaid expansion to adults with incomes up to 138 percent FPL. In a state that does not expand Medicaid, HIX subsidies are also available to adults with incomes between 100 and 138 percent FPL. In either case, lawfully resident immigrants with incomes below the generally applicable threshold can nevertheless qualify for HIX subsidies if their immigration status disqualifies them from Medicaid.

[3] In a state that implements the Basic Health Program (BHP) option, subsidy-eligible consumers with incomes between 138 and 200 percent of FPL would be served through state-contracting health plans, rather than the HIX.

[4] Internal Revenue Code §36B(c)(2)(C)(ii), added by ACA §1401(a).

[5] Center for Consumer Information and Insurance Oversight (CCIIO), *Verification of Access to Employer-Sponsored Coverage Bulletin*, April 26, 2012.

1. Applicants for subsidies must attest, under penalty to perjury, whether they have access to "affordable employer-sponsored coverage that meets minimum value standards."
2. That attestation must be verified, whenever possible, before subsidy eligibility is established. However, CCIIO has concluded that "data sources that contain all the information Exchanges will be seeking to verify do not currently exist." Accordingly, only limited verification is possible before enrollment. Such verification measures include—
   A. *Information voluntarily provided by employers*. This may include "submissions of employer-provided information by applicants" or "opportunities for employers to voluntarily submit information directly to one or more private or public databases that an Exchange might access for the purposes of verification."
   B. *Data matches* should be used, whenever possible, to verify the absence of an affordable ESI offer. For example, "an Exchange might verify an individual's employer through data sources such as the State Directory of New Hires or the State quarterly wage database."
3. If a consumer attests to the lack of an affordable ESI offer and the HIX has access to information that is inconsistent with that attestation, the consumer can explain the inconsistency or otherwise establish eligibility. The same basic procedures will apply as with inconsistencies that involve other eligibility factors.
4. If the consumer's attestation about ESI is neither inconsistent with nor verified by independent information obtained by the HIX, the HIX grants subsidy eligibility. Later, the HIX must "screen a representative sample of enrollees whose eligibility was based on an attestation." The "post-enrollment screening would involve an Exchange comparing data from a selection of applicants with information gathered directly from employers." CCIIO's proposed "interim strategy" thus seeks to reduce employer burdens by limiting data requests to a post-enrollment sample, rather than seeking information for millions of applicants before they qualify.

In this paper, we use the Urban Institute's Health Insurance Policy Simulation Model (HIPSM) to help HIXes develop strategies for determining ESI-related eligibility for subsidies, in line with the CCIIO guidance. We explore two distinct strategies:

- First, if an HIX builds on existing information sources to develop a comprehensive database that identifies all of the state's employers that sponsor ESI for any of their workers, the HIX could eliminate any need to conduct audits for the vast majority of subsidy-eligible workers, focusing audits on the small proportion of enrollees who are potentially ineligible.
- Second, whether or not an HIX develops a comprehensive database of all sponsoring employers, the HIX could structure eligibility determination procedures and target audits based on the applicant's attestation about receipt of ESI at the time of subsidy application.

In effect, these strategies focus on two different facts as the touchstones to eligibility determination: namely, whether employers sponsor coverage for any workers; and whether applicants receive ESI. The two strategies are discussed in turn below, followed by an appendix describing HIPSM and our methodology. We show results for both the U.S. as a whole and for the country's most populous state, California.

Coming years may see the development of data sources that will allow real-time, pre-enrollment verification of applicants' attestations that they are not offered affordable, minimum-value ESI. The goal of this paper is to provide a roadmap for navigating the interim period.

First strategy: Use employer sponsorship of ESI as a touchstone for eligibility determination

We find that more than 70 percent of all subsidy-eligible adults neither work for nor have spouses who work for sponsoring employers. As a result, if an HIX can use Medicaid third-party-liability (TPL) databases or Medicare coordination of benefits (COB) databases to develop a comprehensive list of all the state's employers that sponsor ESI, the HIX could avoid post-enrollment audits for the vast majority of subsidy recipients. Any audits would focus on the minority of subsidy recipients who work for sponsoring employers.

Most subsidy-eligible consumers neither work for nor have a spouse who works for an employer that sponsors ESI for any workers

The appendix to this report explains our methodology in detail. However, some methodological background is needed to understand the results we present here. HIPSM uses Current Population Survey (CPS) data to estimate the characteristics of subsidy-eligible consumers—that is, citizens and lawfully present immigrants under age 65 with incomes between 138 and 400 percent FPL who are ineligible for Medicaid and CHIP and who are not offered ESI that the ACA classifies as affordable.

While the CPS asks about *receipt* of ESI, it does not ask whether respondents were *offered* ESI that they turned down. As explained in the appendix, HIPSM uses statistical matches with other data sources to impute such ESI offers. However, available information sources do not allow us to reliably assess whether a particular employer's coverage qualified as affordable, under the ACA's standards.[6] Accordingly, we modeled two different scenarios: a "more affordable" scenario, which uses assumptions that slightly overstate the affordability of ESI offers; and a "less affordable" scenario, which uses assumptions that slightly understate the affordability of ESI offers. These two scenarios establish a range of ESI affordability, within which the true prevalence of affordable offers is likely to lie.

Table 1 shows our findings about the characteristics of adults under age 65 who meet all requirements for subsidies other than those related to ESI—that is, consumers whose incomes do not exceed 400 percent FPL, who are ineligible for Medicaid and CHIP, and who are citizens or lawfully resident immigrants. As with all of our results, these assume that every state implements the ACA's Medicaid expansion, thereby limiting most subsidy eligibility to adults with incomes between 138 and 400 percent FPL.

