



# Unemployment and Health Insurance: Current Legislation and Issues

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## Summary

When workers lose their job, they can also lose their health insurance. For people with good health and luck, loss of insurance might not matter that much since they would not use many health care services anyway. However, for people who have health problems or are injured, loss of coverage can be serious. Without insurance, people often have difficulty obtaining needed care and problems paying for the care they receive. Unemployed people who cannot postpone care may incur large bills that add to their financial distress.

The 111<sup>th</sup> Congress has passed legislation that begins to address this problem. The American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5), signed on February 17, includes two provisions that will help some unemployed maintain or get coverage: (1) a premium subsidy for COBRA continuation coverage, and (2) an increase in the Health Coverage Tax Credit (HCTC) and expansion of eligibility for it to service sector and public agency workers who lost their jobs due to increased foreign imports or shifts in production to outside the United States.

Other bills introduced in the 111<sup>th</sup> Congress would provide additional assistance to some unemployed, though their express objectives are different and their target populations are broader. Some of these bills would extend COBRA continuation periods; other would provide tax subsidies that could help individuals and families purchase insurance in the individual market. In addition, the 111<sup>th</sup> Congress might consider measures to bring about comprehensive health care reform; this could be helpful once the changes become effective.

Future legislative solutions face three broad challenges. First, the unemployed are a diverse population in terms of age, gender, marital status, income, and other characteristics. These attributes suggest they likely have different health care needs and different capacities to pay for care and insurance. Over a quarter of the unemployed are under age 25, a group that as a whole is relatively healthy, while about a third are age 45 or older. About 40% of households that receive unemployment compensation have incomes under \$25,000, while about 30% have incomes greater than \$50,000. Some people are unemployed for a short period of time, others for years. The diversity makes it difficult to craft targeted remedies that are both equitable and effective.

A second challenge is that many people do not lose health insurance when they lose their jobs since their employers did not provide it. While sometimes people choose jobs without insurance because they do not want it, other times these jobs are their only options. Among the groups less likely to have employment-based insurance are workers in the leisure and hospitality industry, part-time workers, and people who were previously family caregivers. Whether legislation should provide assistance to the unemployed in general or just to those who lost coverage involves difficult cost and equity issues, as well as debate over whether they should be helped to obtain public or private insurance.

A third challenge is whether legislation should build upon existing federal programs and provisions or should create new solutions. Building upon what is established might be appropriate given the immediate needs of the unemployed and their families, but new approaches might allow solutions that are preferable in terms of long-term needs, equity, and other matters. A major consideration for new approaches is how long the recession will last and how high the unemployment rate will be.

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## Introduction

The nation's unemployment rate reached a 25-year high of 8.1% in February 2009, and is expected to increase further by year end. According to the Congressional Budget Office, the unemployment rate is projected to peak at 9.4% later this year.<sup>1</sup>

One consequence of unemployment is that people can also lose their health insurance. The danger of losing insurance is most obvious when coverage is provided by employers, but people who become unemployed might no longer be able to pay individual market premiums as well. Recent estimates indicate for each percentage point increase in the unemployment rate, the number of uninsured would increase by 1.1 million.<sup>2</sup> Loss of insurance might not matter to people with good health and luck since they would not be using much health care anyway. However, for people who have health problems or are injured, loss of coverage can be serious. Without insurance, people often have difficulty obtaining needed care and problems paying for the care they receive. Unemployed people who cannot postpone care may incur large bills that add to their financial distress.<sup>3</sup>

Legislative solutions face three broad challenges. First, the unemployed are a diverse population with different health care needs and different capacities to pay for care and insurance. Their differences makes it difficult to craft targeted remedies that are both equitable and effective. Second, many people do not lose health insurance when they lose their job since their employers did not provide it. Whether legislation should provide assistance to the unemployed in general or just to those who lost coverage involves difficult cost and equity issues, as well as debate over whether they should be helped to obtain public or private insurance. A third challenge is whether legislation should build upon existing federal programs and provisions or should create new solutions. Building upon what is established might be appropriate given immediate needs, but new approaches might allow solutions that some consider preferable.

This report contains information and analysis that might inform debate over these challenges. It is divided into four parts:

- Analysis showing the diversity of the unemployed population,
- Analysis showing the relationship between unemployment and loss of employer-sponsored health insurance
- Summaries of current federal programs and provisions that can assist some unemployed obtain or retain health insurance, and
- Summaries of relevant legislation in the 111<sup>th</sup> Congress.

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<sup>1</sup> Congressional Budget Office, *A Preliminary Analysis of the President's Budget and an Update of CBO's Budget and Economic Outlook*, March 2009.

<sup>2</sup> Dorn, S. "Medicaid, SCHIP and Economic Downturn: Policy Challenges and Policy Responses," Kaiser Commission on Medicaid and the Uninsured, 2008 (#7770).

<sup>3</sup> The Commonwealth Fund, *Losing Ground: How the Loss of Adequate Health Insurance is Burdening Working Families*, August 2008.

The report will be updated to reflect legislative changes, which may occur frequently at times. It will be also be updated to reflect additional analysis.

