

Senate Health Care Reform Bill Summary

H.R. 3590, the Patient Protection and Affordable Care Act As Passed on December 24, 2009

Please note, if your business has fewer than 50 full-time employees, the following does not apply due to the exemption for small businesses included in the legislation.

Key Definitions

Full-Time Employee:

- With respect to any given month, an employee who is employed on average at least 30 hours of service per week

Part-time Workers (30 hours a week, in any month):

- Exempt and not counted for purposes of the 50 full-time employee small business threshold, as well as the per employee free rider penalty. *(See free rider penalty description on page 4).*

Seasonal Workers (≤120 days):

- Exempt and not counted for purposes of the 50 full-time employee small business threshold, as well as the per employee free rider penalty.
- Employees are not counted towards the 50 or more threshold if the workforce exceeds 50 full-time employees for 120 days or fewer in a calendar year AND employees in excess of 50 were seasonal workers during the 120 day period.

Definition of Employer:

- If 2 or more trades or businesses have the same 5 or fewer owners, collectively owning at least 80% of the share or interest (either by vote or value), those trades or businesses shall be considered a single employer for the purposes of health care reform and whether full-time employees of multiple businesses must be combined for purposes of calculating the 50 full-time employee threshold. *(For more details and examples, see Definition of Employer one-pager).*

Minimum Essential Coverage:

Applies to those health insurance plans offered after date of enactment by employers with 50 or more full-time employees.

Defines an essential health benefits package that covers essential health benefits, limits cost-sharing, and has a specified actuarial value (pays for a specified percentage of costs), as follows:

1. For the individual and small group markets¹, requires the Secretary of Health and Human Services to define essential health benefits, which must be equal in scope to the benefits of a typical employer plan.
 2. For all plans in all markets² prohibits out-of-pocket limits that are greater than the limits for Health Savings Accounts (2010: \$5,950 self, \$11,900 family). For the small group market, prohibits deductibles that are greater than \$2,000 for individuals and \$4,000 for families. Indexes the limits and deductible amounts by the percentage increase in average per capita premiums. Limits cost-sharing for such coverage (deductibles, coinsurance, copayments, or similar charges – does not include premiums.)
 3. For the individual and small group markets, requires individuals to enroll in one of the following levels of coverage, under which the plan pays for the specified percentage of costs: Provide either Bronze (60% actuarial value), Silver (70%), Gold (80%), platinum (90%) level of coverage. [Secretary of Health and Human Services may issue regulations under which employer contributions to a health savings account may be taken into account in determining the level of coverage for a plan of the employer.]
- In the individual market, individuals under 30 years, not using the tax credit to obtain coverage, can enroll in a catastrophic plan to satisfy the individual responsibility requirement in the legislation. However, catastrophic plan is not minimum essential coverage and thus can not be offered by an employer to meet health coverage requirements. A catastrophic plan must cover essential health benefits and at least 3 primary care visits, but must require cost-sharing up to the Health Savings Account out-of-pocket limits. Also, if an insurer offers a qualified health plan, it must offer a child-only plan (under 21) at the same level of coverage in the individual market.

Grandfathered Plan:

- Defined as any group health plan (small or large) or health insurance coverage in which individuals are enrolled as of date of enactment of the legislation.
- Current plan coverage can be continued and new employees or family members of employees may be added to the grandfathered plan after date of enactment if that was previously allowed by the plan.
- With few exceptions, existing employer plans offering any level of coverage are not required to adopt health insurance market reforms or quality standards (bronze, silver, gold, platinum).

¹ Individual market refers to an individual health insurance policy purchased apart from the group market. Small Group Market contains small group health plans that are open to an employer with 100 or less employees. Large Group Market applies to employers with 101 or more employees. However, in plan years beginning before January 1, 2016, a State may substitute 51 for 101 employees in defining small group market. If employer was considered small and offered a plan through the small group market through the exchange, and increases in size so as not to be, as long as they continue to offer such enrollment to employees they would still be considered small.

² Applies to Individual, Small Group and Large Group plans.

- Health insurance market reforms in the Senate legislation will not apply to grandfathered plans.
 - For example: Plans that provide dependent coverage for children shall continue to provide that coverage until the child turns 26 years of age. However, this requirement is contained in a section of the bill that does not apply to grandfathered plans.
 - Examples of other market insurance market reforms: no lifetime or annual limits, Prohibition on recession of coverage, coverage of preventive health services, uniform explanation of coverage documents and standardization of definitions by plans, prohibition of discrimination based on salary, appeals process set up for denial of claims, prohibition on discriminatory premium rates, guaranteed availability of coverage to employer and individuals in each state health insurer offers coverage, prohibition on excessive waiting periods (more than 90-days) etc.

