



HIGHLIGHTS:

- ✓ Individual Responsibility Requirement
- ✓ No Employer Mandate
- ✓ Small Business Tax Credit
- ✓ Additional Medicare Tax On Higher-Income Individuals
- ✓ Excise Tax On High Dollar Plans
- ✓ Market Sector Fees
- ✓ Codification Of Economic Substance Doctrine
- ✓ And More

House Passes Health Care Reform; Reconciliation Vote Looms In Senate

After a series of complex parliamentary maneuvers, the House approved a massive health care reform package on March 21, 2010, with over \$400 billion in revenue raisers and new taxes on employers and individuals. The House passed H.R. 3590, the Patient Protection and Affordable Care Act (the Patient Protection Act), approved by the Senate on December 24, 2009, along with H.R. 4872, the Health Care and Education Tax Credits Reconciliation Act of 2010 (the House Reconciliation Act). The House Reconciliation Act serves as a “sidecar” bill, allowing the House to move its changes to the Patient Protection Act using the budget reconciliation rules. These rules allow the Senate to pass the package with only 51 votes, rather than a 60-vote super-majority.

What’s next: President Obama is expected to sign The Patient Protection Act into law directly. However, since the House Reconciliation Act strikes out or modifies a number of provisions in the Senate’s Patient Protection Act to which House members had objected, the Senate now must pass the “sidecar” House Reconciliation Act before it becomes law. The Senate Democrats’ goal is to send a final package to the White House before a scheduled Congressional recess begins on March 29.

on higher-income individuals originally proposed in the House last year. However, the House health-care package would impose an additional Medicare tax on higher-income individuals, including a Medicare tax on investment income, in addition to changing aspects of the excise tax to be imposed on high-dollar insurance plans. And while the health-care package does not mandate employer-provided coverage, it does include “play or pay” language.

Impact *The IRS would be responsible for overseeing a significant part of health care reform, such as the administration of additional taxes on individuals and employers, determinations of various exemptions from those taxes, and oversight of new information reporting requirements. Many of the new requirements have phased-in or delayed effective dates, giving the IRS – and taxpayers – a window of time to prepare.*

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Impact *The Patient Protection Act, as amended by the House Reconciliation Act, does not impose the income tax surtax*

KEY OFFSETS

To help finance health care reform, the Patient Protection Act, as amended by the House Reconciliation Act, includes (1) a 40 percent excise tax on high-dollar health insurance plans

to begin in 2018, (2) an increase in Medicare payroll taxes starting in 2013 on taxpayers in the \$200,000-plus income category (\$250,000 for joint filers), and (3) new fees on certain health-related industries. A dozen other “revenue raisers” are also included in the final bill.

CORE CONCEPTS

The Patient Protection Act, as amended by the House Reconciliation Act, will fundamentally alter the health care landscape for individuals and employers. All individuals not covered by Medicaid or Medicare would be required to obtain health care coverage or pay penalties. Employer-provided coverage would generally satisfy the universal coverage requirement. Lower-income individuals, as well as some middle-class families, would receive a credit or voucher to help pay for health insurance. Employers electing not to offer qualifying coverage would be subject to an additional tax to help finance the health care coverage for their employees. Exceptions would be made for small businesses.

Comment Individuals who currently have coverage and wish to retain that coverage can do so under a “grandfather” provision in the health care package and the coverage will be deemed to meet the individual’s responsibility to have health coverage. A similar grandfather provision applies to employers that currently offer coverage.

INDIVIDUALS

The Patient Protection Act, as amended by the House Reconciliation Act, requires individuals not otherwise eligible for Medicaid or Medicare or other government-sponsored coverage to maintain minimum essential coverage beginning after 2013.

“To help finance health care reform, the Patient Protection Act, as amended by the House Reconciliation Act, includes a 40 percent excise tax on high-dollar health insurance plans to begin in 2018, an increase in Medicare payroll taxes starting in 2013 on taxpayers in the \$200K-plus income category (\$250K for joint filers), and new fees on certain health-related industries.”

