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Philip J. DeCastro

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HEALTH COVERAGE FOR YOUNG ADULTS: TAX INCENTIVES FOR EXTENDING HEALTH COVERAGE TO CHILDREN UNDER AGE 27 AS AMENDED BY THE AFFORDABLE CARE ACT

Philip J. DeCastro *

I. INTRODUCTION

One of the issues brought to the forefront by the health care reform debate was the fact that prior to 2010, thirty percent of young adults were uninsured in the United States.¹ Usually, once children entered college or ceased to be dependents of their parents, many health insurance providers removed these young adults from their parents' policies.² Prior to 2010, this action resulted in about one in five of the total population uninsured.³ Furthermore, in the current uncertain economy, this group often lacks coverage due to unemployment or limited employer-sponsored health benefits.⁴ One in six young adults suffer from a chronic illness, and nearly half of uninsured young adults are experiencing difficulties with paying off their medical bills.⁵

* J.D. Candidate, The Catholic University of America, Columbus School of Law, May 2012; M.A., Columbia University, 2009; B.A., University of Southern California, 2007. The author would like to thank his family and friends, especially his parents, for their love and support. The author also wishes to thank Professor Regina Jefferson, whose substantive guidance and overall encouragement have proved invaluable in shaping this Note. The author also would like to thank the editors and staff of the *Journal of Contemporary Health Law and Policy* for their hard work and help in the production of this Note, as well as Professor of Law, George P. Smith, II, for his unwavering support and continued advice.

1. See *Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Families and Businesses*, U.S. DEP'T OF LABOR, <http://www.dol.gov/ebsa/newsroom/fsdependentcoverage.html> (last visited Nov. 7, 2011) [hereinafter Fact Sheet 1].

2. *Id.*

3. *Id.*

4. See *id.*

5. *Id.*

With these facts in mind, President Barack Obama signed into law the Patient Protection and Affordable Care Act (“Affordable Care Act”) on March 23, 2010.⁶ One of the provisions of the Affordable Care Act extended health coverage to young adults by allowing them to stay on their parents’ employer-sponsored health plans until they reach the age of twenty-seven.⁷ Not only does this extension ensure that young adults are covered by health insurance well into their twenties, but it also provides a tax savings for the individual taxpayer.⁸

The Affordable Care Act amended the Internal Revenue Code in two ways.⁹ First, the Act allows employees to exclude from gross income employer-provided reimbursements related to their children’s medical care up until their children turn twenty-seven.¹⁰ Second, it permits employees to exclude any coverage under an employer-provided accident or health plan from gross income, including coverage pertaining to their children up until twenty-seven years of age.¹¹ These exclusions decrease tax liability for the individual taxpayer by allowing exemptions from gross income for medical reimbursements and health coverage provided by an employer.¹² Moreover, because the Act allows these exclusions, it encourages employees to keep their children on their employer-sponsored plans until their children turn twenty-seven.¹³ Although the constitutionality of the health care law has

6. *See generally* Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010), as amended by the Health Care Education Reconciliation Act, Pub. L. No. 111-152, 98 Stat. 1585 (2010) (codified at 42 U.S.C.A. § 18001 (West 2011)).

7. I.R.S. Notice 2010-38, 2010-1 C.B. 682.

8. *See id.*

9. *See id.*

10. *Id.*

11. *Id.*

12. *See id.*

13. *See* Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 27,122, 27,130 (May 13, 2010) (to be codified at 26 C.F.R. pt. 54, 602).

been challenged in a number of federal courts,¹⁴ any final ruling on the law's constitutionality by the U.S. Supreme Court probably will not come until 2012.¹⁵ In the meantime, proposals on how to improve the Affordable Care Act should be explored.

Some argue that these exclusions should be repealed or capped, or that tax credits for health care are not a viable solution.¹⁶ This Note addresses a different response to the Affordable Care Act's amendments to the Internal Revenue Code by narrowly focusing on the Act's tax implications upon a specific subgroup of the population—young adults. With the enactment of the Affordable Care Act, this Note argues that Congress intended for health coverage to be spread among young adults currently uninsured. Despite this intent, Congress has not covered much of the uninsured young adult population through the current measures of the Affordable Care Act; therefore this Note asserts that the statute has created a lack of equity.¹⁷ This Note also recommends that Congress should extend the effect of the amended sections 105 and 106, by implementing either a modified section 213 tax deduction or a tax credit to incentivize self-employed or temporarily unemployed individuals to keep their children on their health plans. This recommendation increases the likelihood that more young adults will become insured and achieves Congress's intent to cover the uninsured young adult population.

Part II discusses tax exclusions and deductions that impact tax liability to illustrate how the federal government determines how much one owes in taxes. Part III examines section 105(b) of the Internal Revenue Code to show how employer-provided medical care reimbursements decrease tax liability. Part IV reviews section 106 of the Internal Revenue Code and explains how employer-provided contributions to health plans decrease tax

14. Kevin Sack, *Federal Judge Rules that Health Law Violates Constitution*, N.Y. TIMES, Feb. 1, 2011, at A1.

15. Adam Liptak, *Doing the Judicial Math on Health Care*, N.Y. TIMES, Feb. 6, 2011, at WK3.

16. See generally Benjamin D. Gehlbach, Note, *The Preferential Treatment of Employer-Provided Health Care: Time for a Change?*, 27 J. CONTEMP. HEALTH L. & POL'Y 398, 401-02 (2011). The instant Note responds to the position taken by Gehlbach by providing opposite, yet reasonable, alternatives to addressing the Affordable Care Act's amendments to I.R.C. §§ 105 & 106.

17. *Id.* at 409 (noting a lack of equity between those receiving health coverage from their employers and those who do not).

liability. Part V explores section 213 of the Internal Revenue Code to demonstrate how certain medical expenses incurred may further decrease tax liability. Part VI analyzes how the Affordable Care Act amends and affects sections 105(b) and 106 of the Internal Revenue Code to ensure coverage for young adults whose parent's employer reimburses medical care. Finally, Part VII examines the original intent of Congress in enacting the Affordable Care Act and explores how many young adults benefit from the Affordable Care Act. Part VII also argues that a tax incentive should be provided to the self-employed and temporarily unemployed individuals who cannot otherwise take advantage of the tax exclusions as amended by the Affordable Care Act.