Employer Responsibilities

If an Employer has **fewer than 50 full-time Employees...**

- Employer is exempt from providing coverage.
 - Employer is exempt from penalties even if just 1 full-time employee accesses coverage with a premium tax credit on the exchange.
-

If an Employer has **50 or more full-time Employees and...**

DOES NOT OFFER minimum essential health care coverage to their full-time employees and dependents³, and at least 1 full-time employee uses the premium tax credit to obtain coverage on the exchange....

- Employers make a payment of \$750 per full-time employee (1/12th of \$750 with respect to any month).
 - Begins in 2014.
-

If an Employer has **50 or more full-time Employees and...**

DOES OFFER minimum essential coverage to their full-time employees and dependents, but at least 1 full-time employee uses a premium tax credit to obtain coverage on the exchange...

- Employer pays a **free-rider penalty** which is the *lesser of*:
 - \$3,000 for each of those full-time employees receiving a premium tax credit,
 - OR—
 - \$750 for each of their total full-time employees (1/12th of \$750 with respect to any given month).
- Begins in 2014.

DOES OFFER minimum essential coverage to their full-time employees and dependents and makes a contribution, but a full-time employee's required contribution under the employer's plan would be between 8% and 9.8% of household income...

- Employer provides a free choice voucher – the amount equal to the monthly employer contribution for an individual plan, unless the full-time employee elects a family plan – to those full-time employees to buy coverage on the exchange.
- If the voucher exceeds the cost of the coverage premium purchased on the exchange, then full-time employee is paid the excess.

³ Dependents include spouses and children until their 26th birthday. Secretary of HHS will promulgate regulations to define dependents.

- If full-time employee obtains the tax credit to obtain coverage on the exchange, the voucher is not paid by the employer (no double dipping). (Effective 2014).
- Employer is allowed a deduction in the amount of the voucher paid. (Effective 2014).
- If employer provides a voucher to a full-time employee, the employer is not subject to the penalty for that employee for that month. (Effective 2014).

The full-time employee is eligible for a premium tax credit, if the employer offers coverage but the plan's share of the total allowed costs of benefits is less than 60% of the costs OR the full-time employee's required contribution (premium) under the employer's plan exceeds 9.8% of employee's income.

- The premium tax credit amount is calculated on a sliding scale start at 2% of income for those at or above 100% of poverty and phasing out to 9.8% of income those at 400 percent of poverty. The reference premium is the second lowest cost silver plan available in the individual market in the rating area in which the employee resides.

Waiting Period

An employer with 50 or more full-time employees is allowed a penalty-free waiting period up to 60 days before enrolling a new full-time employee in the employer's health care plan.

If an employer with 50 or more full-time employees requires a waiting period 61-90 days before a full-time employee can enroll in health care coverage...

- Employer pays \$600 for any full-time employee in a 61-90 day waiting period.
- Begins 2014.

If employer waits longer than 90 days...

- Employer pays free rider penalty of of \$750 per full-time employee (1/12th of \$750 with respect to any month) for not providing coverage.
- Begins 2014.

Automatic Enrollment of full-time employees (200+)

- Requires employers with more than 200 full-time employees to automatically enroll new full-time employees in one of the employer's-sponsored health care plans (subject to any waiting period authorized by law) with adequate notice and the opportunity for an employee to opt out of any coverage the full-time employee was automatically enrolled in.
- Employee can opt for another plan offered by employer (i.e. different individual plan, family plan etc.), declare they obtained coverage through a family member, opt-out and obtain coverage on the exchange (employer then subject to penalty), use employer voucher to obtain coverage on the exchange because of income threshold and employer not subject to penalty.

- Subject to regulations to be promulgated by the Secretary of Labor.
 - Begins 2014.
-

Grandfathered Plans: If an **Employer currently offers coverage** to their employees....

The legislation addresses this question from the employee’s perspective: With respect to a group health plan or health insurance coverage as of date of enactment of the bill (i.e. grandfathered plan), the individual is not required to terminate coverage, and can continue coverage regardless if the individual renews coverage after date of enactment. Family members may be added to a “grandfathered plan” if that was previously allowed by the plan and new employees can join the current plan as well.

A grandfathered plan is not subject to the health insurance market reforms in the Senate’s legislation for plan begun after date of enactment of the bill. See “Grandfathered Plan” definition above.

ERISA (Employee Retirement Income Security Act):

The Senate’s bill maintains the current ERISA regulatory framework for large employers that allow them to offer a uniform health benefits package across state lines. These employers maintain the ability to offer competitive and more affordable coverage in part through the financial and administrative savings permitted by this uniform national standard. It also allows employers the flexibility to tailor benefits to fit the needs of their workforce.

Notification Requirements for All Employers...

