



NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS
 Founded in 1890 as the National Association of Life Underwriters

ADVOCACY



GOVWATCH

THE VOICE OF THE AGENT

Finance Committee Rejects Public Plan Option in Health Reform

Issue: Health Care/Tax

Date: October 2, 2009

On September 29, during a multi-week mark-up of its version of health reform, the Senate Finance Committee rejected two amendments that would have added a government-run public plan option to the health reform bill. That action came during the committee's fifth 12-hour day of a mark-up that by October 1 had already lasted nearly 80 hours and is expected to continue for at least several more days.

Provisions so far approved by the committee include:

Public (Government-Run) Plan Option: The Finance Committee said no to the intensely controversial question of whether the federal government should establish a health insurance plan as one of the choices available to the individuals and small businesses eligible to buy their health insurance from the state-based exchanges created in the reform legislation. Instead, the committee's bill authorizes creation of non-profit cooperatives.

However, the committee did approve an amendment by Sen. Maria Cantwell (D-WA) that would allow States to negotiate with private insurance companies for health insurance for people who are at 133 percent to 200 percent of the federal poverty level. This is viewed as a "toehold" toward a government plan, and could be a precursor to Senate floor action on the government-run/public plan issue.

Renewed efforts to put a public plan option into the bill will come during Senate floor debate. These are likely to include the two amendments that the Finance Committee defeated that would have added a public plan option to the bill. Also likely is an amendment that would create a "trigger" for creating a federal public plan option. Another possibility on the Senate floor is an amendment to authorize creation of state-run health insurance plan options. These amendments include:

- The first Finance Committee defeated amendment, by Senator Jay Rockefeller (D-WV), resembled the public option provisions in the Education & Labor and Ways & Means versions of H.R.3200, the House health reform legislation. It would have set provider payments based on Medicare rates for the first two years, followed thereafter by use of negotiated rates. The Rockefeller amendment failed by an 8 to 15 vote.
- The second Finance Committee rejected amendment, offered by Senator Charles Schumer (D-NY), failed by a 10 to 13 vote. It would have allowed for provider reimbursements based on negotiated rates. The Schumer proposal tracked the public option provision approved by the Senate Health, Education, Labor and Pensions (HELP) Committee and the House Energy & Commerce version of H.R.3200.
- Senator Olympia Snowe (R-ME) is expected to offer an amendment on the Senate floor that would create a "trigger" for a public plan option. The Snowe proposal would divide the country into geographical regions. If in any of these regions affordable private health insurance is not available within five years to at least 95 percent of the eligible individuals within the region, then the federal government would create a public plan in that region.
- Also possible on the Senate floor is an amendment that would authorize States to create and run public plan health insurance options. Details of this idea are still fluid, but seem to be focusing on allowing states to negotiate reimbursement rates to health care providers who accept State-run health insurance.

Insurance Reforms: The committee has approved a package of insurance reforms, including:

- A prohibition against use of pre-existing conditions
- Price restrictions that include a no more than four-to-one differential between younger and older policyholders
- A required minimum benefits package and a minimum "creditable coverage" rule for insurance sold within an exchange —i.e., non-group health insurance must meet certain actuarial value standards, ranging from only catastrophic coverage to the most generous platinum plan at 90 percent actuarial value. The variation can come from modifications in cost-sharing and to a limited degree in benefits included in the policy.
- Out-of-pocket cost restrictions that will affect some high deductible health plans (HDHPs)/health savings accounts (HSAs) currently on the market. Existing policies could qualify for grandfather protection.
- Annual and lifetime benefit caps would be prohibited

Individual Mandate: The committee approved an individual mandate. Because the bill would require people to buy health insurance, there is continuing controversy in committee and on the Senate floor over the size and scope of subsidies to make insurance affordable to lower income individuals.

The Finance Committee plan provides subsidies to individuals who do not have access to affordable employer-provided health insurance. The subsidies would start when insurance premiums would exceed 12 percent of an individual's income. Subsidies would increase as the cost of insurance premiums account for a higher share of income. The individual mandate is waived for individuals who are unable to find insurance that costs less than 8 percent of their adjusted gross income. And the penalty for non-compliance phases in over several years with a maximum of \$750 per adult in 2017. Expected are more amendments on the floor or in a manager's amendment that would waive, delay or lower fines for failure to comply with the mandate, and also lowering the amount of income a person must spend on health insurance prior to qualifying for subsidies or waivers.