II. TAX EXCLUSIONS V. DEDUCTIONS: TOOLS TO LIMIT TAX LIABILITY

Under federal law, an individual taxpayer must include "all income from whatever source derived,"¹⁸ in gross income,¹⁹ "unless excluded by law."²⁰ Certain provisions in the Internal Revenue Code allow specific items to be excluded from gross income.²¹ These exclusions allow the individual taxpayer to leave out certain benefits from being calculated in the taxpayer's gross income.²² The net effect of these exclusions is that the individual's gross income is calculated as lower than if the individual did not take advantage of these exclusions.²³ In other words, the economic value for these benefits never appears in an individual's gross income.²⁴

The statute allows the individual to take deductions from gross income for certain expenses paid during the tax year.²⁵ Generally, unless otherwise

18. 26 U.S.C. § 61(a) (2006).

19. *Id.*

20. Treas. Reg. § 1.61-1(a) (2010).

21. *See, e.g.*, 26 U.S.C. § 105 (2006).

22. *See, e.g., id.*

23. *See* Matthew J. Barrett, *Determining an Individual's Federal Income Tax Liability when the Tax Benefit Rule Applies: A Fifty-Year Checkup Brings a New Prescription for Calculating Gross, Adjusted Gross, and Taxable Incomes*, 1994 BYU L. REV. 1, 23-24 (1994).

24. *See id.*

25. *See* 26 U.S.C. § 62 (2006).

provided by statute, these deductions consist of business deductions, or expenses paid or incurred to generate income in connection with a trade or business.²⁶ Gross income minus these deductions equals adjusted gross income.²⁷ These deductions are also known as above-the-line deductions and are generally favored because they are not affected by certain limits that apply to other deductions.²⁸

Once an individual calculates adjusted gross income, he or she may deduct for personal exemptions²⁹ and either the standard deduction or itemized deductions.³⁰ This calculation produces the individual's taxable income.³¹ These deductions are otherwise known as below-the-line deductions.³² The individual may elect to itemize his or her deductions rather than apply the standard deduction, if itemizing would produce a lesser number for taxable income.³³ While using the standard deduction may be less time-consuming and labor-intensive, the rationale for itemizing one's deductions would be to calculate a lower taxable income for the individual, if applicable.³⁴ However, below-the-line deductions are subject to additional limits or caps because they are used for expenses that are perceived to be more personal or choice-driven in nature.³⁵

Thus, the taxable income is what the Internal Revenue Service ("IRS") uses to apply its progressive tax rate structure to calculate an individual's tax

26. *Id.*

27. *Id.*

28. See Theodore P. Seto & Sande L. Buhai, *Tax and Disability: Ability to Pay and the Taxation of Difference*, 154 U. PA. L. REV. 1053, 1090 (2006).

29. 26 U.S.C. § 151 (2006).

30. 26 U.S.C. § 63 (2006).

31. *Id.*

32. Seto & Buhai, *supra* note 28, at 1087.

33. 26 U.S.C. § 63.

34. See Seto & Buhai, *supra* note 28, at 1087-90.

35. See *id.* at 1091; see also Louis Kaplow, *The Standard Deduction and Floors in the Income Tax*, 50 TAX L. REV. 1, 1 (1994).

liability.³⁶ After an individual calculates his or her tax liability, he or she may subtract any applicable tax credits from that tax liability in order to calculate the individual's federal taxes due.³⁷ The IRS uses this process to determine what taxes each individual owes the Treasury in any given tax year.³⁸

III. SECTION 105 AND ITS EXCLUSION FOR AMOUNTS REIMBURSED FOR MEDICAL CARE: TAX INCENTIVE FOR EMPLOYEES WHOSE EMPLOYERS REIMBURSE MEDICAL CARE EXPENSES

Section 105 of the Internal Revenue Code, as amended by the Affordable Care Act, states that, "gross income does not include amounts . . . paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care . . . of the taxpayer . . . and any child . . . of the taxpayer who as of the end of the taxable year has not attained age 27."³⁹ Simply stated, when calculating an individual's gross income, this provision provides an exclusion for the reimbursement of medical care by an employer. Thus, the taxpayer is not taxed on the medical expenses incurred for his or her children until they are twenty-seven years old, if the taxpayer's employer reimburses his or her children's medical expenses.⁴⁰

Income tax regulations further clarify the statute by stating that section 105(b) only applies to the amounts that are specifically reimbursed to the taxpayer for medical care expenses incurred by him.⁴¹ Thus, section 105(b) does not apply to amounts that the taxpayer would be entitled to receive

36. See Seto & Buhai, *supra* note 28, at 1087. A progressive tax rate structure spreads the tax burden over several tax brackets with the tax rate per centum by which income is multiplied increasing proportionally as income increases. *Id.* Thus, the income earned towards the greater amount of the spectrum is taxed at a higher rate than the income earned at the lesser end of the spectrum. The effect of a progressive rate system is that the more income an individual earns, the higher the tax is on that individual. *Id.*

37. See *id.* at 1088.

38. See generally *id.* at 1087-88.

39. 26 U.S.C. § 105(b) (2006).

40. *Id.* See also 26 U.S.C. § 152(a)-(d) (2006) (defining dependents as a qualifying child or a qualifying relative as defined by statute); see also I.R.S. Notice 2010-38, *supra* note 7, at 682.

41. Treas. Reg. § 1.105-2 (2010).

irrespective of his medical care expenses.⁴² Furthermore, the regulations provide that “[i]f the amounts are paid . . . solely to reimburse him for expenses . . . for the prescribed medical care, section 105(b) is applicable even though such amounts are paid without proof of . . . the actual expenses . . . but section 105(b) is not applicable to the extent that such amounts exceed . . . the actual expenses.”⁴³

The regulations further articulate that section 105(b) excludes from gross income amounts received through health insurance plans, such as accident or health plans for employees, or sickness and disability funds for employees.⁴⁴ The regulations explain that a health plan is generally an arrangement to pay employees when they experience personal injuries or sickness.⁴⁵ Furthermore, the regulations state that a health plan “may be either insured or noninsured, and it is not necessary that the plan be in writing or that the employee’s rights to benefits under the plan be enforceable.”⁴⁶ The regulations caution that “if the employee’s rights are not enforceable, an amount will be deemed to be received . . . only if . . . the employee was covered by a plan . . . providing for the payment of amounts . . . in the event of personal injuries or sickness, and notice or knowledge of such plan was reasonably available.”⁴⁷

