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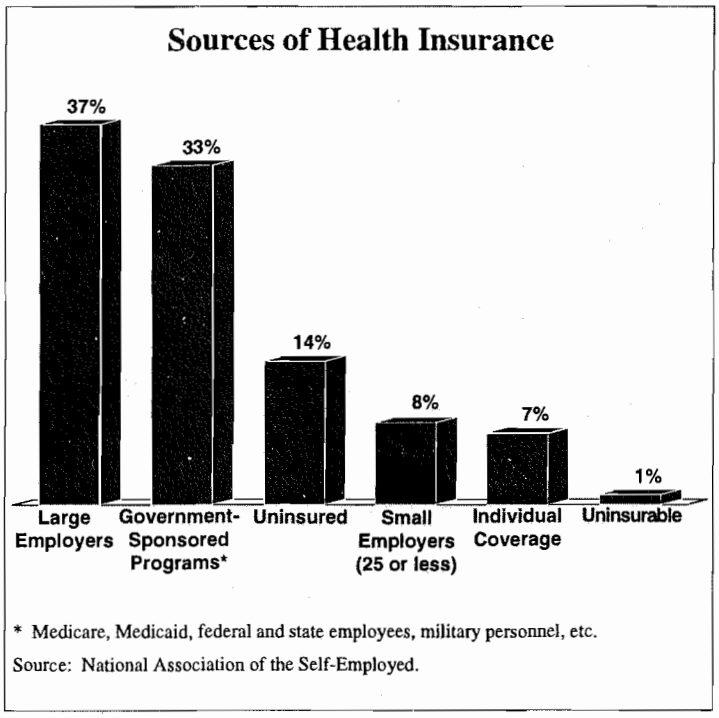
Portability: Is Kassebaum/ Kennedy the Answer?

A fundamental problem in the market for health insurance is that people lose their insurance when they switch jobs or become unemployed. If they have a serious health condition, they may find they are unable to obtain new coverage.

How serious is this problem? Opinion polls show that as many as one-third of employees fear that if they switch jobs they will be unable to obtain new health insurance. Yet, although job switchers often face a waiting period before they are covered under an employer's health plan, surveys show that less than 1 percent of the population lacks health insurance because they have been denied coverage due to a preexisting condition. [See the figure.]



* Medicare, Medicaid, federal and state employees, military personnel, etc.

Source: National Association of the Self-Employed.

The Health Insurance Reform Act, introduced by Senators Nancy Kassebaum (R-KS) and Edward Kennedy (D-MA), is being promoted as the solution. Unfortunately, while solving the problem of the 1 percent, this bill would create even greater problems for the 99 percent. Let's see why.

Portability. The argument for reform is that people who have been paying into the insurance system (directly or through their employer) should not lose coverage simply because they change jobs. If people owned their own insurance, this problem would never arise. However, federal tax law subsidizes health insurance purchased by an employer but does not provide the same subsidy for insurance purchased by individuals. As a result, almost 90 percent of the people who have private health insurance obtain it through their employer. Since the employer-based insurance system is largely the creation of the federal government, a change in government policy is needed to protect job switchers in an increasingly mobile labor market.

To address this problem, Congress passed in 1985 the Consolidated Budget Reconciliation Act (COBRA), which permits individuals leaving a company of 20 or more employees to retain their health insurance for up to 18 months by paying 102 percent of the premium their employer had been paying.

Kassebaum/Kennedy goes further. It permits insured employees who leave one employer to be covered immediately upon taking another job that offers employees health insurance, regardless of their health status. Almost everyone agrees with this provision.

The more controversial provision is one that would permit employees to shift from group to individual coverage regardless of their health status. Under this provision, the employee who leaves a job must have been covered for at least 30 days, and the plan that covered him must have been in effect for 18 months. If the company operates under COBRA, the individual must pay premiums out of pocket for the full 18-month COBRA period before moving to an individual policy.

