



## **The Health Care and Education Reconciliation Act**

### **Section-by-Section Analysis**

#### **TITLE I – COVERAGE, MEDICARE, MEDICAID AND REVENUES**

##### **Subtitle A – Coverage**

**Sec. 1001. Tax Credits.** Improves the financing for premiums and cost sharing for individuals with incomes up to 400% of the federal poverty level. Subsection (a) improves tax credits to make premiums more affordable as a percent of income; and subsection (b) improves support for cost sharing, focusing on those with incomes below 250 percent of the federal poverty level. Starting in 2019, constrains the growth in tax credits if premiums are growing faster than the consumer price index, unless spending is more than 10 percent below current CBO projections.

**Sec. 1002. Individual responsibility.** Modifies the assessment that individuals who choose to remain uninsured pay in three ways: (a) exempts the income below the filing threshold, (b) lowers the flat payment from \$495 to \$325 in 2015 and from \$750 to \$695 in 2016 and (c) raises the percent of income that is an alternative payment amount from 0.5 to 1.0 percent in 2014, 1.0 to 2.0 percent in 2015, and 2.0 to 2.5 percent for 2016 and subsequent years to make the assessment more progressive.

**Sec. 1003. Employer responsibility.** Improves the transition to the employer responsibility policy for qualifying employers by subtracting the first 30 full time employees from the payment calculation (e.g., a firm with 51 workers full-time that does not offer coverage will pay an amount equal to 51 minus 30, or 21 times the applicable payment amount per employee). Applies the same size threshold for all employers. The provision also changes the applicable payment amount for firms that do not offer coverage to \$2,000 per full-time employee. Employers who offer coverage but whose employees receive tax credits will also see the aggregate cap on payments increased to \$2,000. Also, eliminates the assessment for workers in a waiting period, while applying the same size threshold for all firms subject to the employer responsibility requirement.

**Sec. 1004. Income definitions.** Modifies the definition of income that is used for purposes of tax credit and subsidy eligibility and the individual responsibility requirement. The modifications conform the income definition to information that is currently reported on the Form 1040 and to the present law income tax return filing thresholds. The provision also extends the exclusion from gross income for employer provided health coverage for adult children up to the end of the calendar year in which the child turns age 26.

**Sec. 1005. Implementation funding.** Provides \$1 billion to the Secretary of Health and Human Services to finance the administrative costs of implementing health insurance reform.

### *Subtitle B - Medicare*

**Sec. 1101. Closing the Medicare prescription drug “donut hole”.** Provides a \$250 rebate for all Medicare Part D enrollees who enter the donut hole in 2010. Builds on pharmaceutical manufacturers’ 50 percent discount on brand-name drugs beginning in 2011 to provide 75 percent coverage for brand-name and generic drugs by 2020 to fill the donut hole.

**Sec. 1102. Medicare Advantage payments.** Freezes Medicare Advantage payments in 2011. Beginning in 2012, reduces Medicare Advantage benchmarks relative to current levels. Benchmarks will vary from 95 percent of Medicare spending in high-cost areas to 115 percent of Medicare spending in low-cost areas, with benchmarks increased by five percentage points in all areas for high-quality plans. Changes will be phased-in over three, five or seven years, depending on the level of payment reductions. Extends CMS authority to adjust risk scores in Medicare Advantage for observed differences in coding patterns relative to fee-for-service and phases up the adjustment beginning in 2014.

**Sec. 1103. Savings from limits on MA plan administrative costs.** Ensures Medicare Advantage plans spend at least 85 percent of revenue on medical costs or activities that improve quality of care, rather than profit and overhead.

**Sec. 1104. Disproportionate share hospital (DSH) payments.** Advances Medicare disproportionate share hospital cuts to begin in fiscal year 2014 but lowers the ten-year reduction by \$3 billion.

**Sec. 1105. Market basket updates.** Revises the hospital market basket reduction that is in addition to the productivity adjustment as follows: -0.3 in FY2014 and -0.75 in FY2017, FY2018 and FY2019. Removes Senate provision that eliminates the additional market basket for hospitals based on coverage levels. Providers affected are inpatient hospitals, long-term care hospitals, inpatient rehabilitation facilities, psychiatric hospitals and outpatient hospitals.