Individuals who fail to maintain minimum essential coverage would be liable for a penalty. The Patient Protection Act uses a formula to calculate the penalty taking into account the taxpayer’s household income and a flat dollar amount.

The Patient Protection Act, as amended by the House Reconciliation Act, imposes a nondeductible flat dollar-amount penalty of \$95 per person without minimum essential coverage in 2014. The nondeductible penalty rises to \$325 per person without minimum essential coverage in 2015 then to \$695 per person without minimum essential coverage in 2016 and is indexed for inflation thereafter.

Comment For individuals under the age of 18 or in college, the applicable flat dollar penalty would be one-half of the above amounts.

Comment The flat dollar penalty on any taxpayer for any tax year with respect to all individuals for whom the taxpayer is liable (generally family members) cannot exceed an amount equal to 300 percent of the applicable dollar amount for the year.

Additionally, amendments made by the House Reconciliation Act raise the percentage of income that is the alternative to the flat dollar annual penalty from 0.5 percent to 1.0 percent in 2014, 1.0 to 2.0 percent in 2015, and 2.0 to 2.5 percent for 2016 and subsequent years.

Example *Abby, a 34-year old single, does not have minimum essential coverage in 2016 and is not exempt from having minimum essential coverage. Abby would be liable for a penalty the greater of: \$695 or 2.5 percent of her modified adjusted gross income.*

Impact *The Patient Protection Act, as amended by the House Reconciliation Act, completely exempts taxpayers below the threshold for filing an income tax return from the minimum essential coverage penalty. The*

INDIVIDUAL RESPONSIBILITY

Year	Penalty	Percent of Income*
2014	\$95	1%
2015	\$325	2%
2016	\$695**	2.5%

* In lieu of the flat penalty if greater

** Indexed for inflation thereafter

House Reconciliation Act also lowered the penalty set in the Patient Protection Act effective for 2015 from \$495 to \$325 and for 2016 from \$750 to \$695.

COVERAGE SUBSIDIES

The Patient Protection Act, as amended by the House Reconciliation Act, also provides premium assistance tax credits and reduced cost sharing to qualified individuals, on a sliding scale. The credit is designed to guarantee that qualified individuals would not spend more than a specific percentage of their income on medical insurance premiums. Generally, these are individuals who cannot afford minimum essential coverage based on the relationship of their income to the federal poverty level. The health care package allows for the advanced payment of premium assistance tax credits.

Comment In coordination with this subsidy credit, which starts at 133 percent of the federal poverty level (FPL), the health-care package also expands Medicaid to cover those with income less than 133 percent of FPL.

The federal poverty level is determined based on family size. For example, the subsidy range for a family of four, starting above the 133 percent level, would extend from \$29,327 to \$88,000 under current levels. For single individuals, the subsidy range would extend from \$14,000 to \$43,000.

The Patient Protection Act, as amended by the House Reconciliation Act, includes a religious conscience exception, excludes undocumented individuals in the U.S. from coverage and provides special rules for qualified members of Native American tribes, certain hardship cases, children under age 18 and incarcerated individuals. The health care package also provides for cost sharing for lower-income individuals enrolled in qualified health

insurance plans and the advance payment of cost-sharing reductions for eligible individuals.

Comment Individuals with Medicare, Medicaid, Veterans' Affairs, or other government-sponsored coverage would be treated as having minimum essential coverage.

The Patient Protection Act, as amended by the House Reconciliation Act, creates a reinsurance program for employer-sponsored early retiree coverage. Payments made under the reinsurance program for retirees would be excluded from gross income. Additionally, health services provided or purchased by the Indian Health Service would also be excluded from gross income.

Comment The IRS would be responsible for determining eligibility for the premium assistance tax credit. Further, premium assistance tax credits would be disregarded for federal or federally-assisted programs.

