

Tech Flex

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UNITED STATES HEALTH CARE REFORM STATUS

As is being widely discussed, there are a number of efforts currently underway to implement health care reform in the United States. To date, no bills on this issue have been formally introduced. However, “draft bills” have been released in both the Senate and House for comment. It is expected that these drafts, once modified based on the feedback received, will be introduced as formal bills for legislative consideration.

It is important to note that at this point, all the suggested changes in relation to health care reform being floated are merely proposals. As with all legislative proposals, there may be many modifications before any final legislation changes are enacted into law. In order to become law, the bills presented in the Senate and House must be approved by the members of the legislative body where introduced. Once the House and Senate have approved their versions of health care reform, these versions must be reconciled into one piece of legislation approved by both the House and Senate. Upon approval by both the House and Senate, the bill must be signed by the President in order to become law. At this time, none of the required steps have been accomplished.

Please find below a brief summary of the proposals to date:

UNITED STATES SENATE FINANCE COMMITTEE PROPOSALS:

On May 20, 2009, the United States Senate Finance Committee chaired by Senator Max Baucus (D-MT) released a “Description of Policy Options” outlining proposals to raise tax revenue in order to fund modifications to the health care system in America. The proposals include options to modify the rules in relation to the exclusion from an employee’s taxable income the value of employer provided health care as well as modifications or elimination of the favorable tax treatment of health flexible spending accounts, health reimbursement arrangements and health savings accounts (HSA). The following is a brief summary of the current rules and the options for reform provided by the Senate Finance Committee.

Options to Modify the Exclusion for Employer-Provided Health Coverage

Current Tax Treatment:

Generally the tax code provides that employees are not taxed on the value of employer-provided health care. For example, if the premium of the employee's coverage is \$5,000 and the employer pays \$4,000 of that premium on the employee's behalf, the \$4,000 is NOT considered taxable income to the employee. Consequently, the employee does not pay federal income tax, or employment taxes (social security and Medicare) on the \$4,000 paid by the employer. In addition, employees participating in a Section 125 cafeteria plan are allowed to pay their share of premiums on a pre-tax basis through salary reductions. These salary reductions are considered employer contributions to health care and are also excluded from federal income and employment tax.

Proposed Options:

1. Limit the value of employer-provided health coverage that is excludible from gross income. The limit could be based on the value of the plan or the income of the insured, or the limit could be a combination of both.
2. Apply the excludible limit only to taxpayers whose incomes exceed a certain limit. For example, limits to the exclusions could be applied to taxpayers whose adjusted gross income (AGI) exceeds \$200,000 single filer or \$400,000 married filer. Limits could be phased down but not eliminated for taxpayers earning in excess of the AGI threshold or completely eliminated at a certain level.
3. Limit the exclusion based on both the value of employer-provided health insurance and the income of the taxpayer. For example, the value of a plan in excess of the actuarial value could be includible in wages for taxation for a single taxpayer with an AGI over \$200,000 or \$400,000 for married filers.

Also, it is proposed that factors such as geographic cost of living including medical costs of a taxpayer could be used to determine a taxpayer's exclusion limit.

Modify or Repeal the Itemized Deduction for Medical Expenses

Current Tax Treatment:

Individuals are allowed to claim an itemized tax deduction for unreimbursed medical expenses but only to the extent that such expenses exceed 7.5% of the individual's AGI. Consequently, the deduction is beneficial only if the following two conditions are met: (1) the taxpayer's medical expenses exceed the 7.5% of the AGI threshold, and (2) the taxpayer itemizes his/her deductions (as opposed to taking the standard deduction). The deduction is available to insured and uninsured individuals. Insurance premium expenses may be included only if not employer-provided or paid on a pre-tax basis.

Proposed Options:

1. Raise the 7.5% AGI threshold for the itemized deduction for medical expenses.
2. Eliminate the itemized deduction for medical expenses.

