

## **Patient Protection and Affordable Care Act [HR 3590] Health Care and Education Reconciliation Act of 2010 [HR 4872]**

After several years and much debate, President Obama has signed a sweeping new health reform law. The legislation is in two parts consisting of H.R. 3590, the Patient Protection and Affordable Care Act, PL 111-148, and H.R. 4872, the Health Care and Education Reconciliation Act of 2010, P.L. 111-152. These bills were signed into law on March 23, 2010 and March 30, 2010 respectively.

While the primary purpose of this reform is to mandate that all U.S. residents obtain health insurance coverage, the law creates a host of tax credits and penalties on employers and taxpayers for failure to do so. In addition, there are several new rules that were created to raise the necessary funds to pay for this reform.

Many of these provisions do not become effective until 2011 or later, however, there are a few changes that are applicable immediately and some that are retroactive. It is especially important to note the effective date of each provision.

This summary covers the key provisions as they relate to the majority of taxpayers. For many of these changes, specific guidance is not yet available. With effective dates well into the future, it is uncertain what that guidance will provide or when it will be issued.

<b>2009 Effective Date</b>	
Certain Student Loan Forgiveness	The gross income exclusion for amounts received under the National Health Service Corps loan repayment program or certain state loan repayment programs is expanded to include any amount received by an individual under <i>any</i> other state loan repayment or loan forgiveness program that is intended to provide for the increased availability of health care services in

	<p>underserved or health professional shortage areas as defined by the state.</p> <p><b>Effective date:</b> For amounts received by an individual in tax years beginning after December 31, 2008.</p>
<p>Investment Credit for Therapeutic Discovery Projects</p>	<p>A new 50% nonrefundable investment tax credit for qualified investments in qualifying therapeutic discovery projects.</p> <p>A "qualifying therapeutic discovery project" is a project which is designed to develop a product, process, or therapy to diagnose, treat, or prevent diseases and afflictions by:</p> <ul style="list-style-type: none"> <li>• Conducting pre-clinical activities, clinical trials, clinical studies, and research protocols, or</li> <li>• By developing technology or products designed to diagnose diseases and conditions, including molecular and companion drugs and diagnostics, or to further the delivery or administration of therapeutics.</li> </ul> <p><b>Effective date:</b> For expenses paid or incurred in taxable years beginning after December 31, 2008.</p>
<p><b>2010 Effective Date</b></p>	
<p>Small Employer Health Insurance Credit</p>	<p>Eligible small employers are eligible for a credit for nonelective contributions to purchase health insurance for its employees. The credit will only offset actual tax liability and is claimed on the employer's tax return. The credit is neither payable in advance nor refundable.</p> <ul style="list-style-type: none"> <li>• An eligible small employer (ESE) is an employer with no more than 25 full-time equivalent employees ("FTEs") employed during its tax year.</li> <li>• The employees have annual full-time equivalent</li> </ul>

wages that average no more than \$50,000.

- The full amount of the credit is available only to an employer with 10 or fewer FTEs and those employees have average annual full-time equivalent wages from the employer of \$25,000 or less.

The credit is equal to the lesser of:

1. The amount of contributions the ESE made on behalf of the employees during the tax year for the qualifying health coverage, or
2. The amount of contributions that the employer would have made during the tax year if each employee had enrolled in coverage with a small business benchmark premium.

To calculate the contributions under the second of these two amounts, the benchmark premium is multiplied by the number of employees enrolled in coverage and then multiplied by the uniform percentage that applies for calculating the level of coverage selected by the employer. The applicable percentage is 35% for tax years beginning after 2009 and before 2014. It is 50% for tax years beginning after 2013.

The credit is reduced for employers with more than 10 but not more than 25 FTEs. It is also reduced for an employer for whom the average wages per employee is between \$25,000 and \$50,000.

**Effective date:** The first phase of the credit is available for any tax year beginning in 2010, 2011, 2012, or 2013. Qualifying health insurance for claiming the credit for this first phase is health insurance coverage which is

