HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB HHS 17-02 Repeal of the Patient Protection and Affordable Care Act
SPONSOR(S): Health & Human Services Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Health & Human Services Committee		Calamas	Calamas

SUMMARY ANALYSIS

The federal Patient Protection and Affordable Care Act (PPACA) was signed into law on March 23, 2010. Among its sweeping changes to the U.S. health care system were various new or increased taxes, and reductions to or eliminations of existing tax protections and deductions.

The proposed memorial urges the U.S. Congress to repeal the federal PPACA, and its tax provisions.

Copies of the memorial will be sent to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

The proposed memorial does not have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Patient Protection and Affordable Care Act[1]

The federal Patient Protection and Affordable Care Act (PPACA) was signed into law on March 23, 2010.[2] Among its sweeping changes to the U.S. health care system were various new or increased taxes, and reductions to or eliminations of existing tax protections and deductions.

Individual Mandate Tax[3]

Beginning in 2014, PPACA requires U.S. residents who fail to purchase qualifying health care coverage, as defined by PPACA, to pay a surtax. Certain individuals are exempt from this requirement:

- Individuals with a religious conscience exemption;
- Incarcerated individuals;
- Undocumented aliens;
- Individuals who cannot afford coverage (required contribution exceeds 8% of income);
- Individuals with a coverage gap of less than 3 months;
- Individuals in a hardship situation (as defined by the Secretary of the U.S. Department of Health and Human Services);
- Individuals with income below the tax filing threshold; and
- Members of Indian tribes.

As passed, the annual penalty for not having minimum essential coverage is the greater of a flat dollar amount per individual or a percent of the individual's taxable income. The penalty grows over time: $95 or 1% in 2014; $325 or 2% in 2015 and $695 or 2.5% in 2016; after 2016, penalty growth is indexed to inflation. The penalty for a child is one half of the adult penalty.

Employer Mandate Tax[4]

PPACA requires employers with 50 or more full-time employees (working 30 or more hours per week) to offer and contribute to health insurance for all full-time employees. The insurance must be affordable (not more than 9.5% of the employee's income) and cover at least 60% of the cost of the plan. As passed, failure to offer and contribute to health insurance results in a tax penalty of $2,000 for each full-time employee of the business as a whole, minus the first 30. Similarly, failure to offer and contribute to "affordable" coverage results in a tax penalty of the lesser of $3,000 per employee who enrolls in the exchange or $2,000 for every full-time employee, minus the first 30.

Surtax on Investment Income[5]

PPACA imposed a new 3.8 percent surtax on investment income earned in households making at least $250,000, or $200,000 per single individual.

[1] For the purposes of this analysis, PPACA refers to the federal law enacted as Public Law 111-148, as further amended by the federal Health Care and Education Reconciliation Act of 2010, Public Law 111-152, and any amendments, regulations, or guidance thereunder, issued under those acts. PPACA includes amendments to the Public Health Services Act.
[2] P.L. 111-148. On March 30, 2010, PPACA was amended by P.L. 111-152, the Health Care and Education Reconciliation Act of 2010.
[3] PL 111-148, § 1501, 124 Stat. 119 (2010); 26 U.S.C.A. § 5000A. See, National Federation of Independent Business v. Sebelius, 567 U.S. ___ (2012), 183 L. Ed. 2d 450, 132 S.Ct. 2566 (finding the individual mandate penalty is a tax).
[4] PL 111-148, § 1513, 124 Stat. 119 (2010); 26 U.S.C.A. § 4980H.
[5] PL 111-152, § 1402, 124 Stat. 1059 (2010); 26 U.S.C.A. § 1411.

Excise Tax on Comprehensive Health Insurance Plans[6]

PPACA imposes an excise tax on high cost employer-sponsored health coverage, commonly called the "Cadillac Tax." Employer-sponsored coverage that exceeds a statutorily-designated cost threshold will be subject to a tax of 40% of the difference between the threshold and the cost of the coverage. In 2018 dollars, the thresholds are $10,200 for single coverage and $27,500 for family coverage. The threshold will grow with inflation; however, insurance premiums (and medical inflation in general) grow much faster than inflation, so the proportion of plans becoming subject to the tax will grow over time. A 2015 analysis projected that 26% of employers would be affected by the tax in 2018, growing to 42% in 2028. That analysis showed a greater impact on large employers (200 or more employees): 68% would be affected by the tax in 2018.[7]

This excise tax was to have begun in the 2018 calendar year; however, in 2016 Congress delayed its effect to 2020.[8]

Medicare Payroll Tax Increase[9]

