

## Senate-Passed \$871 Billion Health Reform Bill Would Make Many Tax Changes

The Senate's passage on Christmas Eve of H.R. 3590, the Patient Protection and Affordable Care Act, leaves one difficult hurdle in the passage of comprehensive health reform legislation: reconciliation of the Senate bill with the House passed version of health reform, H.R. 3962, the Affordable Health Care For America Act.

The cost of expanding health care to cover an estimated 30 million more Americans is being financed through new taxes. Key revenue provisions in the Senate-passed health reform bill include the following:

- An additional 0.9% hospital insurance (HI) tax would apply to wages in excess of \$200,000 (\$250,000 for joint filers), effective for tax years beginning after 2012.
- A 40% nondeductible excise tax would apply to health coverage in excess of \$8,500 (singles)/\$23,000 (families), to be indexed for inflation, with increased thresholds for over age 55 retirees and those in certain high-risk professions (e.g., firefighters, construction and mining workers). The tax would apply for tax years beginning after 2012. For employees, the employer would aggregate the coverage subject to the limit and issue an information return for insurers indicating the amount subject to the excise tax. The excise tax would be levied at the insurer level. Transition relief would apply for health insurance plans maintained in the 17 states in which health care was least affordable.
- Employers would be required to report the value of health benefits on employees' Form W-2s, effective for tax years beginning after 2010.
- Effective for calendar years beginning after December 31, 2009, health insurance providers would have to pay an annual fee. The fee would be allocated based on market share of net premiums written for any U.S. health risk and third party administration agreement fees.
- For purposes of employer provided health coverage (including health reimbursement accounts (HRAs) and health flexible savings accounts (FSAs), HSAs, and Archer medical savings accounts (MSAs)), the definition of medicine expenses deductible as a medical expense would generally be conformed to the definition for purposes of the itemized deduction for medical expenses. But this change would not apply to doctor prescribed over-the-counter medicine. Thus, the cost of over-the-counter medicine (other than insulin or doctor prescribed medicine) could not be reimbursed through a health FSA or HRA. In addition, the cost of over-the-counter medicines (other than insulin or doctor prescribed medicine) could not be reimbursed on a tax-free basis through an HSA or Archer MSA. These changes would be effective for tax years beginning after 2010.
- The penalty for nonqualified HSA distributions would be increased from 10% to 20%, effective for disbursements made during tax years beginning after 2010.
- Allowable contributions to health FSAs in cafeteria plans would be capped at \$2,500, effective for tax years beginning after 2010. The dollar amount would be indexed after 2011.
- Effective for tax years beginning after the enactment date, [Code Sec. 501\(c\)\(3\)](#) hospitals would be subject to new requirements, e.g., a community health needs assessment, promulgation and dissemination of a written financial assistance policy, and new reporting and disclosure rules.
- Effective for payments made after 2011, the bill would modify the general information reporting requirement by eliminating the exception for payments to corporations.
- The floor beneath itemized medical expense deductions would be raised from 7.5% of adjusted gross income (AGI) to 10%, effective for tax years beginning

- after 2012. The AGI floor for individuals age 65 and older (and their spouses) would remain unchanged at 7.5% through 2016.
- A 10% excise tax would apply to indoor tanning services, effective for services performed on or after July 1, 2010.
  - The deduction for expenses allocable to Medicare Part D subsidy would be eliminated, effective for tax years beginning after 2010.
  - A \$500,000 deduction limit would apply to the remuneration of officers, employees, directors, and service providers of covered health insurance providers. This limit would be effective for remuneration paid in tax years beginning after 2012 with respect to services performed after 2009.
  - For tax years beginning after 2010, the bill would provide for a “simple” safe harbor from the nondiscrimination requirements for cafeteria plans for an eligible small employer. The safe harbor would also apply to the nondiscrimination requirements for specified qualified benefits offered under the cafeteria plan, including group term life insurance, coverage under a self insured group health plan, and benefits under a dependent care assistance program. The safe harbor would require that the cafeteria plan satisfy minimum eligibility and participation requirements and minimum flex-credit contribution requirements.
  - The bill would create a temporary tax credit, subject to an overall cap of \$1 billion, to encourage investments in new therapies to prevent, diagnose, and treat chronic diseases, effective for expenditures paid or incurred after 2008, in tax years beginning after 2008. The credit would sunset at the end of 2010.
  - An annual fee would be levied on manufacturers and importers of branded drugs, and on manufacturers and importers of certain medical devices. The branded-drug fee would apply for calendar years beginning after 2009, and the fees would be allocated based on market share of the branded drug sales for calendar years beginning after 2008. The medical-devices fee would apply for calendar years beginning after 2010, and the fees would be allocated based on market share of medical device sales for calendar years beginning after 2009.
  - The [Code Sec. 833](#) treatment of certain health organizations would be modified, effective for tax years beginning after 2009.
  - A new income tax exclusion would apply for assistance provided to participants in state student loan repayment programs for certain health professionals, effective for tax years beginning after 2008.
  - For tax years beginning after 2009, the adoption credit would be refundable and the qualifying expenses threshold would be increased.

[Click here for text of the Reid substitute amendment \(manager's amendment\) to H.R. 3590, the "Patient Protection and Affordable Care Act." This amendment was incorporated into the bill that passed the Senate.](#)

[Click here for JCX-61-09 \(December 19\), the Joint Committee on Taxation estimated revenue table for the manager's amendment to the "Patient Protection and Affordable Care Act."](#)