[6] We do not attempt to estimate whether particular ESI offers meet the ACA's minimum value requirements since, as we explain in the appendix, almost all ESI is likely to satisfy those requirements.

Table 1. Non-elderly adults under 400 percent FPL who are citizens or lawfully present immigrants and ineligible for Medicaid, by access to ESI, under various affordability scenarios, U.S. and California: 2011

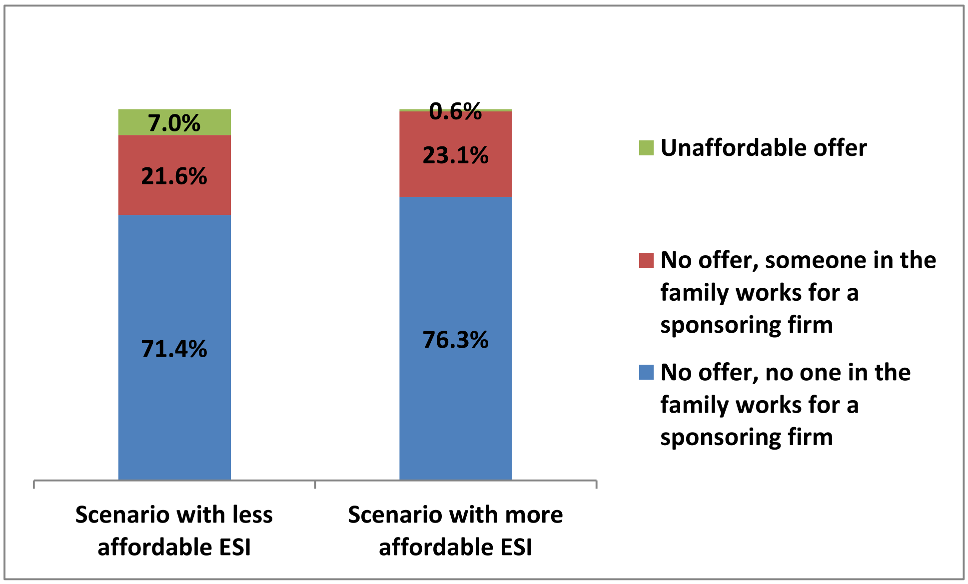
	U.S.				California		
	Receives ESI	Does not receive ESI	Total		Receives ESI	Does not receive ESI	Total
Scenario with more affordable ESI							
Offered affordable ESI	38,841,339	1,131,435	39,972,774		3,161,998	107,098	3,269,095
Offered unaffordable ESI	66,121	16,315	82,436		7,155	0	7,155
Not offered ESI—someone in family works for a sponsoring employer		3,163,340	3,163,340			361,148	361,148
Not offered ESI—no one in family works for a sponsoring employer		10,465,131	10,465,131			1,364,439	1,364,439
Total	38,907,460	14,776,222	53,683,681		3,169,153	1,832,684	5,001,837
Scenario with less affordable ESI							
Offered affordable ESI	38,038,192	997,326	39,035,517		3,079,109	85,051	3,164,160
Offered unaffordable ESI	869,268	150,424	1,019,693		90,044	22,047	112,090
Not offered ESI—someone in family works for a sponsoring employer		3,163,340	3,163,340			361,148	361,148
Not offered ESI—no one in family works for a sponsoring employer		10,465,131	10,465,131			1,364,439	1,364,439
Total	38,907,460	14,776,222	53,683,681		3,169,153	1,832,684	5,001,837

Source: HIPSM 2012. *Note*: A sponsoring employer offers and helps pay for ESI provided to some or all of its employees. Subsidy-eligible adults are listed in dark grey cells. Those listed in light grey cells could qualify for subsidies by dropping ESI and receiving coverage through the HIX. Results assume that all states implement the ACA's Medicaid expansion. The scenario with more affordable ESI understates the likely prevalence of unaffordable offers by assuming average worker premium contribution rates, stratified by firm size and industry. The scenario with less affordable ESI overstates the likely prevalence of unaffordable ESI offers by assuming worker premium contribution rates that typify firms with predominately low-wage employees. The appendix explains these scenarios in more detail.

For purposes of this analysis, our most important findings are two-fold, as illustrated in figures 1 and 2:

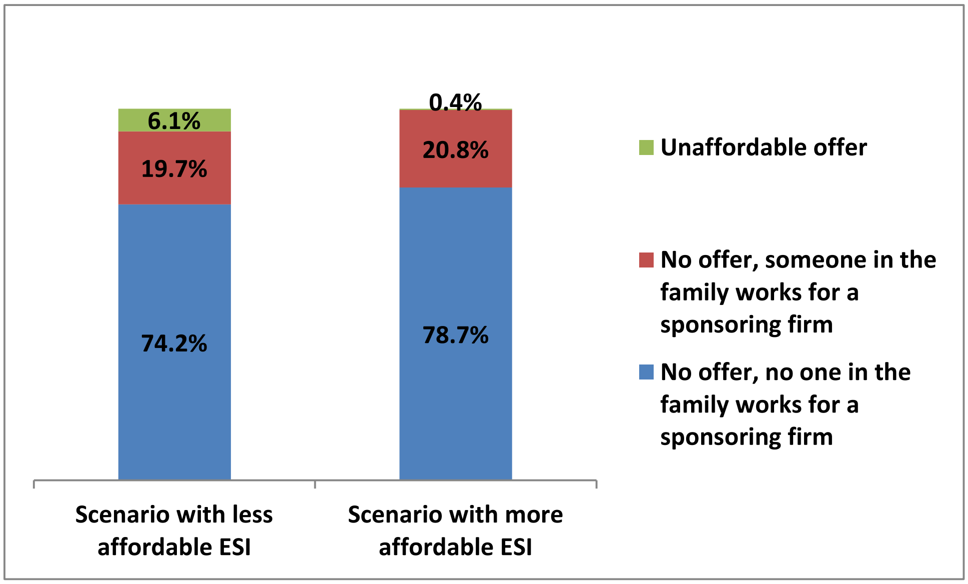
- ***For more than 7 in 10 subsidy-eligible consumers, neither they nor their spouses work for a company that offers insurance to any of its employees***. This group includes between 71.4 and 76.3 percent of subsidy-eligible consumers in the U.S. as a whole, and between 74.2 and 78.7 percent of those in California.
- ***More than 9 in 10 subsidy-eligible consumers will qualify for subsidies, not because of unaffordable offers, but because they are not offered any ESI at all***. The proportion ranges between 93.0 percent and 99.4 in the U.S. as a whole, and between 93.9 and 99.6 percent in California.