## Diversity of The Unemployed Population

The unemployed population as of February 2009 totaled 12.5 million people with 8.1% of the labor force looking for work.<sup>4</sup> They are a diverse population in terms of age, gender, marital status, income and other characteristics. These attributes indicate that they likely have different health care needs and different capacities to pay for care and insurance. This section will first describe the diversity of the unemployed within various demographic categories and then briefly discuss some policy implications.

### Age

**Table 1** shows the ages of people who were unemployed as of February 2008 and 2009.

- Over one-quarter of the unemployed (27%) are age 16 to 24, while 23% are ages 25 to 34. About one-third are over age 45 (31%).
- However, compared to a year ago, unemployed workers are increasingly older.
  - The share of the unemployed ages 25 and older was 73% as of January 2009, compared to 67% a year ago.
    - Within this age group the highest rate of unemployment is for the 25 to 34 year olds, which one would consider a younger and likelier to be a healthier population.

**Table 1. Distribution of Unemployed by Age**

Age	% Distribution Of Unemployed		Unemployment Rate
	February 2008	February 2009	February 2009
16 to 24	33%	27%	18.3
25 and older	67%	73%	6.9
25 to 34	22%	23%	8.7
35 to 44	17%	19%	6.8
45 to 54	16%	18%	6.2
55 +	12%	13%	5.6

**Source:** Bureau of Labor Statistics (BLS), Employment Situation, February, 2009. *Table A-7: Selected Unemployment Indicators, Seasonally Adjusted*, Published March 6, 2009.

<sup>4</sup> Bureau of Labor Statistics, *The Employment Situation: February 2009*. Published March 6, 2009.

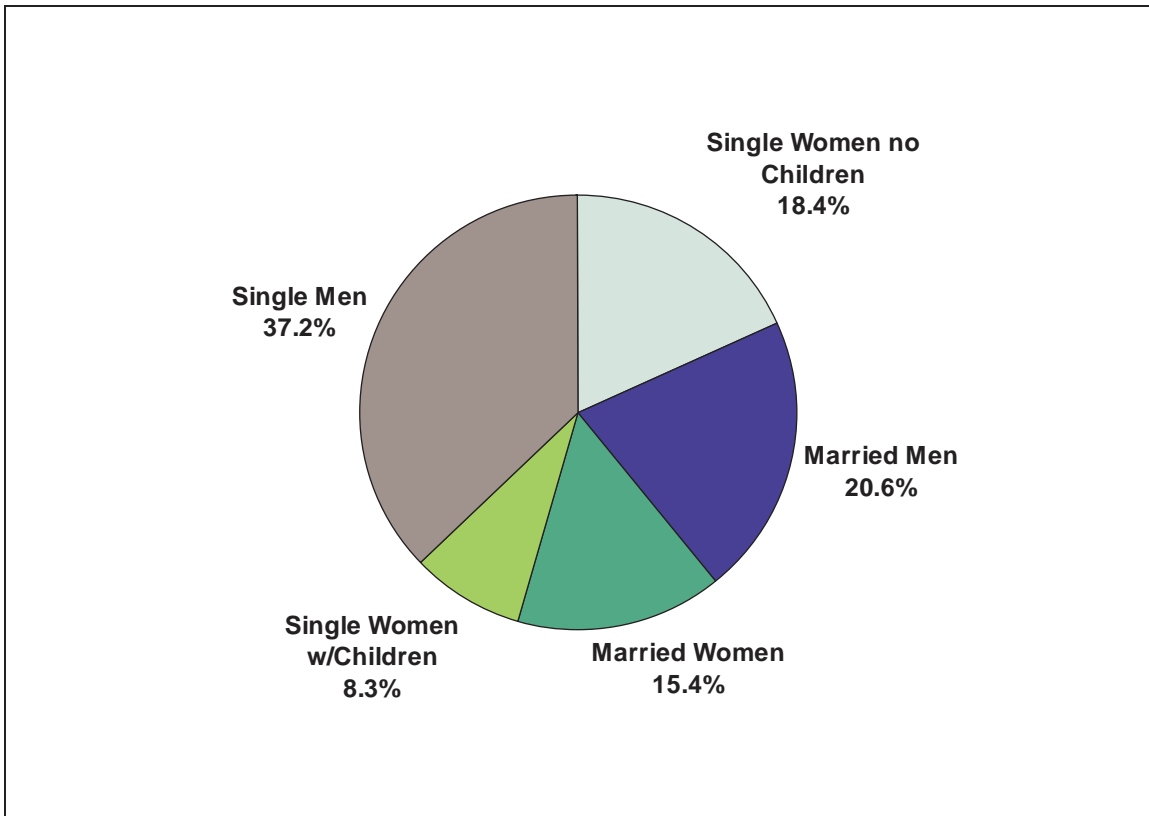
The age distribution of the unemployed can affect their probability of needing health care services and the availability of other financial resources while unemployed. The younger unemployed will most likely incur lower health care expenditures and may rely more on parents for family assistance as compared to their older counterparts.

## Marital Status and Gender

**Figure 1** shows the unemployed by marital status, gender and the presence of children in a household.

- The majority of the unemployed are single men (37%) and single women without children account for 18% of the unemployed.
- Single women with children comprise another 8% of the unemployed.
- Married women account for 15% and married men comprise 21% of the unemployed.

