

Chart: Key employer elements in House and Senate health care reform bills

Current House and Senate Democratic proposals for comprehensive health care reform include many issues of consequence to employer health benefit programs. The chart below compares key elements of each chamber’s approved bills:

- the Affordable Health Care for America Act ([HR 3962](#)), passed Nov. 7 by the House ([GRIST #20090275](#), Nov. 9, 2009); and
- the Patient Protection and Affordable Care Act ([HR 3590](#)), passed Dec. 24 by the Senate ([GRIST #20090333](#), Dec. 24, 2009).

The elements addressed in the chart are subject to change. What will or won’t be in final health care reform legislation won’t be known until both chambers pass a single bill, which President Obama is asking Congress to complete by late January or early February.

Provision	House bill (HR 3962)	Senate bill (HR 3590)
Employer mandate/ shared responsibility	Yes, starting in 2013	Yes, starting in 2014
Coverage/contribution requirement	Offer qualifying coverage and contribute 72.5% of cost for single coverage, 65% for family coverage for full-time employees (prorated for part-time staff)	Offer full-time employees (those working an average of 30 or more hours for at least one week in a month) coverage with minimum actuarial value of 60% and meeting minimum standards
Fee for not meeting coverage/ contribution requirement	Employers not offering coverage <ul style="list-style-type: none"> ▪ 8% of payroll, capped at the minimum contribution levels Employers offering coverage <ul style="list-style-type: none"> ▪ 8% of payroll, capped at the minimum contribution levels, for employees opting out and enrolled in exchange-based coverage 	Employers not offering coverage <ul style="list-style-type: none"> ▪ \$750 annually for every full-time employee if they have at least one full-time worker receiving income-based premium assistance to buy coverage through new health insurance exchanges Employers offering coverage that is unaffordable or does not meet minimum standards <ul style="list-style-type: none"> ▪ \$3,000 annually for each full-time employee receiving income-based assistance for health insurance exchange coverage ▪ Penalties capped at \$750 times total number of full-time employees ▪ No penalties for employees receiving free-choice vouchers

Provision	House bill (HR 3962)	Senate bill (HR 3590)
Employer mandate/ shared responsibility	Yes, starting in 2013	Yes, starting in 2014
Free-choice voucher	No provision	Offer vouchers to employees with household incomes at or below 400% of the federal poverty level (FPL) if their contribution for employer-sponsored coverage would be 8% to 9.8% of household income <ul style="list-style-type: none"> ▪ Voucher amount equal to highest (percentage) employer contribution to any of its own plans ▪ Vouchers to be used for purchasing exchange-based coverage; employees could keep any excess amounts
Auto-enrollment into employer plan	Yes	Yes, employers with more than 200 employees would have to auto-enroll new full-time employees
Employer reporting of employee health coverage	Yes, starting in 2013	Yes, starting in 2011 on employee's Form W-2
Individual coverage mandate	Yes, starting in 2013	Yes, starting in 2014
Penalty for no coverage	Surcharge equal to the lower of <ul style="list-style-type: none"> ▪ 2.5% of adjusted income above income tax filing threshold or ▪ National average premium on the exchange 	Penalty calculated as lesser of <ul style="list-style-type: none"> ▪ A national average premium for the year or ▪ Greater of <ul style="list-style-type: none"> – A percentage of income (up to 2% in 2015) or – \$95 in 2014, \$495 in 2015 and \$750 in 2016; indexed thereafter
Affordability subsidies for exchange-based coverage	Up to 400% of federal poverty level (FPL)	Up to 400% of FPL
Medicaid expansion	Yes, up to 150% of FPL	Yes, up to 133% of FPL
Health plan standards	Yes	Yes
Coverage and cost-sharing rules	Cover essential benefits; no pre-existing condition exclusions; no aggregate lifetime limits; cost-sharing restrictions, including no cost-sharing for preventive services Cover diagnosis and treatment of congenital or developmental deformity, disease or injury for children up to age 21; extend dependent child coverage to age 27 Grace period could affect applicability date.	Cover essential benefits; no pre-existing condition exclusions; no annual or lifetime limits; cost-sharing restrictions, including no cost-sharing for preventive services; no waiting periods exceeding 90 days (waiting periods of 60 to 90 days subject to penalty); external review procedures; medical loss-ratio standard for insured group health plans Extend dependent child coverage to age 26 Grandfathering provision could affect applicability date.

Provision	House bill (HR 3962)	Senate bill (HR 3590)
Tax changes and fees	Yes	Yes
Excise tax on high-cost coverage	No provision	Starting in 2013, 40% excise tax on value of coverage exceeding \$8,500/single, \$23,000/family (higher thresholds for certain groups) <ul style="list-style-type: none"> ▪ Coverage includes full cost of medical, dental or vision plans; on-site clinics; health flexible spending arrangement (FSA) contributions; and employer health savings account (HSA) contributions. ▪ Thresholds indexed to Consumer Price Index plus 1%.
Tax-free employer coverage for domestic partners and other family members	Yes	No
HSAs, health FSAs and health reimbursement arrangements	Starting in 2013, \$2,500 annual cap on health FSA contributions Starting in 2011, no tax-free coverage for nonprescribed items; higher penalty for nonqualified HSA distributions	Starting in 2011, \$2,500 (indexed) cap on annual health FSA contributions; no tax-free coverage for nonprescribed items; higher penalty for nonqualified HSA distributions
Other tax increases (selected)	Starting in 2011, 5.4% surcharge on taxpayers with adjusted gross income exceeding \$500,000 (single) or \$1 million (married filing joint return) Group health plan fees for federal comparative effectiveness research trust fund Tax on medical device sales	In 2013, Medicare payroll tax of 2.35% if annual earnings exceed \$200,000 (individual) or \$250,000 (couple); no change in 1.45% Medicare tax for others Group health plan fees for federal comparative effectiveness research trust fund Excise tax on indoor tanning services Fees on health insurers, pharmaceutical manufacturers and medical device manufacturers
Exchanges/gateways	Yes, starting in 2013	Yes, starting in 2014
Eligibility	Individuals and small employers	Individuals and small employers
Public health insurance plan option	Yes	No, multistate private plans to be overseen by the federal Office of Personnel Management
COBRA	Yes	No provision
Length of continuation period	Extend COBRA continuation period until individual eligible for other employer-sponsored or exchange-based coverage	

Provision	House bill (HR 3962)	Senate bill (HR 3590)
Employer wellness programs	Yes	Yes
Wellness initiatives	Small-employer grant program	Increase HIPAA wellness program incentive limit from 20% to 30% of total cost of coverage
Medicare changes	Yes	Yes
Medicare Advantage	Reduce Medicare Advantage plan payments	Change method for calculating Medicare Advantage plan payments
Medicare Part D	Change tax treatment for employers receiving Medicare Part D subsidy payments, eliminate Medicare Part D donut hole, discount brand-name drugs, negotiate Part D prices	Change tax treatment for employers receiving Medicare Part D subsidy payments, discount brand-name drugs, means-test Part D premium
Medicare Part B	Freeze Medicare Part B income thresholds for means-testing	No provision
Retiree medical protections	Yes	No provision
Maintenance-of-effort requirement	Limit retiree medical premium increases or cost-sharing/benefit reductions, unless changes also apply to active employee coverage	