Revenue Provisions Included In H.R. 3962
"Affordable Health Care for America Act"

October 29, 2009

Division A, Title V, Subtitle A, Part 3 - Limitations on Health Care Related Expenditures

Sec. 531. Distributions for medicine qualified only if for prescribed drug or insulin. Under present law, a taxpayer may deduct as an itemized deduction certain medical expenses that are not covered by insurance paid during the taxable year to the extent that such expenses exceed 7.5% of the taxpayer's adjusted gross income (AGI). Any amounts paid during a taxable year for medicine or drugs are deductible as a medical expense under the rules relating to itemized medical expenses only if the medicine or drug is a prescribed drug or is insulin. The bill would conform the definition of medical expenses (with respect to expenses related to medicines and drugs) for purposes of HRAs, Health FSAs, HSAs, and Archer MSAs to the definition under the itemized deduction for medical expenses. *This proposal has been estimated to raise $5 billion over ten years.*

Sec. 532. Limitation on health flexible spending arrangements under cafeteria plans. Under present law, there is no statutory limit on the amount that an employee may contribute to a health flexible spending arrangement through a cafeteria plan salary reduction election. The bill would limit salary reduction contributions to health flexible spending arrangements to $2,500 (indexed for inflation). *This proposal has been estimated to raise $13.3 billion over ten years.*

Sec. 533. Increase in penalty for nonqualified distributions from health savings accounts. Under present law, a 10% penalty applies to nonqualified distributions from health savings accounts. Nonqualified distributions include distributions that are not used to pay for health care related expenses. The bill would increase the 10% penalty on nonqualified distributions from health savings accounts to 20%. *This proposal has been estimated to raise $1.3 billion over ten years.*

Sec. 534. Denial of deduction for Federal subsidies for prescription drug plans which have been excluded from gross income. Certain employers are eligible for Federal subsidies with respect to prescription drug benefits provided to retirees and the subsidies are excluded from gross income. However, in addition to receiving such subsidies on a tax-free basis, present law also permits such employers to deduct expenses for which they are Federally subsidized. The bill would eliminate the ability of employers to deduct these subsidized expenses. *This proposal has been estimated to raise $3 billion over ten years.*

Part 4 – Other Provisions to Carry Out Health Insurance Reform

Sec. 545. Exclusion from gross income for medical care provided for members of Indians Tribes. Indian tribes have sought to supplement health care services provided to members of tribes under the Indian Health Service program. The bill would clarify that gross income does

not include medical care and health insurance coverage that an Indian tribe provides to members of the tribe. *This proposal has been estimated to cost less than $50 million over ten years.*

Division A, Title V, Subtitle B - Other Revenue Provisions
Part 1 – General Provisions

Sec. 551. Surcharge on AGI in excess of $1 million. The bill would impose a 5.4% surcharge on adjusted gross income (AGI) above $1,000,000 (married filing a joint return) and $500,000 (single). According to the nonpartisan Joint Committee on Taxation, only 0.3% of all households in the United States have AGI in excess of these thresholds. As a result, 99.7% of all households would not be affected by this health care surcharge. *This proposal has been estimated to raise $460.5 billion over ten years.*

Sec. 552. Excise tax on medical devices. The bill would impose an excise tax on the sale (other than for resale) or lease of medical devices equal to 2.5% of the sales price. The tax is deductible for income tax purposes. Retail sales of devices that are available to the general public, and are of a type (and purchased in a quantity) that is purchased by the general public, sales for export, and sales of devices for use in further manufacturing would be exempt from the excise tax. In certain instances where the medical device manufacturer has an agreement with a wholesaler to distribute the devices, and the sales price is negotiated between the medical device manufacturer and the purchaser, the wholesaler can be reimbursed by the manufacturer for the excise tax paid. *This proposal has been estimated to raise $20 billion over ten years.*

Sec. 553. Expansion of information reporting requirements. Under present law, a taxpayer is required to file an information return if the taxpayer makes aggregate payments of $600 or more to a recipient for services or determinable gains in the course of a trade or business during the calendar year. Notwithstanding this general requirement, taxpayers are not required to file information returns for payments to corporations. The bill would require taxpayers to file an information return for aggregate payments of $600 or more in a calendar year to a corporation. *This proposal has been estimated to raise $17.1 billion over ten years.*