Figure 1. Access to ESI among all U.S. residents who will qualify for subsidies, under various assumptions about affordability: 2011



Source: HIPSM 2012. *Note:* If a firm offers health insurance to any of its employees, it is a sponsoring firm. Subsidies are those offered in the HIX or BHP (in a state that adopts the latter option). Subsidy-eligible people include those who could shift out of ESI to qualify. Results assume that all states implement the ACA's Medicaid expansion. The scenario with more affordable ESI understates the likely prevalence of unaffordable offers by assuming average worker premium contribution rates, stratified by firm size and industry. The scenario with less affordable ESI overstates the likely prevalence of unaffordable ESI offers by assuming worker premium contribution rates that typify firms with predominately low-wage employees. The appendix explains these scenarios in more detail.

Figure 2. Access to ESI among all California residents who will qualify for subsidies, under various assumptions about affordability



Source: HIPSM 2012. *Note:* If a firm offers health insurance to any of its employees, it is a sponsoring firm. Subsidies are offered in the HIX or BHP (if California adopts the latter option). Subsidy-eligible people include those who could shift out of ESI to qualify. Results assume that California implements the ACA's Medicaid expansion. The scenario with more affordable ESI understates the likely prevalence of unaffordable offers by assuming average worker premium contribution rates, stratified by firm size and industry. The scenario with less affordable ESI overstates the likely prevalence of unaffordable ESI offers by assuming worker premium contribution rates that typify firms with predominately low-wage employees. The appendix explains these scenarios in more detail.

How HIXes might determine whether subsidy applicants work for firms that sponsor ESI for any of their employees

As CCIIO observed, currently available data are insufficient to verify all ESI-related eligibility factors. But two data sources may suffice to identify firms that do not sponsor ESI for any workers, which would make audits unnecessary for the more than 70 percent of subsidy-eligible adults who work for such employers.

The first data source involves Medicaid third-party liability (TPL) data. Currently, state Medicaid agencies have access to information about private insurance, including ESI, for the purpose of identifying sources of TPL—that is, coverage for Medicaid beneficiaries that can pay for services Medicaid would otherwise need to finance. States have been required, for several years, to operate mechanisms through which all private insurance furnished to state residents, including through self-insured plans and other group coverage, is reported to state Medicaid agencies.[7] CMS requires insurers to furnish TPL information at least annually, but states have the option to require more frequent information.[8]

As a practical matter, many states work with TPL contractors that help determine whether particular Medicaid applicants and beneficiaries receive ESI. In some states, TPL information includes both the insurer and the identity of the sponsoring employer. In others, policymakers

[7] Deficit Reduction Act of 2005, Section 6035.
[8] CMS, "Third Party Liability," *State Medicaid Director Letter* SMDL # 10-011, June 21, 2010, http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD10011.pdf.

would need to refine Medicaid TPL data to obtain employer identification numbers (EIN) if they want to use this information to identify applicants who are not offered ESI.

Two sources of generous federal funding are available for states that need to tweak their Medicaid TPL systems to help determine subsidy eligibility in the HIX. First, information technology investments needed for Medicaid TPL purposes can qualify for 90 percent federal funding under Medicaid.[9] Second, states may be able to allocate some of these development costs to 100 percent federal funding for HIXes if the investment is used to establish a system for verifying subsidy eligibility in the HIX.

In addition to Medicaid TPL data, Medicare coordination of benefits (COB) data might be used to identify all sponsoring employers within a state. Under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007,[10] employers and group health plan administrators must provide CMS with quarterly information about ESI recipients. Several existing data matching arrangements seek to ensure that, when CMS identifies an individual as a Medicare beneficiary, the employer or health plan indicates whether that individual receives ESI. The statute requires employers and group plans to "submit such information to the Secretary in a form and manner (including frequency) specified by the Secretary."[11] The legislation also provides that, "[n]otwithstanding any other provision of law, under terms and conditions established by the Secretary, the Secretary … may share information collected under this paragraph as necessary for purposes of the proper coordination of benefits."[12] The information that employers provide to CMS includes EINs for Medicare enrollees.

