



From the Desk of Dean Zerbe.

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Senate Finance Plan Disguises Taxes

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The standard line is that a camel is a horse designed by a committee. But at least that strange-looking mammal is loved by its mother. The health reform plan produced by the "Senate Six"--the bipartisan group assembled by Senate Finance Committee Chairman Max Baucus--is the camel of health plans. But it's already being disowned by some of its supposed parents.

In my previous column, I went through several of the key tax features in the trial balloon Baucus floated last week. His new release provides more details on these provisions and some that I hadn't previously discussed that merit attention.

The main revenue raiser in this plan is a tax beginning in 2013, on insurance coverage with a value that exceeds \$21,000 for a family or \$8,000 for an individual. The more you look at this provision, the more convoluted it appears and the worse the paperwork burden for business owners and their accountants. The employer must aggregate all the different health coverage (health, dental, vision, supplemental, etc.) provided to an individual and also include any coverage in the form of reimbursements from a Health Savings Account, or a Health Reimbursement Account, plus employer contributions to an HSA. The small business must then apportion those excess amounts among the different insurance providers, issue a W-2 that includes the values to the employee and also report all this to the Internal Revenue Service.

So just to be clear, let's say an insurance company issues an insurance policy to a family with a cost of \$19,000. The family also has a contribution made on its behalf to an HSA and has dental and supplemental coverage. All these items together total \$30,000. The employer figures this all out, pro rates the excess (over \$21,000) amounts to each insurer (even though no single one is over \$21,000), and the insurers pay the IRS a 35% tax on that pro-rated amount. Naturally, if the employer doesn't

report correctly to the IRS, there will be a significant fine. No discussion by the Committee of the compliance cost this will impose on small-business owners.

These premium taxes are on top of \$60 billion in new "fees" based on market share that are imposed on health insurers. My green eye-shade friends tell me that that this fee/tax will increase premiums by 2% to 4%.

Another hidden tax hike: Employers offer employees the chance to put pre-tax money into HSAs and flexible spending accounts to help them cover their growing share of health costs (deductibles, uncovered items, copays). The Committee is tightening significantly what HSA and FSA money can be used for. Only those medical costs that are currently allowed to be claimed as itemized deductions could be paid for with money from HSAs and FSAs. In addition, the Committee will specifically not allow the purchase of over-the-counter drugs to be covered by these accounts. Even more significant, the proposal would limit the amount put in an FSA to \$2,000 a year. (An employee having extensive dental work can easily exceed that in a year.) It all means more taxes for some employees. Then there are those taxes masquerading as "fees" that are going to be imposed on certain industries--insurers (as I mentioned above), but also pharmaceutical, medical devices and clinical labs. How will the fees work? Consider the \$23 billion fee on prescription drugs. First, the fee is not deductible by the drug company. As my friends at Gaines, Kriner & Elliott (a Buffalo-based accounting firm) point out, the hallmark of a tax (unlike a fee) is that it is not deductible from taxable income. So this is a tax.

That's simple. Now for the complicated part. The fee will be based on market share from the previous year. The market share is based on parent, affiliate and other related parties (and covers both foreign and domestic-based companies). The market

share is for sales to (or purchases by) specific government programs (Medicare; Medicaid; VA; and, TRICARE). The Treasury will determine market share. The first \$5 million of sales won't count in the market share calculation; 10% of sales from \$5 million to \$125 million will count in market share; 40% from \$125 million to \$225 million; 75% from \$225 million to \$400 million and 100% from \$400 million and above. So potentially, the drug fee will be less of a hit for small companies, but it still is a tax and a fiendishly complex one at that.

This tax will be imposed on old businesses; new businesses (after one year); bankrupt companies; companies that made no profits; companies with small margins; companies with big margins--all treated the same. The ramifications of this are enormous and unknown. For example, a company might jettison those products that have large market share but little margin. (Forget about worrying about not keeping your health insurance, start worrying about whether you are still going to be able to get that little blue pill you need.) In addition, the fights with the IRS over what is appropriate market share will enrich tax lawyers and impoverish small businesses for years to come. I can only emphasize that this is incredibly dangerous tax policy that is being put forward.

Let me give credit to the Finance Committee for what they got right--a rule saying that nonprofit hospitals, which get billions of dollars in tax breaks, cannot charge low-income individuals more than what they charge an insured person and also that they cannot use hammer and tong tactics to collect debts from low-income families. This reform will provide real benefit to working families. The sad thing is that it took years to get these common-sense reforms moving forward (and still look for the hospitals to fight this).

Chairman Baucus' mark keeps in place the concepts that individuals/families will be



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taxed if they do not get health insurance and employers will be taxed if they do not provide "appropriate" health insurance. Beginning in 2013, the tax on those without health insurance is \$950 for an individual and \$3,800 for a family. The full amount isn't imposed on lower-income families--it is phased in beginning at 100% of federal poverty level. (Native Americans do not have to pay any tax for failure to get health insurance regardless of income.)

The plan also imposes a tax on businesses with more than 50 employees, which do not provide "affordable" health insurance, at up to \$400 per employee. Affordable is defined as a policy that doesn't cost the employee more than 12 percent of income as his share of premiums.

The bottom line of all this is that when you hear folks say "you can keep your current insurance" skepticism is in order. In many, many cases your employer is not going to be able to maintain the current insurance you have because of all the costs and complications being imposed by this bill. Fortunately, the outlook for passage of this bill in the Senate is uncertain.

Dean Zerbe
National Managing Director
alliantgroup, LP
dean.zerbe@alliantgroup.com
www.alliantgroup.com