**Figure 1. Characteristics of the Unemployed by Gender and Marital Status, February 2009**



**Source:** BLS, Employment Situation, February 2009, Table A-7: Selected Unemployment Indicators, Seasonally Adjusted, Published March 6, 2009.

Marital status has a direct impact on the probability of the unemployed continuing to be covered by health insurance. Those that are married (or heads of household) may be providing the main source of health insurance coverage for their families. Those most at-risk in this category are

single mothers who are head of household and unemployed. Their loss of coverage reduces the availability of employer-sponsored coverage to their children. Some may, however, be eligible for public assistance through Medicaid (see the discussion on page 11 below) or the State Children's Health Insurance Program (CHIP). On the other hand, those married with a spouse who still has a job and health insurance coverage, may allow him or her to enroll in their spouse's plan.

## **Duration of Unemployment**

The duration of unemployment has increased over the past year.

- As of February 2009, 42% of the unemployed had been unemployed for 15 weeks or longer. Nearly 1 in 4 (23%) were unemployed for more than 6 months, this compares to 18% with a similar duration in unemployment a year earlier.<sup>5</sup>
- Educational attainment of the unemployed may affect how quickly they can find another job. Less skilled, less educated people may find it more difficult to find employment.
  - The majority of the unemployed (35%) were high school graduates as of February 2009.
  - The second highest group are the unemployed had some college or an associate degree (29%). About 1 in 5 unemployed (20%) had a bachelor's degree or higher, while 17% of the unemployed did not have a high school diploma.

The longer one stays unemployed and uninsured, the greater may be the delay in seeking medical treatment<sup>6</sup> (see discussion on health status below).

## **Health Status**

The health status of the unemployed is dependent on whether or not they have health insurance coverage, their demographic composition, and the duration of their unemployment.

- In 2007, about half of those individuals looking for work were uninsured.<sup>7</sup>
- As noted earlier, the unemployed today tend to be older than a year ago. Since age and health status are strongly correlated, they may also be less healthy. **Table 2** reports on data by perceived health status by age (regardless of employment status).
  - Of those ages 25 to 44, 9% report they are in fair to poor health. Whereas, of those ages 45 to 64, 16% report they are in fair to poor health.

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<sup>5</sup> BLS, Employment Situation, February 2009, *Table A-9: Unemployed Persons by Duration of Unemployment*, Published March 6, 2009.

<sup>6</sup> The Commonwealth Fund, *Losing Ground: How the Loss of Adequate Health Insurance is Burdening Working Families*, August 2008.

<sup>7</sup> CRS Analysis of the 2008 March Supplement to the Current Population Survey.



- Finally, as noted earlier, the unemployed today tend to have longer durations of unemployment, which may further delay necessary medical treatment.

**Table 2. Percent Reporting Perceived Health Status by Age**

Age	Perceived Health Status				
	Excellent	Very Good	Good	Fair	Poor
<b>18 to 24</b>	38%	35%	22%	4%	1%
<b>25 to 44</b>	28%	37%	27%	7%	2%
<b>45 to 64</b>	20%	33%	30%	11%	5%

**Source:** 2006 Medical Expenditure Panel Survey.

Studies show that more than 70% of adults with gaps in health care coverage tend to forgo needed care because of cost, up from just over half in 2001. Uninsured adults are also less likely than those with insurance to obtain screening such as blood pressure, cholesterol, and cancer screening than their insured counterparts.<sup>8</sup> These problems may be further exacerbated among the older unemployed and/or those with longer durations of unemployment.

## Income

Individuals who become unemployed may be eligible for unemployment compensation (UC). Eligibility, benefit amount, and duration for unemployment compensation is determined by each state.<sup>9</sup>

- Generally, UC benefits are based on wages for covered work over a 12-month period. Most state benefit formulas replace half of a claimant's average weekly wage up to a weekly maximum.
- The average regular UC benefit duration as of December 2008 was 15 weeks. In December 2008, approximately 5 million unemployed workers received UC benefits in a given week.

Data on the income characteristics of those currently unemployed is not available. However, according to the most recent data from the Internal Revenue Service, the annual average unemployment compensation benefit was \$3,524 in 2005 (see **Table 3**).

- Nearly 40% of those who received unemployment compensation benefits had household income below \$25,000, while 30% had household income of \$50,000 and over.

<sup>8</sup> The Commonwealth Fund, *Losing Ground: How the Loss of Adequate Health Insurance is Burdening Working Families*, August 2008.

<sup>9</sup> CRS Report RS22538, *Unemployment Compensation: The Cornerstone of Income Support for Unemployed Workers*, by Julie M. Whittaker.

**Table 3. Unemployment Compensation Benefits By Household Income, 2005**

Household Income <sup>a</sup>	Number (in 1,000s)	Distribution by Income	Average Annual Benefit
Less than \$10,000	775	9.4%	\$2,423
\$10,000 to \$15,000	865	10.7%	\$3,015
\$15,000 to \$20,000	818	10.1%	\$3,422
\$20,000 to \$25,000	758	9.4%	\$3,487
\$25,000 to \$30,000	676	8.4%	\$3,537
\$30,000 to \$40,000	955	11.8%	\$3,707
\$40,000 to \$50,000	758	9.4%	\$3,727
\$50,000 to \$100,000	1,944	24.1%	\$3,766
\$100,000 and over	536	6.6%	\$4,597
Total	8,065	100%	\$3,524

**Source:** CRS analysis of data from the Congressional Budget Office.

- a. Represents individual, couple or family income where income is defined as adjusted gross income plus statutory adjustments, tax-exempt interest, and nontaxable Social Security benefits.

