

**HEALTH CARE REFORM - CONGRESSIONAL PROPOSALS  
COMPARISON OF TAX PROVISIONS OF HOUSE AND SENATE BILLS  
2009**

Topic	House Bill (H.R. 3962) Affordable Health Care for America Act	Senate Bill (H.R. 3590) Patient Protection and Affordable Care Act
<b><u>Individual/ Employer Mandates</u></b>		
Individual Requirement to have Health Care Coverage	<p><b>Requirement</b> - Maintain "acceptable" health care coverage for yourself and your "qualified children."</p> <p><b>Annual Penalty Tax</b> - <u>Lesser of</u> (i) 2.5% of the amount by which your "modified adjusted gross income" exceeds the threshold income amount to be required to file a tax return under the Code, or (ii) the "applicable national average premium" for the tax year.</p> <p><b>Exclusions</b> - De minimis lapses, financial hardships, religious objections, non-resident aliens, and taxpayers residing outside the U.S.</p> <p><b>Effective Date</b> - Tax years beginning after December 31, 2012.</p>	<p><b>Requirement</b> - Maintain "minimal essential" health care coverage for yourself and your dependents.</p> <p><b>Annual Penalty Tax</b> - <u>Lesser of</u> (i) \$750/ individual for whom you are responsible, (ii) \$2,250 (3 X \$750), or (iii) 2% of household income. (Tax and limits phased-in through 2016.)</p> <p><b>Exclusions</b> - De minimis lapses, financial hardships, religious objections, non-resident aliens, members of Indian tribes, and incarcerated individuals.</p> <p><b>Effective Date</b> - Tax years ending after December 31, 2013.</p>
Employer Requirement to Offer Health Care Coverage	<p><b>Requirement</b> - Employers must offer qualifying health care coverage to its employees and make contributions to the plan for each electing employee in an amount equal to (i) 72.5% of the premium of the employer's lowest cost qualified plan offered for single coverage, or (ii) 65% of the premium of the employer's lowest cost qualified plan offered for family coverage. (The percentages are reduced for part-time employees.)</p> <p><b>Penalty for Noncompliance</b> - Additional 8% payroll tax on wages of employees not covered (no wage limit).</p> <p><b>Exclusions</b> - Certain small employers with annual payrolls for the preceding year of less than \$500,000 would be completely exempt, and employers with prior year payrolls between \$500,000 and \$750,000 would be subject to a reduced payroll tax for noncompliance.</p> <p><b>Effective Date</b> - Tax years beginning after December 31, 2012.</p>	<p><b>Requirement</b> - No affirmative requirement to provide health care coverage.</p> <p><b>Additional Fee</b> - If an employer does <u>not</u> offer health care coverage, however, and at least one employee receives either a premium tax credit or a cost-sharing reduction from the government, the employer must pay an annual fee of \$750 X number of full-time employees. If an employer <u>does</u> offer health care coverage, but still has at least one employee who receives a premium tax credit or cost-sharing reduction from the government, the employer must pay an annual fee equal to the <u>lesser of</u> (i) \$3,000 per employee receiving the credit/ reduction, or (ii) \$750 X number of full-time employees.</p> <p><b>Exclusion</b> - Employers that averaged less than 50 full-time employees/ day in the prior year.</p> <p><b>Effective Date</b> - Tax years beginning after December 31, 2013.</p>
Tax Credit for Small Businesses providing Health Care Coverage	<p><b>Small Business Applicability</b> - Employers with less than 25 full-time equivalent employees ("FTEs") and less than \$40,000 in average annual wages.</p> <p><b>Tax Credit</b> - 50% of employer's annual "qualified employee health coverage expenses" <u>excluding</u> coverage paid for employees whose compensation exceeds \$80,000/ year. Limited to 2 years.</p> <p><b>Credit Phase-Out</b> - Employers with 10-25 FTEs and average annual wages between \$20,000-\$40,000.</p> <p><b>Effective Date</b> - Available starting January 1, 2013.</p>	<p><b>Small Business Applicability</b> - Employers with less than 25 FTEs and less than \$40,000 in average annual wages.</p> <p><b>2011-2013 Tax Credit (Phase I)</b> - 35% of employer's contribution to employee's health insurance premium (limited to 35% of premium of plan with "average premium" as determined by Sec. of HHS).</p> <p><b>Post-2013 Tax Credit (Phase II)</b> - 50% of employer's contribution to employee's health insurance premium for insurance purchased through a state Exchange (limited to 50% of premium of plan with "average premium" as determined by Sec. of HHS). Limited to 2 consecutive years only.</p> <p><b>Credit Phase-Out</b> - Employers with 10-25 FTEs and average annual wages between \$20,000-\$40,000.</p> <p><b>Applicability to Tax-Exempt Entities</b> - Credit percentages reduced to 25% for Phase I and 35% for Phase II. Can be applied against payroll taxes.</p> <p><b>Effective Date</b> - Taxable years beginning after December 31, 2010.</p>
Information Reporting Requirements	Each person who provides "acceptable" health care coverage to an individual must file a separate information return with the Secretary of the Treasury (providing a copy to the insured) disclosing information on the individual and the coverage.	Each employer is required to include the cost of employer-sponsored health coverage on each employee's W-2.