Employer Mandate: The Finance Committee plan stops short of requiring employers to provide health insurance. Instead, it would:

- Require employers with more than 50 full-time employees to pay a fee into the exchange when their workers who qualify for federal subsidies buy their insurance through the exchange.
- The fee is based on the level of federal subsidy, but is capped at \$400 per worker.

Other Provisions Applicable to Employers: As approved by the Finance Committee, the bill specifies that employer-provided health insurance would not be required to meet the benefit standards that would apply to health insurance provided through the exchanges. The committee also approved a package of tax credits to help businesses afford to provide health insurance for their workers.

Long-Term Care Insurance: Senators dropped from the bill a tax benefit for employees who purchase long-term care insurance under cafeteria plans in order to help cover the cost of other reform efforts.

Tort Reform: A number of amendments seeking to reform medical malpractice rules were ruled out of order, due to tort reform being outside the jurisdiction of the Finance Committee. Medical malpractice amendments are expected during the Senate floor debate.

Interstate Sale of Health Insurance: The Finance Committee plan authorizes states to enter into compacts to allow interstate sales of health insurance. Participating states would have to agree, by legislation signed into law, on which state's law would govern the health insurance purchased across state lines.

State-Based Health Insurance Exchanges: The Finance Committee plan would create state-based health insurance exchanges. These exchanges are buying groups that would be available to individuals without access to affordable employer-provided coverage, and to very small businesses. Individuals without access to health insurance before the exchanges are operational could buy insurance through a federal high risk pool.

Responding to NAIFA-AHIA input, the Finance Committee included language that specifically authorizes licensed insurance agents to work with individuals and small businesses purchasing their health insurance through the exchanges.

Financing: To date, the Finance Committee plan includes the following financing provisions:

- The bill includes a \$6 billion fee on the health insurance sector, allocated by market share.
- The Finance plan currently includes a tax on “luxury” health insurance coverage. As it is currently drafted, the luxury health insurance tax would:
 - Apply to the actuarial value of the aggregate level of health coverage provided to employees.
 - All forms of health coverage—major medical, supplemental coverage (including dental, vision and specific disease coverage), flexible spending arrangements (FSAs), health reimbursement accounts (HRAs), and HSAs would be included in the calculation of whether aggregate coverage exceeds the threshold amount.
 - Aggregate coverage would not include long-term care and disability income insurance.
 - The threshold amount for most coverage would be \$8,000/individual and \$21,000/family (indexed). The threshold would be increased by an extra \$1,850 for individual coverage and \$5,000 for family coverage for people between the ages of 55 and 64 who are not enrolled in Medicare, and for people in high risk occupations.
 - The tax rate on amounts of aggregate coverage in excess of the threshold amount would be 40 percent.
 - The threshold would also be increased, for three years, for coverage in high-cost states.
- The bill contains a separate \$2,500 cap on annual contributions to FSAs. The cap is not indexed.
- The bill increases to 10 percent (from 7.5 percent), for those under age 65, the amount by which medical expenses must exceed adjusted gross income in order for medical expenses to be deductible. There is an effort underway to expand the groups who would still get the 7.5 percent floor to include people with disabilities, debilitating sicknesses, and terminal illnesses.
- The bill standardizes the definition of medical expenses—i.e., the definition of expenses that can be paid with tax-free withdrawals from HSAs, HRAs or FSAs, or deducted under section 213 (itemized medical expenses). The standardization would follow the rules currently applicable to section 213.
- The bill specifies that over-the-counter medications, unless they are prescribed by a doctor, cannot be paid for, penalty-free, from HSA, HRA or FSA funds.
- The bill would increase the penalty (from 10 percent to 20 percent) for non-medical, early (prior to age 65) withdrawals from HSAs.

Next Steps: The bill now goes to the Congressional Budget Office (CBO) for scoring. CBO said it could take several days to complete the calculation of how much the bill will cost and whether it is fully offset. After the CBO score comes back, the Finance Committee will take a final vote on whether to send the plan to Senate leadership for melding with the plan approved by the Senate’s Health, Education, Labor and Pensions (HELP) Committee. The melded bill will then go to the Senate floor for what insiders predict will be another extended debate.

