What Happens to Americans Without Health Insurance?

A Timeline of the Evolution of Penalties for Noncompliance with the Individual Mandate in the Democrats' Health Reform Legislation

JULY 2009 – KENNEDY-DODD HELP COMMITTEE BILL

The Affordable Health Choices Act was voted out of Committee on July 15th and introduced in the Senate on September 17th, 2009 as S. 1679.

Below are quoted excerpts of the bill text and the Congressional Research Service's analysis of the individual mandate and reporting of health insurance coverage. While there was clear consideration given to reporting of compliance with the mandate, there was no explicit mention in the bill of civil or criminal penalties associated with non-compliance. The excerpts have been abbreviated to consolidate the most relevant content.

- "[The bill] includes a mandate for most individuals to have health insurance, with penalties for noncompliance.
- Most individuals who do not maintain qualifying coverage for themselves and their dependents could be required to pay an annual amount established by the Secretary of Labor of no more than $750 per person (with a limit of no more than four times the penalty in total for the taxpayer and any dependents), adjusted for inflation beginning with taxable years after 2011.
- Individuals would be required to maintain qualifying coverage, defined as coverage under a group health plan or health insurance coverage that an individual is enrolled in on the date of enactment or coverage that meets or exceeds the criteria for minimum qualifying coverage, Parts A and B of Medicare, Medicare Advantage, Medicaid, CHIP, Tricare, certain veteran's health care program coverage, Federal Employees Health Benefits Program (FEHBP), state health benefits high-risk pools….
- The individual mandate requirements would be effective beginning in tax years after December 31, 2011.
- Every person who provides health insurance that is qualifying coverage would be required to make a return, in such form as prescribed by the Secretary that
  - (1) contained the name, address, and taxpayer identification number of each individual who is covered under the health insurance that is qualifying coverage provided by such person
  - (2) the number of months during the calendar year during which each such individual was covered under the qualifying health insurance plan
  - (3) other information as prescribed by the Secretary.
- Every person required to make a return described above, would also be required to provide, in writing, to each individual whose name was required on that return, the following information
  - (1) the name, address and phone number of the person required to make such return
  - (2) the number of months during the calendar year that such individual was covered under qualifying health insurance provided by such person.
- No later than June 30 of each year, the Secretary of the Treasury, acting through the Internal Revenue Service, in consultation with the Secretary of HHS, would send a notification to each individual who files an individual income tax return and who was not enrolled in qualifying coverage with information on the services available through the Gateway operating the State in which the individual resides."

SEPTEMBER-OCTOBER 2009 – BAUCUS SENATE FINANCE COMMITTEE BILL

The Baucus Senate Finance bill was voted out of Committee in the fall of 2009 and introduced in the Senate on October 19, 2009 as S. 1796, America's Healthy Future Act.

The consideration of the provisions in this bill related to the individual mandate and penalty generated significant media attention and contributed directly to the modification of these provisions. On September 24, 2009, Sen. John Ensign (R-Nev.) received a handwritten note from Joint Committee on Taxation Chief of Staff Tom Barthold confirming the penalty for failing to pay the up to $1,900 fee for not buying health insurance. Violators could be charged with a misdemeanor and could face up to a year in jail or a $25,000 penalty, Barthold wrote on JCT letterhead. The note was a follow-up to Ensign's questioning at the markup. Largely as a result of this exchange and the media attention it generated, the penalty was changed.

Below are quoted excerpts of the Committee's report of the *finalized* Baucus Senate Finance Committee Bill (as introduced in the Senate) regarding the individual mandate, reporting of health insurance coverage, and penalties for noncompliance. The excerpts have been abbreviated to consolidate the most relevant content.

- "Beginning July 1, 2013, all U.S. citizens and legal residents are required to maintain health insurance coverage….
- In order to ensure compliance, individuals are required to report on their Federal income tax return the months for which they maintain the required minimum health coverage for themselves and all dependents under age 18.
- In addition, insurers (including employers who self-insure), must report information on health insurance coverage to both the covered individual and to the IRS.
- Insurers will be required to identify the primary insured individual and any other individuals covered by the policy, as well as the dates during which the individual maintained coverage during the tax year.
- A similar reporting requirement applies to employers with respect to individuals enrolled in public health insurance plans or group health plans if the reporting is not provided by the insurer (e.g. in the case of self-insured plans).
- Individuals who fail to maintain essential health benefits coverage are subject to a penalty of $750 per adult in the household, with a maximum of two adults per household. This per adult penalty is phased in as follows: $0 for 2013; $200 for 2014; $400 for 2015; $600 in 2016, $750 in 2017 and indexed to CPI-U beginning in 2018 and thereafter.
- The penalty applies to any period during which the individual is not covered by a health insurance plan with the minimum required benefit but is prorated for partial years of noncompliance. No penalty is assessed for individuals not maintaining health insurance for a period less than or equal to three months in the tax year. However, penalties are assessed for those not insured for more than three months during the tax year.
- The penalty is assessed through the Code and accounted for as an additional amount of Federal tax owed. However, it is not subject to the enforcement provisions of subtitle F of the tax code. Instead, in cases in which payment is not forthcoming following the initial notice and demand for payment, collection is limited to withholding of Federal payments otherwise due to the uninsured individual. The use of liens and seizures otherwise authorized for collection of taxes does not apply to the collection of this penalty.
- Non-compliance with the personal responsibility requirement to have health coverage is not subject to criminal or civil penalties under the Code and interest does not accrue for failure to pay such assessments in a timely manner."