**HEALTH CARE REFORM - CONGRESSIONAL PROPOSALS**  
**COMPARISON OF TAX PROVISIONS OF HOUSE AND SENATE BILLS**  
**2009**

Topic	House Bill (H.R. 3962) Affordable Health Care for America Act	Senate Bill (H.R. 3590) Patient Protection and Affordable Care Act
<b>Main Tax Revenue Raiser(s)</b>	<p><b>Surcharge on High-Income Taxpayers</b> - An additional 5.4% tax would be assessed on the modified AGI &gt; \$1 million for taxpayers filing married filing joint or surviving spouse and on the modified AGI &gt; \$500,000 for all other taxpayers.</p> <p><b>Exclusions</b> - Corporations and charitable trusts.</p> <p><b>Other Notes</b> - Cannot be off-set with tax credits and not taken into account in computing AMT.</p> <p><b>Effective Date</b> - Tax years beginning after December 31, 2010.</p>	<p><b>1) Excise Tax on High-Cost Insurance Plans</b> - An excise tax of 40% of the cost (determined w/o regard to any gross-up for this tax) of employer-sponsored health care coverage that exceeds \$8,500 for individual coverage or \$23,000 for family coverage would be assessed on the insurance issuer. The threshold amounts would be increased for (i) qualified retirees, (ii) employees in high-risk professions, (iii) individuals in the 17 states where health care is least affordable (only through 2015), and (iv) periodically to account for inflation. This tax would go into effect for tax years beginning after December 31, 2012.</p> <p><b>2) Increased Medicare Payroll Tax</b> - The employee portion of the Medicare tax rate would increase by 0.9% on wages &gt; \$200,000 for individuals and wages &gt; \$250,000 for joint filers. (This increase would also apply to the S/E income of self-employed individuals.) This increase would be effective for remuneration received after December 31, 2012.</p>
<b>Limitations on Health Care Expense Tax Benefits</b>		
Revised Definition of "Qualified Medical Expenses"	The definition of "qualified medical expenses" in the context of what qualifies for (i) tax-free reimbursements through HRAs and FSAs, and also (ii) tax-free distributions through HSAs would be revised to include expenses for drugs only if the drug is either (i) a prescription drug, or (ii) insulin. (This amendment would effectively eliminate the tax-free benefits associated with these arrangements for the purchase of over-the-counter drugs.) This change would apply to expenses incurred after December 31, 2010.	Same as House bill <u>except</u> that <u>doctor-prescribed</u> over-the-counter drugs would still be eligible for the tax benefits associated with these arrangements.
Limitation on FSA Salary Reductions	Elective salary reductions under a cafeteria plan for purposes of coverage under a Health FSA would be limited to \$2,500/ year. This limitation would take effect for taxable years beginning after December 31, 2012.	Same as House bill <u>except</u> that limitation would take effect for taxable years ending after December 31, 2010 and the \$2,500 limitation would be adjusted for cost-of-living each year.
Increased Penalty on Non-Qualified HSA Distributions	The penalty for distributions from HSAs that are not made for "qualified medical expenses" before the taxpayer reaches age 65 is increased from 10% to 20% of the disbursed amount. This penalty would begin to apply to distributions made in tax years after December 31, 2010.	Same as House bill.
Elimination of Deduction for Federal Prescription Drug Subsidies	Sponsors of qualified retiree prescription drug plans that receive tax-free subsidy payments from the Secretary of Health and Human Services would now be prohibited from deducting the costs reimbursed by such subsidy for federal income tax purposes. This tax deduction would be eliminated for tax years beginning after December 31, 2010.	Same as House bill.
Increased Limitation on Itemized Deductions for Medical Expenses	N/A	This provision would increase the threshold for deducting medical expenses on Schedule A so that such expenses would now have to exceed <u>10%</u> of a taxpayer's adjusted gross income ("AGI") rather than only 7.5% in order to be deducted. This provision would not apply to expenses of taxpayers age 65 and older through the end of 2016. This change would take effect for taxable years beginning after December 31, 2012.
<b>New Taxes on Certain Health Care Industries</b>	<b>Excise Tax on Sales of Medical Devices</b> - A 2.5% excise tax would be imposed on the sales price of the "first taxable sale" of certain medical devices effective for sales after December 31, 2012.	<b>Annual Fees on Certain Health Care Industries</b> - The industries of branded drug manufacturers/ importers, medical device manufacturers/ importers, and health insurance providers will be subject to an annual fee (not tax deductible) ranging between \$2-10 billion beginning some time between 2009-2011, which will generally be allocated among industry members by market share.

