

Tech Flex

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HEALTH CARE REFORM LEGISLATIVE ACTIONS

As reported in the July 2009 Tech Flex [\[LINK\]](#), a number of efforts are currently underway to implement health care reform in the United States. To date, no bills on this issue have been formally introduced for consideration in either the full House or the Senate. However bills have been passed by three committees in the House and one in the Senate. In addition, a second Senate committee continues to work on its version of the health care reform bill with the goal of producing a bill by September 15th. Currently the House and Senate are in recess and will reconvene after Labor Day. Please find below, a brief discussion of the most recent Senate and House committee activities.

UNITED STATES SENATE

HELP Committee Update

On July 15, 2009, the Senate's Health, Education, Labor and Pensions (HELP) Committee passed its version of the "Affordable Health Choices Act" (Act) by a 13-10 party-line vote. The HELP proposal is estimated by the non-partisan Congressional Budget Office to cost \$611 billion over the next 10 years. It includes in addition to numerous other provisions an employer "play-or-pay" mandate, state-based health insurance exchanges with a public plan option, an individual coverage mandate, and insurance market reforms. Please find below a brief summary of a few of the bill's provisions.

Insurance Market Reforms - Will reform the individual and group health insurance markets in all 50 states to promote availability of coverage for all individuals and employer groups. Under these new requirements, premium payments for insurance policies within each market will be permitted to vary only by family structure, geographic region, the actuarial value of benefits provided, tobacco use and age. Rates specifically will not be permitted to vary based on gender, class of business, or claims experience. Guaranteed issue and guaranteed renewability will be required in all states in each individual and group health insurance market.

Prohibiting Discrimination Based on Health Status: In issuing health insurance policies, insurers will not be permitted to establish terms of coverage based on any applicant's health status, medical condition (including physical and mental illness), claims experience, prior receipt of health care, medical history, genetic information, evidence of insurability (such as being a victim of domestic violence), or disability.

Coverage of Preventive Health Services: Health insurance policies will not be allowed to impose more than minimal cost sharing for certain preventive services endorsed by the U. S. Preventive Services Task Force as clinically and cost effective, for immunizations recommended by the CDC, and for certain child preventive services recommended by the Health Resources and Services Administration.

Extension of Dependent Adults: All individual and group coverage policies will be required to continue offering dependent coverage for children until the child turns age 26.

No Lifetime or Annual Limits: No individual or group health insurance policy will be permitted to establish lifetime or annual limits on the dollar value of benefits for any enrollee or beneficiary.

Shared Responsibility Payments: All individuals will be required to obtain health insurance coverage. Exemptions will be made for individuals for whom affordable health care coverage is not available or for those for whom purchasing coverage creates an exceptional financial hardship. The minimum penalty to accomplish the goal of enhancing participation in qualifying coverage will be no more than \$750 per year. Individuals deemed to lack availability to affordable coverage are exempt from the mandate and penalty.

Shared Responsibility of Employer: Employers with more than 25 employees who do not offer qualifying coverage or who pay less than 60 percent of their employees monthly premiums are subject to a \$750 annual fee per uninsured full-time employees and \$375 per uninsured part-time employees. For employers subject to the assessment, the first 25 workers will be exempted. Beginning in 2013, the penalty amounts will be adjusted using the Consumer Price Index for urban consumers. Employers with 25 or fewer employees are exempt from penalties and are eligible for program credits.

Menu Labeling: A restaurant that is part of a chain with 20 or more locations doing business under the same name (other restaurants are exempt) would be required to disclose calories on the menu board and in a written form, available to customers upon request, additional nutrition information pertaining to total calories and calories from fat, as well as amounts of fat, saturated fat, cholesterol, sodium, total carbohydrates, complex carbohydrates, sugars, dietary fiber, and protein.

The Act also includes a provision that would allow the purchase of long-term care insurance through a cafeteria plan on a pre-tax basis which is currently prohibited. This provision, if enacted, would be effective for tax years beginning January 1, 2011 and thereafter.

IF ENACTED as now written, the Affordable Health Choices Act would amend Section 125(f) by deleting the current language shown with the “~~strikethrough~~” below:

125(f) Qualified benefits defined.