Case law has further elaborated on section 105(b) as to what constitutes an enforceable plan. In *American Family Mutual Insurance Company v. United States*, the court clarified ambiguous language in the statute and regulation by determining when a plan would be enforceable, thereby allowing an employee his or her right to payment.⁴⁸ After examining numerous related

42. *Id.*

43. *Id.*

44. Treas. Reg. § 1.105-5 (2010).

45. *Id.*

46. *Id.*

47. *Id.*

48. *Am. Family Mut. Ins. Co. v. United States*, 815 F. Supp. 1206, 1207, 1210, 1212-13 (W.D. Wis. 1992). Plaintiff American Family Mutual Insurance Company sued for a refund on federal employment taxes by asserting that reimbursements paid to employees for medical and dependent care assistance benefits were not part of employees’ gross income and were therefore excludable. *Id.* at 1207. The government contended that the reimbursements constituted taxable income to the employees because the benefit plans did not meet statutory requirements for exclusion; specifically, the

rulings, the court concluded that a benefit plan is a “predetermined course of action that necessarily applies prospectively only, at least concerning the time that the employee incurs expenses for medical care.”⁴⁹ Thus, because of the plan’s retroactivity feature, the court concluded that the plaintiff’s medical benefits plan did not qualify for the exclusion under section 105(b).⁵⁰ Moreover, the court asserted that the importance of enforceability of employees’ right to payment was meant to address instances where a plan is enacted after an employee becomes ill but before incurring expenses.⁵¹

Additionally, the court in *Estate of Kaufman v. Commissioner of Internal Revenue* examined the legislative history behind section 105.⁵² The court, citing the Senate Finance Committee’s report on the statute, acknowledged that since section 105 only allows the exclusion when benefits are paid out under an arranged plan, the use of the word “plan” in the statute indicates that something more than one or more ad hoc payments is required for the exemption.⁵³ Furthermore, the court stated, “[h]ad Congress intended to exclude from gross income all ad hoc benefit payments arbitrarily made at the complete discretion of the employer in the absence of any sort of prior arrangement or practice, the use of the term ‘plan’ would scarcely have been necessary.”⁵⁴ Thus, case law has helped to clarify some ambiguities in the language of the statute to prevent any misconceptions of the statute.

benefits were provided retroactively. *Id.* at 1207, 1210. The court cited many interpretations of the regulation § 1.105-5(a), regarding an employee’s right to payment from the plan as enforceable, and asserted that the language of the statute and regulation was ambiguous. *Id.* at 1212-13.

49. *Id.* at 1213.

50. *Id.* at 1214.

51. *Id.* The court further held that unenforceable plans must be made known to employees before illness or injury in order to be valid, and that enforceable plans must exist before an employee incurs an expense as a result of the illness. *Id.*

52. *Estate of Kaufman v. Comm’r*, 35 T.C. 663, 666 (1961).

53. *Id.*

54. *Id.*

IV. SECTION 106 AND ITS EXCLUSION OF EMPLOYER-PROVIDED
CONTRIBUTIONS TO HEALTH PLANS: TAX INCENTIVE FOR EMPLOYEES
WHOSE EMPLOYERS CONTRIBUTE TO HEALTH PLANS

Section 106 of the Internal Revenue Code states, “[e]xcept as otherwise provided in this section, gross income of an employee does not include employer-provided coverage under an accident or health plan.”⁵⁵ The income tax regulations provide, “the gross income of an employee does not include contributions which his employer makes to an accident or health plan for compensation (through insurance or otherwise) to the employee for personal injuries or sickness incurred by him, his spouse, or his dependents, as defined in section 152.”⁵⁶ Moreover, the regulations specify that “[t]he employer may contribute to [a] . . . plan either by paying the premium (or a portion . . .) on the policy of accident or health insurance covering . . . his employees, or by contributing to a separate trust or fund . . . which provides accident or health benefits directly or through insurance to . . . his employees.”⁵⁷ The regulations stipulate, however, that if a fund provides additional benefits, section 106 applies only to the accident or health benefits of the employer’s contribution.⁵⁸

There is some case law that further clarifies the statute. In *Adkins v. United States*, the court held that “nothing in the language of the statute . . . provides an exemption for payments made by an employer directly to employees.”⁵⁹ Thus, an employer must make contributions to an accident or health plan by contributing to a separate fund or trust or pay premiums on an accident or health insurance policy in order for the employee to take advantage of the exclusion.⁶⁰ Additionally, the court stipulated that the statute requires that any contributions to the employee be part of a plan, not lump-sum payments for medical care, because allowing unrestricted lump-sum payments would permit a precedent for employees to retain the benefits of a salary while avoiding tax liabilities.⁶¹ Moreover, the court in *McKean v.*

55. 26 U.S.C. § 106(a) (2006).

56. Treas. Reg. § 1.106-1 (2010).

57. *Id.*

58. *Id.*

59. *Adkins v. United States*, 882 F.2d 1078, 1080 (6th Cir. 1989).

60. *Id.* at 1080-81; *see also* *Laverty v. Comm’r*, 61 T.C. 160, 165 (1974).

61. *Adkins*, 882 F.2d at 1081.

United States asserted that a “backpay award,” or damages for unpaid health insurance premiums, are includible in gross income.⁶² Because the backpay award was not in the nature of a reimbursement, the court reasoned, it was not excludable under section 106.⁶³

V. SECTION 213 AND ITS DEDUCTION FOR MEDICAL EXPENSES: TAX INCENTIVE FOR EVERYONE ELSE, BUT WITH A LIMIT

Section 213 of the Internal Revenue Code states, “There shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent . . . to the extent that such expenses exceed 7.5 percent of adjusted gross income.”⁶⁴ A prospective amendment increases the percentage such that expenses must exceed 10% at the end of the year 2012 for taxpayers to take the deduction under section 213.⁶⁵ Under section 213, individual taxpayers may take an itemized deduction for medical care expenses of the taxpayer, his or her spouse, and dependents, in the amount that the expense exceeds 7.5% (after 2012, 10%) of the taxpayer’s adjusted gross income.⁶⁶ Therefore, the taxpayer may only take advantage of this deduction if his or her medical expenses exceed that percentage threshold. Moreover, this deduction applies to all individuals, regardless of whether they are employed. Additionally, a percentage threshold exists when determining the deduction for medical expenses of those who must pay the alternative minimum tax.⁶⁷ Thus, if the taxpayer does not exceed the

62. *McKean v. United States*, 33 Fed. Cl. 535, 539 (1995); *see also* Rev. Rul. 85-44, 1985-1 C.B. 22.

