

The Patient Protection and Affordable Care Act

Senate Majority Leader Harry Reid (D-NV) released the legislative text of the Senate's merged health care bill on November 18th. The following is a summary analysis of the key provisions impacting the restaurant industry.

EMPLOYER REQUIREMENTS

Coverage

Employers with less than 50 full-time employees are exempt. (See Small Business Exemption section below.)

For employers with 50 or more full-time employees...

An employer can provide minimum essential coverage. (See Minimum Coverage section below for definition.)

If an employer does not provide minimum essential coverage, and one or more full-time employees use a tax credit or cost-sharing to access coverage through the exchange, the employer must pay an assessment of the applicable payment amount (1/12th of \$750)¹ multiplied by the number of full-time employees in that month.

If an employer provides coverage, but an employee uses a tax credit or cost-sharing to access coverage through the exchange, the employer must pay the assessment. The overall amount of the assessment shall not exceed the applicable payment amount (1/12th of \$750) multiplied by the number of individuals employed as full-time employees during that month.

Key definitions:

Full-time employee: An employee who is employed on average at least 30 hours of service per week.

Premium Tax Credit and Cost Sharing Reduction: Subsidies provided to individuals who need assistance in obtaining affordable coverage on the Exchange.

Notice of Coverage Options

All employers must provide employees written notice at time of hiring (or with respect to current employees no later than March 1, 2013):

1. Inform employee of existence of the Exchange, including description of services, and manner in which employee may contact the Exchange.

¹ Applicable payment amount with respect to any month is 1/12 of \$750. (\$62.50 per month) It is adjusted to inflation after 2014.

2. If the employer plan's share of the total allowed costs of benefits is less than 60%, then the employee may be eligible for a premium tax credit and a cost sharing reduction if the employee purchases a plan through the Exchange.
3. If an employee purchases a qualified health plan through the Exchange, they will lose the employer contribution (if offered by the employer) in which all or a portion may be excludable from income for federal income tax purposes.

Waiting Period for Enrollment of Employees

An employer with 50 or more full-time employees (applicable large employer definition²) can choose to apply a waiting period of 30 days without penalty to enroll on any minimum essential coverage³ under an employer-sponsored plan. If an employer chooses a waiting period longer than 30 days, there is an assessment imposed on the employer of \$400 or \$600 for each full-time employee to whom the waiting period applies.

Length of Large Employer (200+) Waiting Period	Employer assessment for waiting period for applicable employees
30 days or less	No assessment
31-60 days	\$400 per full-time employee in the waiting period (adjusted to inflation after 2014)
61 or more days	\$600 per full-time employee in the waiting period (adjusted to inflation after 2014)

Automatic enrollment by employers with 200+ employees

An employer with more than 200 full-time employees that offers employee enrollment in one or more health benefit plans, shall automatically enroll new full-time employees in one of the plans offered and continue enrollment of current employees in the health benefits plan offered.

Any automatic enrollment program shall include adequate notice and opportunity for an employee to opt-out.

- Under the waiting period section of the bill, employers are allowed a 30-day waiting period without penalty. The automatic enrollment section does not explicitly state when automatic enrollment must occur.

Does not supersede state law, except where state law prevents an employer from instituting this automatic enrollment program.

² Applicable Large Employer: An employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year. (Seasonal workers excluded from 50 or more full-time employee count).

(Employees are not counted towards the 50 or more count if the workforce exceeds 50 full-time employees for 120 days or fewer in a calendar year AND employees in excess of 50 were seasonal workers during the 120 day period)

³ Bronze plan with a 60% actuarial value.

SMALL BUSINESS EXEMPTION

Businesses with less than 50 full-time employees are not required to offer coverage nor subject to penalties if their employees access coverage using tax credit or cost-sharing on the Exchange.

SMALL BUSINESS TAX CREDIT

Eligible small employers are those with no more than 25 “full-time equivalent employees” for the taxable year, the average annual wages of those employees do not exceed \$20,000, and the employer’s contribution⁴ for the employees for a qualified health plan in the Exchange is not less than 50% of the premium. The credit is available beginning in 2011, for two consecutive years beginning with the first taxable year the employer offers one or more qualified health plans through the Exchange.

Seasonal worker hours and wages are not counted for the purposes of the tax credit. Certain employees are also excluded, such as: any 2% shareholder of an S Corporation or their dependents, any 5% owner of an eligible small business and their dependent, leased employees.

The amount of credit is 50% of the lesser of the aggregate amount of the employer contribution for employees’ premiums of qualified health plans offered by the employer in the Exchange OR the average premium in the small group market. The amount of the credit is phased out based on number of employees and their average wages using a formula.

This small business tax credit is considered part of the general business credit and can be used against Alternative Minimum Tax obligations (beginning in 2011 and to carrybacks of such credits).

MINIMUM COVERAGE

An essential benefits package is required to:

1. Provide essential health benefits defined by Secretary of Health and Human Services,
2. Limit cost-sharing for such coverage (deductibles, coinsurance, copayments, or similar charges – does not include premiums),
3. Provide either Bronze (60% actuarial value), Silver (70%), Gold (80%), or Platinum (90%) level of coverage.

Individuals under 30 years, who are not certified for tax credit and cost-sharing because of affordability, can enroll in a catastrophic plan. A child-only plan will also be available for those under age 21.

⁴ A contribution, other than an employer contribution based on salary reduction.

INDIVIDUAL RESPONSIBILITY

Beginning in 2014, individuals are required to ensure that the individual and their dependents are covered with “minimum essential coverage” for any month. If not, then a penalty is imposed on the individual of \$750 per calendar year (phased in at \$95 in 2014, \$350 in 2015). The penalty for dependents under 18 is half of the individual penalty per calendar year. There are exemptions for religious purposes as well as affordability of the penalty. If an individual has a gap in coverage of three continuous months or less, the penalty does not apply.

NUTRITIONAL LABELING

The menu labeling agreement we reached earlier this year are included in this bill. It is identical to what was included in the House passed bill, H.R. 3962. The language does include a pre-emption of state and local law. As expected, no changes were made to the agreement. Section 4205 of the bill can be found on pages 1228-1237 of the legislative text.