The Patient Protection Act, as amended by the House Reconciliation Act, also creates a national voluntary insurance program for purchasing community living assistance services and support. Premiums will be paid through payroll deductions if

an individual's employer decides to participate in the program.

EMPLOYERS

The Patient Protection Act, as amended by the House Reconciliation Act, does not require employers to provide health insurance coverage. However, employers that do not provide minimum essential coverage will be liable for an additional tax. The health care package also requires automatic enrollment in health insurance plans sponsored by large and mid-size employers.

Employers (essentially large and mid-size employers for purposes of the House Amended Patient Protection Act) that fail to offer minimum essential coverage during any month for which a full-time employee has enrolled in a subsidized plan using the premium assistance tax credit or cost-sharing reductions would be liable for an additional tax. That penalty would equal the product of the applicable payment amount (with respect to any month, 1/12 of \$2,000) and the number of full-time employees employed by the employer during such month.

Impact *The penalty would apply to employers with 50 or more workers but would subtract the first 30 workers from the payment calculation. Businesses with fewer than 50 employees would be exempt from any employer responsibility.*

PREMIUM TAX CREDITS FOR AFFORDABILITY

Household income*	Initial premium percentage	Final premium percentage
Up to 133%	2.0	2.0
133% up to 150%	3.0	4.0
150% up to 200%	4.0	6.3
200% up to 250%	6.3	8.05
250% up to 300%	8.05	9.5
300 % up to 400%	9.5	9.5

* Household income expressed as a percent of the federal poverty level

Example *ABC Co. has 51 full-time employees and does not offer its employees minimum essential coverage. ABC Co. will pay an amount equal to 51 minus 30 (or 21) times the applicable per employee payment amount (up to \$2,000 per full-time employee).*

Employers offering coverage to employees who qualify for premium assistance tax credits or cost-sharing reductions would also be liable for an additional tax if waiting-period restrictions are imposed. Large employers with extended enrollment waiting periods (generally those exceeding 90 days) would be liable for an additional tax.

Comment Generally, if employer-provided insurance exceeds 9.5 percent of the employee's household income or the employer plan has an actuarial value of less than 60 percent, the coverage will not qualify as minimum essential coverage.

Comment Employers and other entities providing minimum essential coverage would be required to file information returns with the IRS identifying the individual, the coverage and the amount of premium, if any, paid by the individual. Penalties would be imposed for failure to file an information return.

SMALL BUSINESSES

The Patient Protection Act, as amended by the House Reconciliation Act, provides a temporary sliding-scale small employer tax credit to help offset the cost of employer-provided coverage. Generally, a small employer is one with fewer than 25 employees and average annual wages of less than \$40,000.

In 2011 through 2013, eligible employers may qualify for a tax credit for

up to 35 percent of their contribution toward the employee's health insurance premium. In 2014 and beyond, eligible employers who purchase coverage through a state exchange may qualify for a credit for two years of up to 50 percent of their contribution. Qualified tax-exempt employers would be eligible for a reduced credit. Salary reduction contributions are not counted.

Impact *Employers with 10 or fewer employees and average annual wages of less than \$20,000 would be eligible for the full credit.*

Comment Qualified small businesses would be able to purchase insurance for their employees through state-based web portals to be known as Small Business Health Options Programs (SHOP). These insurance exchanges would allow small businesses to pool together to spread their financial risk.

Cafeteria Plans. The Patient Protection Act relaxes the cafeteria plan rules to encourage more small employers to offer tax-free benefits to employees, including those related to health insurance coverage. It does so by carving out a safe harbor from the nondiscrimination requirements for cafeteria plans for qualified small employers.

ADDITIONAL MEDICARE PAYROLL TAX

The Patient Protection Act, as amended by the House Reconciliation Act, broadens the Medicare tax base for higher-income taxpayers by:

1. Imposing an additional of 0.9 percent on earned income in excess of \$200,000 for individuals and \$250,000 for families; and
2. Imposing an unearned income Medicare contribution of 3.8 percent on investment income for individuals

with AGI above \$200,000 and joint filers with AGI above \$250,000.

