

Tax Legislative Update

Breaking news from Capitol Hill
from Grant Thornton's National Tax Office

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Senate votes to consider health care reform bill

The Senate has voted 60-39 to begin consideration of its own version of health care reform, the Patient Protection and Affordable Care Act (H.R. 3950). The Senate Democratic leadership crafted this version over the past several weeks with the goal of attracting the 60 votes needed to avoid filibuster in the Senate. Debate is expected to begin the first week in December. Although 60 Senators agreed to prevent a filibuster of the legislation, thereby allowing its consideration to begin, it is not believed that there are sufficient votes to pass the proposed legislation in its current form. Accordingly, a number of amendments are expected to be considered by the Senate, and its eventual success is by no means assured.

The House voted 220-215 on Nov. 7 to pass its own version of health care reform, America's Affordable Health Choices Act (H.R. 3962). If the Senate is successful in passing its version of health care reform by the full Senate, a conference would be necessary to reconcile differences in the two bills and might not be completed until after the end of the year.

The tax provisions in the Senate bill generally follow those reported by the Senate Finance Committee on Oct. 13 (see [Tax Legislative Update 2009-15](#)), but include several significant changes, such as:

- an additional 0.5 percent Medicare tax on employees' share of wages in excess of \$200,000 for single taxpayers and \$250,000 for married couples, beginning in 2013;
- a five percent excise tax on the cost of elective cosmetic medical procedures, beginning in 2010;
- higher premium costs allowed before the 40 percent surtax on high-cost insurance would apply;
- the assessable payment on individuals who do not obtain a minimum level of health coverage would be phased in at a slower rate; and
- the assessable payment on employers who do not offer affordable health care plans is modified.

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The Senate legislation retains the annual fees assessed on health insurers (\$6.7 billion per year), drug manufacturers and importers (\$2.3 billion per year), and manufacturers and importers of medical devices (\$2 billion per year, reduced from \$4 billion per year in the Finance Committee bill). It also retains revenue offsets that would:

- limit Flexible Spending Account (FSA) contributions to \$2,500;
- increase penalties on improper Health Savings Account (HSA) distributions; and
- expand Form 1099 information reporting to include payments made to corporations and for sales of property.

The following charts compare the revenue-related provisions of the House and Senate bills.

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Side-by-side comparison of tax-related health care provisions
in Congressional reform bills
Individual and employer mandates and assistance

Provision	America's Affordable Health Choices Act (H.R. 3296) as passed on Nov. 7	Patient Protection and Affordable Care Act (H.R. 3950) to be considered by the Senate
Individual mandate	<ul style="list-style-type: none"> Individuals would be required to obtain a minimum level of health coverage or pay a penalty. Penalty would be a tax of 2.5% of adjusted gross income above a taxpayer's standard deduction and exemption amount (\$9,350 for a single taxpayer and \$18,700 for a couple in 2009). Hardship waivers would be available if coverage is unaffordable. Penalty would be capped at the average national cost for basic health insurance coverage. Generally effective beginning in 2013. 	<ul style="list-style-type: none"> Individuals would be required to obtain a minimum level of health coverage. Provides exemptions from the penalty for "hardship," religious objectors, nonresidents, prisoners, Native Americans and individuals at or below 100% of poverty level. Penalty for failure to obtain coverage is \$750 per household member, limited to 3 times adult rate. Penalty would phase in at \$200 in 2014, \$400 in 2015, \$600 in 2016, \$750 in 2017, then indexed to CPI-U after 2017. Penalties assessed at one-half adult rate for dependents under age 18.
Individual assistance	<ul style="list-style-type: none"> Credits would be available on a sliding scale for individuals up to 400% of poverty level. Credits would be available to those with employers who offer no coverage or offer coverage with costs over 12% percent of their income. Credits would apply against the cost of premiums for the basic plan available in a new healthcare exchange created by the bill. 	<ul style="list-style-type: none"> Tax credits would be available on a sliding scale for those between 100% and 400% of poverty level. Tax credits would be refundable and advanceable and based on the ratio of premium cost to income. Cost-sharing assistance would be available on a sliding scale for those between 100% and 400% of poverty level. Tax credits, cost-sharing and premium credits would be tied to specific categories of coverage created by the bill and would generally be available beginning in 2014.
Employer mandate	<ul style="list-style-type: none"> Beginning in 2013, employers would choose to either: 1) offer insurance and contribute to premiums or 2) pay an 8% tax on wages. Employers electing to offer insurance would have to cover at least 72.5% of individual premiums and 65% of family premiums. Separate elections could be made for separate lines of business and for full-time and part-time employees. Employees offered unaffordable coverage could use the exchange created by the bill, and the employer would have to make a contribution to healthcare of 8% of wages. 8% tax on wages would not apply to employers with annual payrolls below \$500,000 and would phase in at payroll levels between \$500,000 and \$750,000. Employers electing to offer insurance but who fail to meet required minimum standards would be subject to a \$100 daily penalty for each employee not covered. 	<ul style="list-style-type: none"> Employers would not be required to offer health insurance coverage. Employers with more than 50 full-time employees (30 hours and above) who do not offer health care coverage, and have an employee who receives a tax credit or cost-sharing assistance for health coverage, would be assessed a fee at a rate of \$62.50 per month for each full-time employee. Employers with more than 50 full-time employees that offer health care coverage at an employee cost that qualifies the full-time employee for assistance would be assessed a fee equal to the lesser of \$250 a month times the number of full-time employees qualifying for assistance or \$62.50 per month times the number of full time employees. Fees would not be deductible. New rules generally effective starting in 2014.

Provision	America's Affordable Health Choices Act (H.R. 3296) as passed on Nov. 7	Patient Protection and Affordable Care Act (H.R. 3950) to be considered by the Senate
Employer assistance	<ul style="list-style-type: none"> • Tax credit of up to 50% of coverage costs would be available for businesses with 25 or fewer employees and average wages under \$40,000. • Tax credit would phase out based on number of employees and AGI per employee, and coverage for employees with over \$80,000 of income would not be eligible for the credit. • Tax credit available for only two taxable years total. • Effective for tax years beginning in 2013 and later. 	<ul style="list-style-type: none"> • Tax credit of up to 35% of coverage costs would be available for small firms in 2011 through 2013. • Full credit would be available for firms with 10 employees or less and average wages below \$20,000, with the credit phasing out between 10 and 25 employees and average pay between \$20,000 and \$40,000. • Phaseout thresholds would be indexed to CPI-U for years beginning in 2014 and seasonal workers would be excluded from the calculation. • After 2013, the tax credit would be increased to a maximum of 50% but would only be available for insurance purchased through newly created state exchanges and only for the first two years an employer offers coverage. • Reduced credit would be available for nonprofits (25% in 2011 and 2012 and 35% for 2013+).

Side-by-side comparison of tax-related health care provisions
in Congressional reform bills

Revenue title

Provision	America's Affordable Health Choices Act (H.R. 3296) as passed by House on Nov. 7	Patient Protection and Affordable Care Act (H.R. 3950) to be considered by the Senate
New tax benefits	<p>Exclusion for family health benefits (costs \$4 billion)</p> <ul style="list-style-type: none"> Individuals could exclude from income any employer-provided coverage allowed under the employer plan — including coverage for domestic partners and their dependents, beginning in 2010. <p>Exclusion for Indian healthcare (under \$50 million)</p> <ul style="list-style-type: none"> Health benefits provided to Indian tribes would not be included in income, effective on the date of enactment. 	<p>Qualified therapeutic discovery credit (no estimate)</p> <ul style="list-style-type: none"> Businesses with 250 or fewer employees could apply for a 50% credit for investments in qualified therapeutic discovery projects in 2009 and 2010. \$1 billion would be allocated to the program. Treasury loan would be available in lieu of credit.
Primary tax revenue raiser	<p>High-income surtax (\$461 billion)</p> <ul style="list-style-type: none"> Beginning in 2011, a 5.4% surtax would be imposed outside of normal tax brackets on AGI above \$500,000 for single filers, trusts and estates, and \$1 million for joint filers. Threshold not indexed for inflation. The surtax would apply to modified adjusted gross income, including both ordinary and capital gains, and could not be reduced by credits. 	<p>Increased Medicare tax on highly paid (\$54 billion)</p> <ul style="list-style-type: none"> An additional 0.5% hospital insurance tax would apply to wages in excess of \$200,000 (\$250,000 if married filing jointly) beginning in 2013. Applies to employee, not employer portion of tax. Applied to self-employment income, but cannot be taken into account in determining the deduction for one-half of self-employment taxes. <p>Non-deductible excise tax on high-cost insurance (\$149 billion)</p> <ul style="list-style-type: none"> Excise tax of 40% would be levied on insurance companies for employer health insurance plans above \$8,500 for singles and \$23,000 for family plans. Thresholds increased to \$9,850 and \$26,000 for high-risk workers and non-Medicare retirees over 55. Generally all employer plans — including medical, dental, vision plans and health FSAs — count towards the cap, with an exception for indemnity and long-term care plans. Effective for tax years beginning in 2013 with threshold indexed for inflation in 2014 using CPI-U + 1%, and a transition rule would raise the threshold by 20%, 10% and 5% for the 17 highest-cost states for first 3 years.

Provision	America's Affordable Health Choices Act (H.R. 3296) as passed by House on Nov. 7	Patient Protection and Affordable Care Act (H.R. 3950) to be considered by the Senate
Health-related tax revenue raisers	<p>Exclusion for employer Part D subsidy (\$3.0 billion)</p> <ul style="list-style-type: none"> Exclusion from gross income for the subsidy for drug plans for Medicare Part D-eligible retirees would be eliminated, effective for tax years beginning after 2010. <p>Flexible Spending Account limits (\$13.3 billion)</p> <ul style="list-style-type: none"> Contributions to health FSAs would be limited to \$2,500 (adjusted for cost of living), effective for tax years beginning after 2012. <p>Standard qualified medical expenses (\$5.0 billion)</p> <ul style="list-style-type: none"> HSA, FSA and HRA expenditures would be limited to items qualifying for the medical expenses itemized deduction (plus insulin and prescribed over-the-counter drugs), effective for tax years beginning after 2010. <p>Increased HSA penalties (\$1.3 billion)</p> <ul style="list-style-type: none"> Additional tax for improper HSA expenditures would increase from 10% to 20%, effective for disbursements in tax years beginning after 2010. <p>Excise tax on medical devices (\$20 billion)</p> <ul style="list-style-type: none"> A 2.5% excise tax would be levied on the first sale or use of medical devices effective after 2012. Exceptions would be provided for sales for use in further manufacture, for resale and for export, and for normal sales to the general public in a retail establishment. 	<p>Exclusion for employer Part D subsidy (\$5.4 billion)</p> <ul style="list-style-type: none"> Exclusion from gross income for the subsidy for drug plans for Medicare Part D-eligible retirees would be eliminated, effective for tax years beginning after 2010. <p>Flexible Spending Account limits (\$14.6 billion)</p> <ul style="list-style-type: none"> Contributions to health FSAs would be limited to \$2,500, effective for tax years beginning after 2010. <p>Standard qualified medical expenses (\$5.0 billion)</p> <ul style="list-style-type: none"> HSA, FSA and HRA expenditures for medicines would be limited to prescribed medicine, including prescribed over-the-counter drugs, effective for tax years beginning after 2010. <p>Increased HSA penalties (\$1.3 billion)</p> <ul style="list-style-type: none"> Additional tax for improper HSA expenditures would increase from 10% to 20%, effective for disbursements in tax years beginning after 2010. <p>Deduction for medical expenses (\$15.2 billion)</p> <ul style="list-style-type: none"> The 7.5% AGI floor for the medical expenses itemized deduction would increase to 10% of AGI for taxpayers aged 64 and younger, effective for tax years beginning after 2012. The floor would remain at 7.5% for seniors until 2017. <p>Executive compensation deductions (\$600 million)</p> <ul style="list-style-type: none"> Insurance companies could not deduct employee pay over \$500,000 if at least 25% of premium income comes from plans meeting minimum creditable coverage requirements of the bill. Effective for compensation paid in tax years beginning after 2012 with respect to services after 2009. <p>5% excise tax on elective cosmetic medical procedures, effective 2010 (\$5.8 billion)</p>

Provision	America's Affordable Health Choices Act (H.R. 3296) as passed by House on Nov. 7	Patient Protection and Affordable Care Act (H.R. 3950) to be considered by the Senate
Non-health-related tax revenue raisers	<p>Corporate information reporting (\$17.1 billion)</p> <ul style="list-style-type: none"> Required Form 1099 and other information reporting would be extended to cover payments for goods and services and to require reporting of payments to corporations, effective 2012. <p>Worldwide interest allocation (\$26.1 billion)</p> <ul style="list-style-type: none"> Worldwide interest allocation rules that are scheduled to take affect for tax years beginning after Dec. 31, 2017, would be fully repealed. <p>Biofuel credit repeal for "black liquor" (\$23.9 billion)</p> <ul style="list-style-type: none"> Unprocessed fuels, including the "black liquor" byproduct of paper processing, would not qualify for the \$1.01 per gallon cellulosic biofuels credit, effective for fuel sold or used after the date of enactment. <p>Treaty rates for deductible payments (\$7.5 billion)</p> <ul style="list-style-type: none"> Reduced withholding rates available under tax treaties would be limited for certain deductible related-party payments, generally effective for payments made after the date of enactment. Reduced rates would be denied for deductible related-party payments to a foreign person if the person and the U.S. payor were members of a foreign controlled group and the top-tier foreign member corporation is not located in a country subject to a tax treaty that allows for reduced rates. <p>Economic substance and penalties (\$5.7 billion)</p> <ul style="list-style-type: none"> Transactions would have economic substance only if they change the taxpayer's economic position in a meaningful way and the taxpayer had a substantial economic purpose for the transaction. Understatement penalty for a transaction lacking economic substance equals 40% (20% with disclosure). "Reasonable cause" exception for the underpayment and fraud penalties would exclude tax shelter transactions and transactions lacking economic substance, and non-economic substance could not have "reasonable basis" to avoid refund penalties. Corporations with gross receipts over \$100 million or required to file reports by Section 13 of the Securities and Exchange Act of 1934 would have to reach a "more likely than not" standard to qualify for the "reasonable cause" exception for underpayment and fraud penalties. Generally effective with respect to transactions entered into after the date of enactment. 	<p>Corporate information reporting (\$17.1 billion)</p> <ul style="list-style-type: none"> Required Form 1099 and other information reporting would be extended to cover payments for goods and services and to require reporting of payments to corporations, effective 2012.

Provision	America's Affordable Health Choices Act (H.R. 3296) as passed by House on Nov. 7	Patient Protection and Affordable Care Act (H.R. 3950) to be considered by the Senate
Notable non-tax revenue raisers	Insurance fee (\$2 billion) <ul style="list-style-type: none"> • A fee would be imposed on insurance and self-insurance plans at the rate needed to raise \$375 million per year, effective for policy or plan years beginning on or after Oct. 1, 2012. 	Fees on healthcare industries (\$101.9 billion) <ul style="list-style-type: none"> • \$2.3 billion fee would be imposed on drug manufacturers. • \$2 billion fee would be imposed on medical device manufacturers, with exemption for sales of all Class I devices and any Class II devices under \$100. • \$6.7 billion fee would be imposed on health insurers. • Annual fees would begin in 2010 and would be non-deductible and allocated by market share.