63. *McKean*, 33 Fed. Cl. at 539.

64. 26 U.S.C. § 213 (2006).

65. *See* Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 9013, 124 Stat. 119, 868 (2010), as amended by the Health Care Education Reconciliation Act, Pub. L. No. 111-152, 98 Stat. 1585 (2010) (codified at 42 U.S.C.A. § 18001 (West 2011)).

66. 26 U.S.C. § 213.

67. The alternative minimum tax is imposed on an individual when the tentative minimum tax for the taxable year exceeds the regular tax for the taxable year. 26 U.S.C. § 55 (2006). The tax imposed is equal to that excess. *Id.* Tentative minimum tax for a non-corporate taxpayer is defined as the sum of 26% of the taxable excess (not exceeding \$175,000) plus 28% of the taxable excess that exceeds \$175,000. *Id.* Taxable excess is

percentage threshold in spending for medical care, he or she does not have any tax incentive to spend on medical care for his or her dependents.

VI. AFFORDABLE CARE ACT: FOCUS ON AMENDING EMPLOYER-PROVIDED STATUTES, NOT ADDRESSING REST OF POPULATION

As noted previously, the enactment of the Affordable Care Act amended sections 105(b) and 106 of the Internal Revenue Code. The IRS provided guidance on this Act, stating, “[a]s amended by the Affordable Care Act, the exclusion from gross income under § 105(b) is extended to employer-provided reimbursements for expenses incurred by the employee for the medical care of the employee’s child . . . who has not attained age 27 as of the end of the taxable year.”⁶⁸ Furthermore, the IRS asserted:

As amended by the Affordable Care Act, the exclusion from gross income under § 105(b) applies with respect to an employee’s child who has not attained age 27 as of the end of the taxable year, including a child of the employee who is not the employee’s dependent within the meaning of § 152(a). Thus, the age limit, residency, support, and other tests described in § 152(c) do not apply with respect to such a child for purposes of § 105(b).⁶⁹

The IRS’ guidance thus clarified that the exclusion only applies to medical care reimbursements of individuals who are not older than age twenty-seven during the taxable year.⁷⁰

Additionally, the IRS explained the Act’s application to section 106 by stating that prior to the Affordable Care Act, the basis and conditions for the exclusion under section 106 paralleled the exclusion under section 105(b).⁷¹

defined as the alternative minimum taxable income that exceeds the exemption amount. *Id.* Alternative minimum taxable income is determined as the taxable income of the taxpayer with adjustments provided in sections 56 and 58 of the Internal Revenue Code, increased by the amount of items of tax preference under section 57 of the Internal Revenue Code. *Id.* Additionally, when determining adjustments for an individual’s alternative minimum taxable income, a deduction for medical expenses is allowable under section 213 of the Internal Revenue Code, but only to the extent that such expenses exceed 10% of adjusted gross income. 26 U.S.C. § 56(b)(1)(B) (2006).

68. I.R.S. Notice 2010-38, *supra* note 7, at 682.

69. *Id.*

70. *Id.*

71. *Id.*

The IRS concluded that Congress did not intend to provide a broader exclusion in section 105(b) than in section 106, as amended by the Affordable Care Act.⁷² Therefore, the IRS and Treasury intended to amend the regulations under section 106, retroactive to March 30, 2010, to exclude from gross income coverage for an employee's child under age twenty-seven.⁷³ As amended, the regulations would provide that "after March 30, 2010, both coverage under an employer-provided accident or health plan and amounts paid or reimbursed under such a plan for medical care expenses of . . . an employee's dependents . . . or an employee's child . . . who has not attained age 27 . . . are excluded from the employee's gross income."⁷⁴

Through these amendments to the exclusions, the individual taxpayer benefits from an ultimate decrease in his or her tax liability.⁷⁵ This result occurs because these exclusions permit gross income to be lower than if the taxpayer had to include the value of his or her coverage and reimbursements for medical expenses.⁷⁶ With gross income lowered as a result of these exclusions, the taxpayer's adjusted gross income is lower and therefore taxable income also is lower than if the individual did not take advantage of these exclusions.⁷⁷ This result reduces tax liability, and thus the individual owes less taxes than if the taxpayer did not take advantage of the exclusions.⁷⁸

IRS guidance outlines some examples of how the statute, as amended by the Affordable Care Act, can apply to individuals.⁷⁹ In the first example, a child's health care coverage and reimbursements are excludible from the parent's gross income under sections 106 and 105(b) up to when a child turns twenty-six during the tax year if the parent's employer provides the

72. *Id.*

73. *Id.*

74. I.R.S. Notice 2010-38, *supra* note 7, at 682-83.

75. *See generally* Seto & Buhai, *supra* note 28, at 1087.

76. *See id.*

77. *See id.*

78. *See id.* at 1087-88.

79. I.R.S. Notice 2010-38, *supra* note 7, at 683.

employee's and the child's health care coverage, the child is not a full-time student, and the child has never worked for the employer.⁸⁰

Another example is an employer that provides health care coverage to an employee and the employee's child who is not a student. For instance, the employee's son is not yet twenty-seven years old, earns fifty thousand dollars in the taxable year, does not live with the employee, and is not eligible for health coverage from his own employer.⁸¹ The adult child is not a dependent of the employee but is a child as defined by statute; thus, the adult child's health care coverage and reimbursements are excludible from the employee's gross income under sections 105(b) and 106.⁸²

80. *See id.*

Employer X provides health care coverage for its employees and their spouses and dependents and for any employee's child (as defined in § 152(f)(1)) who has not attained age 26. For the 2010 taxable year, Employer X provides coverage to Employee A and to A's son, C. C will attain age 26 on November 15, 2010. During the 2010 taxable year, C is not a full-time student. C has never worked for Employer X. C is not a dependent of A because prior to the close of the 2010 taxable year C had attained age 19 (and was also not a student who had not attained age 24) . . . C is a child of A within the meaning of § 152(f)(1). Accordingly, and because C will not attain age 27 during the 2010 taxable year, the health care coverage and reimbursements provided to him under the terms of Employer X's plan are excludible from A's gross income under §§ 106 and 105(b) for the period on and after March 30, 2010 through November 15, 2010 (when C attains age 26 and loses coverage under the terms of the plan). *Id.*