Modify Health Savings Accounts

Current Tax Treatment:

Individuals who are covered under health plans with a minimum specified deductible known as a "high deductible health plan" (HDHP) are allowed to make tax deductible and/or pre-tax contributions to a health savings account (HSA). An HSA is a tax-exempt account held by a trustee or custodian for the benefit of the individual. Subject to certain specified dollar amounts (\$3,000 for self only coverage and \$5,950 for family coverage in 2009), contributions made to an HSA by individuals are deductible for tax purposes. Also, employer contributions to an HSA (including employee pre-tax contributions) are excludable from taxation. In addition, income investments made from an HSA are not taxable.

Disbursements from the HSA for qualified medical expenses are not taxable to the individual. However, distributions made for non qualified expenses are included in gross income of the accountholder and subject to a 10% additional penalty. The initial determination of whether a distribution is for a qualified medical expense is based on self-substantiation of the accountholder.

Proposed Options:

1. Limit HSA contributions to the lesser of the individual's deductible under the HDHP or the dollar amount of the maximum allowable aggregate HSA contributions.
2. Increase the additional tax penalty for non qualified expense HSA distributions to 20% from 10%.
3. Provide that distributions from an HSA would only be excludible from gross income if qualified expenses are substantiated by the employer or an independent third party.
4. If a limit were to be placed on the current exclusion for employer-provided health coverage, HSA contributions could be counted against that limit.

For a copy of the "Description of Policy Options," please click on the link provided below:

<http://finance.senate.gov/sitepages/leg/LEG%202009/051809%20Health%20Care%20Description%20of%20Policy%20Options.pdf>

AFFORDABLE HEALTH CHOICES ACT DRAFT—INITIALLY ISSUED ON JUNE 9, 2009:

On June 9, 2009, Senator Edward Kennedy (D-MA) and the Democratic members of the Senate Committee on Health, Education, Labor and Pensions (HELP) released a copy of the Affordable Health Choices Act (Act). As drafted, this health reform legislation is 615 pages in length.

The Affordable Health Choices Act includes the following five major elements: choice, cost reduction, prevention, health system modernization, and long term care and services. For details regarding each of the elements (as described by the writers of the draft), please click here: [\[LINK\]](#)

HELP has stated that it will continue to make changes to Affordable Health Choices Act beginning on July 6, 2009 with an anticipated date of completion of July 10, 2009.

For a copy of the Affordable Health Choices Act, please click on the link provided below:

http://help.senate.gov/BAI09A84_xml.pdf

**UPDATE TO AFFORDABLE HEALTH CHOICES ACT PROPOSES—ISSUED ON JULY 1, 2009:
PENALIZING FIRMS WHO DO NOT PROVIDE HEALTH COVERAGE TO EMPLOYEES**

Democrats on the Senate Health, Education, Labor and Pensions Committee released an updated version of a health care overhaul plan July 1, 2009, including a public plan option and penalties for individuals and employers who fail to provide coverage for employees.

The legislation would tax employers with more than 25 workers \$750 a year for each full-time employee and \$375 for each part-time employee who is not provided health insurance at work. The legislation also would create a "small-business health options program credit" giving certain employers \$1,000 for each employee who receives self-only insurance through the employer, \$2,000 for each employee who receives family health insurance through the employer, and \$1,500 for each employee who receives coverage for two adults or one adult and at least one child through the employer.

For a copy of the revised Affordable Health Choices Act DISCUSSION DRAFT, please see the above attached document.

http://help.senate.gov/BAI09F54_xml.pdf

HOUSE DRAFT RELEASED BY COMBINED COMMITTEES

The three House Committees responsible for health care reform legislation: specifically, the Ways and Means, Energy and Commerce, and Education and Labor released an 852-page draft bill on June 19, 2009. The bill (not yet named) includes individual and employer mandates, a federal health insurance exchange, a public health insurance option and insurance reform, as well as changes to Medicare and Medicaid. The House Ways and Means Committee will begin marking up its portion of the bill during the week of July 13, 2009. Committee members will consider a variety of funding options.

