

Tax and Benefits Provisions of the 2010 Health Care Act as Amended by the 2010 Health Care Reconciliation Act

Industry-Specific Revenue Raisers. The following revenue raising changes will be imposed on health related industries:

- A new deduction limit on executive compensation applies to insurance providers. If at least 25% of the insurance provider's gross premium income is derived from health insurance plans that meet the minimum essential coverage requirements in the new health reform law ("covered health insurance provider"), an annual \$500,000 per tax year compensation deduction limit will apply for all officers, employees, directors, and other workers or service providers performing services for or on behalf of a covered health insurance provider. The limit applies to tax years beginning after Dec. 1, 2009, with respect to services performed after that date (Code Sec. 162(m)(6) , as amended by 2010 Health Care Act Sec. 9014). For analysis, see ¶704 .
- Pharmaceutical manufacturers and importers will have to pay an annual flat fee beginning in 2011 allocated across the industry according to market share. The annual flat fee beginning in 2011 is allocated across the industry according to market share. The schedule for the flat fee is: 2011, \$2.5 billion; 2012 to 2013, \$2.8 billion; 2014 to 2016, \$3 billion; 2017, \$4 billion; 2018, \$4.1 billion; 2019 and later, \$2.8 billion. The fee will not apply to companies with sales of branded pharmaceuticals of \$5 million or less (2010 Health Care Act Sec. 9008, as amended by 2010 Reconciliation Act Sec. 1404). For analysis, see ¶609.
- For sales after Dec. 31, 2012, manufacturers or importers of medical devices will have to pay a 2.3% of the sale price is imposed on the sale of any taxable medical device by the manufacturer, producer, or importer of the device. A taxable medical device is any device, defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act, intended for humans. The excise tax will not apply to eyeglasses, contact lenses, hearing aids, and any other medical device determined by IRS to be of a type that is generally purchased by the general public at retail for individual use (Code Sec. 4191 , as added by 2010 Reconciliation Act Sec. 1405). For analysis, see ¶607 .
- Health insurance providers will face an annual flat fee on the health insurance sector effective for calendar years beginning after Dec. 31, 2013. The fee will be allocated based on market share of net premiums written for a U.S. health risk for calendar years beginning after Dec. 31, 2012. The aggregate annual flat fee for the industry will be: \$8 billion for 2014; \$11.3 billion for 2015 and 2016; \$13.9 billion for 2017; and \$14.3 billion for 2018. The fee will be indexed to the rate of premium growth for later years. The fee will not apply to companies whose net premiums written are \$25 million or less (2010 Health Care Act Sec. 9010, as amended by 2010 Health Care Act Sec. 10905, as further amended by 2010 Reconciliation Act Sec. 1406). For analysis, see ¶610 .
- For services provided on or after July 1, 2010, the indoor tanning industry will be hit with a 10% excise tax on indoor tanning services (Code Sec. 5000B , as added by 2010 Health Care Act Sec. 9017, as amended by 2010 Health Care Act Sec. 10907). For analysis, see ¶608
- For tax years beginning after Dec. 31, 2009, nonprofit Blue Cross Blue Shield organizations must maintain a medical loss ratio of 85% or higher in order to take advantage of the special tax benefits provided to them, including the deduction for 25% of claims and expenses and the 100% deduction for unearned premium reserves (Code Sec. 833(c)(5) , as amended by 2010 Health Care Act Sec. 9016). For analysis, see ¶1303.