The ACA already requires applicants for insurance affordability programs to identify their employers, including EINs, if available.[13] Accordingly, to verify the absence of ESI offers—thereby eliminating the need for audits—for more than 7 in 10 subsidy-eligible adults, the only information needed from Medicaid TPL or Medicare COB data is whether employers with specified identification numbers sponsor health insurance. If Medicare COB data can be used for this purpose, it could perhaps be offered to HIXes via the federal data hub.[14]

Before these data sources may be used, however, policymakers must confirm that this information, furnished for purposes of administering Medicaid and Medicare, can also be used to administer eligibility determination for subsidies in the HIX.[15] That legal analysis, as well as the

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[9] CMS, op cit.
[10] Public Law 110–173, adding paragraph (7) to Section 1862(b) of the Social Security Act.
[11] Section 1862(b)(7)(A)(ii).
[12] Section 1872(b)(7)(C)(iii).
[13] ACA Section 1411(b)(4)(A). As CCIIO noted in the above-referenced bulletin, consumers may need help from their employers in obtaining appropriate EINs.
[14] Medicare data would also offer the advantage of including sponsoring employers in adjacent states, to help determine eligibility for residents who work across state lines.
[15] The ACA contains at least two possible authorizations for using TPL and COB information in this way. First, Section 1411(d) gives HHS very broad discretion to establish verification methods for eligibility factors other than income, household size, citizenship, and immigration status. This subsection reads, in relevant part, "the Secretary shall verify the accuracy of such information in such manner as the Secretary determines appropriate." Second, ACA Section 1413(c)(2)(A) requires each insurance affordability program "to participate in a data matching arrangement for determining eligibility for participation in the program … that provides access to data described in paragraph (3)." The latter paragraph refers, quite broadly, to "reliable, third party data, including information described in sections 1137, 453(i), and 1942(a) of the Social Security Act." Not only can Medicaid TPL and Medicare COB information be characterized as "reliable, third party data," Section 1942(a) includes both a broad

circumstances in each state, will help determine which (if either) of these two sources can provide a particular HIX with a comprehensive listing of sponsoring employers within the state.

How information about sponsoring employers could focus audits

If an HIX can establish that a particular applicant (and his or her spouse, if any) works for an employer that does not sponsor ESI, the HIX knows the applicant is not offered ESI and need not be audited. The capacity to make these determinations would thus obviate audits for more than 70 percent of subsidy-eligible consumers.

But what if an applicant works for a firm that *does* sponsor coverage? What is the likelihood that such an applicant is *ineligible* for subsidies because of an ESI offer?

The answer to this question depends, in significant part, on who applies for subsidies. Those most likely to apply are consumers without ESI. They will have the most acute need for coverage. Also, consumers without ESI will not be required to surrender any current, employer-subsidized insurance in order to qualify for subsidies. Among the relevant group of likely applicants—that is, among income-eligible adults who do not receive ESI but work for sponsoring employers:[16]

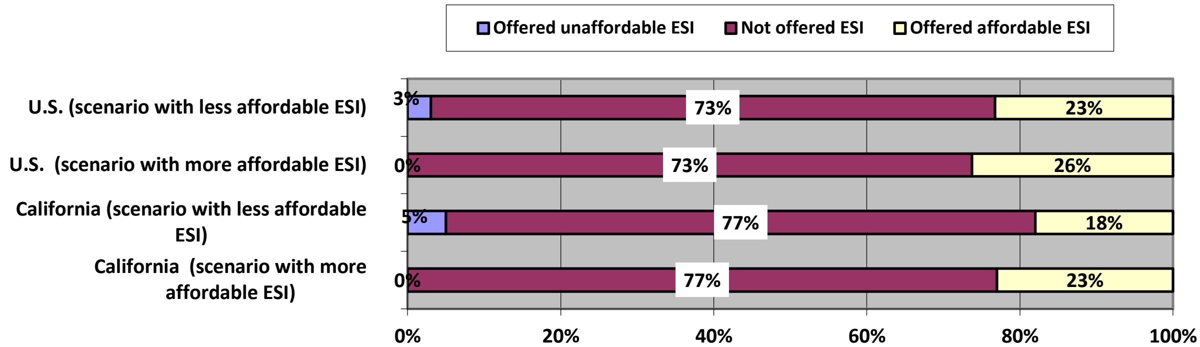
- 73 percent nationally, and 77 percent in California, are ineligible for the coverage their firms sponsor;
- Up to 3 percent nationally, and up to 5 percent in California, are offered unaffordable ESI; so
- Altogether, fewer than 27 percent—that is, between 23 and 26 percent nationally, and between 18 and 23 percent in California—are ineligible for subsidies because they are offered affordable ESI (figure 3).[17]

reference to "sources of data directly relevant to [Medicaid] eligibility determinations" and a specific reference to Social Security Act Section 1902(a)(25)(I), the Medicaid TPL data provision.

[16] These adults are limited to people whose citizenship or immigration status qualifies them for subsidies.

[17] By contrast, if all income-eligible adults applied for subsidies, including all ESI recipients in the applicable income band, at least 87 percent of applicants employed by sponsoring firms would be ineligible for subsidies because of affordable ESI offers. The estimated proportion ranges between 90.3 percent and 92.5 percent in the U.S. and between 87.0 percent and 89.9 percent in California (data not shown).

Figure 3. Adults with incomes between 138 percent and 400 percent FPL who are ineligible for Medicaid, who do not receive ESI, and who work for employers that sponsor coverage: Access to ESI under various assumptions about affordability, U.S. and California



Source: HIPSM 2012. *Note:* The analysis is limited to citizens and lawfully present immigrants. Totals may not add because of rounding. Results assume that all states implement the ACA's Medicaid expansion. The scenario with more affordable ESI understates the likely prevalence of unaffordable offers by assuming average worker premium contribution rates, stratified by firm size and industry. The scenario with less affordable ESI overstates the likely prevalence of unaffordable ESI offers by assuming worker premium contribution rates that typify firms with predominately low-wage employees. The appendix explains these scenarios in more detail.

