

Janet Trautwein
Executive Vice President and CEO
National Association of Health Underwriters
Presentation at The Urban Institute forum
“Can Tax Credits Be a Linchpin for Health Reform?”
Lessons from the Factory Floor”



National Association of Health Underwriters Expanding Tax Credits – Recommendations for Improving the Health Care Tax Credit Provided Under the Trade Adjustment Act of 2002

In August 2002, President Bush signed the Trade Adjustment Act (TAA) that provides a refundable tax credit to help eligible individuals purchase health insurance from a number of different sources. Allowable purchasing options are:

- **COBRA**
- *State-based continuation coverage*
- *Coverage through a state high-risk pool*
- *Coverage through a state employee health insurance program*
- *Coverage through a program comparable to the state employee health insurance program*
- *Coverage arranged between a state and a group health plan, an issuer of health insurance coverage, an administrator or an employer*
- *Coverage through a private purchasing pool*
- *Coverage through a state operated health plan that does not receive federal financial participation*
- **Coverage through the group health plan of the individual's spouse**
- **Individual coverage if in force at least 30 days prior to separation of employment**

Although the items in bold print are automatic options, a state is not required to include one or more of the italicized options. Thirty-nine states, plus Puerto Rico and the District of Columbia, have elected options to date, leaving eleven states with only the automatic options or only the automatic options plus state-based continuation coverage. Many people assume that an individual who has lost coverage always has a COBRA option. This is not the case. Many TAA-eligible individuals worked for employers who have gone out of business. Because COBRA is an employer law, if there is no employer, there is no COBRA. The same holds true for state continuation options. Also, many other eligible individuals worked for small employers to which COBRA does not apply, and not all states have mandated continuation of coverage options for smaller employers. Individuals who are eligible for the TAA credit because they receive benefits from the federal Pension Benefit Guarantee Corporation (PBGC) may have long since lost their employer-sponsored coverage. Many individuals do not have one of the automatic options available, which means that they may be eligible for a tax credit but have no place to spend it.

If a TAA-eligible individual has been previously insured for three months and has less than a 63-day break in coverage, any coverage option(s) selected by the state must provide coverage on a guaranteed issue basis, without application of a pre-existing condition waiting period

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and at benefit levels and premiums that would be customary for a TAA-ineligible individual purchasing the same type of coverage.

These provisions for guarantee issue and waiver of pre-existing conditions apply separately to each state-elected option. Therefore, any option selected by the state must, on its own, provide for coverage to be guaranteed to qualified individuals, with no limitation for pre-existing conditions. Even if a state elects both a high-risk pool as well as an arrangement to provide coverage through an insurance carrier, each option must separately provide for guarantee issue and a pre-existing condition waiver for eligible individuals, even though the very purpose of a high-risk pool is to guarantee coverage for those who do not meet underwriting guidelines in the individual health insurance market.

This lack of flexibility has resulted in fewer coverage options for eligible individuals, and has many paying far more for their share of premiums than they should. In fact, it is reported that the 35% share of premiums is too high for some eligible individuals to afford. The problem is that the rigid nature of the purchasing options is forcing a higher premium level than may be appropriate for the majority of those eligible under the program.

Lack of flexibility in the program also impacts the federal government in an even larger sense because it has assumed 65% of the cost of coverage. It seems fiscally irresponsible for the U.S. government to pay an unnecessarily inflated price for health insurance coverage under the tax credit when other simple solutions exist.

Recommended TAA Improvements to Lower Costs and Improve Access

The best situation would be to completely revise purchasing options to allow eligible individuals to purchase available state-approved coverage without requiring a special state election. At a minimum, it would make sense not to reinvent the wheel and have TAA requirements follow HIPAA portability law, which has a longer prior coverage requirement and allows states to use their high-risk pool to guarantee access. Insurance carriers in states without high-risk pools estimate that they lose \$18 for every dollar they receive in premiums from those who purchase coverage under HIPAA rules. Considering that the TAA requirements are significantly more restrictive on insurance carriers than those under HIPAA, it is not surprising that participation by carriers under TAA has not been as robust as would have been preferred.

Although repeatedly recommended to ensure the program's success, more flexible purchasing options were not included in final bill negotiations which culminated in President Bush signing into law the Trade Act of 2002 (P.L. 107-210). Soon after the signing, agencies began to work on implementation, and it was decided that the language of the law would not allow for one or more state-elected options to be combined to provide the guarantees required for qualified individuals but rather, each had to provide the guarantees separately.

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Requiring that each option meet the provisions separately deters insurance carriers from turning down high-risk individuals and forcing them to obtain their coverage at higher prices through a high-risk pool or some other state guarantee mechanism. Yet, because of this rigid requirement, we have seen 15 states elect their high-risk pool as the *only* state-elected option for anyone of any health status, even though far more affordable rates and more choices in coverage could be made available to eligible individuals through the traditional market.