	<p>generally purchased from an insurance company licensed under state law [§9832].</p> <p>The second phase of the credit is available for tax years beginning after 2013 and is only available to an ESE that purchases health insurance coverage for employees through a state exchange. The credit is available for a maximum coverage period of two consecutive tax years beginning with the first year in which the employer or any predecessor first offers one or more qualified plans to its employees through an exchange.</p>
Coverage for Children Under Age 27	<p>The exclusion for reimbursements for medical care expenses under an employer-provided accident or health plan is extended to any child of an employee who is under age 27 as of the end of the tax year.</p> <p>Under this new rule, it is no longer a requirement that the child is the employee or self-employed taxpayer's dependent.</p> <p><b>Effective date:</b> March 30, 2010.</p>
Excise Tax on Indoor Tanning Services	<p>A 10% excise tax is imposed on any indoor tanning service, whether paid for by insurance or otherwise. The tax is paid by the individual on whom the service is performed (recipient). If the tax is not paid by the recipient of the services when the payment for such services is made, then to the extent that it is not collected, it has to be paid by the service provider.</p> <p><b>Effective date:</b> July 1, 2010.</p>
Adoption Credit	<p>The maximum adoption credit (as well as the exclusion for employer-provided adoption assistance) is increased \$1,000 to \$13,170 per eligible child for both non-special needs adoptions and special needs adoptions.</p> <p>The adoption credit is also made refundable and will be</p>

	<p>indexed for inflation for tax years beginning after 2010.</p> <p>For tax years after 2010, the <i>Economic Growth and Tax Relief Reconciliation Act of 2001</i> eliminated the regular adoption credit and the employer-provided adoption assistance exclusion. However, the credit for special needs adoptions was to be reduced to a maximum credit of \$6,000. Under the <i>Health Care Act</i>, this sunset provision is delayed for one year.</p> <p><b>Effective date:</b> Tax years beginning after December 31, 2009.</p>
<b>2011 Effective Date</b>	
Employer Health Plan Reimbursements Limited to Prescription Medication	<p>Over-the-counter medication can no longer be reimbursed with excludable income under FSAs, HSAs, Archer MSAs, or HRAs unless prescribed by a doctor.</p> <p><b>Effective date:</b> Tax years beginning after December 31, 2010.</p>
Cost of Employer-Sponsored Health Coverage Included on W-2	<p>Employers must disclose on each employee's annual Form W-2 the value of the employee's health insurance coverage sponsored by the employer.</p> <p><b>Effective date:</b> Tax years beginning after December 31, 2010.</p>
Penalty Tax Increase on Nonqualified HSA Distributions	<p>The additional tax on distributions from an HSA that are not used for qualified medical expenses is increased from 10% to 20% of amounts included in gross income.</p> <p>The additional tax on distributions from an Archer MSA that are not used for qualified medical expenses is increased from 15% to 20% of amounts included in gross income.</p> <p><b>Effective date:</b> For distributions made after December 31, 2010.</p>

Simple Cafeteria Plans	<p>Small employers that employed an average of 100 or fewer employees during the previous two years can establish a simple cafeteria plan. A simple cafeteria plan is deemed to meet the stricter nondiscrimination requirements of traditional cafeteria plans. Simple cafeteria plans must still meet certain contribution and eligibility requirements.</p> <p><b>Effective date:</b> Tax years beginning after December 31, 2010.</p>
<b>2012 Effective Date</b>	
Form 1099 Information Reporting	<p>The requirement to issue an information return (generally Form 1099) in the course of a taxpayer's trade or business to any person who is paid \$600 or more now includes any corporation that is not exempt from tax under §501(a).</p> <p>The type of payments with respect to which reporting is required has been expanded to include all payments for property and other gross proceeds for both property and services.</p> <p><b>Effective date:</b> For payments made after December 31, 2011.</p>
<b>2013 Effective Date</b>	
Deduction for Subsidized Retiree Drug Costs Eliminated	<p>The amount otherwise allowable as a deduction for retiree prescription drug expenses will be reduced by the amount of the excludable subsidy payments received by the plan sponsor.</p> <p><b>Effective date:</b> Tax years beginning after December 31, 2012.</p>
Additional Hospital Insurance (HI) Tax for High Income Workers	<p>An additional 0.9% HI tax will be imposed on individual taxpayers on wages (including self-employment income)</p>

	<p>received with respect to employment in excess of:</p> <ul style="list-style-type: none"> <li>• \$250,000 for joint returns,</li> <li>• \$125,000 for married taxpayers filing a separate return, and</li> <li>• \$200,000 in all other cases.</li> </ul> <p>The employer will not be liable for any additional 0.9% HI tax that it fails to withhold and that the employee later pays, but will be liable for any penalties resulting from its failure to withhold. The employee will be liable for the additional 0.9% HI tax to the extent it isn't deducted by the employer.</p> <p>The income tax deduction for one-half of SECA taxes will be computed without regard to the additional 0.9% SECA tax.</p> <p><b>Effective date:</b> Applies to remuneration received, and tax years beginning after December 31, 2012.</p>
<p>Medicare Contribution Tax on Unearned Income</p>	<p>A Medicare contribution tax on unearned income is imposed on individuals, estates, and trusts. For an individual, the tax is 3.8% of the lesser of either</p> <ol style="list-style-type: none"> <li>1. Net investment income, or</li> <li>2. The excess of modified adjusted gross income (MAGI) over the threshold amount. MAGI for this purpose is AGI without regard to the foreign earned income exclusion under §911.</li> </ol> <p>The threshold amount is \$250,000 for a joint return or surviving spouse, \$125,000 for a married individual filing a separate return, and \$200,000 for all others.</p> <p>For an estate or trust, the Medicare contribution tax is 3.8% of the lesser of either:</p>