Some of the key components of the House draft include: coverage and choice, affordability, shared responsibility, prevention and wellness, workforce investments, controlling costs, modernization and improvement of Medicare, innovation and delivery reform through the public health insurance option, and preventing waste, fraud and abuse. For details regarding each of the components (as described by the writers of the draft), please click here: [\[LINK\]](#)

For a copy of the entire 852 page House discussion draft bill, please click on the link provided below:

<http://waysandmeans.house.gov/media/pdf/111/hrdraft1.xml.pdf>

MINNESOTA PROVIDES RELIEF ON EMPLOYER REPORTING AND OPT – OUT FORM

In the April 2009 Tech Flex [\[LINK\]](#), it was reported that a recently enacted Minnesota law (MN. Sec. 290.0678), effective for taxable years beginning after December 31, 2008, for premiums paid in January 2009 and thereafter, requires all employers to make a new annual report to each Minnesota employee. The report must include the dollar amount of any health insurance premiums paid by the employee (on a pre-tax basis) through a "cafeteria" plan under Section 125 of the Internal Revenue Code. **The new report must be made when the employee is sent an Internal Revenue Service Form W-2 by the employer. The first reports will be due in January 2010 and must include all premiums paid during 2009.** The new report is to be provided to employees in order for them to claim a credit for Minnesota state taxes, if applicable.

HOWEVER, Minnesota has amended this law imposing a reporting requirement on employers with respect to pre-tax premium payments **to provide that an employer needs only to provide the statement on request.** In addition, the employer only needs to provide one statement per year.

Opt – Form Provided

The law requiring the adoption of a cafeteria plan does allow employers to opt out of this requirement by filing a form with the Minnesota Department of Commerce. The Minnesota Department of Commerce has released an opt-out form for use by employers exercising this option.

For a copy of the opt-out form, please click on the link provided below:

<http://www.state.mn.us/portal/mn/jsp/content.do?id=-536893703&contentid=536917888&contenttype=EDITORIAL&programid=null&agency=Insurance>.

NEBRASKA RAISES INSURED PLAN DEPENDENT AGE TO 30

As a result of newly enacted legislation (LB 551) Nebraska health insurers and health maintenance organizations (HMOs) must, effective January 1, 2010, allow insured individuals to continue to cover an unmarried child until age 30. LB 551 requires that insured plans covering children must offer coverage to them if the children would otherwise lose coverage under the terms of the plan because of age or loss of dependency. The plan may require an additional premium in relation to the extended coverage for the children. However, employers are not required to contribute to the additional premium cost.

In order to be entitled to the extended coverage, a child must be a state resident or a full-time student or under age 19. Under the new law, the requirement to extend coverage ends on the last day of the month in which the child marries, reaches the age of 30 or becomes covered under another health plan with similar coverage.

For a copy of LB 551, please click on the link provided below:

<http://nebraskalegislature.gov/FloorDocs/Current/PDF/Slip/LB551.pdf>

PENNSYLVANIA INCREASES DEPENDENT AGE OPTION TO 30

As a result of Senate Bill 189 and effective September 8, 2009, Pennsylvania health insurers and health maintenance organizations (HMOs) must provide employers the **option** to extend coverage to age 30 for their covered employees' children. In order to be eligible for the extended coverage period, the children must either be residents of the state of Pennsylvania or full-time students without any health coverage under their own name. In addition, the children must be unmarried and have no dependents of their own.

The new law does not apply to stand-alone dental or vision plans and insurers may determine premium increases for continuation of coverage for the adult dependent past the age of 19. Employers are NOT required to include the extended coverage in its employee benefit offerings. If the employer chooses to do so, the employer is allowed to charge employees the full cost of the extended coverage.

For a copy of the Pennsylvania Senate Bill 189, please click on the link provided below:

http://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2009&sind=0&body=S&type=B&bn=189

EMPLOYERS MAY CONTINUE TO USE CURRENT FORM I-9

The federal Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS) announced on June 26, 2009, that employers can continue to use the current Form I-9 (Rev. 02/02/09) N after the form's expiration date of June 30, 2009.

As background, all employers in the United States must complete and retain a Form I-9 for each individual they hire for employment in the United States. This includes citizens and non-citizens. On the form, the employer must examine the employment eligibility and identity document(s) an employee presents to determine whether the document(s) reasonably appear to be genuine and relate to the individual and record the document information on the Form I-9.

The USCIS Announcement is as follows:

USCIS Issues Guidance on Employment Eligibility Verification Form

Form I-9 Remains Valid Beyond Current Expiration Date of June 30, 2009

WASHINGTON—U.S. Citizenship and Immigration Services (USCIS) announced today that the Employment Eligibility Verification form I-9 (Rev. 02/02/09) currently on the USCIS Web site will continue to be valid for use beyond June 30, 2009.