Impact *The 3.8 percent Medicare "contribution" would be effective starting in 2013. This additional Medicare tax would apply only to the employee portion of the tax. When added to the 0.9 percent tax also imposed by the Patient Protection Act on these high-income earners' portion of their Hospital Insurance (HI) payroll tax, \$210 billion is estimated to be raised over the 2013 to 2019 period.*

Impact *Neither the \$200,000 nor \$250,000 amounts are indexed for inflation.*

Net investment income includes interest, dividends, royalties, rents, gain from disposing of property, and income earned from a trade or business that is a passive activity. Self-employed individuals, as well as estates and trusts, would also be liable for the additional tax.

Distributions from qualified retirement plans, including pensions and certain retirement accounts, would be exempt from paying the additional tax. For example, income from individual retirement accounts (IRAs), 401(a) money purchase plans, 403(b) and 457(b) plans would be exempt.

Comment The final version of the additional Medicare payroll tax appears to be a compromise between the House's proposed income tax surtax on higher-income individuals and the Senate's original "Cadillac plan" excise tax.

Impact *The additional Medicare tax on qualified higher-income taxpayers would not start until 2013. Issues over how certain deferred compensation arrangements would be taxed are certain to arise.*

TAX ON HIGH-COST INSURANCE

The Patient Protection Act, as amended by the House Reconciliation Act, will impose a 40 percent nonrefundable excise tax on group insurers if annual premium payments exceed an inflation-adjusted \$10,200 for individual coverage and \$27,500 for family coverage beginning in 2018.

The Patient Protection Act, as amended by the House Reconciliation Act, also provides higher premium levels for retirees and employees in certain high-risk professions: \$11,850 for individual coverage and \$30,950 for family coverage. Retired individuals age 55 and older would also be eligible for the higher thresholds.

Employers will be required to disclose the value of employer-provided health insurance to employees annually on Form W-2.

Impact *Designed principally to limit so-called “Cadillac plans,” the excise tax for these high-end policies would be imposed pro rata on issuers. For self-insured plans, the plan administrator (including employers that act as plan administrators) would pay the excise tax. The Patient Protection Act, as amended by the House Reconciliation Act, delays application of the excise tax from 2013 until 2018 to give plans “time to implement and realize the cost savings of reform.” Because of this delay, however, the Reconciliation Act eliminates the three-year transition relief that had been available in the Patient Protection Act for coverage in 17 high-cost states.*

Impact *An insurer would be free to pass along the excise tax to consumers in the form of higher premiums as an alternative to, or in combination with, finding cost-cutting opportunities.*

Cost of living adjustments. While the House Reconciliation Act raises the base dollar premium levels for classification as Cadillac plans (the original levels had been set at \$8,500 for individuals and \$23,000 for families), it takes away the more generous inflation-index in the original Patient Protection Act. The threshold amounts originally would have been indexed for inflation using CPI-U plus one percent. The House Reconciliation Act keeps that inflation-adjusted calculation for 2018 and 2019 only. Thereafter, the amounts would be adjusted only using the base CPI-U. The dollar thresholds will be increased automatically in 2018 if the Congressional Budget Office is incorrect in its forecast of the premium inflation rate between 2010 and 2018. Estimates are that the new indexing will more than offset any benefits given under the higher base dollar premium levels.

The House Reconciliation Act removes completely from the Patient Protection Act the value of dental and vision plan benefits from determining the excise tax thresholds. The House Reconciliation Act also provides adjustments to the thresholds to account for plans that carry a higher premium cost because of the participants’ age or gender.

