

## H.R. 3962: Affordable Health Care for America Act

Much of H.R. 3962 is similar to the text of H.R. 3200, previously introduced and considered by the House Energy and Commerce, Education and Labor, and Ways and Means Committees. The following are key provisions the restaurant industry has been focused on in the health care debate as included in H.R. 3962, introduced October 29, 2009.

### **Employer Responsibility**

**1. Offer coverage:** Employers are required to offer a qualified health benefits plan to their employees and their dependents (individual coverage; family coverage = spouse and children).

If the employer does not offer a qualified health benefits plan or the employee declines employer coverage and obtains coverage in the exchange, the employer must pay 8% of payroll (average wages paid during the enrollment period) to the Health Insurance exchange for each such employee. Small employers<sup>1</sup> with payrolls under \$500,000 would not be required to pay the tax if they do not offer qualifying coverage. The percentage of tax is phased in for payrolls of \$500,001 to \$750,000.

<b>Annual Payroll of Preceding Year</b>	<b>Applicable Percentage of Payroll Tax</b>
\$500,000 or less	0 %
\$500,001 - \$585,000	2%
\$585,001 - \$670,000	4%
\$670,001 - \$750,000	6%
\$750,001 or more	8%

**2. Employer Contribution:** Employer must cover 72.5% of the employees' premium costs for individual coverage and 65% for family coverage. Contributions for part-time employees will be pro-rated based on the proportion of average weekly hours of employment and the minimum weekly hours for an employee (30 hours/week).

**3. Provide information to Health Choice Commissioner:** The employer is required to certify that they offer full-time employees the opportunity to enroll in a qualified health benefit plan as well as the months and the monthly premium for the lowest cost option. Employers must also provide the name, address and tax identification number of each full-time employee and the months covered under the qualified health benefits plan.

**4. Auto-enrollment of employees:**

Employers must automatically enroll their employees into the individual health plan offered with the lowest applicable employee premium. Employees can opt-out of

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<sup>1</sup> Small employer is defined as an employer with an annual payroll that does not exceed \$750,000 in a calendar year.

employer provided individual coverage (or choose another plan offered) if they make an affirmative election to do so. Employers shall provide employees a 30-day period to make such an affirmative election before auto-enrolling the employee in the individual plan with the lowest premium. Employers must provide employees a written notice of the employee's rights and obligations, including the option to opt-out.

### **Part-time Workers**

Employers are required to provide coverage for part-time employees or pay the excise tax. The amount of coverage the employer must provide for part-time employees will be pro-rated based on the proportion of average weekly hours of employment and the minimum weekly hours for an employee (30 hours/week). If the employer pays the excise tax, part-time employee salaries are factored into the excise tax calculation since the average salary paid by the employer is used in the calculation.

### **Small Business Exemption**

Employers with payroll of \$500,000 or less are exempted from the mandate to provide coverage for employees or the tax for not providing coverage. (Previously this applied to employers with payrolls of \$250,000 or less).

### **Essential Benefits Package**

This is the minimum coverage that can be offered outside the exchange, with an actuarial value of 70 percent. Limits employee out of pocket spending to \$5,000 for an individual and \$10,000 for a family (CPI indexed).

### **Small Businesses and the Exchange**

Small employers with 25 employees or less can participate in the exchange in the first year (2013). In 2014, employers with 50 employees or less are allowed into the exchange. In 2015, at minimum, the exchange is open to employers with 100 or fewer employees, but the Commissioner can expand this to all employers. Within the exchange, specified benefits packages must be offered (to be defined but more than the essential benefits package at 70 percent actuarial value). Once an employer (or individual) enrolls in coverage through the exchange, they remain eligible for coverage in the exchange, even if their status changes. Employers who offer coverage through the exchange must make at least the required contribution toward the coverage and permit their employees to choose any plan within the exchange.

### **Small Business Tax Credit**

Small employers may claim a tax credit for 50 percent of the employers' contribution towards an employee's health coverage. The tax credit is available to the employer for a maximum of two years. A small employer who has 10 or less employees and an average payroll of \$20,000 or less can receive the full 50 percent credit. The tax credit is phased out for employers with 10 to 25 employees and a payroll of \$20,000 to \$40,000. Employers with more than 25 employees can not receive the tax credit. Small employers also can not take the tax credit if the employee's compensation exceeds \$80,000.

**Nutritional Labeling**

The menu labeling agreement we reached earlier this year had been included in the Energy and Commerce Committee health reform package. As expected, no changes were made to the agreement. The legislative language can be found on page 1510.

**Revenue Raisers**

The language does not include a tax on alcohol or sugar-sweetened beverages.

A 5.4 percent surcharge on taxpayers whose adjusted gross income is in excess of \$500,000 (individuals) or \$1 million (couples) is used to raise a large amount of the offsetting revenue (\$460.5 billion over 10 years). Other provisions include information reporting for payments made to corporations; eliminates nontaxable reimbursements of over the counter medications from HSAs, HRAs, and health FSAs; limits contributions to health FSAs to \$2500.