**Sec. 1106. Physician ownership-referral.** Changes the date after which physician ownership of hospitals to which they self refer is prohibited to December 31, 2010, and provides a limited exception to the growth restrictions for grandfathered physician owned hospitals that treat the highest percentage of Medicaid patients in their county (and are not the sole hospital in a county).

**Sec. 1107. Payment for imaging services.** Changes the effective date of imaging cuts to January 1, 2011 (from January 1, 2010 in Senate-passed bill). Takes into account the CMS imaging rule that went into effect on January 1, 2010, but sets the assumed utilization rate at 75 percent for the practice expense portion of advanced diagnostic imaging services.

**Sec. 1108. PE GPCI adjustment for 2010.** Accelerates phase-in of Medicare physician practice expense adjustment for areas with below average practice expense payment rates. In 2010, the national blend would be increased from ¼ to ½.

**Sec. 1109. Payment for qualifying hospitals.** Provides an additional payment under the

Medicare inpatient prospective payment system to hospitals located in counties in the bottom quartile of counties as ranked by risk adjusted spending per Medicare enrollee.

**Subtitle C – Medicaid**

**Sec. 1201. Federal funding for States.** Strikes the provision for a permanent 100 percent federal matching rate for Nebraska for the Medicaid costs of newly eligible individuals. Provides federal Medicaid matching payments for the costs of services to newly eligible individuals at the following rates: 100 percent in 2014, 2015, and 2016; 95 percent in 2017; 94 percent in 2018; 93 percent in 2019; and 90 percent thereafter. In the case of expansion states, additional federal support for covering nonpregnant childless adults is phased-in so that in 2019 and thereafter, expansion states would receive the same FMAP as other states for newly-eligible and previously-eligible nonpregnant childless adults.

**Sec. 1202. Payments to primary care physicians.** Requires that Medicaid payment rates to primary care physicians for furnishing primary care services be no less than 100 percent of Medicare payment rates in 2013 and 2014. Provides 100 percent federal funding for the additional costs to States of meeting this requirement.

**Sec. 1203. Disproportionate share hospital payments.** Lowers the reduction in federal Medicaid DSH payments from \$18.1 billion to \$14.1 billion and advances the reductions to begin in fiscal year 2014. Directs the Secretary to develop a methodology for reducing DSH allotments to all states in order to achieve the mandated reductions. Extends through FY 2013 the federal DSH allotment for a state that has a \$0 allotment after FY 2011.

**Sec. 1204. Funding for the territories.** Increases federal funding in the Senate bill for Puerto Rico, Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands by \$2 billion. Raises the caps on federal Medicaid funding for each of the territories. Allows each territory to elect to operate a Health Benefits Exchange.

**Sec. 1205. Delay in Community First Choice Option.** Postpones from October 1, 2010 until October 1, 2011 the effective date of the option established for State Medicaid programs to provide community-based long term services and supports for individuals who require an institutional level of care.

**Sec. 1206. Drug rebates for new formulations of existing drugs.** For purposes of applying the additional rebate, narrows the definition of a new formulation of a drug to a line extension of a single source or innovator multiple source drug that is an oral solid dosage form of the drug.

**Subtitle D – Reducing Fraud, Waste, and Abuse**

**Sec. 1301. Community mental health centers.** Establishes new requirements for community mental health centers that provide Medicare partial hospitalization services in order to prevent fraud and abuse.

**Sec. 1302. Medicare prepayment medical review limitations.** Streamlines procedures to

conduct Medicare prepayment reviews to facilitate additional reviews designed to reduce fraud and abuse.

**Sec. 1303. Funding to fight fraud, waste and abuse.** Increases funding for the Health Care Fraud and Abuse Control Fund by \$250 million over the next decade. Indexes funds to fight Medicaid fraud based on the increase in the Consumer Price Index.

