

## Reform Law vs. Reconciliation Law: An Overview of Significant Changes

The following is a brief overview and comparison of the provisions of the healthcare reform bill signed into law on March 23, 2010 (Prior), and the reform reconciliation bill signed into law on March 30, 2010 (Now).

### Grandfathered Plans

- **Prior:** Grandfathered plans were permanently exempt from many reform provisions including the following:
  - Prohibition on lifetime limits (Effective six months following enactment)
  - Prohibition on annual limits (Effective 2014)
  - Increased dependent coverage age limits (Effective six months following enactment)
  - Rescissions prohibited for reasons other than fraud (Effective six months following enactment)
  - Elimination of waiting periods in excess of 90 days (Effective 2014)
  - Elimination of pre-existing condition exclusions for children (Effective six months following enactment)
  - Elimination of pre-existing condition exclusions for adults (Effective 2014)
- **Now:** For grandfathered group plans until 2014, the coverage to age 26 provision only applies to dependents that do not have another source of employer-sponsored health coverage. All other provisions listed above apply to grandfathered plans on the effective date and these plans must comply with the applicable requirements.

### Increased Dependent Coverage (Effective six months following enactment)

- **Prior:** The dependent age limit was increased to age 26 for unmarried dependents.
- **Now:** The requirement that a dependent be unmarried is eliminated and there is clarification that the group health insurance income tax exclusion would apply to dependents up to age 26. For grandfathered plans until 2014, the coverage to age 26 provision only applies to dependents that do not have another source of employer-sponsored health coverage.

### FSA Limit

- **Prior:** FSA limit capped at \$2,500 beginning January 1, 2011
- **Now:** \$2,500 FSA cap delayed until January 1, 2013.



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## Cadillac Tax

- **Prior:** Imposed a 40% excise tax on insurers of employer-sponsored group health plans (fully-insured and self-funded) with aggregate values that exceed \$8,500 (individual coverage) and \$23,000 (family coverage) effective January 1, 2013. This tax does not apply to accident, disability, long-term care, after-tax indemnity, or specified disease coverage. Values of health plans include:
  - Health plan coverage
  - Reimbursements from FSA and HRAs
  - Employer contributions to HSAs
  - Dental, vision, and other supplementary coverage
  
- **Now:** The Cadillac tax is amended as follows:
  - Threshold limits for the excise tax are increased to \$10,200 for individual coverage and \$27,500 for family coverage.
  - Excise tax is delayed until January 1, 2018.
  - Stand-alone dental and vision plans are excluded from the value calculation.
  - Plans are allowed to take into account age, gender, and certain other factors that impact premium costs.

## Employer Mandate (Effective January 1, 2014)

- **Prior:** The employer mandate contained the following provisions:
  - Employer Penalties
    - Employers who don't offer coverage: Employers with more than 50 full-time employees who do not offer coverage and who have one or more employees who receive a premium assistance tax credit to purchase insurance through an exchange must pay a fine of \$750 per year times the number of full-time employees
    - Employers who do offer coverage: Employers with more than 50 employees that offer coverage and have at least one full-time employee receiving the premium assistance tax credit will pay the lesser of (1) \$3,000 for each of those employees receiving the credit or (2) \$750 for each full-time employee
  - Small Employer Exception – Employers with 50 or fewer employees are exempt from the penalties.
  - Construction Industry – For the construction industry, the requirement to provide affordable coverage applies to employers of more than five people with annual payrolls of more \$250,000.



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- Eligibility for Premium Assistance Tax Credit
  - An individual with family income up to 400% of the Federal Poverty Level is eligible for the tax credit if the plan's share of allowed costs under the plan is less than 60% or the employer requires the employee to contribute more than 9.8% of the employee's family income toward the cost of coverage.
- **Now:**
  - Employer Penalties – Increases the annual fine both for employers who do and do not offer coverage from \$750 to \$2000. For employers who do not offer coverage, the first 30 employees are excluded from the fine.
  - Calculation of number of employees – When calculating whether an employer has more than 50 employees, part-time employees must be taken into consideration in the number of full-time equivalent employees based on the number of hours worked. Seasonal workers are exempted.
  - Small Employer Exception – This exception is revised to exempt all employers with 50 or fewer full-time equivalent employees (vs. full-time employees).
  - Construction Industry – The construction industry special standard no longer applies.
  - Eligibility for Premium Assistance Tax Credit – Reduces the contribution threshold making an individual eligible for the tax credit from 9.8% of family income to 9.5% of family income.