PPACA imposed an additional Medicare payroll tax of .9 percent, effective in 2013. The tax applies to wages, compensation and self-employment income in taxable years beginning after December 31, 2012, but only applies to individuals and households over certain income levels, as indicated below.[10]

Filing Status	Threshold Amount
Married filing jointly	$250,000
Married filing separate	$125,000
Single	$200,000
Head of household (with qualifying person)	$200,000
Qualifying widow(er) with dependent child	$200,000

Over-the-Counter Medication Tax-Preferred Exclusion[11]

PPACA prohibited using pre-tax dollars in a health savings account, flexible spending account, or health reimbursement account to pay for over-the-counter (non-prescription) medicines, effective January 1, 2011. The exclusion does not apply to payments for insulin, even if purchased without a prescription, and does not apply to over-the-counter medications for which the taxpayer has a prescription, even if a prescription is not required for it.[12]

Health Savings Account Withdrawal Tax Increase[13]

A health savings account (HSA) is a personal savings account of non-taxed funds used by individuals with high deductible health plans to pay medical and dental expenses. HSA funds are owned by the

[6] PL 111-148, § 9001, 124 Stat. 119 (2010); 26 U.S.C.A. § 4980I.
[7] Claxton, G., Levitt, L., "How Many Employers Could be Affected by the Cadillac Plan Tax?", Kaiser Family Foundation, Aug. 5, 2015, available at http://kff.org/health-costs/issue-brief/how-many-employers-could-be-affected-by-the-cadillac-plan-tax/ (last viewed March 26, 2017).
[8] Consolidated Appropriations Act, 2016, PL 114-113, § 101 (2016).
[9] PL 111-148, § 9015, 124 Stat. 119 (2010); 26 U.S.C.A. §§ 3101, 3102, 1401.
[10] U.S. Internal Revenue Service, Questions and Answers for the Additional Medicare Tax, available at https://www.irs.gov/businesses/small-businesses-self-employed/questions-and-answers-for-the-additional-medicare-tax (last viewed April 2, 2017).
[11] PL 111-148, § 9003, 124 Stat. 119 (2010); 26 U.S.C.A. §§ 106, 220, 223.
[12] U.S. Internal Revenue Service, Affordable Care Act: Questions and Answers on Over-the-Counter Medicines and Drugs, available at https://www.irs.gov/uac/affordable-care-act-questions-and-answers-on-over-the-counter-medicines-and-drugs (last viewed April 2, 2017); U.S. Internal Revenue Service, Publication 969 (2016), available at https://www.irs.gov/uac/affordable-care-act-questions-and-answers-on-over-the-counter-medicines-and-drugs (last viewed April 2, 2017).
[13] PL 111-148, §§ 9004, 10902, 124 Stat. 119 (2010); 26 U.S.C.A. §§ 220, 223.

individuals, and unused funds roll over each year. Withdrawals from a HSA to pay for qualified medical expenses[14] are not taxed.

Prior to PPACA, non-medical withdrawals made before age 65 were taxed as income at 10 percent. PPACA raised this tax to 20 percent, effective January 1, 2011.

Flexible Spending Account Cap[15]

A flexible spending account (FSA) is an account connected to an employer-based health plan which can be used to pay for medical and dental expenses, including prescription drugs and medical supplies and equipment. FSA funds may also be used to pay deductibles and copayments. Prior to PPACA, funds in a FSA were not taxed as income. The employer owns the FSA, and unused funds revert to the employer at the end of the plan year; however, the employer may allow up to $500 to carry over to the next plan year.[16]

PPACA imposes a limit on tax-free dollars in a FSA in the amount of $2,600 (indexed to inflation after 2013).

Medical Device Manufacturers Tax[17]

PPACA imposed a 2.3 percent tax on medical devices, levied against the device manufacturer or importer, sold after December 31, 2012. However, a two-year moratorium was enacted in 2015, which runs from January 1, 2016 through December 31, 2017.[18]

Itemized Deduction Reduction[19]

Prior to PPACA, individuals with medical and dental expenses that exceeded 7.5 percent of their adjusted gross income could deduct their medical and dental expenses (not covered by insurance) in their federal income tax filings. PPACA raised the threshold for that deduction, requiring an individual's medical and dental expenses to exceed 10 percent of adjusted gross income to qualify for the deduction, beginning in tax year 2013.