Currently, House leadership is engaged in finalizing the version of H.R.3200, their health reform bill that will go to the full House for a vote. Among their tasks is paring back the legislation from its approximate \$1.1 trillion cost as it left each committee to the \$900 billion level called for by President Obama. Tax offsets, the construction of the public plan option, and other issues also confront leadership as it melds the three committee bills into one piece of legislation. Timing for completion of this process is uncertain, as is the projected date for House floor action. Some speculate, however, that it could be November before the House votes on H.R.3200.

NAIFA Staff Contact: [Diane Boyle](#), AHIA Executive Vice President,

Back to [NAIFA GovWatch](#)

Copyright © 2010 National Association of Insurance and Financial Advisors. All Rights Reserved.

NAIFA, 2901 Telestar Court, Falls Church, VA 22042-1205 | 877-TO-NAIFA | membersupport@naifa.org





NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS
Founded in 1890 as the National Association of Life Underwriters

ADVOCACY



GOVWATCH

THE VOICE OF THE AGENT

U.S. House Financial Services Committee Hears Testimony on Harmonized Fiduciary Standards of Care for IAs and BDs, Federal Office of Insurance

Issue: Financial Services Regulatory Reform

Date: October 6, 2009

The House Financial Services Committee (Chairman Barney Frank, D-MA) held a hearing today to examine two legislative proposals of great interest to NAIFA members. Most notably, the Committee discussed a piece of draft legislation that would impose a new harmonized fiduciary standard of care on both investment advisers and broker-dealers.

The Committee also discussed legislation to create a Federal Insurance Office within the Treasury Department to serve in an advisory capacity on insurance policy matters national and international in scope -- a proposal which NAIFA continues to support.

Background: On Thursday, October 1, 2009 Chairman Paul Kanjorski of the House Financial Services Subcommittee and Capital Markets, Insurance, and Government Sponsored Enterprises released a discussion draft of a revised legislative proposal, known as the Investor Protection Act. The original draft version of the Investor Protection Act was proposed by the Obama Administration as part of their comprehensive regulatory reform overhaul effort.

Chairman Kanjorski's draft legislation, like the Administration's proposal, would impose a fiduciary standard of care on broker-dealers and harmonize the standards applicable to investment advisers and broker-dealers. The call for a harmonized fiduciary standard stems from a January 2008 SEC-commissioned Rand report which found that consumers do not clearly understand the differences between investment advisers and broker-dealers. The Rand report also found that investors are generally happy with their advisers and the services they provide. NAIFA believes the latter point is critical to keep in mind as proposals for a uniform standard of care are considered in order that the goal of harmonization does not damage the current, generally successful, nature of existing client-adviser relationships.

Impact on NAIFA Members: This issue is important to us because nearly three-quarters of NAIFA's members are registered representatives of broker-dealer firms; and many NAIFA members are registered investment adviser representatives. Thus, any statutory or regulatory changes that are put in place will have a significant impact on our membership and on the relationships NAIFA members have with their clients. We are therefore deeply concerned about the application across the board of a yet to be defined fiduciary standard to all persons providing financial advice. The term "fiduciary standard" is subject to a variety of different legal definitions and may impose different obligations under different sets of circumstances. This makes it very difficult to determine with certainty the standard owed by an adviser to a client, particularly given the differing levels of engagement between advisers and clients.

For months NAIFA has been actively meeting with officials with the SEC, FINRA, Members of Congress and their staff, and key industry partners on how best to address this critical issue. As part of those efforts, we recommended specific legislative changes to original Obama Administration's draft proposal. The discussion draft released by Chairman Kanjorski last week reflected some of those changes but there is still much work to be done to ensure a positive legislative outcome.

Update: Today's hearing brought a number of different industry perspectives to the table, with both regulators and industry representatives testifying. Witnesses generally agreed that a "fiduciary standard" should be applied to both investment advisers and broker-dealers to the extent they are providing personalized investment advice to retail investors. There is, however, a lack of consensus among the witnesses, as well as among the members of the financial services community that did not testify today, about what the definition of "fiduciary" should be and if it can be tailored to reflect the various types of client engagements that exist.

