

NRF Draft Comparison of Key Health Care Reform Concerns

The National Retail Federation strongly supports comprehensive health care reform, such as is outlined in NRF’s Vision for Health Care Reform. We urge Congress to take a step back in order to find a more limited and affordable bipartisan approach to health care reform. Responsible reforms now can lead to targeted step-by-step reforms to meet changing needs in the future.

NRF opposed and key voted against the House-passed bill, H.R. 3962. We oppose and would likely key vote against the Senate Reid bill, H.R. 3950, as presently written.

Issue	House “America’s Affordable Health Care for America Act” (H.R. 3962, passed 220-215, November 7, 2009)	Senate “Patient Protection and Affordable Care Act” (H.R. 3590, as substituted for by Majority Leader Reid’s bill)	Comments
Employer Mandate	<ul style="list-style-type: none"> • Pay-or-Play Mandate • Employers must provide qualifying coverage to full and part-time employees for individual and family coverage or pay an annual penalty of 8% of payroll. • Employers must pay for 72.5% of individual coverage and 65% of family coverage. • Qualifying coverage must be offered either through a Qualified Health Benefit Plan or a grandfathered plan, as permitted. • Penalty is pro-rated for part-time employees and reduced 	<ul style="list-style-type: none"> • Conditional Mandate • Employers must provide coverage to full-time employees or pay a penalty of \$750 per full-time employee not covered if one full-time employee is eligible for subsidies. • Employers with fewer than 50 employees are excluded. • Part-time and seasonal employees are excluded. • Employers who offer coverage are still subject to penalties if one or more full-time employees are eligible 	<ul style="list-style-type: none"> • NRF opposes all employer mandates, whether pay-or-play, conditional or “free-rider” employer mandates. • Added labor cost is hard to absorb by industries with thin profit margins, such as the retail and restaurant industries. • Lower wages, fewer hires and less employment are real possibilities with an employer mandate.

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	<p>for smaller employers – see below.</p> <ul style="list-style-type: none"> Separate elections for full and part-time workers may be permissible. Employer must pay the 8% penalty for any employee who opts out of the employer plan once the health insurance exchange is established. Small business percentage of payroll tax is based on payroll size: <ul style="list-style-type: none"> \$500,000 or less (0%); \$500,001 - \$585,000 (2%); \$585,001 - \$670,000 (4%); \$670,001 - \$750,000 (6%) \$750,001 and higher (8%) 	<p>for subsidies.</p> <ul style="list-style-type: none"> Employer must pay \$3,000 per subsidy-eligible full-time employee up to a maximum cap of \$750 for all full-time employees. Full-time employees must obtain coverage through their employer's plan unless coverage does not meet minimum requirements. Employees can opt out if coverage does not meet bronze level (60% actuarial value) or if the employee share of premiums exceeds 9.8% of household income. 	
Waiting Periods	<ul style="list-style-type: none"> Employer must automatically enroll employee in lowest cost option within 30 days unless the employee opts out. 	<ul style="list-style-type: none"> Allows for a maximum 90 day waiting period, but charges penalties for waiting periods longer than 30 days. For waiting periods between 30 – 60 days, the penalty is \$400 per affected employee. For waiting periods between 60 – 90 days, the penalty is \$600 per affected employee. 	<ul style="list-style-type: none"> Employers – especially high turnover industries, like retail, restaurant, and agricultural – need flexibility to manage employee populations. A 90-day waiting period without penalty is a minimum need to manage post-reform benefits.
Definition of Full-Time	<ul style="list-style-type: none"> Commissioner to determine minimum weekly hours to be considered full-time. 	<ul style="list-style-type: none"> 30 or more average hours. 	<ul style="list-style-type: none"> Workforce needs and therefore hours worked vary greatly in the retail and