The availability of other forms of income for the unemployed is important to their ability to pay for health insurance coverage or health care services directly out-of-pocket. Unemployment compensation by itself is most likely insufficient to pay for these costs. Beyond unemployment compensation, individuals also may draw down their savings (including retirement savings) to pay for household expenses. These savings, however, have faced financial strains of their own. Recent estimates show that retirement savings, one of the largest sources of savings, have lost nearly a third of their value over the past year.<sup>10</sup>

## Some Policy Implications

One approach to helping the unemployed retain or obtain health insurance is to provide assistance to everyone who loses their job. However, in an environment of limited resources, some policy makers might prefer to target assistance on the unemployed who have the greatest needs. The diversity described above indicates that this approach might raise some complex issues:

- Should older unemployed workers be given higher priority (or maybe larger subsidies) since on average they have higher health care expenditures? In general, this approach might provide the greatest benefit per dollar spent. However, some younger workers also have high costs, and some older workers may have more assets.
- Should higher priority be given people who are out of work a long time? They often have greater financial need and arguably people might be expected to pay health care costs for the first few months of unemployment. On the other hand, some people need immediate assistance to avoid unbroken insurance coverage, which could prevent application of pre-existing condition exclusions.

<sup>10</sup> Mauricio Soto, *How is The Financial Crisis Affecting Retirement Savings?*, Urban Institute, December 10, 2008.

- Should equal assistance be provided to all unemployed, or should more help be given to those with lower incomes? Should there be an income limit to receiving any assistance at all? Some current forms of assistance (such as the Health Coverage Tax Credit, described below on page 11) are not adjusted or limited by income, nor is the income tax exclusion for employer-provided coverage.<sup>11</sup> On the other hand, the full COBRA premium subsidy (described below on page 15) is available only to taxpayers with incomes below certain levels. Limitations can involve administrative complexity, such as defining and measuring income. However, some would argue that new subsidies should be viewed as a form of means-tested payments to be focused on those most in need.

## **The Link Between Health Insurance Coverage and Unemployment**

While some people lose health insurance when they lose their job, either because they could not continue their employer-sponsored coverage or could not pay for it, other unemployed had no coverage to lose since their employer did not provide it. Sometimes people choose jobs without insurance because they do not want it, but other times these jobs are their only options.

Complicating the link between coverage and unemployment are other at-risk groups who are not technically unemployed but who may not have coverage due to change in work status. These groups include involuntary part-time workers and discouraged workers who no longer seek employment.

### **Employer-Sponsored Health Insurance by Industry: Implications for the Unemployed**

Employment-based health insurance does represent an important source of coverage to workers and their dependents. In 2007, about 71% of workers received employment-based coverage from an employer, either in their own name (54%) or as a dependent of another family member's employer (17%).<sup>12</sup> Certain characteristics of the unemployed increase the likelihood of losing employer-sponsored coverage.

A closer look at the industry characteristics of the unemployed provides some insight into their health insurance status prior to becoming unemployed. Those most likely to have lost employer sponsored coverage are the nearly 5.5 million unemployed who report that they have been permanently laid off from their jobs.

- Permanently laid-off workers represent nearly half (50%) of unemployed workers as of February 2009.

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<sup>11</sup> For more information on the tax exclusion, see CRS Report RL34767, *The Tax Exclusion for Employer-Provided Health Insurance: Policy Issues Regarding the Repeal Debate*, by Bob Lyke.

<sup>12</sup> EBRI, *Sources of Health Insurance and Characteristics of the Uninsured: Analysis of the March 2008 Current Population Survey*, September 2008.

- The majority of the unemployed (72%) had previously worked in manufacturing, retail, construction, professional and business services, leisure and hospitality.
  - Workers laid off in the manufacturing and information sectors had the highest likelihood of having health insurance from their previous employer (see **Table 4**).
  - Workers laid off in the leisure and hospitality, construction and wholesale and retail trade sectors were less likely to have health insurance from their previous employer prior to being laid off.
- Another 12% of the unemployed have been temporarily laid off. These workers may still have access to health insurance and other employer-provided benefits (if they were available prior to their change in work status).
- About 7% of the unemployed left their jobs voluntarily.

**Table 4. Employer-Sponsored Insurance Coverage of Workers, By Industry**

Industry	Unemployment Rate By Industry February, 2009	Share of Workers in Industry with Employer Sponsored Insurance in their Own Name, 2007	% Uninsured while Employed, 2007
<b>Manufacturing</b>	11.5%	69%	13%
<b>Information</b>	7.1%	67%	11%
<b>Transportation /Utilities</b>	9.1%	63%	16%
<b>Financial Activities</b>	6.7%	61%	9%
<b>Professional and Business Services</b>	10.8%	49%	19%
<b>Wholesale/ Retail Trade</b>	8.9%	47%	19%
<b>Construction</b>	21.4%	40%	34%
<b>Leisure and Hospitality</b>	11.4%	28%	28%

**Source:** Unemployment data derived from BLS, Employment Situation, February 2009. Table A-11: Unemployed Persons by Industry. Percent with employer-sponsored coverage and uninsured calculated by CRS from March 2008 Supplement to the Current Population Survey.

