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H.R. 4872, the Health Care and Education Reconciliation Act of 2010

Summary.....	2
Major Provisions.....	2
Coverage, Medicare, Medicaid and Revenues.....	2
Coverage	2
Medicare	3
Medicaid	3
Fraud, Waste, and Abuse.....	3
Revenue	4
Higher Education Provisions Under the Finance Title	4
Education and Health	4
Legislative History	5
Expected Amendments	5
Administration Position	6
Resources	6

Summary

Together with the *Patient Protection and Affordable Care Act (H.R. 3590)*, the *Health Care and Education Reconciliation Act (H.R. 4872)* will ensure that all Americans have access to quality, affordable health insurance and will put middle-class families ahead of private banks. The Congressional Budget Office has determined that these two bills will reduce health care costs and give 95 percent of non-elderly Americans access to affordable health insurance. In addition, by eliminating wasteful subsidies to banks and reducing the cost of student loans, the bill will make college more affordable and invest in our nation's future. Together, the bills will reduce the deficit by \$143 billion over the next ten years and roughly \$1.3 trillion in the second decade. The *Health Care and Education Reconciliation Act* meets the reconciliation instructions included in the *Fiscal Year 2010 Budget Resolution (S. Con. Res. 13)* for both the Senate Finance Committee and the Health, Education, Labor and Pensions (HELP) Committee.

Major Provisions

By making targeted improvements to the *Patient Protection and Affordable Care Act*, the *Health Care and Education Reconciliation Act* makes a good bill even better.

Coverage, Medicare, Medicaid and Revenues

Title I includes provisions under the jurisdiction of the Finance Committee.

Coverage

- Makes plans in the Exchange more affordable by further limiting the cost of premiums and cost-sharing for individuals under 400 percent of poverty (a family of four with income less than \$88,000). Ensures that if costs grow faster than expected, the amount of tax credits will be reduced to more closely track the overall inflation rate.
- Modifies the assessment that individuals who remain uninsured pay by exempting income below the filing threshold. The individual assessment is the greater of a flat dollar payment, which has been lowered, and a percentage of income, which has been raised, as compared to the *Patient Protection and Affordable Care Act*.
- Improves employer responsibility provisions:
 - Raises large employer penalty cap from \$750 per worker to \$2,000 per worker
 - Strikes the penalty for waiting periods between 60 and 90 days;
 - Counts full-time equivalents toward the threshold for triggering a penalty, but does NOT impose any penalties for part-time workers;
 - Phases in the penalties as employers become larger by discounting 30 full-time workers from the per-worker penalty, eliminating a disincentive to creating new jobs; and
 - Eliminates the special rule for construction industry employers.

Medicare

- Provides a \$250 rebate for beneficiaries who hit the coverage gap or “donut hole” in 2010 and fills the donut hole for brand and generic drugs by 2020.
- Reduces Medicare Advantage overpayments in a targeted way that reflects the different needs of urban and rural areas. Provides a more refined approach that varies rates by local fee-for-service costs on a sliding scale. Includes three to seven year phase-in and increases MA benchmarks for high-performance plans. Ensures that Medicare Advantage plans spend at least 85 percent of revenue on medical costs or activities that improve quality of care.
- Lowers Medicare Disproportionate Share Hospital (DSH) cuts in the *Patient Protection and Affordable Care Act* from \$25.1 billion to \$22.1 billion and revises market basket updates to hospitals by \$9.9 billion.
- Adjusts the utilization rate changes included in the *Patient Protection and Affordable Care Act* to take into account the CMS imaging rule that went into effect on January 1. Sets the assumed utilization rate at 75 percent for the practice expense portion of advanced diagnostic imaging services.

Medicaid

- Equalizes and increases funding for the Medicaid expansion by providing 100 percent federal match in 2014, 2015, and 2016; 95 percent match in 2017; 94 percent match in 2018; 93 percent match in 2019; and 90 percent thereafter.
- For early expansion states, provides additional federal funding to reduce the cost of covering non-pregnant childless adults beginning in 2014. In 2019 and thereafter, all states will bear the same costs for covering non-pregnant childless adults.
- Increases payments for Medicaid primary care to Medicare rates in 2013 and 2014 and provides full federal support to do so.
- Lowers the reduction in federal Medicaid DSH payments in the *Patient Protection and Affordable Care Act* from \$18.1 billion to \$14.1 billion over ten years.
- Increases funding for the territories by \$2 billion, and provides territories the option to establish an Exchange.
- Delays Community First Choice Option for one year, until Fiscal Year 2011.
- Narrows the definition of new drug formulations for purposes of applying the Medicaid drug rebate.

Fraud, Waste, and Abuse

- Establishes new requirements for community mental health centers to prevent fraud and abuse.

- Modifies Medicare prepayment medical review limitations.
- Increases funding to fight fraud, waste, and abuse by \$250 million.
- Requires a 90-day period of oversight for initial claims of DME suppliers.

Revenue

- Delays implementation of the excise tax on high cost health plans until 2018; increases the thresholds for imposing the tax to \$10,200 for self-only plans and \$27,500 for family coverage. Adds adjustments for age and gender of enrollees.
- Delays the establishment of a \$2,500 cap on FSA contributions until 2013.
- For individuals with Adjusted Gross Income above \$200,000 for a single taxpayer and \$250,000 for a married couple, equalizes the Medicare contribution treatment for earned and unearned income.
- Closes the “black liquor” loophole that allows certain taxpayers to get an unintended tax credit for cellulosic biofuels.
- Establishes, in statute, the “economic substance doctrine” to prevent the use of transactions that generate tax benefits but which otherwise have no business purpose.