Indoor Tanning Services Tax[20]

PPACA imposes a 10 percent excise tax on indoor tanning services. The tax applies to a service "employing any electronic product designed to incorporate one or more ultraviolet lamps intended for the irradiation of an individual by ultraviolet radiation, with wavelengths in air between 200 and 400 nanometers, to induce skin tanning".[21]

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[14] See, U.S. Internal Revenue Services, Publication 502 (2016), available at https://www.irs.gov/publications/p502/ar02.html#en_US_2016_publink1000178851 (last viewed April 2, 2017); U.S. Centers for Medicare and Medicaid Services, "Health Savings Account", available at https://www.healthcare.gov/glossary/health-savings-account-HSA/ (last viewed April 3, 2017); United Health Care, CHD Comparison Grid HSA, HRA, FSA, available at https://www.uhc.com/content/dam/uhcdotcom/en/Employers/PDF/CDHComparisonGridHSAHRAFSA.pdf (last viewed April 3, 2017).
[15] PL 111-148, § 9005 124 Stat. 119 (2010); 26 U.S.C.A. § 125.
[16] See, U.S. Centers for Medicare and Medicaid Services, "Using a Flexible Spending Account", available at https://www.healthcare.gov/have-job-based-coverage/flexible-spending-accounts/ (last viewed April 3, 2017); United Health Care, CHD Comparison Grid HSA, HRA, FSA, available at https://www.uhc.com/content/dam/uhcdotcom/en/Employers/PDF/CDHComparisonGridHSAHRAFSA.pdf (last viewed April 3, 2017).
[17] PL 111-148, § 9009, 124 Stat. 119 (2010); 26 U.S.C.A. § 4191.
[18] Consolidated Appropriations Act, 2016 (PL 114-113) § 174.
[19] PL 111-148, § 9013, 124 Stat. 119 (2010); 26 U.S.C.A. § 213.
[20] PL 111-148, § 9017, 124 Stat. 119 (2010), as replaced by § 10907; 26 U.S.C.A. § 5000B.
[21] Id.

Deduction for Employer-Provided Retiree Prescription Drug Coverage Elimination[22]

The Medicare Modernization Act of 2003 granted federal subsidies to employer plans that offered drug benefits to retirees which were at the same level as (or better than) the Medicare drug benefit. The Act also allowed employers providing prescription drug coverage for retirees to exclude that federal retiree drug subsidy from income, and to also deduct the cost of retiree health benefits from income, despite having been reimbursed for some of those costs by the drug coverage subsidy. According to one analyst, the purpose of the subsidy and the deduction was to encourage employers to offer prescription drug benefits to retirees.[23]

PPACA eliminated the deduction of the drug coverage costs reimbursed by the federal drug subsidy, effective in 2013.

Blue Cross / Blue Shield Deduction Reduction[24]

Prior to PPACA, the Internal Revenue Code authorized a tax deduction for Blue Cross Blue Shield organizations, and other entities meeting specific requirements. The deduction is for the amount of the excess of 25 percent of the claims and liabilities incurred that year plus expenses incurred or claims settled (for certain types of contracts, over and adjusted surplus calculated pursuant to the Code).[25] PPACA limited the application of this deduction to organizations with a medical loss ratio[26] of 85 percent or more.

Charitable Hospital Excise Tax[27]

PPACA adds requirements for charitable hospitals to maintain status under Section 501(c)(3) of the Internal Revenue Code. Such hospitals must:

- Conduct community needs assessments meeting certain criteria each year;
- Establish financial assistance policies which include eligibility criteria for financial assistance, application procedures, and collections policies, among other things; and
- Limit charges to people eligible for financial assistance to no more than the amounts billed to individuals with insurance coverage.

PPACA imposes a tax in the amount of $50,000 for every taxable year in which a charitable hospital does not meet the above requirements.

Drug Manufacturer Tax[28]

PPACA imposes a tax on brand drug manufacturers and importers, effective in calendar years after December 31, 2010. The tax applies to manufacturers and importers with over $5 million in aggregate brand drug sales to the Medicare or Medicaid programs, or programs of the Department of Veterans Affairs or the Department of Defense, or TRICARE. The amount of the tax for each entity is the result of a complex calculation of annual aggregate overall and brand sales data, excluding orphan drug sales and rebates, with an adjustment, applied to a schedule of the total tax amount established by PPACA in

[22] PL 111-148, § 9012, 124 Stat. 119 (2010); 26 U.S.C.A. § 139A.
[23] McArdle, Frank, "Implications of Recent Legislation for Retiree Health Coverage", Kaiser Family Foundation, April 14, 2014, available at http://kff.org/report-section/retiree-health-benefits-at-the-crossroads-implications-of-recent-legislation-for-retiree-health-coverage/ (last viewed April 2, 2017).
[24] 111-148, § 9016, 124 Stat. 119 (2010); 26 U.S.C.A. § 833.
[25] 26 U.S.C. § 833.
[26] As articulated by PPACA for application in this instance, the medical loss ratio is the total premium revenue expended on clinical services and "activities that improve health care quality" in the tax year as a percent of total premium revenue.
[27] PL 111-148, § 9007, 124 Stat. 119 (2010); 26 U.S.C.A. § 501(r).
[28] PL 111-148, § 9008, 124 Stat. 119 (2010); 26 C.F.R. § 51.1.

