



Health Care Reform Preliminary Summary¹

H.R. 3590, the Patient Protection and Affordable Care Act (PL 111-148) and H.R. 4872, the Reconciliation Act of 2010

As passed by the House of Representatives on March 21, 2010

*****Subject to change based on action taken by Senate or regulation*****

Please note, if your business has fewer than 50 full-time equivalents, 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 (less than 30 hours a week, in any month):

- Employers are not required to provide health care coverage nor pay any penalties for part-time employees.
- Solely for the purposes of determining if an employer is above or below the 50 full-time equivalent small business threshold, part-time workers hours considered as part of determining full-time equivalents employed.

Seasonal Workers (≤120 days):

- Exempt and not counted for purposes of the 50 full-time equivalent small business threshold or subject to the per employee free rider penalty.
- If the workforce exceeds 50 full-time equivalent employees (not including seasonal workers) the employer must provide coverage or pay the penalty for those seasonal employees who are full-time.
- Definition established by the U.S. Secretary of Labor which would include retail workers.

Example:

- 100 full-time seasonal and 40 full-time non-seasonal: employer would not have to provide coverage or pay penalties.

¹ Please note: This document is a preliminary summary and is not legal guidance. It is subject to change based on review by legal counsel, further Senate action, or promulgation of regulations.

- 100 full-time seasonal and 50 fulltime non-seasonal: employer would owe \$240,000 (\$2,000 multiplied by 120 full-time employees; 150 full-time employees minus the 30 full-time employee discount).

Definition of Employer:

- A single employer is defined by “Common Control” as laid out in the Internal Revenue Code Section 414 (b), (c), (m), (o) and is based on percentage of ownership and control in 2 or more restaurants.
- Please see Definition of Employer explanation on page 10.

Minimum Essential Coverage:

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

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 markets², requires the U.S. 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 markets³ 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. [U.S. 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.]

² 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.

³ Applies to Individual, Small Group and Large Group plans.

- 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 quality standards (bronze, silver, gold, platinum). However, now some health insurance market reforms do apply.
- Some insurance market reforms will be required of all existing health insurance plans starting 6 months after enactment.
 - Prohibition of lifetime limits.
 - Prohibition on rescission of coverage.
 - Limitations on excessive waiting periods (not longer than 90 days).
 - Requirement to provide coverage to children and adult children up to age 26.
- Further insurance market reforms applicable to grandfathered group health plans:
 - Prohibits pre-existing condition exclusions in 2014.
 - Restricts annual limits 6 months after enactment, prohibited starting in 2014.
 - For coverage of a non-dependent child prior to 2014, group health plans are required only to provide coverage to those adult children without an employer offer of coverage.

Employer Responsibilities

An employer should determine if they fall above or below the small business threshold of 50 full-time equivalents in the bill. *If an employer is below the threshold of 50 full-time equivalents, they are not subject to the coverage requirements or penalties in the bill.*

An employer should use the following formula to determine if they fall above or below the threshold:

of full-time employees (based on 30 hours or more a week over a month)

+ (hours worked by all part-time employees / 120 hours)

#full-time equivalents⁴

Part-time workers' aggregate hours count towards the 50 full-time equivalent employees for the threshold purposes. However, the firm does not pay for any actual part-timers. In all cases, the employer does not pay for the first 30 full-timers. The change was made to prevent employers from simply paying the penalty and not consider providing coverage.

Example:

If a firm has 80 part-time workers (working at the equivalent of 40 full-time employees) and 40 full-time employees, the employer either provides coverage or pays the penalty because the firm has more than 50 FTE's but only has to cover or pay for the actual full-time workers. In this case, the employer would pay for 10 full-time employees (40 full-time employees minus the 30 full-time employee discount) = \$20,000 penalty for not providing coverage.

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

- 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 equivalents and...**

DOES NOT OFFER minimum essential health care coverage to their full-time employees and dependents⁵, and at least 1 full-time employee uses the premium tax credit to obtain coverage on the exchange....

⁴ Number of full-time equivalents is used solely for determining if an employer is above or below the 50 full-time equivalent threshold and then is or is not subject to the requirements in the bill.