Although high-risk pools provide critical access to health insurance for individuals in poor health, they were never designed to accommodate healthy individuals. If states with high-risk pools could make arrangements with one or more carriers to use their normal pricing and underwriting structure for eligible individuals and guarantee access to coverage for uninsurable individuals who meet prior coverage requirements through the high-risk pool, it would be far better than the current arrangement for health insurance tax credit purchasing options. It would provide more choice for most individuals at a better price, which would also result in a better price for the U.S. government. Additionally, those who are uninsurable would have the same options they have now in the 13 states that have already elected a high-risk pool as their purchasing option. Their purchasing options would be expanded significantly were the HCTC to be allowed in the other 21 states with functioning high-risk pools.

Expansion of TAA

It might seem logical to expand the TAA tax credit to others who have become unemployed. In fact, we frequently hear from unemployed individuals who are not eligible for TAA that it does not seem fair to them that only those who have lost their jobs for trade-related reasons are eligible.

Although expansions to other groups may seem like a logical next step, there are challenges in taking this course. First, while a number of states have elected options, not all of the options elected would be suitable if the eligible population grew from its current number to several million. For example, state high-risk pools, elected as the only option in 15 states, are not designed to handle large populations. Second, if, for example, a person’s period of eligibility were tied to being on unemployment compensation, that person would be eligible for the credit for a six-month period. A short-term risk like this is not attractive for insurance carriers with the current structure of guarantee issue and preexisting conditions waivers in the TAA law and many might choose not to participate in the program. Third, even with a generous credit like the TAA credit, individuals and families who have substantially reduced income due to the loss of employment are significantly less able to come up with their own 35% share of premiums, particularly if the cost of coverage is artificially high, which is the case with the current purchasing options.

An alternative solution would be to simply target low-income working individuals who make too much to qualify for Medicaid, but not enough to afford health insurance on their own. Over the years, we have seen that the government’s cost of some proposals for subsidizing

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the cost of health insurance coverage for low-income individuals can be very high. However, these costs can be lowered in several ways. First, credits or other subsidies can be phased out for the “higher” low incomes, although reduced subsidies can significantly reduce the ability of some individuals to come up with their shares of premiums. If take-up rates are low, measures of the relative success of the program may appear low, simply because people in this income category, for the most part, live paycheck to paycheck and may have little to spend for health insurance.

Another way to control the cost is to make the subsidy available only to those who are currently uninsured. Although this would effectively penalize those who already bought coverage, it would measurably reduce the number of those who are actually uninsured. The period of uninsurance to determine eligibility should be fairly long—at least 12 months—so as not to create an incentive for those who are already insured to drop their current coverage to qualify.

An additional cost-control idea is to limit the duration of the subsidy. If this is done, the benefit should be at least 2-3 years (assuming that someone meets the income requirements for that length of time). Shorter periods are less attractive risks for insurers and may invite adverse selection.

It should be noted that many people in this income category already have access to employer-sponsored coverage but can’t afford to pay their share of premiums. This is particularly common with dependent coverage where the employer may pay some or all of the employee premium, but none of the dependent premium. This employer/employee cost sharing structure is quite common in small businesses that employ primarily low-income workers, as well as in certain areas of the country. Allowing employer-sponsored coverage to which the employer makes only a minimal contribution to be considered a qualified purchasing option would help these employees maximize all sources of funding to better enable them to afford coverage. This could be combined with a qualifier that the individual have been uninsured for a period of time to limit cost.

Finally, if it is decided not to allow employer-sponsored coverage (other than COBRA) to be an allowable purchasing option, it is important to establish eligibility parameters that do not create incentives for employees to leave employer coverage in order to use the subsidy in the individual market. This sort of competing crowd-out could create a real problem, particularly for small employers, as insurers often have participation requirements that can be difficult to meet if all employees don’t participate. It could be a fairly large problem for employers whose workforce, however small, is highly concentrated towards low-income employees. The end result could be loss of coverage for those employees who are already insured as a result of inability of the employer to meet participation requirements. However, it can be avoided if language is included stating that persons who are “eligible” for employer-sponsored coverage are ineligible for the subsidy, as opposed to language stating that if a person is “participating in” employer sponsored coverage, they are ineligible.

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With any of these eligibility choices, adequate flexibility in purchasing options is essential for success. Coverage must be affordable, even for those with a subsidy, or the program will not achieve its desired objective.

For questions on these issues, contact NAHU Executive Vice-President and CEO Janet Trautwein at (703) 276-3800 or jtrautwein@nahu.org.