Example *Dan, age 40, elects family coverage under an employer-provided fully-insured health care policy covering major medical and dental with a value of \$37,000. The amount subject to the proposed excise tax would be the \$9,500 above the \$27,500 threshold for family coverage. Dan’s employer would report \$9,500 as taxable to the insurer. The insurer calculates and pays the tax to the IRS.*

MARKET SECTOR FEES

The Patient Protection Act, as amended by the House Reconciliation Act, imposes annual nondeductible fees on

various health-related industries, such as medical device manufacturers and importers, health insurance providers and others. The annual fees would be allocated across industry sectors according to market share. The patient Protection Act, as amended, delays the effective dates of the taxes on brand name pharmaceutical sales by one year until 2011 and on health insurance providers for three years until 2014. The Patient Protection Act, as amended, also exempts qualified nonprofit insurance providers serving lower-income and other targeted groups and some voluntary employee benefit associations.

Comment The Patient Protection Act, as amended by the House Reconciliation Act, removes an annual fee that would have been imposed on medical device manufacturers. However, as a trade-off, the Patient Protection Act, as amended, adds an excise tax on medical device sales. However, certain medical devices routinely purchased by consumers, such as eyeglasses and hearing aids, would be exempt from the excise tax.

The Patient Protection Act, as amended by the House Reconciliation Act, would also require Code Sec. 501(c)(3) hospitals to conduct periodic community health needs assessments and adopt written financial assistance policies. Individuals who qualify for financial assistance would be billed at the same rates as insured individuals. The bill would also add some consumer protection provisions to debt collection activities by nonprofit hospitals.

Comment The IRS would be required to review a nonprofit hospital’s community benefit activities at least once every three years.

Comment The Patient Protection Act, as amended by the House Reconciliation Act, authorizes the IRS to share return infor-

mation with the U.S. Department of Health and Human Services to curb Medicare fraud.

Health Insurance Executive Pay.

The Patient Protection Act modifies Code Sec. 162(m) as it applies to remuneration paid by health insurance providers to high-level executives. If at least 25 percent of the premium income to the insurer does not meet minimum essential coverage requirements under the Act, no Code Sec. 162(m) deduction would be allowed to the extent the remuneration exceeds \$500,000, with a special provision for deferred compensation. No further changes were made in the House Reconciliation Act to this provision.

Indoor Tanning Tax. The Patient Protection Act, as amended by the House Reconciliation Act, imposes a tax of 10 percent on qualified indoor tanning services effective for services provided on or after July 1, 2010.

New Therapies Tax Credit. On the positive side of the ledger for the health industry, the Patient Protection Act creates a new two-year temporary tax credit to encourage investments in new health care therapies for tax years beginning in 2009 and 2010.

FSAS AND HSAS

The Patient Protection Act, as amended by the House Reconciliation Act, modifies the definitions of qualified medical expenses for health FSAs, HSAs, and HRAs to conform them to the definition used for the medical expense itemized deduction (excluding over-the-counter medicines prescribed by a health care professional). The health care package also caps health FSA contributions at \$2,500 per year after 2012, which is indexed annually for inflation after 2013.

The Patient Protection Act, as amended, also increases the additional tax on nonqualified distributions from health savings accounts (HSAs) from 10 percent to 20 percent and from Archer MSAs from 15 to 20 percent.

Impact *The Patient Protection Act as passed by the Senate would have applied to health FSA distributions and reimbursements for tax years beginning after December 31, 2010. The House Reconciliation bill delays the effective date by two years, to tax years beginning in 2013.*

To prevent an end-run around the new FSA restrictions using cafeteria plan rules, the House Reconciliation Act provides that, if a benefit is available under a cafeteria plan through employer provided contributions to a health FSA, the benefit will not be treated as a qualified benefit unless the cafeteria plan provides that an employee may not elect for any taxable year to have salary reduction contributions in excess of \$2,500 made to the arrangement.