### **Employer Waiting Period (Effective January 1, 2014)**

- **Prior:** Imposed a \$600 penalty (per full-time employee subject to the waiting period) on employers with more than 50 full-time employees that require a waiting period of more than 60 days, and prohibited waiting periods in excess of 90 days.
- **Now:** Eliminates the fine, but still prohibits waiting periods in excess of 90 days.

### **Medicare Part D retiree drug subsidy**

- **Prior:** The Medicare Part D retiree drug subsidy would have been eliminated effective January 1, 2011.
- **Now:** Elimination of this tax deduction is delayed until the 2013 tax year.



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## Pharmaceutical annual fee

- **Prior:** The annual fees (divided among individual market participants based on market share) were scheduled to begin in 2010 at \$2.3 billion
- **Now:** The fee structure has been increased by \$4.8 billion over a 10-year period as follows:
  - \$2.8 billion in 2012-2013
  - \$3.0 billion in 2014-2016
  - \$4.0 billion in 2017
  - \$4.1 billion in 2018
  - \$2.8 billion in 2019 and beyond

## Tax on Insurance Sector

- **Prior:** The insurance sector annual fees (divided among individual market participants based on market share) were scheduled to begin in 2011 at \$2 billion and continue as follows:
  - \$4 billion in 2012
  - \$7 billion in 2013
  - \$9 billion in 2014-2016
  - \$10 billion in 2017 and future years
- **Now:** The reconciliation bill delays the annual fee until 2014 and increases the amount of fees due as follows:
  - \$8 billion in 2014
  - \$11.3 billion in 2015-2016
  - \$13.9 billion in 2017
  - \$14.3 billion in 2018
  - For 2019 and beyond, the fee is indexed to the annual amount of premium growth

## Taxes on Medical Device Manufacturers

- **Prior:** Imposed annual fees of \$2 billion from 2011 through 2017 increasing to \$3 billion after 2017
- **Now:** Instead of annual fees, medical device manufacturers will pay an excise tax of 2.3% on the sale of any taxable medical device effective 2013. This tax would not apply to eyeglasses, contact lenses, hearing aids, and other devices deemed to be available for regular retail purposes.



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## Medicare Payroll Tax Increase (Effective January 1, 2013)

- **Prior:** Added an additional tax of 0.9% (Medicare Hospital Insurance Tax) on self-employed individuals and employees with earnings in excess of \$200,000 (individual filer) or \$250,000 (joint filer). Self-employed individuals cannot deduct any portion of the additional tax.
- **Now:** In addition to the 0.9% tax, the reconciliation bill adds a new 3.8% Medicare contribution on certain unearned income for individuals with adjusted gross income in excess of \$200,000 (individual filer) or \$250,000 (joint filer)

## Individual Mandate (Effective January 1, 2014)

- **Prior:** Citizens and legal immigrants who do not purchase qualified health insurance would be subject to the higher of an excise tax of up to \$750 per person (up to a max of \$2,250 for a family) or up to 2% of household income. The penalty would be phased in beginning in 2014.
- **Now:**
  - Changes the penalty for failure to comply to \$695 per year (up to a max of \$2,085 for a family) or 2.5% of household income, whichever is higher. The penalty is phased in as follows:
    - 2014: \$95 per person or 1% of taxable income
    - 2015: \$325 per person or 2.0% of taxable income
    - 2016: \$695 per person or 2.5% of taxable income
    - After 2016, the penalty is increased annually by the cost-of-living adjustment
  - Exempts from the penalty individuals with incomes below the federal tax filing threshold.



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