81. *See id.*

82. *See id.*

Employer Y provides health care coverage for its employees and their spouses and dependents and for any employee's child (as defined in § 152(f)(1)) who has not attained age 27 as of the end of the taxable year. For the 2010 taxable year, Employer Y provides health care coverage to Employee E and to E's son, G. G will not attain age 27 until after the end of the 2010 taxable year. During the 2010 taxable year, G earns \$50,000 per year, and does not live with E. G has never worked for Employer Y. G is not eligible for health care coverage from his own employer. G is not a dependent of E because G does not live with E and E does not provide more than one half of his support . . . G is a child of E within the meaning of § 152(f)(1). Accordingly, and because G will not attain age 27 during the 2010 taxable year, the health care coverage and reimbursements for G under Employer Y's plan are excludible from E's gross

Another example is an employer that provides health care coverage to an employee and the employee's dependents. In this case, the employee's son is not yet twenty-seven years old, earns fifty thousand dollars in the taxable year, does not live with the employee, and is offered health coverage from his employer but declines.⁸³ The employee's child is defined as a child by statute, and the health care coverage and reimbursements for the adult child are excludible from the employee's gross income under sections 105(b) and 106.⁸⁴

A fourth example describes a situation where an employer provides health care coverage to an employee and the employee's dependents. Here, the employee's son is not yet twenty-seven years old, earns fifty thousand dollars in the taxable year, does not live with the employee, and is married.⁸⁵ Moreover, the employee's son and spouse decide not to participate in the health care coverage offered by the son's employer; thus, the son is a child as defined by statute and the health care coverage and reimbursements of the son are excludible from the employee's gross income under sections 105(b) and 106.⁸⁶ However, "the fair market value of the coverage for [the son's spouse] is includible in the employee's gross income" because the son's spouse is not considered a child of the employee as defined by statute.⁸⁷

income under §§ 106 and 105(b) for the period on and after March 30, 2010 through the end of the 2010 taxable year. *Id.*

83. *See id.*

84. *See id.*

Same facts as Example (2) [*supra* note 82], except that G's employer offers health care coverage, but G has decided not to participate in his employer's plan . . . G is a child of E within the meaning of § 152(f)(1). Accordingly, and because G will not attain age 27 during the 2010 taxable year, the health care coverage and reimbursements for G under Employer Y's plan are excludible from E's gross income under §§ 106 and 105(b) for the period on and after March 30, 2010 through the end of the 2010 taxable year. *Id.*

85. *See* I.R.S. Notice 2010-38, *supra* note 7, at 683.

86. *See id.*

87. *See id.*

Same facts as Example (3) [*supra* note 84], except that G is married to H, and neither G nor H is a dependent of E. G and H have decided not to participate in the health care coverage offered by G's employer, and Employer Y provides

The last example is as follows:

Employer Z provides health care coverage for its employees and their spouses and dependents. Effective May 1, 2010, Employer Z amends the health plan to provide coverage for any employee's child (as defined in § 152(f)(1)) who has not attained age 26. Employer Z provides coverage to Employee F and to F's son, K, for the 2010 taxable year. K will attain age 22 in 2010. During the 2010 taxable year, F provides more than one half of K's support. K lives with F and graduates from college on May 15, 2010 and thereafter is not a student. K has never worked for Employer Z. Prior to K's graduation from college, K is a dependent of F. Following graduation from college, K is no longer a dependent of F For the 2010 taxable year, the health care coverage and reimbursements provided to K under the terms of Employer Z's plan are excludible from F's gross income under §§ 106 and 105(b). For the period through May 15, 2010, the reimbursements and coverage are excludible because K was a dependent of F. For the period on and after March 30, 2010, the coverage is excludible because K is a child of F within the meaning of § 152(f)(1) and because K will not attain age 27 during the 2010 taxable year. (Thus, for the period from March 30 through May 15, 2010, there are two bases for the exclusion.)⁸⁸

Thus, the amendments to the statute by the Affordable Care Act apply to a number of unique yet practical situations that have a significant impact on how parents cover their children's health care.

VII. THE NEED TO EXTEND HEALTH COVERAGE TO A LARGER SEGMENT OF THE UNINSURED YOUNG ADULT POPULATION

A. *Intent of Congress in Enacting the Affordable Care Act*

One of the major impacts of the Affordable Care Act on taxpayers is that it provides tax savings for those reimbursed employees who keep their

health care coverage to G and H . . . G is a child of E within the meaning of § 152(f)(1). Accordingly, and because G will not attain age 27 during the 2010 taxable year, the health care coverage and reimbursements for G under Employer Y's plan are excludible from E's gross income under §§ 106 and 105(b) for the period on and after March 30, 2010 through the end of the 2010 taxable year. The fair market value of the coverage for H is includible in E's gross income for the 2010 taxable year. *Id.*

88. *Id.*

children on their health plans until their children reach age twenty-seven.⁸⁹ This tax expenditure,⁹⁰ (as opposed to an income-defining provision),⁹¹ serves as an instrument by which the government can encourage specific behavior by allowing for a tax benefit.⁹² In this case, the public can infer from this legislation that Congress intended for health coverage to be extended to those young adults who are currently uninsured.⁹³ However, the assumption is that the majority of uninsured young adults are children of parents who work for an employer who directly or indirectly reimburses health expenses or have set up a health plan compliant with section 106.⁹⁴ Under the current statute and proposed regulations, those young adults who are not children of reimbursed employees or are children of self-employed individuals likely cannot take advantage of this tax benefit.⁹⁵

89. *See id.* *See also* Fact Sheet 1, *supra* note 1.

90. A tax expenditure is defined as a provision in the Internal Revenue Code that delivers financial assistance to taxpayers, similar to direct expenditure programs, by incentivizing or subsidizing preferential programs through a reduction in tax liability; doing so is a way a government can fund its social and economic programs—instead of directly funding these programs, the government reduces the tax liability of the taxpayer once the taxpayer uses these programs. *See* Jonathan Babu, *The Tax Expenditure Budget: What the U.S. Can Learn from Germany*, 27 SETON HALL LEGIS. J. 163, 164, 166 (2002); *see also* STANLEY S. SURREY, PATHWAYS TO TAX REFORM 1-2, 6 (1973).

91. An income-defining provision is a provision in the Internal Revenue Code that attempts to measure net income or base tax liability on a taxpayer's ability to pay. *See* Boris I. Bittker & Kenneth M. Kaufman, *Taxes and Civil Rights: "Constitutionalizing" the Internal Revenue Code*, 82 YALE L.J. 51, 63-64 (1972). These provisions essentially determine what the taxpayer owes the government, as opposed to provisions that reduce tax liability when recognizing the taxpayer's use of certain government programs.