For more information on today's hearing, including a report of the discussion of a Federal Office of Insurance, please visit: http://www.naifa.org/advocacy/documents/Report_of_Hearing_on_IPA_FIO.pdf

While NAIFA did not testify at today's hearing, we submitted a written statement for the record. [View a copy of our statement for the record](#)

Next Steps: Chairman Frank has made no secret that his Committee will have a very full schedule holding hearings and marking up legislation in the coming weeks and months. While Frank has stated that he would prefer to see individual pieces of regulatory reform be taken up separately on the House floor, Majority Leader Steny Hoyer (D-MD) stated today that legislation—including the Investor Protection Act—will be incorporated into a larger regulatory reform package, which will be taken up by the House in November.

NAIFA will continue to work with Chairman Kanjorski and other key members of Congress in order to address our concerns about the draft Investor Protection Act. **NAIFA members should be on alert about this critical issue and be prepared to hold district meetings, attend Town Hall meetings, and respond to GovAlerts if that step becomes necessary in order to positively impact this process.**

NAIFA Staff Contact: Jill Edwards, Assistant Vice President – Federal Government Relations, at jilledwards@naifa.org; Gary Sanders, Vice President – Securities and State Government Relations, at gsanders@naifa.org

Back to [NAIFA GovWatch](#)

Copyright © 2010 National Association of Insurance and Financial Advisors. All Rights Reserved.

NAIFA, 2901 Telestar Court, Falls Church, VA 22042-1205 | 877-TO-NAIFA | membersupport@naifa.org





NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS
 Founded in 1890 as the National Association of Life Underwriters

ADVOCACY



GOVWATCH

THE VOICE OF THE AGENT

Finance Committee Reports Out Its Health Reform

Issue: Health Care/Tax

Date: October 13, 2009

On October 13 the Senate Finance Committee finally finished its more than three weeks of mark-up, and reported out its version of health care reform. The vote was 14 – 9. Senator Olympia Snowe (R-ME) was the sole Republican to join all the Democrats in voting in favor of the measure. View the [October 2 GovWatch](#) for a summary of the Senate Finance Committee plan.

The vote follows the [Congressional Budget Office \(CBO\) and the Joint Committee on Taxation \(JCT\) scoring](#) of the Senate Finance Committee's health care reform legislation. CBO and JCT estimated the bill's cost at approximately \$829 billion over ten years.

NAIFA Position: NAIFA continues to support health reform and is pleased that agent priorities have been included in the proposals. Paramount for NAIFA, of course, is recognition of the critical role agents play in servicing consumers. The Senate Finance Committee plan joins all other versions of reform in recognizing this important role.

NAIFA remains committed to affordable access to health insurance. However, as the Senate Finance Committee reports out its plan, NAIFA still has a number of concerns that need to be addressed. NAIFA will be working on having these concerns addressed during Senate and House floor debates, and during the House-Senate conference. These concerns include:

- **Continuous Coverage** - Efforts to address concerns about the economic impact of both the employer mandate on businesses that do not currently offer health insurance, and about the individual mandate on middle class Americans have resulted in lowering the penalty for those who do not carry insurance coverage. The penalty for not maintaining coverage differs among the various reform plans, but ranges from as low as nothing in the first year under the Finance Committee plan to an excise tax of no more that \$750 per adult under the HELP plan. But weak mandates could devastate affordable insurance—if people can carry insurance only when they're sick or injured, the price of insurance will skyrocket for everyone. This is a very difficult problem that Congress must resolve.
- **FSAs** - Senate Finance includes a cap on annual contributions to flexible spending arrangements (FSAs). We support an effort to index (or eliminate) the cap on annual contributions to FSAs.
- **Medical Malpractice** - NAIFA continues to believe that medical malpractice reform should be addressed. CBO found that medical malpractice reform that includes caps on damages could achieve some \$41 billion in health care savings.
- **Paying for Reform** - There is growing opposition in the House to the Senate's proposed "luxury tax" on health insurance. There is also growing opposition to the surcharge on high-income Americans contained in the House bill. Further, many lawmakers want to enhance federal subsidies to make health insurance more affordable. Finding acceptable new tax revenue to pay for health reform will continue to be a difficult problem lawmakers must solve.
- **Next Steps:** The bill now goes to Senate leadership for melding with the plan approved by the Senate's Health, Education, Labor and Pensions (HELP) Committee. The melded bill will then go to the Senate floor for what insiders predict will be another extended debate.

NAIFA Staff Contact: Diane Boyle, NAIFA's Health & Employee Benefits Lobbyist, at dboyle@naifa.org.

Back to [NAIFA GovWatch](#)

Copyright © 2010 National Association of Insurance and Financial Advisors. All Rights Reserved.

NAIFA, 2901 Telestar Court, Falls Church, VA 22042-1205 | 877-TO-NAIFA | membersupport@naifa.org





NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS
 Founded in 1890 as the National Association of Life Underwriters

ADVOCACY



GOVWATCH

THE VOICE OF THE AGENT

U.S. House Committee Marks Up Legislation to Establish Fiduciary Standards of Care for Broker-Dealers and their Reps

Approves Several NAIFA-Supported Amendments But Threats Still Remain

Issue: Financial Services Regulatory Reform

Date: October 28, 2009

The House Financial Services Committee (Chairman Barney Frank, D-MA) today began to mark up legislation which would bring investment advisers and broker-dealers under a harmonized fiduciary standard of care. The bill, known as the Investor Protection Act of 2009 (IPA), was introduced earlier this month by Rep. Paul Kanjorski (D-PA), Chairman of the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises (See [October 6 GovWatch](#)).

Impact on NAIFA Members: The IPA will have huge ramifications for NAIFA members and the way you interact with your clients. This legislation covers disclosures to investors, commission compensation, and harmonized examinations for investment advisers, broker dealers and registered representatives.

NAIFA Progress: A modified version of Chairman Kanjorski's bill was circulated on Monday, October 26. The updated "manager's draft" (Subcommittee Chairman Kanjorski and full Committee Chairman Barney Frank's changes to the IPA) included some helpful improvements to the original draft—improvements which NAIFA strongly supported. We therefore submitted comments to House Financial Services Committee staff regarding the October 26 version of the IPA. Those comments can be found [here](#).

Today, NAIFA staff was able to work with key members of the Financial Services Committee to make further improvements to the IPA. Those improvements include:

- An amendment by Rep. Dan Maffei (D-NY) clarifying that broker-dealers and their registered reps who only offer a limited suite of products will not be considered in violation of the fiduciary standard for that reason. – Adopted
- An amendment by Rep. Keith Ellison (D-MN) clarifying that the fiduciary standard of care will only apply when a registered rep or investment adviser is providing personalized investment advice "about securities." - Adopted
- An amendment by Rep. Michael Capuano (D-MA) to require the Government Accountability Office to conduct a study regarding the regulation of financial planners. – Adopted

Rep. Capuano was initially planning to offer an amendment to make "financial planning" a recognized profession subject to an additional layer of regulation and oversight from a Financial Planning Oversight Board. NAIFA, through our grassroots efforts, was able to convince Rep. Capuano that his proposed amendment would result in a major overhaul of an already heavily regulated financial services marketplace. He therefore agreed to change his amendment to ask the GAO to study the issue.

Rep. Ellison offered—but subsequently withdrew—an amendment to express concerns about language that registered reps or investment advisers must act in the "best interest" of a client "without regard to the financial interest of the broker,

dealer..." Rep. Ellison offered his amendment in order to go on the record as having concerns with this language, but then withdrew it after a commitment from Chairman Frank to address this issue in the report language of the bill (the official document which clarifies the intent of legislative language). Rep. Maffei also spoke to share the concerns of Rep. Ellison. NAIFA understands from the Chairman's staff that the "without regard to the financial interest" language is not intended to define the fiduciary standard, **and will continue to work with the Chairman to address this harmful language.**

Next Steps: The Committee has not yet completed marking up the IPA bill but it is expected to be approved when they return to this markup on Tuesday, November 3. The bill is then expected to be taken up on the House floor, as part of a comprehensive regulatory reform package, the 3rd week of November.

Grassroots Action Needed: NAIFA has had great success in making improvements to the IPA but there is still much work to be done. Our biggest outstanding concern is the bill will keep open the door for the SEC to ban commissioned based sales. We are currently working on a House floor strategy to address this major outstanding concern.

Please join your NAIFA Government Relations Team for a webinar on the Investor Protection Act of 2009 to learn more about this issue and how you can make an impact. The webinar will be held on Thursday, October 29, 2009 from 3:00 to 3:30 pm Eastern Time. [Click here to register](#) for the webinar.

This webinar is a follow up to the October 23 webinar. Therefore, if you missed that one, you can bring yourself up to speed before Thursday's webinar. [Click here](#) to access the October 23 webinar. (Space is limited to 1,000.) [Click here](#) to access the issue brief.