**Sec. 1304. 90-day period of enhanced oversight for initial claims of DME suppliers.** Allows a 90-day period of enhanced oversight and withholding of payment in cases where the HHS Secretary identifies a significant risk of fraud among DME suppliers.

#### *Subtitle E – Revenues*

**Sec. 1401. High-cost plan excise tax.** Levies an excise tax of 40 percent on insurance companies and plan administrators for any health coverage plan to the extent its cost is above the threshold of \$10,200 for single coverage and \$27,500 for family coverage. This threshold will be increased if growth in the cost of group coverage before 2018 is higher than expected. The tax applies to self-insured plans and plans sold in the group market, but not to plans sold in the individual market (except for coverage eligible for the deduction for self-employed individuals). The threshold does not include stand-alone dental and vision coverage. The threshold would be indexed at CPI-U plus one percentage point in year 2019 and CPI-U in years thereafter. An additional threshold amount of \$1,650 for self-only and \$3,450 for family coverage is available for retired individuals age 55 and older and for plans that cover employees engaged in high risk professions. An adjustment to the thresholds is also available for employers whose health costs are higher due to the age or gender of their workers. This provision is effective beginning after December 31, 2017.

**Sec. 1402. Unearned income Medicare contribution.** Equalizes the tax treatment of earned and unearned income under the Medicare contribution for taxpayers with income above \$200,000 for singles (\$250,000 for married couples filing jointly). The provision imposes a 3.8 percent tax (identical to the combined employer/employee tax rates on earned income) on income from interest, dividends, annuities, royalties and rents which are not derived in the ordinary course of trade or business, excluding active S corporation or partnership income. Only income in excess of the thresholds is subject to the tax. The proposal would be effective for taxable years beginning after December 31, 2012.

**Sec. 1403. Delay of the annual limitation on contributions to a health FSA.** Delays for two additional years the \$2,500 cap on contributions to health Flexible Spending Arrangements so that it is effective for years beginning after December 31, 2012.

**Sec. 1404. Brand name pharmaceuticals.** The applicable amount of the fee on pharmaceutical manufacturers is changed to be as follows: \$2.5 billion in 2011, \$2.8 billion in years 2012-2013, \$3.0 billion in 2014-2016, \$4.0 billion in 2017, \$4.1 billion in 2018 and \$2.8 billion in 2019 and years thereafter. This provision is delayed for one year and is effective for years beginning after December 31, 2010.

**Sec. 1405. Excise tax on medical device manufacturers.** Strikes the fee on medical device manufacturers and replaces it with an excise tax on the sale of medical devices by the manufacturer or importer equal to 2.3 percent of the sales price. The tax is deductible for federal income tax purposes. The excise tax would not apply to any sale of eyeglasses, contact lenses, hearing aids, or any medical device of a type generally purchased by the public at retail. In addition, sales for export and sales of devices for use in further manufacturing would be exempt from the excise tax. The provision is effective for sales after December 31, 2012.

**Sec. 1406. Health insurance providers.** The applicable amount of the fee on health insurance providers is changed to be as follows: \$8.0 billion in 2014, \$11.3 billion in years 2015-2016, \$13.9 billion in 2017, and \$14.3 billion in 2018. For years after 2018, the amount of the annual fee is the amount for the preceding year increased by the rate of premium growth for the preceding calendar year. This provision alters the exemptions from the fee to include non-profits which receive more than 80 percent of their gross revenues from government programs that target low-income, elderly, or disabled populations. In addition, only 50 percent of net premiums written by entities who are exempt from federal income tax under Internal Revenue Code sections 501(c)(3), (4), (26), and (29) are included for purposes of determining an entity's market share. This provision is delayed for three years and is effective for years beginning after December 31, 2013.

**Sec. 1407. Delay of elimination of deduction for expenses allocable to Medicare part D subsidy.** Delays for two years the elimination of the deduction for the Part D subsidy so that it is effective for years beginning after December 31, 2012.