Thus, among non-ESI-recipients who work for sponsoring firms and meet other requirements of subsidy eligibility, the vast majority will qualify for subsidies. Accordingly, CCIIO's proposed approach of establishing eligibility for this group based on attestations under penalty of perjury and post-enrollment audits makes sense. This approach fits the general rubric used for eligibility determination under ACA regulations, under which applicants are not asked for documentation so long as available data are "reasonably consistent" with applicant attestations. CCIIO's verification strategy also follows the precedent of the Internal Revenue Service's approach to individual income tax returns, under which returns are processed and refunds granted based on taxpayer attestations as to elements for which third-party verification is not readily available; documentation is not requested unless the return is audited. If instead CCIIO required documentation about ESI offers from all applicants—even if it limited such requests to applicants who could be identified as working for sponsoring firms—non-trivial burdens would be placed on consumers and employers alike without necessarily making major improvements to the accuracy of eligibility determination.[18]

[18] When applicants for other benefit programs are asked for information about income—which is probably easier to document than the actuarial value and employee premium share for ESI offers that a worker has not accepted—such requests can, by burdening applicants, deter enrollment without necessarily improving the accuracy of eligibility determination. For example, a pilot project of the National School Lunch Program (NSLP) showed that, when income documentation was requested from NSLP applicants, the number of eligible children receiving free or reduced-price meals dropped by 18 percent, from 50.9 to 41.7 percent, with no statistically significant improvement in the accuracy of eligibility determination. Philip Gleason, John Burghardt, Paul Strasberg and Lara Hulsey, "Tightening Income Documentation in a Means-Tested Program: Who Stays Away*?" Eval Rev* 32: 273, originally published online, January 25, 2008.

Second strategy: Use ESI receipt as a touchstone of eligibility determination

Some HIXes may not be able to compile a comprehensive list of all employers that sponsor ESI. Such HIXes can nevertheless to target their audits with a high degree of confidence in relying on self-attestations.

An HIX could ask applicants whether, at the time of application, they receive ESI. Those who do not receive ESI would be targeted for audits based on their likelihood of being offered ESI. Those who receive ESI would need to demonstrate eligibility before enrollment.

To place this analysis in context, we note that someone who receives ESI when applying for subsidies (typically October 15 through December 7) and is found eligible for subsidies could shift out of ESI and into subsidized HIX coverage in time for the following benefit year, which begins in January.

Applicants who do not receive ESI

Among applicants who attest that they do not receive ESI, an HIX could target post-enrollment audits intelligently, whether or not it knows whether the applicants' employers sponsor ESI. The HIX could ask each applicant whether anyone in the applicant's family works for a firm with 50 or more employees and, if not, for a firm with 10 or more employees. The HIX could combine that fact with information the HIX probably already has about wages, income, employment by a government agency, age, marital status, and the presence or absence of dependent children in the household.

Using these facts, the HIX could assess the applicant's likelihood of an ESI offer, based on the HIPSM results displayed in table 2 that show the prevalence of ESI offers among various groups of otherwise eligible adults who meet other subsidy requirements.[19] For example:

- If no one in the family earns wages above $29,000, and no one works for a firm with 10 or more workers, the adult has a 9 percent likelihood of being offered any ESI;
- If someone in the family earns wages above $29,000, no one in the family works for a firm with 50 or more employees, the applicant is married or has dependent children, and the applicant's modified adjusted gross income (MAGI) exceeds 300 percent FPL, the adult has a 40 percent likelihood of being offered any ESI; and
- If someone in the family works at a firm with 50 or more employees, no one in the family works for a government agency, and the applicant's MAGI is under 300 percent FPL, the adult has a 60 percent chance of being offered any ESI.

These are results for U.S. residents as a whole. For Californians, the results are broadly similar (5 percent, 36 percent, and 47 percent, respectively).

[19] These are citizens and lawfully present immigrants with incomes between 138 and 400 percent FPL who are ineligible for Medicaid and CHIP.

Table 2. Among various groups of adults under age 65 with incomes at or below 400 percent FPL who are ineligible for Medicaid, who are citizens or lawfully present immigrants, and who do not receive ESI, the prevalence of ESI offers and the number of adults, in the U.S. and California: 2011

Group	U.S.		California	
	% with offer	Total # in group	% with offer	Total # in group
No worker (in family)	0%	3,597,000	0%	518,000
Worker (in family)				
No worker in firm with 50+ employees				
Max wages < $29,000				
No worker in firm with 10+ employees	9%	1,690,000	5%	222,000
Worker in firm with 10+ employees				
Single or with dependent children	15%	1,501,000	14%	185,000
Married, no dependent children	32%	319,000	13%	45,000
Max wages > $29,000				
Married or with dependent children				
MAGI <= 300% FPL	24%	835,000	36%	41,000
MAGI > 300% FPL	40%	505,000	36%	63,000
Single, no dependent children	20%	974,000	14%	109,000
Worker in firm with 50+ employees				
Married or with dependent children				
Married				
Max wages < $15,500	36%	311,000	37%	32,000
Max wages > $15,500				
Any government worker and MAGI > 300%	82%	157,000	84%	19,000
No government workers or MAGI < 300%	60%	1,841,000	47%	186,000
Single, with dependent children	27%	265,000	8%	12,000
Single, no dependent children				
Oldest age <= 23				
MAGI < 200% FPL	29%	419,000	24%	65,000
MAGI > 200% FPL	42%	420,000	42%	60,000
Oldest age >= 24				
MAGI < 300% FPL	15%	1,555,000	16%	227,000
MAGI > 300% FPL	32%	386,000	36%	49,000
Total:		***14,776,000***		***1,833,000***

Source: HIPSM 2012. *Note:* "Max wages" refers to the annual wages received by the applicant or the applicant's spouse, whichever is higher. "Worker in firm with 50+ employees" applies to a household in which at least one spouse is employed by such a firm. "Oldest age" refers to the age of the applicant and the applicant's spouse, whichever is higher. Results assume that all states implement the ACA's Medicaid expansion.