**HEALTH CARE REFORM - CONGRESSIONAL PROPOSALS**  
**COMPARISON OF TAX PROVISIONS OF HOUSE AND SENATE BILLS**  
**2009**

Topic	House Bill (H.R. 3962) Affordable Health Care for America Act	Senate Bill (H.R. 3590) Patient Protection and Affordable Care Act
<b>New Taxes on Certain Insurance Policies (to finance Research Funds)</b>	<p><b>Applicable Taxpayers</b> - Issuers of certain accident or health insurance policies with respect to U.S. residents.</p> <p><b>Annual Tax</b> - \$2 X average number of lives covered (adjusted for inflation) OR "fair share per capita amount" determined by Sec. of HHS X average number of lives covered.</p> <p><b>Applicability to Self-Insured Plans</b> - Tax issued on plan sponsor.</p> <p><b>Effective Date</b> - Policy years ending after October 1, 2012.</p>	<p><b>Applicable Taxpayers</b> - Issuers of certain accident or health insurance policies with respect to U.S. residents.</p> <p><b>Annual Tax</b> - \$2 X average number of lives covered (\$1 for plan years ending during FY 2013 and increased for inflation for all future years).</p> <p><b>Applicability to Self-Insured Plans</b> - Tax issued on plan sponsor.</p> <p><b>Effective Date</b> - Policy years ending after September 30, 2012, and before September 30, 2019.</p>
<b>International Tax Revenue Raisers</b>	<p><b>1) Worldwide Interest Allocation</b> - Repeals the modification included in the AJCA of 2004 which was to take effect after December 31, 2010.</p> <p><b>2) Limitation on Treaty Benefits</b> - Withholding rate is not reduced for payments to certain foreign payees despite treaty with U.S. when country of foreign parent of payee does <u>not</u> have treaty with U.S. This change would be effective for payments made after the date of enactment.</p>	N/A
<b>Other Miscellaneous Revenue Raisers</b>	<p><b>1) Revision to Biofuel Tax Credit</b> - Limits the type of fuel eligible for the tax credit (<u>e.g.</u>, excluding "black liquor") and reduces the tax credit per gallon based on the BTU content of the fuel. Limitations would be effective for sales occurring after the date of enactment.</p> <p><b>2) Increased Information Reporting for Payments to Corporations</b> - Persons who make payments of \$600/ year or more to a corporation for property or services after December 31, 2011 would be required to file an information return disclosing the payment.</p> <p><b>3) Economic Substance</b> - Economic substance doctrine is specifically codified. A new 20% penalty would be applied to underpayments and erroneous refunds attributable to transactions lacking economic substance. The underpayment penalty would be increased to 40% for non-disclosed transactions. No reasonable cause/ good faith exception would be available. These new rules would apply to transactions entered into after the date of enactment.</p>	<p><b>1) Executive Compensation Limitation</b> - No tax deduction for remuneration &gt; \$500,000 would be permitted for certain insurance providers for remuneration paid after taxable years beginning after 2012, with respect to services performed after 2009.</p> <p><b>2) Increased Information Reporting for Payments to Corporations</b> - Persons who make payments of \$600/ year or more to a corporation for property or services after December 31, 2011 would be required to file an information return disclosing the payment.</p> <p><b>3) Indoor Tanning Tax</b> - A tax equal to 10% of the amount paid for services will be assessed on customers effective for services performed on or after July 1, 2010.</p> <p><b>4) Section 833 Modification</b> - Health organizations will not receive the beneficial tax treatment of this Code Section unless at least 85% of their total premium revenue is expended on reimbursements for clinical services for their enrollees.</p>
<b>New Requirements for Non-Profit Hospitals</b>	N/A	<p><b>Applicable Entity</b> - Each "hospital facility" operated by a 501(c)(3) entity.</p> <p><b>Requirements</b> - Each hospital must (i) conduct a community health needs assessment every 3 years and adopt an implementation strategy to meet those needs, (ii) adopt a financial assistance policy, (iii) place certain limits on billing for patients that qualify for financial assistance, and (iv) prohibit extraordinary collection actions.</p> <p><b>Penalty</b> - \$50,000/ year for failure to comply.</p> <p><b>Effective Date</b> - Taxable years beginning after the date of enactment.</p>
<b>Miscellaneous Tax Benefits</b>	<p><b>1) Exclusion from Income of Indian Tribe Health Benefits</b> - Certain health care benefits provided to members of Indian tribes after the date of enactment would be specifically excluded from the member's gross income.</p>	<p><b>1) Exclusion from Income of Indian Tribe Health Benefits</b> - Certain health care benefits provided to members of Indian tribes after the date of enactment would be specifically excluded from the member's gross income.</p> <p><b>2) Tax Credit for New Therapies</b> - A tax credit equal to 50% of project investment would be available to certain companies that invest in "qualified therapeutic discovery projects" in 2009 or 2010.</p> <p><b>3) Expanded Exclusion from Income of Student Loan Forgiveness</b> - Expands the circumstances in which student loan forgiveness is excluded from income to include programs designed to provide for the increased availability of health care services in underserved areas.</p> <p><b>4) Expanded Adoption Credit</b> - Increases the credit in certain circumstances and makes the credit refundable. Applies to taxable years beginning after December 31, 2009.</p> <p><b>5) Small Business Cafeteria Plans</b> - Eases participation requirements for certain small businesses that average 100 or fewer employees per business day.</p>