⁵ Dependents include spouses and children until their 26th birthday. U.S. Secretary of HHS will promulgate regulations to further define dependents.

- Employers make a payment of \$2000 per full-time employee (1/12th of \$2000 with respect to any month).
- In calculating the assessment, an employer may discount the number of full-time employees by 30 (cannot be used if utilize 30 employee discount for other penalty).
- Begins 2014.

If an Employer has **50 or more full-time Employees plus full-time equivalents 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:
 - \$3,000 for each of those full-time employees receiving a premium tax credit,
 - The maximum assessment shall not exceed \$2000 x # of full-time employees (minus a 30 full-time employee discount).
- 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.
- 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% 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 equivalents is allowed a penalty-free waiting period up to 90 days before enrolling a new full-time employees in the employer's health care plan.

If employer waits longer than 90 days...

- Employer pays free rider penalty of \$2,000 per full-time employee (1/12th of \$2000 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 U.S. 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.

All grandfathered health insurance plans will have to conform to certain insurance reforms 6 months after enactment. Other reforms are implemented starting in 2014. See "Grandfathered Plan" definition above for more specifics.

ERISA (Employee Retirement Income Security Act):

The ERISA regulatory framework for large employers that allow them to offer a uniform health benefits package across state lines is maintained. These employers continue to have 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.
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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 contribution⁶ 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).

Reasonable Break Time for Nursing Mothers

The bill amends the Fair Labor Standards Act to require employers to provide nursing mothers, up to one year after the birth of their child, reasonable break time each time needed. Employer shall provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by

⁶ A contribution, other than an employer contribution based on salary reduction.

nursing mothers. Employer with less than 50 employees is not required to comply if requirements would impose a significant difficulty or expense. Employer is not required to compensate an employee receiving the break time for any work time spent. This does not preempt state law.

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 \$695 per calendar year (phased in at \$95 in 2014, \$325 in 2015, \$695 in 2016) OR up to 2.5% of income by 2016 (up to a cap of the national average bronze plan premium) shall be imposed. Income below the filing threshold is exempted.
- 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 Information

- The nutrition information agreement reached in 2009 was included in the health care bill. The language does include a pre-emption of state and local law. A separate summary of this provision will be available.

Revenue Raisers/Pay-fors

- **Excise tax on high cost employer-sponsored health coverage.** Levies a 40% excise tax on insurance companies and plan administrators for any health care coverage plan that is above the premium threshold of \$10,200 for single coverage and \$27,500 for family coverage (subject to adjustment for unexpected increase in medical costs prior to effective date). Increased threshold of \$1,650 single/\$3,450 family for over age 55 retirees or certain high-risk professions. 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 is indexed to CPI. Begins in 2018.
- **Medicare Contribution Tax.** Modifies the existing 3.8% tax to include unearned income (net investment income). Applies to modified adjusted gross income of more than \$250,000 for joint filers, \$200,000 for single filers. Net investment income is defined as interest, dividends, royalties, rents, gross income from trade or business involving passive activities, and net gain from disposition of property (other than property held in a trade or business). Begins 2013.
- **Broaden Medicare Hospital Insurance tax for high-income taxpayers.** Increases tax from 1.45% to 2.35% on individual taxpayers earning over \$200,000/\$250,000 for married couples filing jointly.