MEDICAL EXPENSE DEDUCTION

The Patient Protection Act, as amended by the House Reconciliation Act, raises the threshold for the itemized medical expense deduction from 7.5 percent of adjusted gross income (AGI) to 10 percent of AGI for regular income tax purposes effective for tax years beginning after December 31, 2012. However, individuals age 65 and older (and their spouses) would be temporarily exempt from the increase. The exemption for seniors would apply to any tax year beginning after December 31, 2012 and ending before January 1, 2017 if the taxpayer or the taxpayer's spouse attained age 65 for the tax year.

Impact *The Patient Protection Act, as amended by the House Reconciliation Act, makes no adjustment to the allowable medical expense deduction for purposes of computing alternative minimum tax (AMT) liability. For now, the AGI floor for AMT purposes remains at 10 percent.*

Comment The Patient Protection Act, as amended by the House Reconciliation Act, does not extend the employer-provided health coverage gross income exclusion for employees' spouses and dependent children to coverage provided to domestic partners. Pending legislation, the Domestic Partnership Benefits and Obligations Act of 2009 would provide the same employment benefits to federal employees in same-sex partnerships currently provided to married federal employees and their spouses, including healthcare, retirement, family leave, and other benefits.

Adult children coverage. The Patient Protection Act, as amended by the House Reconciliation Act, extends the employer-provided health coverage gross income exclusion to coverage for adult children up to age 26. To be eligible, they must be also eligible to be claimed as a dependent for tax purposes.

Adoptions. The Patient Protection Act makes the adoption credit refundable. It also raises the dollar limitation for the credit to \$13,170 and extends the credit through 2011. The health care package also enhances the incentives for adopting children with special needs.

MEDICARE PART D

The Patient Protection Act eliminates the deduction for the subsidy for employers that maintain prescription drug coverage for retirees who are eligible for Medicare Part D.

Comment The House Reconciliation bill delays the effective date of this provision by two years until 2013.

OTHER REVENUE RAISERS

In addition to health-care related taxes and fees, several other areas have

been targeted to raise more revenue as an offset to the overall cost of the entire Health Care package. These additional provisions are estimated to raise \$28.1 billion over the 2010-2020 scoring period.

BIOFUEL CREDIT

The cellulosic biofuel credit was intended to reward taxpayers that use alternative fuels in industrial and other processes. The Patient Protection Act, as amended by the House Reconciliation Act, targets what some lawmakers perceive as certain industries' abuse of the credit by denying the credit to a by-product known as "black liquor." The provision applies to fuels sold or used on or after January 1, 2010.

Impact *This nonmedical revenue provision is a money maker, raising \$23.6 billion. However, both this provision and the codification of the economic substance doctrine are used as the primary revenue raisers in the*

version of the Extenders bill the Senate passed on March 10, thus jeopardizing a quick resolution of that bill between House and Senate negotiators.

ECONOMIC SUBSTANCE DOCTRINE

The Patient Protection Act, as amended by the House Reconciliation Act, codifies the economic substance doctrine. A transaction would have economic substance only if the taxpayer's economic position (other than its federal tax position) changed in a meaningful way and the taxpayer had a substantial purpose (other than a federal tax purpose) for engaging in the transaction. The provision applies to transactions entered into after date of enactment.

Impact *Violations are subject to stiff, automatically-applied penalties of 20 or 40 percent, depending on the underlying transaction and level of disclosure. This no-fault penalty regime concerns*

many advisors, especially in connection with corporate and partnership tax planning strategies in which tax reduction has been an acceptable principal reason for structuring certain deals.

CORPORATE ESTIMATED TAX PAYMENTS

The Patient Protection Act, as amended by the House Reconciliation Act, increases the required corporate estimated tax payments factor for corporations with assets of at least \$1 billion for payments due in July, August, and September 2014 by 14.5 percentage points.

INFORMATION REPORTING

The Patient Protection Act, as amended by the House Reconciliation Act, imposes new information reporting requirements. Generally, businesses that pay any amount greater than \$600 during the year to corporate and noncorporate providers of property and services will be required to file an information report with each provider and with the IRS.