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			<ul style="list-style-type: none"> restaurant industries. Defining full-time status as 390 hours worked per calendar quarter is a better approach to defining full-time status. Temporary or seasonal workers should be excluded.
Public Plan Option	<ul style="list-style-type: none"> Strong public plan option offered within Exchange. Secretary will negotiate rates that cannot exceed private plan reimbursement rates in Exchange. Unlimited start-up funding, but ultimately must become self-sustaining. Medicare providers are assumed to participate unless affirmatively opt-out. 	<ul style="list-style-type: none"> Strong public plan option offered through Gateway or Exchange with state opt-out. Community Health Insurance Option. Reimbursement capped at average local rate but could go lower. 	<ul style="list-style-type: none"> NRF opposes any public plan option because of the danger of additional cost shifting from inadequate reimbursement (as seen with Medicare and Medicaid) and for the danger of crowding out private plan alternatives.
ERISA	<ul style="list-style-type: none"> Allows Secretary of Labor to waive ERISA preemption rules to allow implementation of state single payer system. Prohibits reduction in employer-sponsored retiree health benefits (Tierney) Applies state law rights and remedies to coverage obtained through the Exchange. Must offer Qualified Health 	<ul style="list-style-type: none"> Retains exclusive federal regulation of self-insured plans. Imposes numerous new requirements on ERISA plans, including minimum coverage, automatic enrollment (more than 200 employees), new notice requirements, and new reporting requirements. 	<ul style="list-style-type: none"> Senate approach is more protective of ERISA, the crucial linchpin of employer-based coverage.

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	<p>Benefit Plan (QHBP) with all benefit requirements and market rules or a Current Group Health Plan (CGHP) defined as a grandfathered plan.</p> <ul style="list-style-type: none"> • After five years, grandfathered plans (including ERISA self-insured) must meet all QHBP requirements, including minimum benefits but not rating rules. • Includes a study of self-insured plans and requires that measures be recommended to “discourage small and mid-sized firms from self-insuring.” 		
Financing Provisions	<ul style="list-style-type: none"> • Surcharge on high income taxpayers – would particularly affect small employers organized as Subchapter S corporations. • Federal premium tax to support comparative effectiveness research. • Extends exclusion from income for employer-provided coverage to domestic partners, other relatives, older children. 	<ul style="list-style-type: none"> • High cost plan excise tax, indexed to CPI plus 1%. Tax will apply to coverage amounts above threshold. • Taxation of employer subsidy for retiree prescription drugs. • Health industry fees, including taxes on insurance, pharmacy and medical device companies. 	<ul style="list-style-type: none"> • There are few if any good options for financing large scale health care reform. • House surcharge for high income taxpayers would disproportionately burden small business. • Senate proposal to tax more generous health plans will take valued coverage off the table. Inadequate indexing could subject more taxpayers to the cap, much as is seen

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Individual Mandate	<ul style="list-style-type: none"> • Must obtain acceptable coverage as of Jan. 1, 2013 or face a surtax of 2.5 percent of the excess of the taxpayer's AGI over the applicable threshold for the taxpayer. • Tax is capped at the national average premium for self-only basic coverage through Exchange. • Religious and hardship exemptions. • Enforced through tax penalty. 	<ul style="list-style-type: none"> • Must obtain acceptable coverage as of Jan. 1, 2014. • Inadequate penalties - \$95 in 2014, \$350 in 2015, \$750 in 2016, indexed thereafter. • Penalties are reduced by half for those under 18 years. • Religious and hardship exemptions. • Enforced through tax penalty. 	<p>with the AMT.</p> <ul style="list-style-type: none"> • Senate penalties are inadequate and would encourage individuals not to obtain coverage until expensive care is needed. • An enforceable individual mandate is the linchpin to comprehensive reform. • An individual mandate makes employer mandates unnecessary.
Market Reform	<ul style="list-style-type: none"> • For QBHP or fully insured plans, premium rates may only vary by age (2 to 1), geographic area and family structure. • Pre-existing condition exclusions prohibited. • Guaranteed issue and renewability of coverage. • Dependents covered to age 26 • Annual and lifetime limits prohibited 	<ul style="list-style-type: none"> • For fully insured group and individual coverage – premium rates may only vary by age (3 to 1) and tobacco use (1.5 to 1). • Variation on family composition and geographic regions to be defined by states. • Pre-existing condition exclusions prohibited. • Guaranteed issue and renewability of coverage. • “Unreasonable” annual or lifetime limits prohibited. 	<ul style="list-style-type: none"> • Senate takes a more responsible approach to market reform, though NRF continues to worry market reforms will greatly increase costs for some employer plans.