## Health Insurance Coverage For Those Entering the Labor Force

Those considered unemployed include individuals entering or re-entering the workforce. Nearly one-third of the unemployed are just entering the labor force either for the first time (8.1%) or re-entering after being out for some time (23%). This later group most likely include family caregivers returning to work, retirees returning to work to supplement their income in the “down” economy, or those returning after an extended illness. Those entering or the re-entering the labor

force, most likely did not lose employer-sponsored coverage in their own name.<sup>13</sup> Many may have coverage through their spouse, parents, retiree-health through their prior employer, or were uninsured.<sup>14</sup>

## **Other At-Risk Groups**

Legislative proposals to help the unemployed with health insurance typically focus on people who do not have a job and are actively searching for work. They may or may not be receiving (or have received) unemployment benefits. However, there are others who may be without health insurance due to a change in work status: the involuntary part-time worker and the discouraged worker who has left the workforce altogether.

### **Involuntary Part-Time Workers**

- The number of involuntary part-time workers have nearly doubled over the past year to 8.6 million. These are individuals who wanted to work full-time but instead had to work part-time.<sup>15</sup>
- Part-time workers are about twice as likely to be uninsured (26%) as compared to full-time workers (13%).<sup>16</sup>

### **Discouraged Workers**

- Another group that raises concerns with respect to health insurance coverage are discouraged workers—persons not currently looking for work because they believe jobs are not available for them.
- As of February 2009, there were 731,000 discouraged workers. This number has more than doubled over the past year.<sup>17</sup>

## **Some Policy Implications**

As discussed above, some people lose employer-sponsored health insurance when they lose their job, but other unemployed did not have coverage to begin with. In addition, there are involuntary part-time workers and discouraged workers who do not have coverage. Should all of these groups be given assistance, or should some be given higher priority? Several issues are involved:

- In general, there appears to be a trade-off between concerns about cost and concerns about equity. Providing assistance to all the groups mentioned above would cost more than helping just those who lost employer-sponsored coverage,

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<sup>13</sup> Some could have retiree-health coverage from a prior employer and some could still be purchasing COBRA coverage.

<sup>14</sup> See CRS Report RL34596, *Health Insurance Coverage of People Aged 55 to 64*, by Chris L. Peterson.

<sup>15</sup> BLS, Employment Situation, February 2009, Table A-1: Employed Persons by Class of Worker and Part-Time Status, Published March 6, 2009.

<sup>16</sup> EBRI, *Sources of Health Insurance and Characteristics of the Uninsured: Analysis of the March 2008 Current Population Survey*, September 2008.

<sup>17</sup> BLS, Employment Situation, February 2009, Table A-13: Persons Not in the Labor Force, Published March 6, 2009.

but on grounds of equity it may be difficult to justify not helping all. At the same time, there is something to be said for giving higher priority to those who recently had coverage if the immediate goal is not to allow things to get worse.

- If assistance is given to those who did not have employer-sponsored coverage, what form of coverage should they have? Should they be enrolled in public programs such as Medicaid or Medicare (for those near age 65), or should they be permitted private insurance options? If the latter were allowed, what benefit and consumer protection standards might apply?

## **Current Programs and Provisions That Assist Some Unemployed with Health Insurance**

Current federal law includes several programs and provisions that might assist some unemployed with respect to health insurance. The ones that are directly or otherwise closely related to being unemployed include the following, each of which is briefly summarized and assessed below:

- COBRA
- Health Coverage Tax Credit
- Medicaid
- Itemized Deduction for Medical Expenses
- Health Savings Accounts
- Individual Retirement Accounts

At the end of these summaries and assessments is a brief discussion of whether solutions should build upon these current law measures or develop new approaches.

### **COBRA**

Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) requires employers with 20 or more employees to provide employees and their families the right to continue participation in the employer's group health plan in case of certain events, one of which is involuntary dismissal. Depending on the triggering event, the continuation period generally lasts up to 18 or 36 months.<sup>18</sup>

- One attraction of COBRA for the unemployed is that they can continue in the health plan they had while working; this is especially important when the plan is linked to particular doctors and other providers. Employer plans have group rates, which often are lower than individual market insurance premiums for similar benefits when people are older or have health conditions.

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<sup>18</sup> CRS Report R40142, *Health Insurance Continuation Coverage Under COBRA*, by Janet Kinzer. Forty states have continuation laws of their own which extend COBRA-like protections to firms with fewer than 20 employees or lengthen the continuation period for some individuals. Kaiser Family Foundation, *Expanded COBRA Continuation Coverage for Small Firm Employees, 2007*. <http://www.statehealthfacts.org/comparabletable.jsp?cat=7&ind=357&typ=5>.

- A limitation of COBRA for the unemployed has been that covered individuals usually have to pay 102% of the health plan's full premium (i.e., both the employee's and the employer's share, plus 2%). Without subsidies, typical premiums can consume a large part of the unemployment benefit, or even exceed it in the case of family coverage.<sup>19</sup> The ARRA provides some assistance in this respect; it includes a temporary 65% COBRA subsidy in the form of an employer tax credit. However, the subsidy is limited to 9 months, and individuals still must pay the remaining balance. Employers contend that COBRA is elected by people with higher than average health care needs, so the actual cost to the plans may substantially exceed even the plan premium.