NAIFA Staff Contact: Jill Edwards, Assistant Vice President – Federal Government Relations, at jilledwards@naifa.org.

Back to [NAIFA GovWatch](#)

Copyright © 2010 National Association of Insurance and Financial Advisors. All Rights Reserved.

NAIFA, 2901 Telestar Court, Falls Church, VA 22042-1205 | 877-TO-NAIFA | membersupport@naifa.org





NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS
 Founded in 1890 as the National Association of Life Underwriters

ADVOCACY



GOVWATCH

THE VOICE OF THE AGENT

Speaker Pelosi Reveals Merged House Health Reform

Issue: Health Care/Tax

Date: October 29, 2009

Action Taken: House leadership, led by Speaker Nancy Pelosi (D-CA), today announced completion of a health reform bill that combines the efforts of the House's Committees on Education & Labor, Energy & Commerce, and Ways & Means.

Below is a summary of its major provisions.

Government/Public Plan Option: The bill contains a government/public plan option, based on rates to be negotiated by a new government agency (the Health Choices Commission, or HCC). The government plan option would be one of many (the bill's authors hope) choices available to those who buy their insurance through an exchange. The government/public plan option would be subject to the same rules (e.g., insurance reform, essential benefits packages) as the private insurance sold through the exchange.

Exchange: The bill would create a national exchange. It would allow states to instead set up their own exchanges. Exchanges would offer private health insurance to individuals not otherwise covered by "acceptable" insurance, and to small businesses.

The exchange would be set up and administered by a new government agency, the Health Choices Commission (HCA). The HCA would promulgate nondiscrimination and parity (mental health) rules.

The bill specifically authorizes licensed insurance agents to act as enrollment agents and brokers. Exchange insurance, including the public health insurance option, would be bought by eligible individuals and businesses through enrollment agents and brokers.

States would be required to assist groups who want to establish "Consumer Operated and Oriented Plan Programs," or "co-ops" as options for health insurance that would be offered through the exchange.

Insurance Reforms: Beginning in 2010, a number of insurance reforms are mandated. They include:

- No rescissions except for fraud
- Guaranteed issue and renewability
- Limit on premium costs based on age to no more than a two to one ratio
- Community rating
- No use of health history or preexisting conditions (full prohibition against preexisting conditions becomes effective as of 1/1/13; between now and then, the look-back period is limited to 30 days; and exclusion of coverage due to preexisting conditions would be allowable for three rather than 12 months)
- No annual or lifetime benefit limits
- Parents could continue to cover their children on their health insurance policies up through age 26

- Insurance companies could have no more than an 85 percent loss ratio. If loss ratios fall below the 85 percent level, the excess would have to be rebated to policyholders. There is some flexibility built into this rule with respect to the individual market if market disruption results from the 85 percent loss ratio requirement.
- As of the date of enactment, employers would not be allowed to reduce retiree health benefits unless they are also reducing the same benefits for active employees
- Health insurers would have to provide at least 90 days notice prior to a premium increase

Long-Term Care Benefits: The melded House bill contains a new federal long term care program which would require employers to automatically enroll their workers (subject to an opt-out) in a program that would provide about \$50/day in benefits in the event that the worker became unable (at least five years after beginning participation) to perform at least two activities of daily living. The employee-paid premium for the program—known as the CLASS Act—would be required to be actuarially sound, but is expected to be about \$65/month, at least initially.

Individual Mandates: The bill contains an individual mandate that will require all individuals to carry health insurance. Failure to comply with this rule would result in an additional 2.5 percent tax on modified adjusted gross income. There would be a hardship exemption (based on affordability). There is language that specifies that those eligible for Medicaid, CHIP, Veterans Affairs (VA) coverage and other government health insurance programs would be deemed to have acceptable coverage.

Employer Mandate: The melded bill requires employers to offer and pay for health insurance for their workers. The rules are:

- Employers with payrolls of \$750,000 or more would be subject to the mandate
- Employers subject to the mandate would have to pay at least 72.5 percent of the cost of individual coverage, and 65 percent of the cost of dependent coverage. "Proportional" employer contributions to the premium would be required for "non fulltime" workers.
- Employers with payrolls of \$500,000 or less would be exempt from the employer mandate
- Failure to comply with the mandate would result in a tax of eight percent of payroll in excess of \$750,000. A two percent tax would apply to payroll starting at \$500,000, and the tax would graduate, in two percent increments, up to a payroll size of \$750,000.
- There would be a two-year tax credit for small employers electing to offer health insurance to their workers. The credit would be equal to 50 percent of the cost of the insurance for employers with 9 or fewer workers. The credit would phase down for employers with 10 to 25 workers. It would not be available to employers with 26 or more workers.