the Internal Revenue Code, to proportionately share the total tax amount. The total tax amount for 2017 is $4 billion.[29]

Health Insurer Tax[30]

PPACA imposes a tax on health insurers and health maintenance organizations, effective in 2014. However, in 2015 Congress instituted a moratorium on collection of the tax for the 2017 calendar year.[31]

The amount of the tax for each insurer is the ratio of a percentage of the entity's net premiums written in the U.S., to the aggregate net premiums written by all such entities in the U.S. the same year, applied to a total tax amount for each year set by the Internal Revenue Code, to proportionately share the total tax amount. The total tax amount for 2018 is $14.3 billion.[32]

Health Insurer Executive Compensation Limit[33]

Prior to PPACA, the Internal Revenue Code limited corporate tax deductions for executive compensation for publicly held corporations and executives that receive federal assistance under the Troubled Asset Relief program.[34]

PPACA limits compensation for executives of insurers and health maintenance organizations with at least 25 percent of gross premiums received being for minimum essential coverage (as defined by PPACA). The executive compensation limit is $500,000.

Biofuel Tax Increase[35]

Prior to PPACA, the Internal Revenue Code contained a tax credit for cellulosic biofuel producers of $1.01 for each gallon of product. PPACA eliminated the tax credit for fuels with significant water, sediment, or ash content (sometimes referred to as "black liquor"), effective January 2010.[36]

Codification of the Economic Substance Doctrine[37]

The economic substance doctrine is a court-created principle for determining the applicability of claimed tax benefits based on whether the transaction that gives rise to the benefit has economic substance apart from the tax considerations. To obtain the benefit, the transaction must meaningfully change the taxpayer's economic position, in some way other than by the reduction in tax liability.[38]

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[29] U.S. Internal Revenue Service, "Annual Fee on Branded Prescription Drug Manufacturers and Importers", available at https://www.irs.gov/businesses/corporations/annual-fee-on-branded-prescription-drug-manufacturers-and-importers, (last viewed April 3, 2017).
[30] PL 111-148, § 9010, 124 Stat. 119 (2010); 26 C.F.R. § 57.1.
[31] Consolidated Appropriations Act of 2016, Title II, § 201 (Pub. L. 114-113).
[32] U.S. Internal Revenue Service, "Affordable Care Act Provision 9010 ---- Health Insurance Providers Fee", available at https://www.irs.gov/businesses/corporations/affordable-care-act-provision-9010 (last viewed April 3, 2017).
[33] PL 111-148, § 9014, 124 Stat. 119 (2010); 26 U.S.C.A. § 162.
[34] The Troubled Asset Relief Program (TARP) was established by the Emergency Economic Stabilization Act of 2008 (Pub.L. 110–343, 122 Stat. 3765) to create programs intended to stabilize the financial system. See, U.S. Department of the Treasury, "TARP 5 Year Update 2008-2013, available at https://www.treasury.gov/initiatives/financial-stability/about-tarp/Pages/default.aspx# (last viewed April 3, 2017).
[35] PL 111-152, § 1408, 124 Stat. 1059 (2010); 26 U.S.C.A. § 40.
[36] Id. See, Kaiser Family Foundation, "Summary of the Affordable Care Act", April 23, 2013, available at http://files.kff.org/attachment/fact-sheet-summary-of-the-affordable-care-act (last viewed April 3, 2017).
[37] PL 111-152, § 1409, 124 Stat. 1059 (2010); 26 U.S.C.A. § 7701.
[38] U.S. Senate, Committee on Finance, "Economic Substance Doctrine", citing, *ACM Partnership v. Commissioner*, 73 T.C.M. at 2215 (*affirmed*, 157 F.3d 231 (3d Cir. 1998), cert. denied 526 U.S. 1017 (1999)), available at https://www.finance.senate.gov/imo/media/doc/Leg%20110%20100407agamendment.pdf (last viewed April 3, 2017).

PPACA codified the economic substance doctrine. The penalty for inaccurately obtaining a tax benefit for a transaction without economic substance is 40 percent of the tax benefit related to the transaction.[39]

Effect of Proposed Memorial

The proposed memorial urges the U.S. Congress to fully and permanently repeal PPACA, including all tax increases imposed by it.

Copies of the memorial will be sent to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the federal government to act on a particular subject.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

[39] Internal Revenue Code §6662(b) and §6662(i).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES