

## Chart: Key employer health care reform elements

Health care reform with major implications for employers has now become law, with a package of revisions heading for Senate action. The approved measure holds significant implications for employers, and the bill under Senate debate would change some of those provisions. The chart below describes key elements of the health care reform legislation, and highlights areas the bill under Senate debate would change:

- the Patient Protection and Affordable Care Act (PPACA, [HR 3590](#)), passed March 21 by Congress (*GRIST Alert*, March 22, 2010) and signed into law by President Obama March 23; and
- the Health Care and Education Reconciliation Act of 2010 ([HR 4872](#)), passed by the House on March 21 and sent to the Senate.

As noted above, PPACA became law on March 23 but could change if HR 4872 is enacted or further amended in the Senate.

Provision	Patient Protection and Affordable Care Act (HR 3590)	Reconciliation bill (HR 4872) changes to PPACA
<b>Employer mandate/shared responsibility</b>		
Coverage/contribution requirement	Starting in 2014, employers with more than 50 full-time employees must offer full-time employees coverage that pays at least 60% of benefits covered by the plan and for which an employee's contribution is less than 9.8% of household income: <ul style="list-style-type: none"> <li>▪ Full-time = an average of 30 or more hours for at least one week in a month</li> </ul>	No change, except full-time employees and full-time equivalents are counted for determining whether the 50-employee threshold is met

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<b>Employer mandate/shared responsibility (continued)</b>		
Fee for employers not meeting coverage/contribution requirement	<p>For employers not offering coverage that have at least one full-time employee receiving income-based premium assistance to buy coverage through new health insurance exchanges:</p> <ul style="list-style-type: none"> <li>▪ \$750 annually for every full-time employee</li> </ul> <p>For employers offering coverage that is unaffordable or does not meet minimum standards:</p> <ul style="list-style-type: none"> <li>▪ \$3,000 annually for each full-time employee receiving income-based assistance for health insurance exchange coverage</li> <li>▪ Penalties capped at \$750 times total number of full-time employees</li> <li>▪ No penalties for employees receiving free-choice vouchers</li> </ul>	<p>No change, except for employers not offering coverage that have at least one full-time worker receiving income-based premium assistance to buy exchange coverage:</p> <ul style="list-style-type: none"> <li>▪ \$2,000 annually for every full-time employee</li> </ul> <p>No penalty for first 30 full-time employees</p>
Waiting periods between 60 and 90 days	\$600 penalty for each full-time employee to whom waiting period applies under plans sponsored by employers with more than 100 employees.	Penalty eliminated
Free-choice voucher	<p>Employers must offer vouchers to employees with household incomes at or below 400% of the federal poverty level (FPL) if their contribution for employer-sponsored coverage would be 8% to 9.8% of household income:</p> <ul style="list-style-type: none"> <li>▪ Voucher amount equal to highest (percentage) employer contribution to any of its own plans</li> <li>▪ Vouchers provided for purchasing exchange-based coverage but employees could keep any excess amounts</li> </ul>	No change
Auto-enrollment into employer plan	Yes, employers with more than 200 employees would have to auto-enroll new full-time employees.	No change
Employer reporting of employee coverage	Yes, starting in 2011 on employee's Form W-2	No change

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<b>Individual coverage mandate</b>		
Penalty for no coverage	Starting in 2014, individuals who fail to maintain coverage face penalty calculated as lesser of these amounts: <ul style="list-style-type: none"> <li>▪ National average premium for the year or</li> <li>▪ Greater of <ul style="list-style-type: none"> <li>– A percentage of income (up to 2% in 2015) or</li> <li>– \$95 in 2014, \$495 in 2015, \$750 in 2016 and indexed thereafter</li> </ul> </li> </ul>	No change to this aspect of individual mandate penalty, except penalty calculated as lesser of these amounts: <ul style="list-style-type: none"> <li>▪ National average premium for the year or</li> <li>▪ Greater of <ul style="list-style-type: none"> <li>– A percentage of income (up to 2.5% in 2016) or</li> <li>– \$325 in 2015, \$695 in 2016 and indexed thereafter</li> </ul> </li> </ul>
Affordability subsidies for exchange-based coverage	Up to 400% of FPL	No change to this aspect of affordability subsidies
Medicaid expansion	Yes, up to 133% of FPL	No change to this aspect of Medicaid expansion
<b>Health plan standards</b>		
Coverage and cost-sharing rules  <b>Collectively bargained coverage.</b> For coverage maintained pursuant to a collective bargaining agreement (CBA) ratified before March 23, 2010, all new coverage and cost-sharing rules apply on the termination date of the last CBA relating to the coverage. Any coverage amendment to a CBA to comply with these rules will not be treated as terminating the CBA.	<b>All insured plans.</b> All insured plans, regardless of grandfathered status, must meet minimum medical loss ratio: <ul style="list-style-type: none"> <li>▪ Plan years beginning on or after March 23, 2010 <ul style="list-style-type: none"> <li>– Plans of employers with more than 100 employees: Minimum medical loss ratio of 85%</li> <li>– Plans of employers with 100 or fewer employees: Minimum medical loss ratio of 80%</li> </ul> </li> </ul> <b>Grandfathered plans.</b> Effective dates may be indefinitely delayed for group health plans in place before March 23, 2010. Plans lacking/losing grandfathered status. New standards apply as of these dates: <ul style="list-style-type: none"> <li>▪ Plan years beginning on or after September 23, 2010 <ul style="list-style-type: none"> <li>– No pre-existing condition exclusions for covered children under age 19</li> <li>– No lifetime dollar limits</li> <li>– No cost-sharing for preventive services</li> </ul> </li> </ul>	<b>Grandfathered plans.</b> These standards and effective dates apply even to plans in place before March 23, 2010: <ul style="list-style-type: none"> <li>▪ Plan years beginning on or after six months after March 23, 2010 <ul style="list-style-type: none"> <li>– Dependent coverage to age 26 for covered employee's (married or unmarried) child lacking access to other employer coverage</li> <li>– No lifetime dollar limits</li> <li>– Restricted annual dollar limits</li> </ul> </li> <li>▪ Plan years beginning on or after Jan. 1, 2014 <ul style="list-style-type: none"> <li>– Dependent coverage to age 26 for any covered employee's child</li> <li>– No annual limits</li> <li>– No pre-existing condition exclusions</li> <li>– No waiting periods exceeding 90 days</li> </ul> </li> </ul> No discrimination in favor of highly compensated individuals

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<b>Health plan standards (continued)</b>		
	<ul style="list-style-type: none"> <li>– No emergency services preauthorization</li> <li>– No OB-GYN preauthorization or referral requirement</li> <li>– No discrimination in favor of highly compensated individuals under insured plans</li> <li>– Dependent child coverage to age 26</li> <li>– Restricted annual dollar limits</li> <li>– Enrollee choice of primary care physician or pediatrician</li> <li>– Mandatory internal and external claims appeal process</li> <li>– Annual cost-sharing limits for nonpreventive services under all plans tied to high-deductible plan limits</li> <li>▪ Plan years beginning on or after Jan. 1, 2014 <ul style="list-style-type: none"> <li>– No pre-existing condition exclusions for any enrollees</li> <li>– No waiting periods exceeding 90 days</li> <li>– No annual dollar limits</li> <li>– Annual cost-sharing limits for nonpreventive services under all plans tied to high-deductible plan limits</li> <li>– Coverage for clinical trial participation</li> <li>– Insured plans only: Guaranteed issue and renewal</li> </ul> </li> </ul>	

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<b>Tax changes and fees</b>		
Excise tax on high-cost coverage	<p>Starting in 2013, 40% excise tax applies to value of coverage exceeding \$8,500/single, \$23,000/family:</p> <ul style="list-style-type: none"> <li>Coverage includes full cost of medical, dental or vision plans; on-site clinics; health flexible spending arrangement (FSA) contributions; and employer health savings account (HSA) contributions</li> <li>Higher thresholds for retirees age 55 and older and those in certain high-risk professions (\$9,850 and \$26,000) and individuals residing in the 17 highest-cost states (to be determined)</li> <li>Thresholds indexed to Consumer Price Index plus 1%</li> </ul>	<p>Starting in 2018, 40% excise tax applies to value of coverage exceeding \$10,200/single, \$27,500/family:</p> <ul style="list-style-type: none"> <li>Stand-alone dental and vision plan coverage is not subject to the excise tax</li> <li>Higher thresholds for retirees and workers in high-risk professions (\$11,850 and \$30,950) and for multiemployer plans (\$30,950)</li> <li>Thresholds adjusted for age and gender</li> <li>Thresholds indexed to <ul style="list-style-type: none"> <li>CPI plus 1% in 2018 – 2019</li> <li>CPI in 2020 and later years</li> </ul> </li> </ul>
Tax-free employer coverage for children who are not otherwise tax dependents	No change to current tax treatment	Yes, tax-free treatment for adult children covered through age 26
HSAs, health FSAs and health reimbursement arrangements	<p>Starting in 2011, tougher coverage/contribution limits and penalties apply:</p> <ul style="list-style-type: none"> <li>\$2,500 (indexed) cap on annual health FSA contributions</li> <li>No tax-free coverage for nonprescribed items</li> <li>Higher penalty for nonqualified HSA distributions</li> </ul>	No change, except health FSA contribution cap starts in 2013
Other tax increases (selected)	<p>New tax provisions include:</p> <ul style="list-style-type: none"> <li>Starting in 2013, Medicare payroll tax of 2.35% on employees whose annual earnings exceed \$200,000 (individual) or \$250,000 (couple); no change in 1.45% Medicare tax for others</li> <li>Group health plan fees for federal comparative effectiveness research trust fund</li> <li>Excise tax on indoor tanning services</li> <li>Fees on health insurers, pharmaceutical manufacturers and medical device manufacturers</li> </ul>	<p>No change, except adds another tax:</p> <ul style="list-style-type: none"> <li>Starting in 2013, 3.8% tax on capital gains, interest, dividends and other net investment income for taxpayers with adjusted gross income exceeding \$200,000 (individual) or \$250,000 (couple)</li> </ul>

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<b>Exchanges</b>		
Eligibility	Starting in 2014, individuals and small employers will have access to health insurance exchanges	No change
Public health insurance plan option	No, multistate private plans will be overseen by the federal Office of Personnel Management	No change
<b>Employer wellness programs</b>		
Wellness initiatives	Starting for plan years beginning on or after Jan. 1, 2014, HIPAA wellness program incentive limit will increase from 20% to 30% of total cost of coverage	No change
<b>Medicare changes</b>		
Medicare Advantage (selected)	Phases in competitive bidding to base Medicare Advantage benchmarks on actual plan costs	Freezes MA plan payments in 2011 Replaces current payment scheme by creating and phasing-in benchmark payments of current average fee-for-service costs in an area
Medicare Part D (selected)	Notable changes include: <ul style="list-style-type: none"> <li>Starting in 2011, tax treatment of employers' Part D subsidy payments changes</li> <li>Discounts on brand-name drugs</li> <li>Means-test for Part D premiums</li> </ul>	No change, except: <ul style="list-style-type: none"> <li>Medicare Part D tax change starting in 2013</li> <li>Eliminates Medicare Part D donut hole, beginning with \$250 rebate in 2010</li> </ul>
<b>Early retiree reinsurance</b>		
Reinsurance for early retiree plans	Beginning in June 2010, temporary reinsurance program will reimburse cost of providing coverage to retirees between ages 55-64: <ul style="list-style-type: none"> <li>Participating plans to submit reimbursement claims and receive 80% reimbursement of costs between \$15,000 and \$90,000 for a covered individual</li> <li>Reimbursements can only be used to reduce plan and retiree direct costs</li> <li>Program capped at \$5 billion</li> </ul>	No change