92. *See* Babu, *supra* note 90, at 164, 166; *see also* SURREY, *supra* note 90, at 1-2, 6.

93. *See generally* Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 27,122, 27,126-27 (May 13, 2010) (to be codified at 26 C.F.R. pt. 54, 602).

94. *See id.* at 27,127.

95. *See id.* at 27,128 ("Because the parents' non-group coverage is underwritten, there is not likely to be any financial benefit to the family in moving the young adult onto the parents' coverage, and the Departments assume these young adults will not be affected by the regulation."). *Id.*

Self-employed individuals should not be treated differently because doing so has the net effect of limiting the number of young adults receiving health coverage. The result is that their parents have no tax incentive to continue to keep them on their health plans even when those children are not able to secure coverage through other means.⁹⁶ The Affordable Care Act aimed to decrease the number of uninsured Americans;⁹⁷ however, health reform legislation provides various tax consequences that may influence those who opt to keep their children under twenty-seven years old on their employer-provided health plans.⁹⁸ While significant tax savings are afforded to those reimbursed employees—even those working for small employers⁹⁹—who opt to have their children included in their health coverage, self-employed individuals do not garner the same tax treatment.¹⁰⁰ Under the income tax regulations, “a self-employed individual is not treated as an employee for purposes of section 105.”¹⁰¹ Because a self-employed individual’s health benefits are not reimbursed by an employer, that individual cannot take advantage of the exclusion provided under sections 105 or 106,¹⁰² which in turn presents a public policy issue of equity. Although certain employer-provided fringe benefits can be excluded from gross income,¹⁰³ health benefits differ in that they ensure the well-being of the population as a whole and thus should be extended equitably. If the intent of Congress was to encourage taxpayers to keep their children under twenty-seven years old on their employer-provided health plans, then Congress should also extend benefits similar to those of sections 105 and 106 to self-employed

96. *See id.*

97. *See id.* at 27,127, Table 1.

98. *See generally* I.R.S. Notice 2010-38, *supra* note 7, at 682.

99. *See, Keeping the Health Plan You Have: The Affordable Care Act and “Grandfathered” Health Plans*, HEALTHCARE.GOV (June 14, 2010), <http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html> [hereinafter Fact Sheet 2] (stating that “[t]o help sustain small business coverage, the Affordable Care Act also includes a tax credit for up to 35% of their premium contributions.”). *Id.*

100. Treas. Reg. § 1.105-5(b) (2010).

101. *Id.*

102. *Id.*

103. *See generally* 26 U.S.C. § 132 (2006).

individuals.¹⁰⁴ Because these self-employed individuals may only take a below-the-line deduction subject to a 7.5% floor on their health expenses, the tax incentive for keeping their children on health plans they purchase diminishes. In an uncertain economy with many businesses cutting back the benefits they provide to young adult employees, only allowing reimbursed employees the opportunity to take this tax exclusion potentially limits the number of individual taxpayers who keep their children on their health plans, thus undermining congressional intent.

Additionally, “the individual [insurance] market is a residual market for those who need insurance but do not have group coverage available and do not qualify for public coverage.”¹⁰⁵ Although this market provides a transitional bridge between different types of coverage for short periods of time, about 17% of individuals maintained their policies for more than two years and nearly 30% of individuals maintained their policies for over three years.¹⁰⁶ Therefore, a significant portion of the population receives coverage through this individual market, and these self-employed individuals should not be overlooked.

B. Number of Uninsured Young Adults Who Will Benefit from the Affordable Care Act

According to the Departments of Treasury, Labor, and Health and Human Services (“Departments”), in 2010, there were an estimated 29.5 million young adults ages nineteen to twenty-five in the United States and out of this total, 6.59 million were uninsured.¹⁰⁷ Furthermore, 9.3 million of the 29.5

104. Although, ideally, benefits similar to those in sections 105 and 106 should also apply to self-employed individuals without children, that assertion remains outside the scope of this Note, which focuses primarily on the extension of tax benefits similar to those in sections 105 and 106 to provide an incentive for parents to spend on medical expenses for their children under the age of twenty-seven. Assuming that Congress extended this tax benefit to encourage the health coverage of more young adults (*see* Fact Sheet 1, *supra* note 1) this Note seeks to narrowly examine that particular intent of Congress and additional ways that intent may be met.

105. Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 34,538, 34,553 (June 17, 2010) (to be codified at 26 C.F.R. pt. 54, 602).

106. *Id.*

107. Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 Under the Patient Protection and

million do not have a parent with employer-sponsored insurance or non-group insurance; thus, they have no access to dependent care.¹⁰⁸ Out of these 9.3 million young adults, 3.1 million are uninsured.¹⁰⁹ Therefore, about 10.5%¹¹⁰ of the estimated young adult population are uninsured and cannot benefit from the amended sections 105(b) and 106 because they do not have a parent with a plan they can access. Moreover, the Departments estimate that only 2.37 million young adults will be affected by extending dependent coverage to age twenty-seven.¹¹¹ Thus, approximately 8%¹¹² of the total young adult population will be affected; and the Departments further project that approximately 1.83 million of that 2.37 million are currently uninsured.¹¹³ Therefore, according to the Departments' estimates, only a little over 6%¹¹⁴ of the young adult population will potentially go from being uninsured to being insured if they elect to become a part of their parents' plans. That figure translates to less than 28% of the total uninsured young adult population being able to benefit from extending dependent coverage.¹¹⁵

Affordable Care Act, 75 Fed. Reg. 27,122, 27,127, Table 2 (May 13, 2010) (to be codified at 26 C.F.R. pt. 54, 602).

108. *Id.* at 27,127.

109. *Id.*

110. 3.1 million divided by 29.5 million and multiplied by 100% equals approximately 10.5%. *See id.*

111. *Id.* at 27,128.

112. 2.37 million divided by 29.5 million and multiplied by 100% equals approximately 8.03%. *See id.*

113. Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 27,122, 27,128 (May 13, 2010) (to be codified at 26 C.F.R. pt. 54, 602).

114. 1.83 million divided by 29.5 million and multiplied by 100% equals approximately 6.2%. *See id.*

115. Based on the tables presented by the Departments of Treasury, Labor, and Health and Human Services, 1.83 million divided by 6.59 million and multiplied by 100% equals approximately 27.769%. *See id.* at 27,127-29, Tables 2 & 4.