Higher Education Provisions Under the Finance Title

- Provides \$2 billion for community colleges to develop and improve educational or career training programs for workers eligible for Trade Adjustment Assistance.

Education and Health

Title II includes provisions under the jurisdiction of the HELP Committee.

Higher Education Provisions

- Beginning July 1, 2010, all new federal student loans will originate through the Direct Loan program, instead of through the Federal Family Education Loan program.
- Includes \$36 billion to address the Pell Grant shortfall and to increase the maximum Pell Grant to \$5,550 in 2010 and to \$5,975 by 2017. Starting in 2013, the grant will be linked to match rising costs of living for five years by indexing it to the Consumer Price Index
- Expands the Income-Based Repayment program. Starting in 2014, the bill will cap a new borrower’s loan payments at 10 percent of their net income, after adjustments for basic living costs, and will forgive any remaining debt after 20 years.
- Invests \$2.55 billion in Historically Black Colleges and Universities and other Minority-Serving Institutions.

- Includes \$750 million to bolster college access and other supports for students. It will more than double funding for the College Access Challenge Grant program to fund programs in every state that focus on informing students about college options and financing, increasing financial literacy and helping retain and graduate students.
- Ensures that the reconciliation instructions for the HELP Committee are met by reducing the deficit by at more than \$10 billion over ten years.

Health Provisions

- Extends important insurance reforms to existing plans, including bans on lifetime and annual limits, coverage of pre-existing conditions, a ban on rescissions, limits on waiting periods, and expanded coverage for young adults.
- Eliminates 340B inclusion of inpatient drugs; no exceptions to group purchasing exclusion.
- Increases the substantial investment in Community Health Centers to expand access to health care in communities where it is needed most.

Legislative History

The *Health Care and Education Affordability Reconciliation Act of 2010* (**H.R. 4872**) makes targeted improvements to **H.R. 3590**, the legislative vehicle for the *Patient Protect and Affordable Care Act of 2009*. **H.R. 3590** was presented to President Obama and signed into law on March 23, 2010.

On March 17, 2010, Rep. Spratt introduced **H.R. 4872**, the *Health Care and Education Affordability Reconciliation Act of 2010*. The bill was reported out by the House Budget Committee and, on March 21, 2010, the House passed **H.R. 4872** by a vote of 220-211. [Roll Call Vote [167](#)]

On March 23, 2010, the Senate began consideration of **H.R. 4872**, which follows the reconciliation instructions included in the *Fiscal Year 2010 Budget Resolution* (**S. Con. Res. 13**).

Expected Amendments

The DPC will distribute information on amendments as it becomes available to staff listservs.

Administration Position

On March 23, 2010, the White House released its Statement of Administrative Policy on H.R. 4872:

“The Administration strongly supports enactment of H.R. 4872, the Health Care and Education Reconciliation Act. Combined with the Patient Protection and Affordable Care Act, this legislation makes significant improvements that will help to give American families and small business owners more control of their own health care. Together, they make important changes – ending the worst practices of insurance companies; giving uninsured individuals and small business owners the same kind of choice of private health insurance that Members of Congress have; and bringing down the cost of health care for families and businesses while also reducing Federal budget deficits.

“These bills provide the necessary health reforms that the Administration seeks – affordable, quality care within reach for the tens of millions of Americans who do not have it today by providing the largest middle class tax cuts for health care in history, reducing premium costs and out-of-pocket expenses, and prohibiting insurance companies from denying coverage to the millions of Americans with pre-existing medical conditions. These bills also make critical improvements for Medicare beneficiaries including closing the coverage gap in the Medicare drug benefit known as the “donut hole.” They also bring new stability and security for the hundreds of millions who already have insurance by reining in the worst insurance industry abuses and putting in place reforms that increase transparency, improve the quality of care, and contain health care costs. They contribute to transforming the health care system to make health care more accessible and affordable for the American people. H.R. 4872 also includes provisions that would eliminate wasteful subsidies for student loan lenders and invest these savings to: fortify the Pell Grant program and increase Pell Grants for millions of students; strengthen community colleges; strengthen Historically Black Colleges and Universities and other Minority-Serving Institutions; and allow students to cap student loan payments at affordable levels. The education provisions are estimated by the Congressional Budget Office to reduce the deficit. The Administration urges quick action on this landmark reform.”

Resources

Information on the Patient Protection and Affordable Care Act (**H.R. 3590**) and the *Health Care and Education Affordability Reconciliation Act of 2010* **H.R. 4872** can be accessed [here](#).

Congressional Budget Office, Cost estimate for the amendment in the nature of a substitute to **H.R. 3590**, as proposed in the Senate on November 18, 2009 (November 18, 2009) available [here](#).

Congressional Budget Office, Cost estimate for the amendment in the nature of a substitute for **H.R. 4872**, as passed in the House on March 21, 2010 (March 23, 2010) available [here](#).

Congressional Research Service, “Health-Related Revenue Provisions: Changes Made by the Reconciliation Act of 2010 to **H.R. 3590**,” available [here](#).

Congressional Research Service, “Health Insurance Premium Credits in Senate-Passed **H.R. 3590**,” available [here](#).

Congressional Research Service, “Private Health Insurance: Changes Made by the Reconciliation Act of 2010 to Senate-Passed **H.R. 3590**,” available [here](#)