However, an employee leaving a business with fewer than 20 employees would be able to purchase an individual policy immediately. As a result, small employers might be tempted to drop their coverage if an employee developed a serious (expensive-to-treat) medical condition, secure in the knowledge that the employee could get individual insurance.

A more serious problem is that under the group-to-individual provisions, the individual market would become the insurer of last resort for people who have been paying premiums to other institutions. Suppose a person who has been working and paying premiums for 20 years

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contracts the AIDS virus and can no longer work. That 20 years worth of premiums might have been paid to a self-insured employer or to a large insurer who does not sell individual policies. The previous insurer would have gotten thousands of dollars in premiums when the employee was healthy and would be able to pass on the burden of that employee's later health care expenses — but none of the past premiums — to an insurer that writes individual policies.

In general, individual insurance tends to be sold by small insurance companies operating on thin margins. These companies are the potential insurers of the 41 million Americans who are currently uninsured, and experience shows that the best way to get the uninsured to purchase insurance is to keep the price low.

Thus, shifting the cost of portability to the individual market may solve one problem (portability), but it would worsen an even greater problem — the growing number of uninsured.

Guaranteed Issue. The Kassebaum/Kennedy bill also requires insurers to provide group health insurance to any employer, regardless of the health status of the employees. This requirement, known as guaranteed issue, encourages employers with a healthy workforce (especially small employers) not to buy health insurance. If people can purchase affordable health insurance at any time, why would any healthy person buy health insurance? They have an incentive to remain uninsured and purchase insurance *after* a catastrophic event has occurred. Furthermore, the fewer healthy people who buy insurance the higher the premium must be to cover costs. This higher premium creates an additional incentive for the healthy to remain uninsured.

Kassebaum/Kennedy attempts to limit such perverse incentives by allowing the insurer to wait 12 months before paying expenses for a preexisting illness (18 months if the person declines health insurance when joining a company but enrolls later). Health maintenance organizations (HMOs), which typically do not rely on such exclusion periods, may postpone coverage for only two months (three months for a late enrollee) under the bill's provisions.

Thus an employer could not be denied group health insurance because an employee had a medical condition, but an HMO would not have to cover any employee's preexisting medical condition for at least two months and a traditional health insurer would not have to do so for at least one year.

In principle, insurers should not object to a requirement to *sell* insurance as long as they can *charge* any premium they like. And indeed, the Kassebaum/Kennedy bill has no restrictions on how much a company could charge for a policy. In theory, insurers could charge actuarially fair premiums — fully reflective of what they predict each employer's health care costs would be.

In practice, however, circumstances may be very different. For one thing, many states already impose restrictions on how much an insurance company can charge. So although the Kassebaum/Kennedy bill does not control premiums, most states do. In addition, once the bill became effective, small group policyholders would find that access to unaffordable health insurance was not worth much. As a result, lawmakers would feel pressure to add price controls — forcing insurers to sell coverage at premiums well below the expected costs.

Other Reforms. Other provisions in Kassebaum/Kennedy are meant to promote wellness programs and to encourage the voluntary formation of purchasing cooperatives. And a vague provision would let HMOs establish Medical Savings Accounts.

Making the Bill Better. One way to improve the bill would be to drop the guaranteed issue provision. Guaranteed issue has to do with access, not portability. If the Congress wants to increase access, it should do so in a separate bill.

There are other ways of making policies available to people with preexisting conditions without requiring companies to sell them. For example, some 28 states already have passed legislation creating high-risk pools that sell health insurance to approximately 100,000 individuals with preexisting conditions.

Another way to enhance the bill's chances is to extend the COBRA provision to all companies. That would force everyone who left a job for any reason to pay their own health insurance premiums through their former employer for up to 18 months before moving to the individual market. Congress might also consider extending the COBRA period from 18 to 24 or perhaps 36 months, but allow employers to charge higher premiums that would reflect the real costs of COBRA coverage.

This Brief Analysis was prepared by NCPA Health Policy Director Merrill Matthews, Jr.