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Congress of the United States

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MAR 20 2012

Honorable Tom Coburn
United States Senate
172 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Coburn:

This letter is in response to your request for an analysis of the “Patient Protection and Affordable Care Act,” and the “Health Care and Education Reconciliation Act of 2010”¹ (the “healthcare bill”), identifying the tax provisions that increase costs for individuals earning less than \$200,000 annually and families earning less than \$250,000 annually. The list provided below does not include tax provisions in the healthcare bill that decrease costs for individuals and families earning less than \$200,000 and \$250,000 annually. Also, this list does not include other non-tax provisions in the healthcare bill that may increase or decrease costs for individuals and families. As a result, it cannot be used to draw conclusions about the net effect of the healthcare bill on affected individuals and families.

There are a number of tax provisions in the healthcare bill that may directly increase taxes on some individuals and families earning less than \$200,000 and \$250,000 per year. Furthermore, other tax provisions in the bill that directly affect businesses may ultimately affect individuals and families earning less than \$200,000 and \$250,000, respectively, to the extent that increased taxes results in higher prices for the products of the affected businesses.

Tax Provisions Directly Affecting Individual Taxpayers

One provision that directly increases taxes is the penalty on taxpayers who fail to maintain minimum essential health insurance coverage.² The penalty is the greater of a flat dollar amount per uninsured person that rises to \$695 in 2016 (and is indexed by inflation thereafter) or a percentage of the household’s income. In both cases, an overall cap applies to family payments. The penalty applies to individuals at all income levels.

Another provision with tax consequences for individuals and families earning less than \$200,000 and \$250,000 each year is the modification of the itemized deduction for medical expenses.³ This provision increases the threshold for the itemized deduction of unreimbursed medical expenses from 7.5 percent of AGI to 10 percent of AGI. This decreases the amount of the deduction (and thus increases taxes) for families with medical expenses exceeding 7.5 percent of AGI. For example, suppose a family with \$100,000 of AGI incurs eligible medical expenses of

¹ P.L. 111-148 and P.L. 111-152

² Sec. 5000A of the Internal Revenue Code of 1986 (“the Code”).

³ Sec. 213 of the Code.

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\$11,000. Before the healthcare bill, they would be entitled to an itemized deduction on Schedule A for medical expenses in excess of 7.5 percent of AGI (i.e. \$3,500). After December 31, 2012, the effective date of the change, this family is entitled to a deduction of eligible medical expenses over 10 percent (i.e., \$1,000). Assuming this family is in the 28 percent tax bracket in 2013 and assuming neither the taxpayer nor the spouse is over the age of 65, their taxes will increase by \$700.

Other provisions directly affecting individuals and families with incomes below \$200,000 and \$250,000, respectively include the increase in additional tax on distributions from health savings accounts and flexible spending arrangements not used for medical expenses⁴ and limitations on health flexible spending arrangements in cafeteria plans.⁵

Tax Provisions That May Indirectly Affect Individuals

A number of tax provisions in the healthcare bill may indirectly affect individuals to the extent the incidence of the tax is borne by consumers in the form of higher prices. One such provision is the excise tax on high-cost employer-sponsored health coverage.⁶ This provision imposes an excise tax on insurers if the aggregate value of employer-sponsored health insurance coverage for an employee exceeds a threshold amount defined in the bill. The tax is equal to 40 percent of the aggregate value that exceeds the threshold amount. It is imposed pro rata on the issuers of the insurance. Though the statutory incidence of the tax is borne by the issuers, a portion of this increase is likely to be passed on to employees in the form of higher prices for insurance policies. In addition, employers are likely to respond to the higher costs of insurance by modifying their health plans to stay within the thresholds and converting the savings into higher wages or other fringe benefits for employees. This type of response on the part of employers may result in higher income and payroll taxes for employees.

Another provision that indirectly affects individuals is the annual fee on health insurance providers.⁷ Under the provision, an annual fee applies to any covered entity engaged in the business of providing health insurance with respect to United States health risks. The aggregate annual fee is apportioned among the providers based on a ratio designed to reflect relative market share of U.S. health insurance business. This fee increases costs for affected health insurance providers and may be passed on to consumers in the form of higher prices.

⁴ Sec. 220 and 223 of the Code.

⁵ Sec. 125 of the Code.

⁶ Sec 4980I of the Code.

⁷ Sec. 9010 of the Senate amendment.

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Other provisions indirectly affecting individuals through possible effects on prices of goods and services include the imposition of an annual fee on manufacturers and importers of branded drugs;⁸ the imposition of an excise tax on manufacturers and importers of certain medical devices;⁹ repeal of the business deduction for federal subsidies for certain retiree prescription drug plans;¹⁰ the imposition of a fee on insured and self-insured health plans for the Patient Centered Outcomes Research Trust Fund;¹¹ and the imposition of a 10-percent excise tax on indoor tanning services.¹²

I hope that this letter is helpful to you. If I can be of further assistance in this matter, please let me know.

Sincerely,



Thomas A. Barthold

⁸ Sec. 9008 of the Senate amendment.

⁹ Sec. 4191 of the Code.

¹⁰ Sec. 139A of the Code.

¹¹ Secs 3475, 4376, 4377, and 9511 of the Code.

¹² Sec. 5000B of the Code.