DECEMBER 2009 TO MARCH 2010 – REID SENATE BILL

Below are quoted excerpts of the Congressional Research Service's analysis of the individual mandate and reporting of health insurance coverage in H.R. 3590, the Patient Protection and Affordable Care Act, as amended and passed by the Senate on December 24, 2009. H.R. 3590 reflects the merged Senate health reform bills, S. 1679, the Affordable Health Choices Act (as ordered reported by the Senate Committee on Health, Education, Labor and Pensions on July 15, 2009), and S. 1796, America's Healthy Future Act of 2009 (as ordered reported by the Senate Committee on Finance on October 19, 2009). The excerpts have been abbreviated to consolidate the most relevant content.

- "Beginning in 2014, [the bill] would include a mandate for most individuals to have health insurance, or to pay a penalty for noncompliance.[31]
- Individuals would be required to maintain minimum essential coverage for themselves and their dependents. Those who did not would be required to pay a penalty for each month of noncompliance.
- The penalty would be calculated as the greater of either (1) a percentage of *household income* or (2) a *flat dollar amount*. The penalty amount based on *household income* would be 0.5% in 2014, 1.0% in 2015, and 2% thereafter. The annual *flat dollar amount* would be phased-in—$95 in 2014, $495 in 2015, $750 in 2016 (adjusted for inflation thereafter), assessed for each taxpayer and any dependents. The flat dollar amount would be reduced by one-half for dependents under the age of 18. Furthermore, regardless of family size, a family's penalty would be capped at three times (300%) the flat dollar amount. Finally, the penalty for noncompliance could not exceed the national average premium for bronze level qualified health plans offered through an exchanges (for the relevant family size).
- No penalty would be imposed on those without coverage for less than 90 days (with only one period of 90 days allowed in a year)…..
- <u>Taxpayers who were required to pay a penalty, but failed to do so, would not be subject to any criminal prosecution or penalty for such failure. The Secretary could not file notice of lien or levy on any property, for a taxpayer who does not pay the penalty.</u>

MARCH 2010 – DEMOCRATS' RECONCILIATION BILL

On March 23, 2010, the President signed into law H.R. 3590, the Patient Protection and Affordable Care Act (PPACA) as passed by the Senate on December 24, 2009, and the House on March 21, 2010. The new law, among other changes, makes statutory changes affecting the regulation of and payment for certain types of private health insurance.

On March 21, 2010, the House passed an amendment in the nature of a substitute to H.R. 4872, the Health Care and Education Reconciliation Act of 2010 (hereafter referred to as the reconciliation bill). The Senate passed the reconciliation bill and the President signed it into law.

Below are quoted excerpts of the Congressional Research Service's analysis of the reconciliation bill. The excerpts have been abbreviated to consolidate the most relevant content.

- Under H.R. 3590, "A person who is not in compliance with the individual mandate may be subject to a financial penalty based on either a percentage of household income or a flat dollar amount, whichever is greater. The penalty amount based on household income would be the product of household income multiplied by 0.5% in 2014, 1.0% in 2015, and 2% for each year thereafter. The annual flat dollar amount would be phased in—$95 in 2014, $495 in 2015, $750 in 2016 (adjusted for inflation thereafter), assessed for each taxpayer and any dependents. Other penalty rules would apply in the case of any dependents under the age of 18, and a family's penalty would be capped as specified in the bill. No penalty would be imposed on certain individuals if they meet specified criteria. One such individual would be a person whose household income does not exceed the federal poverty level (FPL).

- The reconciliation bill would make certain changes to the calculation of the penalties imposed on persons who are not in compliance with the individual mandate, and would modify a rule regarding the exemption from the individual mandate.
- For the non-compliance penalty based on percentage of income, the reconciliation bill would change the base income amount and percentages depending on the year. The base income amount would be the amount of household income that exceeds the personal exemption amount for the applicable tax year. The applicable percentages would be 1% in 2014, 2% in 2015, and 2.5% for each year thereafter.
- For the non-compliance penalty based on a flat dollar amount, the reconciliation bill changes the penalty amounts for 2015 and 2016: $325 and $695, respectively. This penalty would be adjusted for inflation (based on the 2016 amount) thereafter.
- The reconciliation bill would strike the exception to the non-compliance penalty for persons with income below the poverty line included in H.R. 3590. Instead, the reconciliation bill would except from the non-compliance penalty individuals whose household income is less than the personal exemption amount for the applicable tax year."
- Now, under law, the final tax penalties for non-compliance with the individual mandate will be $695 or 2.5% of adjusted gross income.