Among otherwise eligible applicants who do not receive ESI, an HIX could thus distribute audits in proportion to their likelihood of being offered ESI, as shown in table 2.[20]

[20] To illustrate, suppose that otherwise eligible applicants not receiving ESI fall into three equally large groups. Group A, B, and C consist, respectively, of people with a 20, 40, and 60 percent likelihood of being offered ESI. Now suppose that the HIX plans to audit 90 applicants. Compared to group A, members of group B are twice as likely to be offered ESI, so group B should receive twice as many audits; members of group C are three times as likely, so that group should receive three times as many audits. Accordingly, 15 randomly chosen members of group A, 30 in group B, and 45 in group C are audited.

Applicants who receive ESI

If an applicant receives ESI, the HIX might require the applicant to document the ESI's unaffordability or insufficient value before enrollment. If CCIIO must change its policy to make an exception that permits or requires advance verification in these cases, that change deserves serious consideration.

As illustrated by table 1 above, very few income-eligible consumers who receive ESI meet the ACA requirements for unaffordable ESI offers.[21] Furthermore, requiring advance documentation from ESI recipients would protect some applicants from harm. People who receive ESI when they apply for subsidies are uniquely at risk, because they could drop coverage based on an eligibility determination that later turns out to be mistaken. Suppose the HIX grants eligibility based on an attestation of unaffordability from an applicant who is enrolled in an employer plan. Apparently qualifying for subsidies, the applicant relinquishes ESI, signs up for coverage in the HIX, and begins receiving advance payment of tax credits (APTC). Several months later, the consumer or the HIX learns that the attestation was mistaken because the ESI offer was affordable. The consumer may have incurred a substantial tax debt to the Internal Revenue Service, potentially equaling all APTCs that the consumer received. Further, the consumer can neither continue receiving APTCs nor return to the employer plan until its next open enrollment period. Without subsidies from either the employer or the federal government, the consumer could find all coverage options unaffordable and be forced to drop coverage entirely.

Requiring ESI recipients to document the unaffordability or insufficient value of employer plans would not ask the impossible or significantly burden consumers. Affordability and (in many cases) minimum value can typically be assessed based on plan information that the Employee Retirement Income Security Act of 1974 (ERISA) has long required plan administrators to give their insured employees, upon a worker's request.[22]

Such a carefully tailored exception to the policy proposed in CCIIO's guidance would not impose major burdens on employers. As explained earlier, few ESI recipients are likely to apply for subsidized coverage. Employers would thus face a trickle rather than a flood of verification requests if pre-enrollment verification took place only for applicants who attest to ESI receipt.

Note that this general approach can be used even if CCIIO decides that ESI recipients, like applicants without ESI, should not be subject to pre-enrollment verification. In that case, ESI recipients would be the group most likely to be audited.

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[21] This table shows that, nationally, between 97.8 and 99.8 percent of ESI recipients who are otherwise eligible for subsidies (between 97.2 and 99.8 percent in California) receive coverage that the ACA classifies as affordable.

[22] According to 29 C.F.R. §2520.102–3(j)(3), this information includes, among other things: "a description of: any cost-sharing provisions, including premiums, deductibles, coinsurance, and copayment amounts for which the participant or beneficiary will be responsible; any annual or lifetime caps or other limits on benefits under the plan; the extent to which preventive services are covered under the plan; whether, and under what circumstances, existing and new drugs are covered under the plan; whether, and under what circumstances, coverage is provided for medical tests, devices and procedures; provisions governing the use of network providers, the composition of the provider network, and whether, and under what circumstances, coverage is provided for out-of-network services; any conditions or limits on the selection of primary care providers or providers of specialty medical care; any conditions or limits applicable to obtaining emergency medical care; and any provisions requiring preauthorizations or utilization review as a condition to obtaining a benefit or service under the plan."

Conclusion

HIXes face a challenge in verifying that subsidy applicants lack access to affordable, minimum value ESI. Given limitations on available data, CCIIO's proposed approach for the near-term—establishing eligibility based on attestations, in the absence of inconsistent information, followed by post-enrollment audits—reflects a realistic judgment about the value of universal, pre-enrollment verification and the potential burdens such verification could place on employers and consumers.

This paper suggests two potential strategies for targeting these audits. With the first strategy, HIXes able to compile a comprehensive database of employers that sponsor ESI for any of their employees would limit audits to applicants who work for a sponsoring employer. With the second strategy, an HIX would ask applicants whether they receive ESI at the time of application. Consumers who do not receive ESI would be audited based on their likelihood of receiving ESI offers, given characteristics known to the HIX. For applicants who receive ESI, HIXs could, if CCIIO makes an exception to its general policy of avoiding pre-enrollment verification, ask such applicants to document the absence of an affordable, minimum value ESI offer before they qualify for subsidies. Among other advantages, this exception would prevent consumers from terminating their ESI based on apparent eligibility for subsidies in the HIX, only to find, months later, that they are in fact ineligible for these subsidies, potentially exposing them to repayment requirements and leaving them unable to return to the employer plan until the company's next open enrollment period. Alternatively, if CCIIO does not allow for such a limited exception, enrollees who attested to receiving ESI at the time they applied could be in the group most likely to receive post-enrollment audits.