Even though the Departments admit that it is “difficult to estimate precisely what fraction of . . . young adults who might potentially be affected by the provision will actually enroll on their parents’ coverage,”¹¹⁶ the figures illustrate the health implication that a vast majority of the uninsured young adult population will not become insured because they do not have access to dependent care. As a result, young adults with chronic illnesses and those who have trouble paying their medical bills will continue to be burdened by escalating costs and a lack of guaranteed quality medical care. Moreover, uninsured young adults will not benefit from preventive care that can detect illnesses before they progress too far. These potential health implications to uninsured young adults should be addressed through means that reach a greater number of the population.

The Departments assert that the benefits of the interim final regulations far outweigh the costs to the community based on the premise that the regulations, by decreasing the number of uninsured individuals even by a fraction of those uninsured, will decrease the cost-shifting of uncompensated care and increase the receipt of preventive care and timely access to high quality care, thereby promoting a healthier population.¹¹⁷ The Departments are correct in asserting these benefits. However, preventing a reduction in tax liability for a segment of the uninsured population because the individuals in that segment lack a parent with qualified health coverage prevents that number of overall uninsured young adults from decreasing even more. If the federal government does not incentivize more individuals to keep their children on their health plans, then these children who might not normally be covered would risk a continuous lack of coverage, thereby defeating the purpose of ensuring the coverage for young adults before they attain their own health benefits from an employer.

C. Recommendations to Increase Coverage for More Uninsured Young Adults

In order to decrease the number of uninsured young adults in the United States, Congress should ensure the coverage of the children of self-employed individuals. Congress could remedy this issue in two ways. First, Congress could extend the effect of sections 105 and 106 to individuals who are not part of employer-sponsored insurance or non-group insurance plans by removing the 7.5% limit on the amount of unreimbursed medical expenses these taxpayers may deduct under section 213.¹¹⁸ Alternatively, Congress

116. *Id.* at 27,129.

117. *Id.* at 27,130.

118. 26 U.S.C. § 213 (2006).

could provide a tax credit¹¹⁹ to incentivize these individuals to keep their children on the health plans that they buy on the individual market. Permitting any of these solutions would technically favor personal consumption and may add to the cost of health care reform; however, Congress could adopt a phase-out or temporary fix strategy to ensure that these measures are only available for a temporary time period. Furthermore, adopting either of these strategies would better ensure that individuals would keep their children on their plans longer, thereby accomplishing the original intent of broader health coverage of the population through health reform.

1. Recommendation: Remove the Threshold under Section 213 to Incentivize Non-Reimbursed Individuals to Spend on Children's Health Care

The first potential solution would encourage the extension of dependent coverage until age twenty-seven to individuals who are not part of an employer-sponsored insurance or non-group insurance plan and allow them to take advantage of the similar benefits that sections 105(b) and 106 of the Internal Revenue Code provide. Congress and the IRS could provide this benefit by modifying section 213 of the Internal Revenue Code to remove the threshold individuals without employer-reimbursed plans must meet before being able to deduct medical expenses. Removing the threshold would be limited to self-employed individuals who spend for their children's medical expenses.¹²⁰ Moreover, the modified deduction would only apply to medical expenses of children under age twenty-seven that would normally be excludible under sections 105 and 106 had they been reimbursed by an employer. Lastly, the threshold will still apply to individuals who are reimbursed for their medical expenses under this modified provision.

In order to provide a further incentive to keep children on their parents' plans, this deduction would still apply to those individuals who must pay the alternative minimum tax. Congress could provide an exception to the

119. A tax credit provides a tax benefit in a different manner than a deduction in that a credit remedies the upside-down subsidy effect. Miranda P. Fleischer, *Generous to a Fault? Fair Shares and Charitable Giving*, 93 MINN. L. REV. 165, 196 (2008). The upside-down subsidy effect is "inherent in any deduction: because deductions reduce taxable income, they are worth more to higher-bracket taxpayers than lower-bracket taxpayers." *Id.* at 192. Thus, "[t]he best remedy for the upside-down [subsidy] effect . . . would be to replace the deduction with a credit." *Id.* at 196. See also Lily L. Batchelder et al., *Efficiency and Tax Incentives: The Case for Refundable Tax Credits*, 59 STAN. L. REV. 23, 24 (2006).

120. See *supra* note 104.

alternative minimum tax's 10% threshold for medical expenses of children under age twenty-seven. This proposed exception would allow these individuals to benefit still from the deduction even if those expenses did not exceed 10% of adjusted gross income. However, when determining the alternative minimum tax for an individual, this deduction would apply only to the extent those expenses, if reimbursed by an employer, would have been excludible under sections 105 and 106.

By allowing the deduction without this threshold, Congress would provide a tax incentive for self-employed and unemployed individuals to spend for their children's health care until the age of twenty-seven. Although removing such a limit would cost the federal government tax revenue, Congress and the IRS could provide a limit as to how many years this deduction without the threshold could be utilized. Furthermore, this recommendation would not prove as costly as removing the threshold in section 213 for all individuals. By limiting who may take the deduction and the type of costs for which individuals may take the deduction, the proposed recommendation will not have overwhelming revenue collection repercussions. Moreover, when competitive market exchanges are established in 2014,¹²¹ Congress will have provided a temporary means for the uninsured young adult population to become insured until they are able to shop for more competitive health plans, thereby accomplishing the goal of decreasing the number of uninsured young adults.

Even though section 105(g) states that self-employees are not employees for the purpose of section 105, the purpose of that provision "was to prevent self-employed individuals who deducted Keogh plan contributions from also excluding from income any medical benefits paid by the plans."¹²² However, the proposed recommendation does not alter policy regarding preventing this double benefit. The medical benefits of the Keogh retirement plan benefit the self-employed individual solely;¹²³ under the proposed recommendation, self-employed individuals would have an incentive to spend on their children's¹²⁴ coverage. To prevent a double

121. See Fact Sheet 2, *supra* note 99.

122. John H. Eggertsen et al., *Guidance on Partner Health Plans Leaves Self-Funding Questions Unanswered*, 76 J. TAX'N 18, 22 (1992). Keogh plans are a type of retirement plan that may provide accident or health benefits. *Id.* Thus, the intent of the statute may have been to avoid double exclusion of these benefits from gross income.