**Sec. 1408. Elimination of unintended application of cellulosic biofuel producer credit.** Adds an additional revenue provision. Modifies the \$1.01 per gallon cellulosic biofuel producer credit to exclude fuels with significant water, sediment, or ash content, such as black liquor. The provision would exclude from the definition of cellulosic biofuel any fuels that (1) are more than four percent (according to weight) water and sediment in any combination, or (2) have an ash content of more than one percent (according to weight). The provision would be effective for fuel sold or used after January 1, 2010.

**Sec. 1409. Codification of economic substance doctrine and penalties.** Adds an additional revenue provision. Clarifies the application of the economic substance doctrine which has been used by courts to deny tax benefits for transactions lacking economic substance. The provision would also impose a 40 percent strict liability penalty on underpayments attributable to a transaction lacking economic substance (unless the transaction was disclosed, in which case the penalty is 20 percent). This provision is effective for transactions entered into after the date of enactment.

**Sec. 1410. Time for payment of corporate estimated taxes.** Provides for a one-time adjustment to corporate estimated taxes for payments made during calendar year 2014.

**Subtitle F – Other Provisions**

**Sec. 1501. TAA for communities.** Appropriates \$500 Million a year for fiscal years 2010

through 2014 in the Community College and Career Training Grant program for community colleges to develop and improve educational or career training programs. Ensures that each state receives at least 0.5 percent of the total funds appropriated.

## **TITLE II – HEALTH, EDUCATION, LABOR, AND PENSIONS**

### **Subtitle A – Education**

**Section 2001. Short Title; References.** Provides that this subtitle may be cited as the “SAFRA Act,” and that, except as otherwise provided, whenever an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Higher Education Act of 1965.

#### **Part I—Investing in Students and Families**

**Section 2101. Federal Pell Grants.** Amends the Higher Education Act to include mandatory funding for the Pell Grant. This provides additional mandatory funding to augment funds appropriated to increase the federal maximum Pell Grant award by the change in the Consumer Price Index. The mandatory component of the funding is determined by inflating the previous year’s total and subtracting the maximum award provided for in the appropriations act for the previous year or \$4860, whichever is greater. Beginning in the 2018-2019 academic year, the maximum Pell award will be at the 2017-2018 level.

**Section 2102. Student Financial Assistance.** This section provides \$13.5 billion in mandatory appropriations to the Federal Pell Grant program.

**Section 2103. College Access Challenge Grant Program.** This section amends section 786 of the Higher Education Act by authorizing and appropriating \$150 million for fiscal years 2010 through 2014 for the College Access Challenge Grant program created under the College Cost Reduction and Access Act of 2007. Provides that the allotment for each State under this section for a fiscal year shall not be an amount that is less than 1.0 percent of the total amount appropriated for a fiscal year.

**Section 2104. Investment in Historically Black Colleges and Universities and Minority Serving Institutions.** This section amends section 371(b) of the Higher Education Act by extending funding for programs under this section created under the College Cost Reduction and Access Act of 2007 for programs at Historically Black Colleges and Universities and minority-serving institutions through 2019, including programs that help low-income students attain degrees in the fields of science, technology, engineering or mathematics by the following annual amounts: \$100 million to Hispanic Serving Institutions, \$85 million to Historically Black Colleges and Universities, \$15 million to Predominantly Black Institutions, \$30 million to Tribal Colleges and Universities, \$15 million to Alaska, Hawaiian Native Institutions, \$5 million to Asian American and Pacific Islander Institutions, and \$5 million to Native American non-tribal serving institutions.

## **Part II—Student Loan Reform**

**Section 2201. Termination of Federal Family Education Loan Appropriations.** This section terminates the authority to make or insure any additional loans in the Federal Family Education Loan program after June 30, 2010.

**Section 2202. Termination of Federal loan Insurance Program.** This section is a conforming amendment with regard to the termination of the FFEL program, limiting Federal insurance to those loans in the Federal Family Education Loan program for loans first disbursed prior to July 1, 2010.

**Section 2203. Termination of Applicable Interest Rates.** This section makes a conforming amendment with regard to the termination of the FFEL program limiting interest rate applicability to Stafford, Consolidation, and PLUS loans to those loans made before July 1, 2010.