Essential Benefits Package: For health insurance to count as satisfying the health insurance mandates, it must include at least the "essential benefits package." The rules include:

- The package would have to be offered on a nondiscriminatory basis
- It would be recommended by a new government entity, the Benefits Advisory Committee (BAC), and then approved by the Department of Health and Human Services (HHS)
- Cost sharing would be limited, and could not exceed \$5,000 in out of pocket spending for individual coverage, or \$10,000 in dependent care coverage.
- The essential benefits package must have an actuarial value of at least 70 percent
- There could be no abortion benefits in an essential benefits package
- For policies that provide abortion benefits, there must be strict separation of private vs federal funds, and no federal funds could be used for abortion benefits

National Risk Pool: Between date of enactment and the date the exchange is up and operating (2013) there would be a national high risk pool program. Per this program, Congress would authorize \$5 million to insure people who have been denied coverage due to preexisting conditions and/or who have been without coverage for "several months." The program would stop if and when the \$5 million authorized is used up.

Antitrust Exemption: The bill states that the antitrust exemption available to health insurers and medical malpractice insurers would no longer be available for purposes of fixing prices, monopolizing markets, or dividing market territories.

Taxes (Offsets): The bill is principally offset by savings in Medicare (including Medicare Advantage) and new taxes. The new taxes include:

- An indexed annual cap of \$2,500 on contributions to flexible spending accounts (FSAs)
- An increase from 10 percent to 20 percent in the penalty tax for early (prior to age 65) withdrawals (for nonmedical expenses) from health savings accounts (HSAs)
- Modification of rules for permissible tax-free withdrawals from HSAs, FSAs and/or health reimbursement accounts (HRAs) to disallow use of HRA/FSA/HSA tax-free funds for over-the-counter medicines, unless those medicines are obtained via prescription
- A 5.4 percent surcharge on modified adjusted gross income in excess of \$500,000 for individuals and \$1 million for married couples filing joint tax returns
- Elimination of the tax deduction for employers receiving government subsidies for providing retiree prescription drug coverage
- Tax parity for employer-provided health coverage for domestic partners and other non-dependents
- Information reporting for payments made to corporations
- A 2.5 percent excise tax on the sale of medical devices (excluding resales and retail sales) for use in the United States

Medical Malpractice: The bill contains a limited incentive to States to set up alternatives to litigation in cases of medical malpractice (e.g., “early offer” or “certificate of merit” programs).

Interstate Sales of Insurance: The bill would allow States to enter into compacts for purposes of sale of health insurance across state lines.

COBRA Extension: The bill would extend COBRA eligibility (from 18 or 36 months as under current law) for the period between the health reform bill’s enactment and the date by which the exchange would be up and operating.

Medicare: The bill cuts Medicare Advantage programs, and makes the Medicare Part D prescription drug program available to those in the “donut hole”—those with incomes above certain levels, but below other levels—starting in 2010.

Wellness/Information Technology: The bill also includes incentives for employers that offer wellness programs, so long as the programs are offered on a nondiscriminatory basis; and authorization for information technology programs.

Next Steps: The legislation is still subject to change via a still-emerging “manager’s amendment”. The bill’s full text and manager’s amendment will be publically available for 72 hours before Members are asked to vote. The bill could go to the House floor for a vote by late next week (November 5 or 6), although that target date could slip.

Background Material:

[H.R. 3692 Bill Text](#) (1,990 pages)

[Section by Section Analysis](#)

[Major Changes](#)

[Implementation Timeline](#)

NAIFA Staff Contact: Diane Boyle, NAIFA’s Health & Employee Benefits Lobbyist, at dboyle@naifa.org.

Back to [NAIFA GovWatch](#)

Copyright © 2010 National Association of Insurance and Financial Advisors. All Rights Reserved.

NAIFA, 2901 Telestar Court, Falls Church, VA 22042-1205 | 877-TO-NAIFA | membersupport@naifa.org