In future years, HIXes may gain real-time access to data sources that show whether particular individuals are offered ESI that meets the ACA's standards for affordability and minimum value. In the meantime, the approaches described here offer reasonable strategies for responsible states and HIX administrators to limit subsidies to consumers who meet applicable eligibility requirements.

Appendix. Methodology

In general

Our results are based on HIPSM's simulation of the ACA as if it were fully implemented in 2011. The cost and coverage effects of the ACA in each state according to this simulation are found in earlier publications.[23] HIPSM augments the underlying Current Population Survey (CPS) data with imputations of health care costs, premiums, ESI offers, immigration status, and detailed Medicaid eligibility type.[24] Individuals are grouped into tax filing units. In determining Medicaid eligibility, we assume that all states implement the ACA's eligibility extension to citizens and qualified immigrants with income at or below 138 percent FPL.[25]

Estimating the affordability of ESI offers

Someone offered ESI can qualify for subsidies only if the offer is deemed affordable under the law, as explained in the Introduction. The lowest offered single premium cannot exceed 9.5 percent of the tax unit's modified adjusted gross income (MAGI).

Obtaining reliable data at the level of detail necessary to assess the characteristics of workers with unaffordable offers is problematic. Several sources, such as the Medical Expenditure Panel Survey-Insurance Component (MEPS-IC) and the Kaiser/HRET survey, give *average* worker contribution rates for companies with specified characteristics, such as firm size and industry.

However, unaffordable offers occur primarily in firms with employee contributions much higher than the average. Hence, estimates of affordability need detailed information about the "upper tail" of the distribution—in other words, the employers that require unusually high worker premium payments. Little publicly available data describe such employers. The Kaiser/HRET survey publishes estimates by several broad categories of employers. (We use this information to give an upper-bound estimate of the number of unaffordable offers, as explained below.) The MEPS-IC publishes data on worker premium contributions in dollars, but that may not reflect the amount that workers in the subsidy eligibility range would pay.[26] Several nongovernmental employer benefit surveys tabulate more detailed questions, but sample size is generally small, making estimates of the upper tail of contribution rates unreliable. In addition, all available data are limited to employer contribution levels for workers who enroll in ESI, missing those who are offered coverage but decline it.

To identify the effects of unaffordable ESI offers, we developed estimates to illustrate the probable range of such offers. One set of estimates assumes average-level employer contributions at all firms within each employer grouping. As explained above, these estimates

[23] Frederic Blavin, Matthew Buettgens, and Jeremy Roth, "State Progress Toward Health Reform Implementation: Slower Moving States Have Much to Gain," (Washington, DC: The Urban Institute, 2012) http://www.urban.org/health_policy/url.cfm?ID=412485

[24] Matthew Buettgens, "HIPSM Methodology," (Washington, DC: The Urban Institute, 2011) http://www.urban.org/UploadedPDF/412471-Health-Insurance-Policy-Simulation-Model-Methodology-Documentation.pdf

[25] Nominally, Medicaid extends to 133 percent FPL. However, 5 FPL percentage points are subtracted from gross income in determining eligibility. The gross income eligibility threshold is thus 138 percent FPL.

[26] We are currently investigating the prospects for combining MEPS-IC estimates of the percentage of employees contributing zero to their premium with MEPS-IC estimates of the standard errors of premium contributions to produce more detailed distributions within firm size and industry categories, but that task is outside the scope of this project.

understate the number of unaffordable offers and so provide the lower end of our range. The body of the report describes these results as the more affordable scenario.

To estimate the upper end of the range, we distribute employer contribution levels about their mean within each firm size grouping,[27] drawing upon the Kaiser/HRET Employer Health Benefits 2011 Annual Survey (exhibit 6.16) results for employers with a large percentage of their workers in low-wage jobs. Compared to other companies, these employers pay a smaller average percentage of premiums. For firms with fewer than 100 employees, we assume that the 95th percentile of worker contribution rates was 50 percent, and for firms with more than 100 employees, we assume that the 97th percentile of worker contribution rates was 50 percent. Within each firm size group, we compute the standard deviation necessary to produce a normal distribution with these percentiles. Next, we generate a new worker contribution rate for each observation, where this rate is drawn from a normal random variable with the appropriate mean and standard deviation. We then recode worker contribution rates below the average within each firm size cell to that average, and recode rates larger than 100 percent to 100 percent. Finally, we compute new out-of-pocket premium offers for each worker offered a premium using these contribution rates, and recalculate the affordability of these offers using the new premiums.

The resulting estimate for the number of unaffordable offers represents an upper bound that overestimates the prevalence of unaffordable offers. The body of the paper describes this set of results as the less affordable scenario. This scenario establishes the top of the range showing the prevalence of unaffordable offers; even though available data are not sufficient to yield a reliable point estimate of affordable insurance offers, the true proportion is likely within the estimated range.

The following major sources of uncertainty bias upwards these estimates of the prevalence of unaffordable offers:

- We apply to all firms the Kaiser/HRET distribution reported for firms where at least 35 percent of workers earn at most $23,000 a year. This assumption overestimates the number of unaffordable offers, as firms with many low-wage workers, according to Kaiser/HRET, are more likely than other companies to require their employees to make large premium contributions.
- In order to keep overall take-up rates high and improve the risk pool, some large employers set lower employee contribution rates for their lower-income workers than for their higher-income workers. Such reduced contribution rates for subsidy-eligible workers are not included within our upper-bound estimates.
- We raise the contribution levels of workers with below-average premium contribution amounts to the applicable average. In reality, just as some firms ask their workers to pay above-average levels, others require below-average contributions. If we had been able to consider such below-average worker contribution levels, our estimated number of unaffordable offers may have declined.
- Unaffordable offers result from current variation levels. Such offers will become less common if, as seems probable, the modified community rating that the ACA applies to the small firm market reduces the variance of employee contributions.