	<ol style="list-style-type: none"> <li>1. Undistributed net investment income, or</li> <li>2. The excess of AGI [as defined in §67(e)] over the dollar amount at which the highest income tax bracket applicable to an estate or trust begins.</li> </ol> <p><b>Effective date:</b> Tax years beginning after December 31, 2012.</p>
Medical Expense Deduction Floor Increases to 10%	<p>The AGI threshold for deducting medical expense increases from 7.5% to 10%.</p> <p><b>Effective date:</b> Tax years beginning after December 31, 2012.</p> <p><b>NOTE:</b> For taxpayers who have reached age 65 by the end of the year, the effective date of this provision is delayed until January 1, 2017.</p>
Limitation on FSA Reimbursements	<p>The maximum amount available for reimbursement as a benefit under a qualified cafeteria plan (health FSA) is limited to \$2,500. Currently there is no limit other than limits set by the plan.</p> <p><b>Effective date:</b> Tax years beginning after December 31, 2012.</p>
Compensation Deduction Limit for Health Insurance Providers	<p>The deduction for compensation paid by a covered health insurance provider to officers, employees, directors, and other workers or service providers (such as consultants) performing services for or on behalf of a covered health insurance provider is limited to \$500,000.</p> <p><b>Effective date:</b> Tax years beginning after December 31, 2012.</p>
<b>2014 Effective Date</b>	
Individuals With No Health Insurance Coverage	<p>For tax years beginning after December 31, 2013, non-exempt U.S. citizens and legal residents must maintain minimum essential health coverage or pay a penalty.</p>

Minimum essential coverage includes government sponsored programs (Medicare, Medicaid, Children's Health Insurance Program), eligible employer-sponsored plans, plans in the individual market, certain grandfathered group health plans and other coverage as recognized by Health and Human Services.

This minimum coverage requirement does not apply to:

- Individuals who cannot afford coverage because their required contribution for employer-sponsored coverage or the lowest cost "bronze plan" in the local Insurance Exchange exceeds 8% of household income for the year. If self-only coverage is affordable to an employee, but family coverage is unaffordable, the employee is subject to the penalty if he does not maintain minimum essential coverage. However, any individual eligible for employer coverage due to a relationship with an employee (e.g. spouse or child of employee) is exempt from the penalty if that individual does not maintain minimum essential coverage because family coverage is not affordable (i.e., exceeds 8% of household income).
- Taxpayers with income below the income tax filing threshold.
- Those exempted for religious reasons (who must be members of a recognized religious sect exempting them from self-employment taxes).
- Individuals residing outside of the U.S.
- Individuals who are incarcerated or are not legally

present in the U.S.

- All members of Indian tribes.

The monthly penalty for any taxpayer for any month during which any failure to maintain minimum essential coverage occurred will be an amount equal to 1/12 of the greater of a flat dollar amount or a percentage of income.

The flat dollar amount used in determining the monthly penalty amount will be an amount equal to the lesser of:

- The sum of the applicable dollar amounts for all individuals with respect to whom a failure to maintain minimum essential coverage occurred during the month, or
- 300% of the applicable dollar amount (determined without regard to the special rule for individuals under age 18) for the calendar year with or within which the tax year ends.

The amount of income used in determining the monthly penalty will be the excess of the taxpayer's household income for the tax year over the amount of gross income required to meet the filing requirement for the year multiplied by the following percentage:

- 1.0% for tax years beginning in 2014.
- 2.0% for tax years beginning in 2015.
- 2.5% for tax years beginning after 2015.