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Exchange or Gateway	<ul style="list-style-type: none"> National exchange established by July 1, 2010. Optional state-based or group of state exchanges Subsidies only available through exchange. Size transition – year 1 (individuals and employers with 10 or fewer employees); year 2 add employers with 20 or fewer employees; year 3 add larger employers as allowed. Allows unlimited COBRA rights until Exchange is operating. 	<ul style="list-style-type: none"> Each state must establish an Exchange by Jan. 1, 2014 for individuals. States must also establish SHOP exchanges for small employers. Subsidies only available through Exchange. States can require additional benefits but must bear the incremental subsidy cost increases due to the added benefit. Entire individual market in single risk pool. State option to merge individual and small group risk pools. All members of Congress and Congressional staff must purchase through Exchange by July 1, 2014. 	<ul style="list-style-type: none"> Insurance exchanges or gateways are a type of purchasing arrangement that has been tried and failed in a number of states – succeeding only in Massachusetts, albeit with significant cost overruns. Time will tell if they will lower costs and improve quality on a nationwide basis. House schedule for implementation is far too aggressive.
Benefits	<ul style="list-style-type: none"> Essential benefits package covering broad range of medical, mental health, prescription drug and rehabilitative services, among others. Set by Health Benefits Advisory Committee one year after enactment. No cost-sharing for preventative services. 	<ul style="list-style-type: none"> Essential benefits package covering broad range of medical, mental health, prescription drug and rehabilitative services, among others. Set by Medicare Advisory Council – will determine benefits package, contribution and subsidy recommendations. 	<ul style="list-style-type: none"> There is a disconnect between the generosity of benefits and the cost of health coverage. This concern is heightened by the Senate proposal for a surcharge on high dollar health plans.

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	<ul style="list-style-type: none"> Annual limit on cost-sharing - \$5,000 for individual, \$10,000 for family, indexed to CPI. Lifetime or annual limits prohibited. 	<ul style="list-style-type: none"> Lifetime or annual limits prohibited. 	
Collective Bargaining Agreements	<ul style="list-style-type: none"> Act does not apply until the earliest of the expiration of the last CBA applicable or 3 years after enactment. 	<ul style="list-style-type: none"> Act does not apply until the later of termination of the agreement or one year. 	<ul style="list-style-type: none"> Collective bargaining agreements should be subject to the same requirements as other health plans.
Individual and Small Business Tax Credits	<ul style="list-style-type: none"> Complicated Sliding scale tax credits for individuals between 100% and 400% of FPL Employers with 25 employees or less. 50% tax credit for coverage costs. Average employee compensation must be less than \$20,000. Size-based phaseout for employers with more than 10 employees. No credit allowed for highly compensated employees -- \$80,000 or more. 	<ul style="list-style-type: none"> Complicated Individuals between 100% and 400% of the FPL. Small businesses with 25 or fewer employees and annual wages of less than \$40,000 that purchase health insurance could be eligible for a tax credit. Employer must contribute 50% of coverage costs in order to obtain a maximum 50% credit for coverage costs. 	<ul style="list-style-type: none"> Tax-based assistance is helpful but needs to be targeted more broadly and with less complexity. Subsidies should be available both inside and outside the Exchange.
Account-Based Plans	<ul style="list-style-type: none"> Flexible spending arrangements (FSA) capped to \$2,500. Over-the-counter medications no longer eligible for FSA and 	<ul style="list-style-type: none"> Flexible spending arrangements (FSA) capped to \$2,500. Over-the-counter medications no longer eligible for FSA and 	<ul style="list-style-type: none"> This raises some \$5 billion but takes away from a valued means (particularly for middle class individuals) to manage out of pocket health expenses

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	<p>HRA (Health Reimbursement Arrangement) reimbursements.</p>	<p>HRA (Health Reimbursement Arrangement) reimbursements.</p>	<p>with pre-tax dollars.</p>
Regulation	<ul style="list-style-type: none"> Health Choices Administration created to coordinate national exchange and administer subsidies. 	<ul style="list-style-type: none"> Medical Advisory Council created to determine benefit coverages, contribution and subsidy amounts. Findings may only be overturned by a joint resolution of Congress. 	<ul style="list-style-type: none"> Both House and Senate approaches are too bureaucratic
Class Act	<ul style="list-style-type: none"> Class Act – establishes voluntary program to provide individuals with functional limitations with cash assistance to allow them to maintain personal and financial independence. Five-year vesting for eligibility for benefits. Mandatory auto-enrollment through employers. 	<ul style="list-style-type: none"> Class Act – establishes voluntary program to provide individuals with functional limitations with cash assistance to allow them to maintain personal and financial independence. Five-year vesting for eligibility for benefits. Mandatory auto-enrollment through employers. 	<ul style="list-style-type: none"> Better coverage is available in the private market. Congress should not establish a new trust fund based program.