USCIS has requested that the Office of Management and Budget (OMB) approve the continued use of the current version of Form I-9. While this request is pending, the Form I-9 (Rev. 02/02/09) will not expire.

USCIS will update Form I-9 when the extension is approved. Employers will be able to use either the Form I-9 with the new revision date or the Form I-9 with the 02/02/09 revision date at the bottom of the form.

For more information on USCIS and its programs, visit www.uscis.gov.

IRS RELEASES REVISED FORM 941-X

The Internal Revenue Service has released a revised Form 941-X, “Adjusted Employer’s Quarterly Federal Tax Return or “Claim for Refund” and the “Instructions for Form 941-X”, dated June 1, 2009. Form 941 “Employer’s Quarterly Federal Tax Return” is used by employers to report employment taxes, withholding amounts, deposit amounts, and amounts due to the IRS. Form 941-X is used to file adjustments to previously filed Forms 941.

The revisions were necessary to accommodate provisions in the American Recovery and Reinvestment Act of 2009 (ARRA). Specifically, ARRA provides that persons known as “assistance eligible individuals” will be considered to have paid the required Consolidated Omnibus Budget Reconciliation Act (COBRA) premium if they pay 35 percent of the COBRA premium. The remaining 65 percent will be paid on their behalf generally by the former employer who will be reimbursed by the government in the form of a credit to payroll taxes owed by the employer to the Internal Revenue Service. Any amounts owed to the employer or other provider of the subsidized 65 percent of the premium in excess of the amount that can be taken as a credit against payroll taxes will be reimbursed in the form of a refund.

The revised Form 941-X adds Lines 17a, COBRA premium assistance payments, and 17b, Number of individuals provided COBRA premium assistance payments, where employers will report adjustments to the amounts reported on Lines 12a and 12b of Form 941. Lines 17-20 on the original Form 941-X are now lines 18-21 on the revised form, which means that the total of the adjustments on the form should be entered on Line 18 rather than Line 17 and the explanation for adjustments made on the form should be entered on Line 21 rather than Line 20.

For a copy of the revised Form 941-X, please click on the link provided below:

<http://www.irs.gov/pub/irs-pdf/f941x.pdf>

For a copy of the revised Form 941-X Instructions, please click on the link provided below:

<http://www.irs.gov/pub/irs-pdf/i941x.pdf>

IRS: TWO FORMS W-2C NEEDED TO CORRECT ERRONEOUS TAX YEAR OR EIN

In the Summer 2009 Edition of the Social Security Administration / Internal Revenue Service Reporter (SSA/IRS Reporter), the IRS has stated that in order to correct an incorrect tax year or employer identification number on Form W-2 (Wage and Tax Statement), **two Forms W-2c** (Corrected Wage and Tax Statement) must be filed as follows:

- File one Form W-2c showing the incorrect tax year or EIN and reducing the previously reported money amounts to zero.
- File a second Form W-2c reporting the money amounts (showing zeros in the “previously reported” columns) in the correct year or with the correct EIN.

The article in the Summer 2009 Edition of the SSA/IRS Reporter states as follows:

Correcting an Incorrectly Reported Tax Year or employer Identification Number (eIN). To correct an incorrect tax year or EIN on Form W-2, file one Form W-2c showing the incorrect tax year or EIN and reducing the previously-reported money amounts to zero. You will also need to file a second Form W-2c reporting the money amounts (showing zeros in the “Previously reported” columns) in the correct year or with the correct EIN. Consider our free W-2c Online software from our Business Services Online website, www.socialsecurity.gov/employer

To access the Summer 2009 Edition of the SSA/IRS Reporter in its entirety, please click on the link provided below:

<http://www.irs.gov/pub/irs-pdf/p1693.pdf>

FEDERAL MINIMUM WAGE INCREASE EFFECTIVE JULY 24, 2009

Effective July 24, 2009, the federal minimum wage will be increasing to \$7.25 per hour from the current level of \$6.55 per hour. The tipped employee minimum hourly rate will remain at \$2.13 per hour in cash wages. Consequently, the maximum tip credit will be changing from \$4.42 per hour to \$5.12 per hour. ($\$2.13 + \$5.12 = \$7.25$).