Except for individuals under age 18, the "applicable

	<p>dollar amount" will be:</p> <ul style="list-style-type: none"> <li>• \$95 for 2014,</li> <li>• \$325 for 2015, and</li> <li>• \$695 for 2016 and later years (subject to an adjustment for inflation after 2016).</li> </ul> <p>No penalty is assessed for individuals who do not maintain health insurance for a period of three months or less during the tax year. If an individual exceeds the three month maximum during the taxable year, the penalty for the full duration of the gap during the year is applied.</p> <p><b>Effective date:</b> Tax years ending after December 31, 2013.</p>
<p>Refundable Tax Credit for Providing Premium Assistance</p>	<p>Individuals whose household income is at least 100% but not more than 400% of the federal poverty threshold and who don't receive health insurance under an employer plan will be allowed a refundable tax credit for the premiums paid during the tax year for qualified health plan insurance coverage purchased on an Exchange.</p> <p><b>Effective date:</b> Tax years ending after December 31, 2013.</p>
<p>Qualified Plans Offered Through a Cafeteria Plan</p>	<p>Generally, if an employer offers health benefits through an Exchange, it is not a qualified benefit under a cafeteria plan. However, if the employer is a "qualified employer" a reimbursement (or direct payment) for the premiums for coverage under any "qualified health plan" through a health insurance Exchange is a qualified benefit under a cafeteria plan.</p> <p>A qualified employer is a small employer that elects to</p>

	<p>make all of its full-time employees eligible for one or more qualified health plans offered in the small group market through an Exchange that offers qualified health plans. For this purpose, a small employer is one that employed an average of at least one but not more than 100 employees on business days during the preceding calendar year, and employs at least one employee on the first day of the plan year.</p> <p>A qualified health plan is one that meets certain certification requirements, provides an essential health benefits package, and is offered by an insurer meeting detailed requirements. A health insurance Exchange is a federally supervised marketplace for health insurance policies meeting specific eligibility and benefit criteria, and is made available not later than January 1, 2014, to qualifying individuals.</p> <p><b>Effective date:</b> Tax years ending after December 31, 2013.</p>
Health Coverage Excise Tax for Large Employers	<p>Large employers (with at least 50 full-time employees) that don't offer health care coverage for all their full-time employees, offer minimum essential coverage, or offer minimum essential coverage that consists of a plan under which the plan's share of the total allowed cost of benefits is less than 60%, must pay a penalty if any full-time employee is certified to the employer as having purchased health insurance through a state Exchange with respect to which a tax credit or cost-sharing reduction is allowed or paid to the employee.</p> <p>These excise taxes are payable on notice and demand by IRS and are nondeductible.</p> <p><b>Effective date:</b> Months beginning after December 31, 2013.</p>

<p>"Free Choice" Vouchers for Non-Participating Employees</p>	<p>Employers who offer minimum essential coverage through an eligible employer-sponsored plan and pay a portion of that coverage must provide qualified employees with a "free choice" voucher with a value that can be applied to the purchase of a health plan through the insurance Exchange.</p> <p>Qualified employees are those employees:</p> <ul style="list-style-type: none"> <li>• Who do not participate in the employer sponsored plan;</li> <li>• Whose required contribution for employer sponsored minimum essential coverage (if they did participate in the plan) exceeds 8%, but does not exceed 9.8% of household income; and</li> <li>• Whose total household income does not exceed 400% of the poverty line for the family.</li> </ul> <p>If the value of the voucher exceeds the premium of the health plan chosen by the employee, the employee is paid the excess value of the voucher, and the excess amount received by the employee is includible in gross income (otherwise, the voucher doesn't result in income to the employee).</p> <p><b>Effective date:</b> For vouchers provided after December 31, 2013.</p>
<p>Employer Reporting Responsibilities for Health Coverage</p>	<p>Certain employers will be subject to new information reporting and related statement obligations for health insurance coverage.</p> <p>The information required to be reported includes:</p> <ol style="list-style-type: none"> <li>1. The name, address and employer identification</li> </ol>

	<p>number of the employer;</p> <ol style="list-style-type: none"> <li>2. A certification as to whether the employer offers its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan;</li> <li>3. The number of full-time employees of the employer for each month during the calendar year;</li> <li>4. The name, address and taxpayer identification number of each full-time employee employed by the employer during the calendar year and the number of months, if any, during which the employee was (and any dependents) were covered under a plan sponsored by the employer during the calendar year; and</li> <li>5. Such other information as IRS may require.</li> </ol> <p><b>Effective date:</b> Periods beginning after December 31, 2013.</p>
Corporation Estimated Tax Payment	<p>The corporate estimated tax payment due in July, August, or September 2014 for large corporations (assets of at least \$1 billion in the previous year) is increased from 157.75% to 173.50% of the payment otherwise due.</p> <p><b>Effective date:</b> Although this provision is effective on March 30, 2010, the date of enactment, but does not apply until 2014.</p>

**2018 Effective Date**

Excise Tax on High Cost Employer Sponsored Health Coverage

Insurers will be subject to a nondeductible excise tax if the aggregate value of employer sponsored health insurance coverage for an employee (plus any former employee, surviving spouse and any other primary insured individual) exceeds a threshold amount.

**Effective date:** Tax years beginning after December 31, 2017.