**Section 2204. Termination of Federal payments to Reduce Student Interest Costs.** This section makes a conforming amendment with regard to the termination of the FFEL program by limiting subsidy payments to lenders for those loans for which the first disbursement is made before July 1, 2010.

**Section 2205. Termination of FFEL PLUS Loans.** This section makes a conforming change with regard to the termination of the FFEL program for federal PLUS loans by prohibiting further FFEL origination of loans after July 1, 2010.

**Section 2206. Federal Consolidation Loans.** This section makes conforming changes with regard to the termination of the FFEL program for federal consolidation loans. This section also provides that, for a 1 year period, borrowers who have loans under both the Direct Lending program and the FFEL program, or who have loans under either program as well as loans that have been sold to the Secretary, may consolidate such loans under the Direct Lending program regardless of whether such borrowers have entered repayment on such loans.

**Section 2207. Termination of Unsubsidized Stafford loans for Middle-Income Borrowers.** This section makes conforming changes with regard to the termination of the FFEL program for Unsubsidized Stafford loans by prohibiting further FFEL origination of loans after July 1, 2010.

**Section 2208. Termination of Special Allowances.** This section makes conforming changes with regard to the termination of the FFEL program by limiting special allowance payments to lenders under the FFEL program to loans first disbursed before July 1, 2010.

**Section 2209. Origination of Direct Loans at Institutions Outside the United States.** This section provides for the origination of federal Direct Loans at institutions located outside of the United States, through a financial institution designated by the Secretary.

**Section 2210. Conforming amendments.** This section makes conforming technical changes with regard to the termination of the FFEL program for Department of Education agreements

with Direct Lending institutions.

**Section 2211. Terms and Conditions of Loans.** This section makes conforming technical changes with regard to the termination of the FFEL program to clarify the terms and conditions of Direct Loans.

**Section 2212. Contracts.** This section directs the Secretary to award contracts for servicing federal Direct Loans to eligible non-profit servicers. In addition, this section provides that for the first 100,000 borrower loan accounts, the Secretary shall establish a separate pricing tier. Specifies that the Secretary is to allocate the loan accounts of 100,000 borrowers to each eligible non-profit servicer. The section also permits the Secretary to reallocate, increase, reduce or terminate an eligible non-profit servicer's allocation based on the performance of such servicer. In addition, this section appropriates mandatory funds to the Secretary to be obligated for administrative costs of servicing contracts with eligible non-profit servicers. This section also requires the Secretary to provide technical assistance to institutions of higher education participating or seeking to participate in the Direct Lending program. This section appropriates \$50 million for fiscal year 2010 to pay for this technical assistance. Additionally, this section authorizes the Secretary to provide payments to loan servicers for retaining jobs at location in the United States where such servicers were operating on January 1, 2010. This section appropriates \$25,000,000 for each of fiscal years 2010 and 2011 for such purpose.

**Section 2213. Income-Based Repayment.** The section amends the Income-Based Repayment program to cap student loan payments for new borrowers after July 1, 2014 to 10 percent of adjusted income, from 15 percent, and to forgive remaining balances after 20 years of repayment, from 25 years.

#### **Subtitle B – Health**

**Sec. 2301. Insurance Reforms.** Extends the prohibition of lifetime limits, prohibition on rescissions, and a requirement to provide coverage for adult children up to age 26 to all existing health insurance plans starting six months after enactment. Extends the limitation on excessive waiting periods to all existing group plans, effective in 2014. For group health plans, prohibits pre-existing condition exclusions in 2014, restricts annual limits beginning six months after enactment, and prohibits them starting in 2014. For coverage of adult children prior to 2014, the requirement on group health plans is limited to those adult children without an employer offer of coverage.

**Sec. 2302. Drugs Purchased by Covered Entities.** Repeals the underlying 340B expansion to inpatient drugs and exemptions to GPO exclusion. Exempts orphan drugs from required discounts for new 340B entities.

**Sec. 2303. Community Health Centers.** Increases mandatory funding for community health centers to \$11 billion over five years (FY 2011 – FY 2015).