For purposes of this section, the term “qualified benefit” means any benefit which, with the application of subsection (a) , is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 106(b) , 117 , 127 , or 132). Such term includes any group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79 and such term includes any other benefit permitted under regulations. ~~Such term shall not include any product which is advertised, marketed, or offered as long-term care insurance.~~

For a copy of the Senate HELP Committee bill, please click on the link provided below:

http://help.senate.gov/Maj_press/2009_07_15_b.pdf

The Senate Finance Committee announced on July 31st that it would not produce and vote on a health care reform bill prior to the August recess beginning end of day August 7th. This group will continue its work on the bill after the Senate reconvenes in September. Once the Finance Committee passes its bill out of committee, their version will need to be reconciled with the HELP Committee version in order to create a single bill to be voted on by the full Senate.

UNITED STATES HOUSE

The three House Committees responsible for health care reform legislation: specifically, the Ways and Means, Energy and Commerce, and Education and Labor released an 852-page draft bill, titled the “Affordable Health Choices Act of 2009” (HR 3200) on June 19, 2009. The cost is estimated by the non-partisan Congressional Budget Office to be in excess of \$1 trillion over ten years.

Some of the key components of the House draft include: coverage and choice, affordability, shared responsibility, prevention and wellness, workforce investments, controlling costs, modernization and improvement of Medicare, innovation and delivery reform through the public health insurance option, and preventing waste, fraud and abuse.

For a copy of the following documents relating to HR 3200, please click on the links provided below:

[Summary of HR 3200](#)

[Detailed Analysis of HR 3200](#)

[Entire HR Bill 3200](#)

After the release of HR 3200, each of the three committees met separately to begin the mark-up (modifications) to the bill. All of the committees have completed this process and passed their version of the bill. Please find below a brief summary of the three committee actions resulting in the differing proposals that will need to be negotiated when the House reconvenes in September.

Ways and Means Committee Provisions:

The Ways and Means Committee added the following two provisions to HR 3200:

- Expand the federal income tax exclusion for employer-provided health benefits to domestic partners and others eligible for coverage under the employer plan.
- Effective for expenses incurred on or after January 1, 2010, eliminate the favorable tax treatment for over-the-counter- medication reimbursements under flexible spending accounts (health FSA), health reimbursement arrangements (HRA) and health savings accounts (HSA).

Here is a link to the Ways and Means Committee's website where additional information regarding the Committee's actions can be found:

<http://waysandmeans.house.gov/>

Education and Labor Committee Provisions:

The following provisions were added to HR 3200 by the Education and Labor Committee:

- Expand coverage under COBRA, to allow a COBRA qualified beneficiary to remain on COBRA coverage (beyond the standard 18-36 months) until he/she becomes eligible for coverage under a new employer's health care plan or through a federal or state-based health insurance exchange.
- Employers would be prohibited from reducing retiree health benefits unless the reductions also apply to active employee participants.
- States could receive ERISA pre-emption waivers in order to implement statewide single-payer systems.
- Small businesses (those with 50 or fewer employees) would be eligible to participate in health insurance exchanges.
- Grant programs would be created to encourage employers to start or enhance wellness programs such as smoking cessation, with loss and exercise programs.

Here is a link to the Education and Labor Committee's website where additional information regarding the Committee's actions can be found:

<http://edlabor.house.gov/>

Energy and Commerce Committee Provisions:

HR 3200 was modified by the Energy and Commerce Committee as follows:

- Reduce the cost of HR 3200 by \$100 billion.
- Exempt more small businesses from the employer-provided insurance mandate.
- Reduce the number of low-income people who would qualify for subsidized coverage.
- Provide 12 years of market protection to companies that offer advanced new drugs to combat major diseases like cancer and Parkinson's.

After the return of the House after August recess, the three bills will need to be reconciled into a single bill for consideration of the entire House. It has been reported that at this point in time, it is anticipated that this vote will take place in late September or early October.

Here is a link to the Energy and Commerce Committee's website where additional information regarding the Committee's actions can be found:

<http://energycommerce.house.gov/>

IRS: HSA SUBJECT TO TAX LEVY AND 10% PENALTY

The Internal Revenue Service (IRS) Office of Chief Counsel recently issued a Chief Counsel Advisory (CCA) to an IRS area office attorney concluding that an account holder's interest in an HSA is subject to an IRS tax levy. In addition the account holder will be liable for the 10% additional excise tax on nonmedical HSA distributions unless, at the time of the tax levy, the holder had reached age 65 or was disabled.

In the CCA, it was noted that the Internal Revenue Code (specifically Section 6331) generally allows the IRS to levy "upon all property and rights to property" of the taxpayer. Noting that the right to withdraw funds from an account (such as an HSA holder's right to withdraw funds from an HSA for any purpose) is a property interest subject to IRS levy, the CCA concluded that the holder's interest in an HSA constitutes "property" or "rights to property" that may be subject to an IRS levy.