123. *Id.*

124. See *supra* note 104 and accompanying text.

benefit and limit the loss of tax revenue, Congress and the IRS could require self-employed individuals with Keogh plan contributions to itemize their deductions and choose to take either a deduction for their Keogh plan contributions¹²⁵ or a deduction for their children's medical expenses under the proposed modifications to section 213. Furthermore, those self-employed individuals without Keogh plan contributions would be able to deduct medical expenses for their children under age twenty-seven that would be excludible under sections 105 and 106 had they been reimbursed by an employer. This proposal would avoid the possibility of a self-employed individual claiming both deductions for his or her Keogh plan contributions¹²⁶ and his or her medical plan contributions. Through this recommendation, Congress would extend a tax benefit to self-employed individuals and allow a significant segment of the uninsured young adult population to become covered under their parents' plans.

2. *Recommendation: Refundable Tax Credit with a Phase-out Provision to Encourage Non-Reimbursed Individuals to Spend on Children's Health Care*

Alternatively, Congress could establish a tax credit for those individuals that are not covered by an employer-sponsored insurance or non-group insurance plan that still elect to purchase a plan on the individual market and add their children to the plan. Tax credits reduce tax liability dollar for dollar and tend to benefit any individual with a tax liability at least equal to the credit because they directly reduce the amount of tax owed.¹²⁷ A refundable tax credit is a dollar for dollar benefit paid to the taxpayer regardless of whether the taxpayer has a tax liability that equals the credit.¹²⁸

125. See Eggertsen, *supra* note 122, at 22.

126. See *id.*

127. Chris Sanders, *Credit Where Credit Is Due*, 74 TENN. L. REV. 241, 247 (2007).

128. Jonathan D. Boyer, *Education Tax Credits: School Choice Initiatives Capable of Surmounting Blaine Amendments*, 43 COLUMBIA J. L. & SOC. PROBS. 117, 142 (2009); see also Luis A. Huerta, *Education Tax Credits in a Post-Zelman Era: Legal, Political, and Policy Alternatives to Vouchers?*, 21 EDUC. POL'Y 73, 103 (2007). Through the Affordable Care Act, Congress amended the Internal Revenue Code to allow a refundable tax credit on the premiums of those taxpayers who enroll in health coverage through State-based competitive marketplaces called Affordable Insurance Exchanges beginning in 2014. Health Insurance Premium Tax Credit, 76 Fed. Reg. 50,931, 50,932 (proposed Aug. 17, 2011) (to be codified at 26 C.F.R. pt. 1). While that particular refundable tax credit only applies to taxpayers who use the Exchanges to enroll in health coverage, that

On the other hand, a nonrefundable tax credit allows a dollar for dollar decrease in tax liability; however, if the taxpayer does not owe any taxes or has a tax liability that does not equal the credit, he or she will not receive the credit balance.¹²⁹ Therefore, refundable tax credits are more equitable than nonrefundable tax credits because they provide a full benefit to all qualified taxpayers.

The proposed tax credit would be available to everyone who spends on their children's coverage until the children reach age twenty-seven in order to provide an equitable benefit to those individuals who want to spend on their children's coverage but are ineligible for the exclusions under sections 105(b) and 106. By making the credit refundable, Congress would encourage individuals with little or no tax liability to spend on their children's coverage because those individuals would still receive a benefit regardless of their tax liability. While this credit may be expensive to fund, Congress can allow this refundable credit by placing limits on how many years a taxpayer may take advantage of the credit or by implementing phase-out provisions to prevent the credit once the taxpayer reaches an income limit. Phase-out provisions allow for a controlled way to limit the amount of the credit once the taxpayer reaches a certain income level—the higher the income of the taxpayer, the less of the credit he or she receives.¹³⁰ Enacting this refundable tax credit would encourage individual taxpayers, namely temporarily unemployed taxpayers and taxpayers in lower tax brackets, to spend for their children's health coverage and thus would have the net result of decreasing the number of uninsured young adults in the United States.

Regardless of the instrument or mechanism, Congress has various tools to allow for the extension of dependent care to those individuals without an employer provided health benefits plan. Each has its own advantages and obstacles, but those obstacles have solutions, and the advantages of extending health coverage to those uninsured young adults have benefits that outweigh the costs, as the Departments of Treasury, Labor, and Health and Human Services assert. Therefore, Congress can still cover a wider segment of the uninsured population through either of these recommendations.

tool is useful to illustrate how a similar tax credit, like the one argued for in this Note, can be used by Congress to encourage taxpayers to spend for their children's health coverage.

129. Boyer, *supra* note 128, at 142; *see also* Huerta, *supra* note 128, at 103.

130. *See* Seto & Buhai, *supra* note 28, at 1094.

VIII. CONCLUSION

Through health care reform, Congress and President Obama intended for the majority of Americans to have health care coverage. Extending dependent care until age twenty-seven demonstrates that intent. Doing so would decrease cost shifting and increase the level of preventive care as well as the likelihood of high quality care. Additionally, young adults, who have the highest uninsured rate of any age group, would have the means to treat chronic illnesses and would likely not be overly burdened with expensive medical bills.

However, only creating incentives for a minority segment of the uninsured population stymies these goals and limits the potential to significantly decrease the number of uninsured young adults in the United States. Congress should not stop short when it has the opportunity to accomplish a reachable goal. It has been argued that the exclusions of employer-provided health coverage should be repealed or capped and that tax credits are not viable alternatives to changing these exclusions.¹³¹ However, Congress could incentivize a significant portion of the population to insure their children until the age of twenty-seven by modifying section 213 to eliminate the percentage threshold so that self-employed individuals may deduct the medical expenses of their children under twenty-seven. The net effect would be decreasing the amount of uninsured young adults and coming close to insuring a larger majority of the population, which is Congress' intent. Even if that mechanism would not work, enacting the phase-out tax credit for individuals who purchase their own coverage and add their children to their plans would have a similar effect on the target population and could still be narrowed through income limits to prevent exorbitant costs.

Thus, if Congress was willing to pay for the cost of insuring a fraction of the young adult population in the United States through tax expenditures under sections 105(b) and 106, then the additional cost of applying these tax expenditures to a larger segment of the population would help to realize a greater benefit in future health cost savings.

In 2014, health exchanges will be available for individuals, thus allowing more competition and savings, but some measures are needed to transition the population to 2014 while still insuring as many people as possible. The proposed measures are viable and possible ways to serve as transitional means to achieve that goal.

131. See Gehlbach, *supra* note 16, at 401-02.