Sec. 554. Delay implementation of worldwide allocation of interest. In 2004, Congress provided taxpayers with an election to take advantage of a liberalized rule for allocating interest expense between United States sources and foreign sources for purposes of determining a taxpayer's foreign tax credit limitation. Although enacted in 2004, this election was not available to taxpayers until taxable years beginning after 2008. Last year, the House of Representatives delayed the phase-in of this new liberalized rule for two years (for taxable years beginning after 2010) as part of the *Housing and Economic Recovery Act of 2008* (P.L. 108-289). The bill would further delay the phase-in of this new rule for an additional nine years (for taxable years beginning after 2019). During the 110th Congress, the House of Representatives voted numerous times on a bipartisan basis to delay the implementation of this future tax benefit as part of: H.R. 3920 by a vote of 264 to 157 (with 38 House Republicans joining 226 House Democrats in support); H.R. 3221 (May vote) by a vote of 322 to 94 (with 95 House Republicans joining 227 House Democrats in support); H.R. 3221 (August vote) by a vote 241 to 172 (with 26 Republicans joining 215 Democrats in support); and H.R. 6049 by a vote of 272-152 (with 45 House Republicans joining 227 House Democrats in support). *This proposal has been estimated to raise $26.1 billion over ten years.*

Part 2 – Prevention of Tax Avoidance

Sec. 561. Limitation on treaty benefits for certain deductible payments. The bill would prevent foreign multinational corporations incorporated in tax haven countries from avoiding tax on income earned in the United States by routing their income through structures in which a United States subsidiary of the foreign multinational corporation makes a deductible payment to a country with which the United States has a tax treaty before ultimately sending these earnings to the tax haven country. This provision has been modified from a previous version approved by the House of Representatives as part of H.R. 2419 (110th Congress) by a vote of 231 to 191 (with 19 House Republicans joining 212 House Democrats in support) to ensure that foreign multinational corporations incorporated in treaty partner countries will not be affected by this provision. *This proposal has been estimated to raise $7.5 billion over ten years.*

Secs. 562 and 563. Codification of the economic substance doctrine and tax penalties on understatements of income. The economic substance doctrine is a judicial doctrine that has been used by the courts to deny tax benefits when the transaction generating these tax benefits lacks economic substance. The courts have not applied the economic substance doctrine uniformly. The bill would clarify the manner in which the economic substance doctrine should be applied by the courts. However, the bill does not change current-law standards used by courts in determining when to utilize an economic substance analysis. Under the provision, in any case in which the economic substance doctrine is relevant to a transaction, the economic substance doctrine would be satisfied only if (1) the transaction changes in a meaningful way (apart from federal income tax consequences) the taxpayer's economic position, and (2) the taxpayer has a substantial non-federal tax purpose for entering into such transaction. The provision also imposes a 20% penalty on understatements attributable to a transaction lacking economic substance (penalty increased to 40% in the case of transactions in which the relevant facts affecting the tax treatment of the transaction are not adequately disclosed). This provision was previously approved by the House of Representatives as part of H.R. 4351 (110th Congress) by a vote of 226 to 193. *This proposal has been estimated to raise $5.7 billion over ten years.*

Part 3 – Parity in Health Benefits

Sec. 571. Certain health related benefits applicable to spouses and dependents extended to eligible beneficiaries. Under present law, the exclusion for employer provided health benefits is limited to coverage and benefits provided for the employee, a spouse, and a dependent. The bill would extend the exclusion for employer provided health coverage to a person who is eligible for coverage under the employer's plan and who is not a spouse or dependent. *This proposal has been estimated to cost $4 billion over ten years.*

DIVISION B, TITLE VIII – REVENUE-RELATED PROVISIONS

Sec. 1802. Comparative Effectiveness Research Trust Fund (CERTF); financing for Trust Fund. The bill would establish a trust fund for the comparative effectiveness research program with dedicated amounts going to both the Center for Comparative Effectiveness Research and the Comparative Effectiveness Research Commission. The trust fund would be funded by a fee that is assessed on insurance companies and self-insured plans on the basis of the number of insured individuals. The trust fund is also funded by transfers from the Medicare trust fund to

the CERTF in addition to the fee. The fee is determined by the Secretary of Health and Human Services as the per participant fee necessary to raise $375 million per year, with a default fee of $2 per participant. *This proposal has been estimated to raise $2 billion over ten years.*