## **Health Coverage Tax Credit**

The Health Coverage Tax Credit (HCTC) is an individual income tax credit that is both refundable (allowing taxpayers to receive the full amount regardless of their tax liability) and advanceable to health plans (allowing taxpayers to benefit from the credit while they have coverage, not just after they file their returns the next year). The 80% credit (raised from 65% by the ARRA) can be applied to premiums for ten types of health insurance, three of which (including COBRA) are available nationwide but seven of which first require state approval. Eligible taxpayers must be receiving Trade Adjustment Assistance (TAA) benefits (or would be except they have not exhausted their unemployment benefits), Alternative Trade Adjustment Assistance benefits, or pension benefits being paid because the Pension Benefit Guaranty Corporation has taken over their pension plan. Individuals are not eligible if they are enrolled in employer subsidized insurance, Medicare Part B, Medicaid, or CHIP (among others) or of they are entitled to Medicare Part A (among others).<sup>20</sup>

- One attraction of the HCTC for the unemployed is that the 80% rate applies regardless of annual income, which can help people who have income earned in the year prior to unemployment or who have a spouse who remains employed.
- Limitations of the HCTC for the unemployed include restricted eligibility categories (broadened somewhat by the ARRA), short eligibility periods for some TAA beneficiaries (eligibility can range from less than a year to over two years, depending on residence and other circumstances), and the inability of cash-strapped taxpayers to pay the remaining part of the premium.<sup>21</sup>

## **Medicaid**

Medicaid is an entitlement program that is targeted toward low-income households. It finances health and long-term care services primarily for the elderly, people with disabilities, members of families with dependent children, and certain other pregnant women and children. Participants must meet low income and sometimes limited resource or asset tests that are established by states

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<sup>19</sup> *Squeezed! Caught between Unemployment Benefits and Health Care Costs*. Families USA January 2009.

<sup>20</sup> The HCTC eligibility rules are complex. For more information, see CRS Report RL32620, *Health Coverage Tax Credit*, by Bernadette Fernandez.

<sup>21</sup> For more information about the limitations of the HCTC, see Stan Dorn, *Health Coverage Tax Credits: A Small Program Offering Large Policy Lessons*. The Urban Institute (February 2008).



within federal guidelines. States must cover certain categorical groups and provide various defined services, but they have options to cover other groups and add other services.<sup>22</sup>

- One attraction of Medicaid for the unemployed is that the program can pay for a wide range of medically-necessary treatments, usually with small deductibles or copayments relative to employment-based coverage.
- A limitation of Medicaid for the unemployed is that they might not meet income and asset tests the states impose, and some (such as childless, non-disabled adults) might not be categorically eligible. In addition, the doctors they had prior to becoming unemployed might not accept Medicaid.

## **Itemized Deduction for Medical Expenses**

Taxpayers who itemize their deductions may deduct unreimbursed medical expenses that exceed 7.5% of their adjusted gross income.<sup>23</sup> Medical expenses include direct payments to providers, insurance deductibles and copayments, and insurance premiums, among other things. The federal income tax provision just described is also followed by most state income tax systems, providing additional tax savings.

- One attraction of the itemized deduction for the unemployed is that it has no employment-related eligibility tests; some people who have lost full-time jobs but are not defined as unemployed (such as those who can only find intermittent part-time work) could still use it.
- A limitation of the itemized deduction is that one must itemize deductions to use it; most lower-income taxpayers find that their standard deduction is larger. The 7.5% adjusted gross income floor further limits its use. In addition, deductions result in relatively low tax savings for lower income taxpayers since their marginal tax rates are relatively low.

## **Health Savings Accounts**

Health Savings Accounts (HSAs) are tax-advantaged accounts that people can use to pay unreimbursed medical expenses such as deductibles, copayments, and services not covered by insurance. Contributions, which are either excluded from taxes (if by employers) or deductible (if by individuals) can be made only when people have qualifying high deductible health insurance; for most, they are limited to \$3,000 for self-only coverage and \$5,950 for family coverage. Amounts not used one year can be rolled over to the next. Withdrawals used to pay health insurance premiums usually are taxable, but not when one is receiving unemployment benefits or within a COBRA continuation period.<sup>24</sup>

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<sup>22</sup> For more information, see CRS Report RL33202, *Medicaid: A Primer*, by Elicia J. Herz and CRS Report RL31698, *Transitional Medical Assistance (TMA) Under Medicaid*, by April Grady.

<sup>23</sup> For taxpayers who are subject to the alternative minimum tax, as middle income families increasingly are, the income floor is higher, 10% of adjusted gross income.

<sup>24</sup> For more information about HSAs, see CRS Report RL33257, *Health Savings Accounts: Overview of Rules for 2008*, by Bob Lyke.