Must provide employees written notice at time of hiring on or after March 1, 2013 (or with respect to current employees no later than March 1, 2013):

1. Inform employee of existence of the Exchange, including description of services, and manner in which employee may contact the Exchange.
 2. If the employer plan’s share of the total allowed costs of benefits is less than 60%, then the employee may be eligible for a premium tax credit and a cost sharing reduction if the employee purchases a plan through the Exchange.
 3. If an employee purchases a qualified health plan through the Exchange, they will lose the employer contribution (if offered by the employer) in which all or a portion may be excludable from income for federal income tax purposes.
-

Small business tax credit is available for those under 25 employees offering coverage

- Eligible small employers are those with no more than 25 “full-time equivalent employees” for the taxable year, the average annual wages of those employees do

- not exceed \$50,000, and the employer's contribution⁴ for the employees for a qualified health plan in the Exchange is not less than 50% of the premium.
- The sliding scale tax credit is available beginning in 2010, for two consecutive years beginning with the first taxable year the employer offers one or more qualified health plans through the Exchange.
 - The amount of the credit is phased out based on number of employees and their average wages using a formula. The full credit is available to employers with 10 or fewer employees with average wages less than \$25,000.
 - Seasonal worker hours and wages are not counted for the purposes of the tax credit. Certain employees are also excluded, such as: any 2% shareholder of an S Corporation or their dependents, any 5% owner of an eligible small business and their dependent, leased employees.
 - The amount of credit is 50% of the lesser of the aggregate amount of the employer contribution for employees' premiums of qualified health plans offered by the employer in the Exchange OR the average premium in the small group market.
 - This small business tax credit is considered part of the general business credit and can be used against Alternative Minimum Tax obligations (beginning in 2011 and to carrybacks of such credits).

OTHER PROVISIONS

Individual Responsibility

- Beginning in 2014, individuals are required to ensure that the individual and their dependents are covered with "minimum essential coverage" for any month. If not, then a penalty of the greater of \$750 per calendar year (phased in at \$95 in 2014, \$3495 in 2015, \$750 in 2016) OR up to 2% of income by 2016 (up to a cap of the national average bronze plan premium) shall be imposed.
- The penalty for dependents under 18 is half of the individual penalty per calendar year, up to a cap of \$2,250 for the entire family. There are exemptions for religious purposes as well as affordability of the penalty.
- If an individual has a gap in coverage of three continuous months or less, the penalty does not apply.

Nutritional Labeling

- The menu labeling agreement reached in 2009 is included in the Senate bill. It is identical to what was included in the House passed bill, H.R. 3962. The language does include a pre-emption of state and local law. As expected, no changes were made to the agreement.

Revenue Raisers/Pay-fors

- **Excise tax on high cost employer-sponsored health coverage.** Levies a 40 percent excise tax on insurance companies and plan administrators for any health

⁴ A contribution, other than an employer contribution based on salary reduction.

coverage plan that is above the premium threshold of \$8,500 for single coverage and \$23,000 for family coverage. The tax is applied to the amount in excess of the threshold amount. The tax applies to self-insured plans and plans sold in the group market, but not to plans sold on individual market. Threshold are indexed to CPI-U plus 1%

- **Inclusion of cost of employer-sponsored health coverage on W-2.** Requires employers to disclose the value of health benefits provided by the employer for each employee's health insurance coverage on the annual W-2 for,.
- **Distributions for medicine qualified only if for prescribed drug or insulin.**
- **Increase in additional tax on distributions from HSA and Archer MSAs not used for qualified medical expenses.**
- **Limitation on health flexible spending arrangements under cafeteria plans.** Limits amount of contributions to health FSAs to \$2,500 per year beginning in 2011. Indexed by CPI-U starting in 2012.
- **Expansion of information reporting.** Requires businesses that pay any amount greater than \$600 during the year to corporate providers of property and services to file an information report with each provider and with the IRS. Information reporting already is required on payments for services to non-corporate providers. Applies to payments made after December 31, 2011.
- **Additional requirements for charitable hospitals.**
- **Annual fee on pharmaceutical manufacturers and importers.**
- **Annual fee on medical device manufacturers and importers.**
- **Annual fee on health insurance providers.** Annual flat fee on health insurance sector of \$2 billion beginning in 2011, \$4 billion in 2012, \$7 billion in 2013, \$9 billion in 2014-2016, \$10 billion for 2017 and beyond. Non-deductible fee would be allocated across industry according to market share and would not apply to companies whose net premiums are \$25 million or less, and whose fees from administration of employer self-insured plans are \$5 million or less. Third party administration agreement fees removed from the allocation of the fee to health insurance providers. Limited exemption from the fee for certain non-profit insurers with a medical loss ratio of 90% or more. Public option as well as co-ops and the national plan, will be subject to the insurance provider fee.
- **Eliminate ability of employers to deduct as a business expense Medicare Part D prescription drug subsidies they receive from the federal government.**
- **Modification of itemized deduction for medical expenses.**
- **Limitation on excessive remuneration paid by certain health insurance providers.**
- **Additional hospital insurance tax for high-wage workers.** Increases tax by .9 percentage points on individual taxpayer earning over \$200,000 (\$250,000 for married couples filing jointly).
- **Special deduction for Blue Cross Blue Shield.**
- **Excise tax on tanning services.**
- **Expansion of adoption tax credit and adoption assistance program.**