This adjustment in the federal minimum wage is the final in a series of three increases resulting from the “Fair Minimum Wage Act of 2007,” which raised the federal minimum wage for the first time since 1997. This legislation which amended the Fair Labor Standards Act (FLSA) previously raised the \$5.15 minimum to \$5.85 per hour as of July 24, 2007 and then to \$6.55 per hour effective July 24, 2008.

NEW JERSEY AND MARYLAND RAISE MINIMUM WAGE

The states of New Jersey and Maryland will be increasing their respective minimum wages effective July 24, 2009 to match that of the federal minimum wage going into effect on that same date. It is important to note that an employee subject to the Fair Labor Standards Act (FLSA) cannot be paid less than the federal minimum wage. However, if the state has a higher minimum wage than what is required under the FLSA, then the employee would generally be entitled to the state minimum wage rate of pay.

New Jersey:

The minimum wage rate in New Jersey will be increasing to \$7.25 per hour from the current level of \$7.15 per hour as of July 24, 2009. The tipped employee minimum hourly rate will be remaining at \$2.13 per hour in cash wages. Therefore, the maximum tip credit will be increasing from \$5.02 per hour to \$5.12 per hour. ($\$2.13 + \$5.12 = \$7.25$).

New Jersey does not have a training/youth wage, opportunity wage, or sub-minimum wage rate.

Maryland:

Effective July 24, 2009, the minimum wage rate in Maryland will be changing from \$6.55 per hour to \$7.25 per hour. The maximum tip credit will remain at 50%. Consequently, the minimum cash wage will be changing from \$3.28 per hour to \$3.63 per hour. ($\$3.63 + \$3.62 = \$7.25$).

The training/youth wage, opportunity wage, and sub-minimum wage rate in Maryland will be remaining at \$4.25 per hour.

COLORADO PASSES PARENTAL INVOLVEMENT IN K-12 EDUCATION LEAVE LAW

On June 1, 2009, the Governor of Colorado signed House bill 09-1057 the “Parental Involvement K-12 Education” leave Act allowing parents or a legal guardian to take time off from work to attend academic activities involving their child. The new law is effective August 5, 2009 and provides up to six hours of unpaid leave per month but not to exceed eighteen hours per academic year. Academic activity includes meetings or conferences for the employee’s child, which includes a parent-teacher conference; a meeting regarding special education services; or a response to intervention; dropout prevention; attendance; truancy; or disciplinary issues. The new rule is a per child leave law and applies to any child for which the employee has primary legal responsibility.

Employers with 50 or more employees and who meet the Federal “Family and Medical Leave Act of 1993” are required to comply.

The employee is required to give the employer a “notice of the need for leave” at least one calendar week in advance of the leave and the employer can require the employee to provide written verification from the school or school district that supports the academic activity. The employer may also require that the leave be taken in no more than three-hour increments.

In drafting the bill, the Colorado General Assembly made note that the “involvement of parents and legal guardians in school-sponsored academic activities is critical to the successful education of Colorado’s children.”

For a copy of this legislation, please click on the link below:

http://www.leg.state.co.us/Clics/CLICS2009A/csl.nsf/fsbillcont3/72A677413BD8FA8F87257537001A374C?Open&file=1057_enr.pdf

NEVADA ENACTS PUBLIC- PRIVATE SCHOOL LEAVE FOR PARENTS

Certain employers in Nevada will soon be required to provide parents with four hours of leave per school year to attend parent-teacher conferences; school-related activities during regular school hours; volunteer for child involved activities; and attend school sponsored events. On May 28, 2009, the Governor of Nevada signed AB 243 to expand leave as an amendment to NRS 394.201 Education Chapter. Effective August 15, 2009, this new law provides that employers of 50 or more employees, who work each day for 20 or more weeks, should grant parents, guardians, or custodians of a child enrolled in a public or private school with unpaid leave to attend and be involved in school activities of the child. The leave is required for each child of the parent, guardian, or custodian who is enrolled in school.