- **Employer W-2 Reporting of value of health benefits.** 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 form.
- **Increase in additional tax on distributions from HSA and Archer MSA's not used for qualified medical expenses** from 10% to 20%.
- **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 2013.
- **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.
- **Annual fee on pharmaceutical manufacturers and importers.** Begins in 2011.
- **Annual excise tax on medical device manufacturers and importers.** Imposes a 2.3% excise tax on manufacturers and importers of certain medical devices beginning in 2013. Exempts Class I medical devices, eyeglasses, contact lenses, hearing aides and any devices generally purchased by public at retail for individual use.
- **Annual fee on health insurance providers.** Begins in 2014. 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. \$ 8 billion in 2014, \$11.3 billion in 2015 and 2016, \$13.9 billion in 2017, \$14.3 billion in 2018, indexed to medical cost growth thereafter. Third party administration agreement fees removed from the allocation of the fee to health insurance providers. Provides exemptions for certain non-profit insurers, 80 percent of whose revenues come from programs that target the low income, elderly or disabled.
- **Modification of itemized deduction for medical expenses.** Raises the 7.5% AGI floor on medical expenses deduction to 10%; AGI floor for individuals age 65 and older and their spouses) remains at 7.5% through 2016.
- **Definition of Medical Expenses.** Conforms the definition of medical expenses for health savings accounts, Archer MSAs, health flexible spending arrangements, and health reimbursement arrangements to the definition of the itemized deduction for medical expenses (excluding over-the-counter medicines prescribed by a physician).
- **Health Insurance Provider employee expenses.** Limits deduction on remuneration to officers, employees, directors, and service providers of covered health insurance providers to \$500,000.
- **Excise tax on tanning services.** 10% tax imposed.
- **Elimination of unintended application of cellulosic biofuel producer credit. (Back liquor)** Limits eligibility for tax credit to processed fuels.
- **Codification of economic substance doctrine and penalties.**
- **Time for payment of corporate estimate taxes.** Increase by 15.75% 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.

Definition of Employer in Health Care Reform Legislation⁷

A single employer is defined by “Common Control” as laid out in Internal Revenue Code Section 414 (b), (c), (m), (o)⁸ and is based on percentage of ownership and control in 2 or more restaurants.

The rules for determining common control are very technical and intricate. This explanation attempts to generalize and restaurateurs should consult a tax professional for interpretation for specific business operations.

In general, the threshold to be defined as a single employer:

If 2 or more restaurants have the same 5 or fewer owners, collectively owning at least 80% of the shares or interest (either by vote or value), those restaurants shall be considered a single employer.

Examples:

1. If a single restaurateur owns 100% of 3 individual S-Corps, for the purposes of health care the 3 S-Corps would be treated as a single employer because the same owner controls at least 80% of each. The full-time equivalents⁹ of all three would be added together to determine if the employer is above or below the small business (50 full-time equivalent) exemption threshold.
2. If restaurateur 1 and 2 own 90% of restaurant A (split 45/45) and 50% of restaurant B (split 25/25), restaurants A and B would not be considered a single employer since restaurateur 1 and 2 only own 50% of restaurant B.
3. If restaurateur 1 and 2 own 90% of restaurant A (split 45/45) and 80% of restaurant B (split 40/40), restaurants A and B would be considered a single employer since restaurateur 1 and 2 own 80% of restaurant B. The employees of restaurants A and B must be considered together to determine if the employer is above or below the small business (50 full-time equivalent) exemption threshold.

⁷ PL 111-148: Section 1513(d)(2)(C) “Rules for Determining Employer Size: (i) Application of Aggregation Rule for Employers: All persons treated as a single employer under subsection (b), (c), (m), (o) of section 414 of the IRC of 1986 shall be treated as 1 employer.”

⁸ IRC Section 414: http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00000414----000-.html
The rules for determining common control set forth by the regulations under section 414 (Treasury Regulations sections 1.414) are very technical and intricate. This explanation generalizes and restaurateurs should consult a tax professional for interpretation of specific business operations.

⁹ Employers must determine whether they are above or below the threshold by the following formula: # of full-time employees based on an average of 30 hours per week in a given month PLUS total number of part-time workers hours divided by 120 hours = # of full-time equivalents for purposes of the threshold.

Timeline of Implementation

2010	Grandfathered plan insurance reforms: 6 months after date of enactment. Small business tax credit begins.
2011	Annual fee on manufacturers and importers of branded drugs. Waste, fraud, and abuse provisions.
2012	Medicare Advantage.
2013	FSA limits imposed. Medical device tax. Medicare hospital insurance tax increase and new Medicare tax on unearned income.
2014	Health insurance exchanges begin. Individual mandate begins. Employer mandate begins. Annual fee on health insurance providers. Prohibits pre-existing condition exclusions from group health plans.
2015	Independent Payment Advisory Board established (Medicare spending).
2016	Interstate health choice compacts.
2017	Large employer participation in exchanges allowed but requires state action.
2018	High premium excise tax.