[27] In HIPSM, firms are divided into those with 1-9, 10-24, 25-49, 50-99, 100-499, 500-999, and 1000 or more employees.

- Our analysis assumes that each worker's likelihood of an affordable offer is independent of the offers received by other household members. In fact, when one spouse is offered affordable ESI, the other spouse has greater ability to accept employment not accompanied by such an offer. If we were able to take this effect into account, the number of households without an affordable offer would have declined, relative to what we estimate.

Several additional sources of uncertainty do not clearly cut in one direction or the other:

- The Kaiser/HRET survey gives distributional information for only two firm sizes, with the division set at 200 workers. Finer firm size data are not available. The effect of this limitation is not clear. Average contribution rates for the smallest firms are often less than for larger firms, but there may be more variance among small employers.
- It is not clear to what extent high employee contribution rates are correlated with high total premiums. Some very high-cost firms may not be willing to contribute more than a relatively small share of costs. On the other hand, it may be that some very low-cost firms have higher employee contribution rates, making workers contribute amounts that are similar to those required by higher-cost firms with lower employee contribution rates.

The minimum value requirement

In addition to being affordable, an employer offer must have an actuarial value (AV) of at least 60 percent in order to disqualify someone from subsidy eligibility. The ACA's AV calculation considers spending only within the *benefit categories that the employer chooses to cover*. According to prior research, at least 98 percent of ESI recipients are in plans with AV of 60 percent or higher, *as measured by the benefits covered in federal employee plans*.[28] This overestimates the number likely to be classified as offering less than minimum value, because many employers can cover fewer benefits than those in federal employee plans. Self-insured plans need not cover essential health benefits, under the ACA. The unusual firm that covers less than 60 percent actuarial value today may thus be able to meet the ACA's minimum value requirements, not by offering more generous coverage, but by self-insuring and reducing covered benefits. Accordingly, the ACA's minimum value requirements are likely to have negligible impact on subsidy eligibility, so our estimates do not include any imputation of ESI offers that fall below 60 percent AV.

Estimating ESI offers among income-eligible consumers who do not receive ESI

To develop classification rules that sort income-eligible consumers into categories where ESI offers are particularly likely or unlikely, we used the K-means clustering algorithm found in STATA, an off-the-shelf statistical package. From a dataset, a nonhierarchical list of variables, and a number of groups, a K-means clustering algorithm divides observations into the desired number of groups, while attempting to minimize the total of the within-group sums of squared differences from the within-group means over all groups and the specified variables. After restricting the national HIPSM 2011 dataset to nonelderly, legally resident, Medicaid/CHIP-ineligible persons with MAGI less than 400 percent of the federal poverty line and without public coverage, we generated several sets of clusters with different numbers of groups. The

[28] Pierre L. Yong, John Bertko, and Richard Kronick, "Actuarial Value and Employer-Sponsored Insurance," HHS/ASPE Research Brief, November 2011.

variables used included the MAGI-FPL ratio, the age of the oldest family member, the maximum annual wages of the family's members, the family type,[29] and the presence in the family of a post-reform offer, a self-employed worker, a government worker, a worker in a firm with more than 10 employees, and a worker in a firm with more than 50 employees. This information is included within the data sets to which HIXes could have access. The results of this analysis are displayed in the body of the paper as table 2.

Limitations

Besides the data limitations described above, employers could react to the ACA by changing their contribution rates. Some large firms with a high concentration of low-income workers may benefit by raising employee contribution rates enough that more workers would qualify for exchange subsidies. On the other hand, with the individual coverage requirement, generous ESI offers may become even more important in worker recruitment and retention than is currently the case. Whether more or less generous ESI payments make sense for a particular company depends on such factors as the risk profile and number of their low-income workers, how the firm views the possibility of paying penalties for their workers who receive publicly funded coverage rather than ESI, the role played by ESI offers in labor markets that affect the employer, and whether an employer would lose access to carriers if a large proportion of its workers rejected the employer's coverage offers. The last of these issues would not be a concern for self-insured firms.

More generally, the introduction of modified community rating into the small firm market may reduce the variance in contribution rates due to experience-rated premiums, as noted earlier. Employer behavior relating to health insurance benefits is complicated, and the situation under the ACA is different enough from the current situation that there are little empirical data on which to base projections. We accordingly did not attempt to estimate the effect of possible post-ACA changes in employer contributions.

Another limitation is that we assumed full implementation of the ACA's Medicaid expansion. In a state that does not implement the expansion, income eligibility for subsidies will range between 100 and 400 percent FPL, rather than between 138 and 400 percent.[30] That would change patterns of ESI access among adults who are otherwise eligible for subsidies.

More broadly, the inherent uncertainty of imputing information about employer offers is compounded here by additional uncertainties involving the generosity of such offers. We have tried to address those uncertainties by estimating a range, reflecting upper and lower bounds within which the actual generosity of employer offers is likely to fall.

[29] We apply four family types: married without dependent children, married with dependent children, single without dependent children, and single with dependent children.
[30] In either case, a small number of individuals below 100 percent FPL will be eligible for subsidies in the exchange as lawfully present immigrants who do not qualify for Medicaid.

About the Authors and Acknowledgments

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