In relation to whether the amount of the IRS levy would be subject to the additional 10% excise tax imposed on nonmedical HSA distributions, the CCA stated that the HSA excise tax is similar to the excise tax applicable to early distributions from qualified retirement plans. Although there is a specific levy exception to the qualified retirement plan distribution excise tax, no such exception exists for the HSA excise tax. Consequently, the additional 10% excise tax will apply to the amount of an IRS levy upon an HSA unless, at the time of the levy, the HSA holder had reached age 65 or is disabled. For a copy of the CCA, please click on the link provided below:

<http://www.irs.gov/pub/irs-wd/0927019.pdf>

DOL RELEASES REVISED MINIMUM WAGE POSTER

As reported in the July Tech Flex [\[LINK\]](#), the federal minimum wage was increased to \$7.25 per hour effective July 24, 2009. The Department of Labor (DOL) has now released a revised minimum wage poster. Every employer of employees subject to the Fair Labor Standard Act's minimum wage provisions must post, and keep posted, a notice explaining the Act in a conspicuous place in all of their establishments so as to permit employees to readily read it.

For a copy of the revised poster, please click on the link provided below.

<http://www.dol.gov/esa/whd/regs/compliance/posters/flsa.htm>

INCREASED FEDERAL MINIMUM WAGE IMPACTS GARNISHMENTS

The increase of the minimum wage to \$7.25 per hour effective July 24, 2009 as noted in the previous article may impact the amount of wages that can be deducted from an employee's wages in order to satisfy a court ordered creditor garnishment. Under the Consumer Credit Protection Act (CCPA) the maximum amount of an employees wages after withholding required by law (i.e. taxes) are deducted in relation to a creditor garnishment is the lesser of the following.

- 25% of the employee's disposable earnings for the week.
- The amount by which the employee's disposable earnings for the week exceed 30 times the federal minimum wage in effect at the time of the withholding.

It is important to note the garnishment withholding limitations are subject to both state and federal law. The CCPA (federal law) limits preempt state law when the CCPA is more generous to the employee whose wages are being garnished by that state law. However, the state law would apply if the maximum amount subject to garnishment is lower than the CCPA maximum or where the state prohibits creditor garnishments.

Assuming an employees withholding for creditor garnishment is subject to the CCPA rather than state law, the matrix below demonstrates the amount of wages subject to garnishment effective July 24, 2009.

Weekly	Biweekly	Semimonthly	Monthly
Disposable earnings are \$217.50 or less: NONE	Disposable earnings are \$435.00 or less: NONE	Disposable earnings are \$471.25 or less: NONE	Disposable earnings are \$942.50 or less: NONE
Disposable earnings are more than \$217.50 but less than \$290.00: AMOUNT ABOVE \$217.50	Disposable earnings are more than \$435.00 but less than \$580.00: AMOUNT ABOVE \$435.00	Disposable earnings are more than \$471.25 but less than \$628.33: AMOUNT ABOVE \$471.25	Disposable earnings are more than \$642.50 but less than \$1,256.67: AMOUNT ABOVE \$942.50
Disposable earnings are \$290.00 or more: MAXIMUM 25%	Disposable earnings are \$580.00 or more: MAXIMUM 25%	Disposable earnings are \$628.33 or more: MAXIMUM 25%	Disposable earnings are \$1,256.67 or more: MAXIMUM 25%

ALASKA INCREASES MINIMUM WAGE

Effective July 24, 2009, the minimum wage rates in Alaska will be changing as follows:

- The minimum wage rate will be increasing from \$7.15 per hour to \$7.25 per hour.
- The tipped employee minimum hourly rate will be changing from \$7.15 per hour to \$7.25 per hour in direct wages. The tip credit does not apply.
- The training/youth wage rate will be remaining at \$7.25 per hour.

Please Note: The raise in the Alaska minimum wage coincides with the increase of the federal minimum wage. As of July 24, 2009, both the Alaska state minimum wage and the federal minimum wage will be \$7.25 per hour.

On January 1, 2010, the Alaska minimum wage rates will be as follows:

- The minimum wage rate will be changing from \$7.25 per hour to \$7.75 per hour.

- The tipped employee minimum hourly rate will be changing from \$7.25 per hour to \$7.75 per hour in direct wages. The tip credit does not apply.
- The training/youth wage rate will be remaining at \$7.25 per hour.

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