- One attraction of HSAs for the unemployed (or who might become so in the future) is that if regular contributions are made people could accumulate a balance that can be used as a rainy day health care fund. Unlike other individual health care funds, HSAs are portable and not tied to continued employment.
- A limitation of HSAs for the unemployed is that one must have high deductible insurance (deductibles of at least \$1,150 for single coverage or \$2,300 for family coverage in 2009) to make contributions; many people are reluctant to accept this risk even though high deductible insurance premiums are somewhat lower. People with high deductible insurance often do not contribute to an HSA or, if they do, they use the money soon afterwards and cannot build up substantial balances.

## **Individual Retirement Accounts**

Individual Retirement Accounts (IRAs) are tax-advantaged accounts to help people save for retirement. Contributions to *Traditional IRAs* are deductible (depending on income and whether one participates in other retirement plans), though after-tax contributions are also allowed. Distributions are taxable (aside from sums attributable to after-tax contributions) and subject to an additional 10% penalty if occurring before age 59 and one-half. In contrast, contributions to *Roth IRAs* are not deductible though distributions of contributions (always deemed to come first) are tax-exempt, as are distributions of earnings after age 59 and one-half. Early distributions of earnings are taxable and subject to an additional 10% penalty. For 2009, contribution limits for both types of IRAs generally are \$5,000 plus an additional \$1,000 for those age 50 and over. For both types of IRAs, the 10% early withdrawal penalty is waived for several reasons, including unreimbursed medical expenses exceeding 7.5% of adjusted gross income and distributions that are less than health insurance premiums paid after loss of a job.<sup>25</sup>

- One attraction of IRAs for the unemployed is that one does not need to get prior approval before withdrawing funds.
- A limitation of IRAs for the unemployed is that distributions to pay medical expenses likely would be taxed; it is only the penalty tax that is waived. Once withdrawn, funds cannot be repaid, so there will be less money available for retirement.

## **What Direction for Current Legislation**

An issue for helping unemployed people with health insurance is whether it is better to build upon these enacted provisions and programs or to develop new solutions. The principal advantage of the former approach is that often it is easier to modify current law than it is to design new initiatives and draft legislative language that would effectively carry them out. Current law can provide a starting point that is based upon a legislative consensus, though this is not always the case. A second advantage of building upon enacted provisions and programs is that administrative procedures and legal interpretations are already in place. For example, states already have procedures for measuring income for determining Medicaid eligibility, and employers can follow

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<sup>25</sup> For additional information see CRS Report RL31770, *Individual Retirement Accounts and 401(k) Plans: Early Withdrawals and Required Distributions*, by Patrick Purcell.

guidelines for COBRA eligibility that have been developed over more than 20 years. Responsibilities and assignments will change, but they need not be created anew. New agencies or offices do not have to be established. The ARRA followed this first approach in providing COBRA subsidies.

On the other hand, current provisions and programs may have features that might not be optimal for helping some unemployed have health insurance. For example, COBRA establishes the right to continue with coverage offered by the prior employer; it does not establish an immediate right to other insurance that might be less expensive, either because the individual is less costly to insure than others in the employer's plan or because the benefits are not as generous.<sup>26</sup> As a consequence, subsidies tied to COBRA cannot be used for individual market insurance that some unemployed might find preferable. Similarly, expanding eligibility for Medicaid ties individuals to both the strengths and limitations of that program. Medicaid is especially helpful to individuals who could not obtain private insurance; at the same time, people with Medicaid sometimes have difficulty finding doctors who will see them.

New approaches for providing health insurance to the unemployed might be preferable, depending on how they are crafted. For one thing, they might appear more equitable if they allowed broader eligibility, avoiding restrictions enacted in earlier times that may seem arbitrary or narrow in today's economic circumstances. In addition, they might provide assistance for longer periods of time, which some may need if the recession is prolonged. Uncertainty about the length and severity of the recession makes it difficult to assess the need for a new approach.

## **Legislation Introduced in the 111<sup>th</sup> Congress**

The following discusses key legislation enacted and other proposals introduced in the current Congress that could provide some assistance to the unemployed regarding health insurance. The first set of bills has provisions that are directly aimed at providing assistance to the unemployed, while the second has provisions of a more general nature that might help some.

### **Bills Directly Related to Providing Assistance to the Unemployed for the Purpose of Health Insurance Coverage**

#### **The American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5)**

The ARRA was signed into law by President Obama on February 17, 2009. It includes the following provisions regarding health insurance for the unemployed:

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<sup>26</sup> The Health Insurance Portability and Accountability Act (HIPAA) requires guaranteed issue and prohibits pre-existing condition exclusions for individuals purchasing individual market insurance who recently had group coverage, but it does not limit the cost of this insurance. Individuals would likely have to undergo medical underwriting, unlike those who elect COBRA. Underwriting would likely lead to higher premiums for some, though this would not be the case for others. The HIPAA provisions apply only after one has exhausted COBRA or other continuation coverage, which can be expensive without a subsidy. For further information, see CRS Report RL31634, *The Health Insurance Portability and Accountability Act (HIPAA) of 1996: Overview and Guidance on Frequently Asked Questions*, by Hinda Chaikind et al.