The employer and employee must mutually agree on when leave is scheduled. The employee must also provide written request at least five school days before the leave is taken and should provide documentation that during the leave he/she attended and/or was involved in a specific school activity.

Part of the basis for implementing the new parental leave law was based on research which shows students with parents involved in school activity have higher grades, higher graduation rates, and overall better attendance.

For a copy of Nevada AB 243, please click on the link provided below:

http://www.leg.state.nv.us/75th2009/Bills/AB/AB243_EN.pdf

GUIDANCE PROVIDED ON INTERACTION BETWEEN FMLA AND CONNECTICUT LEAVE

The Connecticut Department of Labor (CTDOL) has published guidance to address employers' questions on the interaction between the new federal FMLA (FMLA) rules and Connecticut's FMLA (CTFMLA) rules. Where the laws are compatible, the CTDOL indicated that it would adjust its enforcement practices to reflect the FMLA's rules.

However, in some areas, the CTFMLA rules provide greater protections or are contrary to the FMLA rules, and the CTDOL says that it either will not incorporate these changes into its rules or needs to formally adopt new rules to change its enforcement procedures. Examples of areas where the rules differ include: protections for same-sex couples; treatment of bonuses based on attendance; light-duty treatment; certain notice requirements; medical certification requirements; exceptions to recertification requirements; and fitness-for-duty certifications.

For a copy of the CTDOL guidance, please click on the link provided below:

<http://www.ctdol.state.ct.us/wgwkstnd/fmla/FMLA-Guidance.pdf>

WISCONSIN EXPANDS LEAVE RIGHTS TO INCLUDE DOMESTIC PARTNERSHIPS

On June 29, 2009, Governor Doyle signed into law provisions which extend the Wisconsin Family and Medical Leave Law ("WFMLA") to domestic partners. There are two categories of domestic partner recognized, registered and unregistered. WFMLA leave rights for registered and unregistered domestic partnerships become effective on June 30, 2009. However, WFMLA leave rights for registered domestic partners will not be available until August 1, 2009, the date domestic partners may begin registering in the State of Wisconsin.

Before the new provisions were enacted, the WFMLA required employers with 50 or more employees to provide leave entitlements to eligible employees based upon three types of WFMLA-qualifying events: up to six weeks of leave for the birth or placement for adoption of a child, up to two weeks for the serious health condition of certain family members, and up to two weeks for the employee's own serious health condition. Additionally, an employee's entitlement to take leave for a family member was limited to parents, parents-in-law, spouses, and children (including stepchildren, adopted children, foster children, and legal wards).

As a result of the new rules, employees may also take WFMLA leave for the serious health condition of the domestic partner, or the domestic partner's parent. However, the new rules fail to extend the definition of child to include a domestic partner's child. Consequently, an employee remains unable to take WFMLA for purposes of caring for a domestic partner's child with a serious health condition or for purposes of "bonding" with the domestic partner's child following the birth of a child (or placement of a child for adoption or foster care) if the child is not also the employee's "child" as defined by statute.

As background, Wisconsin permits an individual to become a domestic partner (for WFMLA purposes) in two ways. First, the individual can register the domestic partnership with the Register of Deeds for the county in which the domestic partner resides. Individuals who choose to register their domestic partnership must certify the following:

- Each individual is at least 18 years old and capable of consenting to the domestic partnership;
- Neither individual is married to, or in a domestic partnership with, another individual;
- The two individuals share a common residence;
- The two individuals are not nearer of kin to each other than second cousins, whether of the whole or half blood or by adoption; and
- The individuals are of the same gender.

Alternatively, an individual can be in an unregistered domestic partnership, which is a relationship between two individuals (not necessarily of the same gender) who satisfy the following requirements:

- Each individual is at least 18 years old and otherwise competent to enter into a contract;
- Neither individual is married to, or in a domestic partnership with, another individual;
- The two individuals share a common residence.
- The two individuals are not related by blood in any way that would prohibit marriage under the Wisconsin Code;

- The two individuals consider themselves to be members of each other's immediate family;
- The two individuals agree to be responsible for each other's basic living expenses.

There is no "certification" with a state authority required for an unregistered domestic partnership.

*Please contact ADP National Account Services for further information at:
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