- Temporary premium subsidies of 65% for 9 months to help the unemployed afford COBRA coverage from their former employer.<sup>27</sup> (The subsidy is provided in the form of a credit that employers can use to offset payroll taxes they would otherwise pay.) To qualify, a worker must be involuntarily unemployed between September 1, 2008, and December 31, 2009. The subsidy would terminate upon offer of any new employer-sponsored health care coverage or Medicare eligibility. Workers who were involuntarily terminated between September 1, 2008, and the date of enactment, but failed to initially elect COBRA are to be notified by their former employer that they are entitled to elect COBRA and receive the subsidy. The subsidy is phased-out for workers whose annual household adjusted gross income exceeds \$125,000 for single filers and \$250,000 for joint filers.<sup>28</sup>
- Extension of Trade Adjustment Assistance to service-sector workers who lost their jobs due to increased foreign imports or shifts in production outside the U.S. and an increase in the HCTC to 80% for all TAA eligible beneficiaries (from its current rate of 65%).

**Table 5** shows key differences between the House and Senate legislative provisions, along with the conference agreement (H.Rept. 111-16) that became law.

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<sup>27</sup> The Joint Committee on Taxation estimates that the COBRA subsidy provision in ARRA 09, which would apply to state continuation laws as well, would cost \$24.7 billion over FY2009-FY2013 (mostly in FY2009 and FY2010). JCX-19-09.

<sup>28</sup> For more information, see CRS Report R40420, *Health Insurance Premium Assistance for the Unemployed: The American Recovery and Reinvestment Act of 2009*, coordinated by Janemarie Mulvey.

**Table 5. Major Provisions—American Recovery and Reinvestment Act of 2009**

Major Provisions	H.R. 1 as first passed in House	H.R. 1 as amended in Senate (S.Amdt. 570)	P.L. 111-5
Temporary COBRA Subsidy for Involuntary Unemployed	65% subsidy for 12 months no income limits	50% subsidy for 12 months no income limits	65% subsidy for 9 months with income limits
Extension of COBRA Continuation Coverage for 55+ and Long-Tenured Employees	Included	Not Included	Not Included
Expand Medicaid to Four Groups of Unemployed Workers:	Included	Not included	Not included
(1) Unemployment Compensation Recipients			
(2) Unemployed who have exhausted unemployment benefits			
(3) Unemployed after September 2008 and have income below 200% of poverty			
(4) Unemployed who are eligible for food stamps			

**Source:** CRS analysis of H.R. 1, S.Amdt. 570, and P.L. 111-5.

### Other Legislative Proposals

These bills, all of which were introduced prior to the enactment of the ARRA, would help some unemployed by extending the COBRA continuation period.

- H.R. 694 (Representative Sestak): This bill would temporarily extend COBRA coverage from 18 months to 24 months.
- S. 29 (Senator Brown): This bill would extend the COBRA continuation period by 12 months for enrollees who exhaust their continuation eligibility during calendar year 2009. In addition, it would increase the Health Coverage Tax Credit rate to 85% and add COBRA enrollees to the list of taxpayers eligible for the credit.
- S. 281 (Senator Kohl): This bill would extend COBRA coverage for up to 36 months (until they are eligible for Medicare).

### Bills of More General Nature that Might Provide Some Assistance

- H.R. 153 (Representative McHugh): This bill would authorize the establishment of tax-advantaged worker savings accounts to make payment during periods of unemployment. (While this legislation would not help those who are currently unemployed, or soon will be, it could help some who become unemployed in the future.)

- H.R. 198 (Representative Stearns): This bill would allow taxpayers to deduct the cost of health insurance and unreimbursed prescription drug purchases from their federal income taxes. The deduction would not be limited to itemizers.
- H.R. 502 (Representative Bachmann): This bill would allow taxpayers who itemize to deduct unreimbursed medical expenses, including health insurance premiums, without the 7.5% adjusted gross income floor in current law.
- H.R. 879 (Representative Granger): This bill would authorize a refundable tax credit for purchasers of health insurance (\$1,000 each for the taxpayer and spouse plus \$500 for each dependent). The credit would be phased out for higher-income taxpayers.
- H.R. 956 (Representative Kaptur): This bill would (among other things) allow certain taxpayers with incomes under 200% of federal poverty levels to receive a refundable tax credit for health insurance.
- H.R. 1495 (Representative Paul): This bill would (among other things) allow a refundable tax credit for the amount of health insurance paid for by the taxpayer.
- H.R. 1496 (Representative Paul): This bill would allow a nonrefundable tax credit for unreimbursed medical expenses of dependents, generally limited to \$500 per dependent.
- S. 207 (Senator Boxer): This bill would allow taxpayers to deduct up to \$2,000 (\$4,000 in the case of a joint return) of the cost of health insurance from their federal income taxes. The deduction would not be limited to itemizers. The deduction would be phased out for higher-income taxpayers.

The 111<sup>th</sup> Congress might also consider comprehensive health care reform. Most broad reform proposals could include provisions that provide assistance to people who become unemployed, have low income, or lose employment-based coverage (assuming the latter is still permitted). Comprehensive reform bills that have been introduced so far include H.R. 15 (Representative Dingell), H.R. 193 (Representative Stark), H.R. 676 (Representative Conyers), H.R. 1200 (Representative McDermott), H.R. 1321 (Representative Eshoo), and S. 391 (Senator Wyden).

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## **Acknowledgments**

This report was co-authored by Bob Lyke, who is currently working as a contractor for CRS. He can be reached at: 7-7355. Comments were also provided by Julie Whittaker, Pat Purcell, and Lisa Herz.

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