On July 15, 2009, the Senate Health, Education, Labor, and Pension (HELP) Committee voted to approve the *Affordable Health Choices Act (AHCA).* In addition, on July 14, 2009, House Democratic leaders introduced the *America's Affordable Health Choice Act of 2009 (AAHCA)*. This act is the product of three House panels with jurisdiction over health policy that have been working together as one committee to develop a single bill.

Even as we write this, the Senate Finance Committee is finalizing its own bill, which could change the reform landscape significantly. The analysis contained in this paper may need to be significantly expanded in the near future, depending on the details and timing of the Finance Committee bill.

Objectives of the Two Pieces of Legislation

Both AHCA and AAHCA have several stated objectives:

- Reduce health care costs
- Improve health care quality
- Protect consumer choice
- Increase access to health care

Discussion of major provisions of each bill and their potential impact on large employer health coverage and costs follows. Precise impacts will vary by employer due to a variety of factors. We have focused this analysis on large employers and acknowledge that the impact for small employers may be different and more substantial; there are also a number of provisions in these bills that apply specifically to small groups that are not included in this paper. In addition, many of the provisions have not yet been precisely defined, so actual impacts may vary. This summary primarily addresses direct effects of the legislation. Secondary effects on the marketplace would also impact large employers. Finally, we have not provided substantive analysis of the "public plan" option, as that reform has been addressed elsewhere and is beyond the scope of this effort. We acknowledge that a public plan that reimburses at Medicare rates could potentially have system-changing effects on the entire healthcare sector and materially affect any number of other reforms listed below.

- **Individual Responsibility.** The AHCA and AAHCA both have provisions that would penalize individual taxpayers who do not participate in "qualifying coverage." **This provision would not appear to have a major impact on employers that do not have significant groups of employees that currently opt-out of coverage. However, employers may need to adjust their benefit plan options to meet the "qualifying coverage" requirements.**

- **Gateways & Exchanges.** The AHCA would establish "Affordable Health Benefit Gateways" and the AAHCA would establish a "Health Insurance Exchange." These coverage options would be provided by states (if they so choose) and by the federal government. Under both approaches, employees or employers may elect the public plans in lieu of their employer plan, although the approaches vary. **This could affect employer costs depending on which employees elect the Gateways and the cost of the Gateways relative to the employer plan. Large employers may not be included initially.**

- **Consumer Protections.** The AAHCA goes farther than the AHCA in the area of consumer protections, which may place a greater burden on employers or their vendors:

    - Potential tightening of grievance and appeal procedures (to be determined by the Health Choices Commissioner)

    - Transparency and disclosure of plan information

- **Insurance Market Reforms.**

Item	Where Found	Potential Impact on Large Employers
Pre-existing condition exclusions not allowed	AHCA, AAHCA	⇒ Increased costs for health plans that exclude coverage for pre-existing conditions. Little to no direct impact for most large employers.
Preventive Care / Immunizations	AHCA, AAHCA	⇒ Required plan design changes for some plans—could increase short-term costs, but with the goals of improving long-term health status and costs.
Dependent Coverage to Age 26	AHCA	⇒ Increased costs for health plans that have lower dependent coverage ages.
No Annual or Lifetime Caps	AHCA, AAHCA	⇒ Increased costs for health plans that have annual or lifetime benefit maximums.
Nondiscrimination based on salary for benefit eligibility	AHCA	⇒ Employers that use salary criteria as a basis for eligibility would need to change to a different basis, with potential for increased costs.
Grandfathered Plans	AHCA, AAHCA	⇒ The new requirements may have delayed application to coverage in effect as of enactment and to collectively bargained plans.
Actuarial Equivalence Rule of 70% versus no Cost Sharing	AAHCA	⇒ Places limits on plan design flexibility for employers.

- **Employer Pay or Play.** The AHCA has a section on employer responsibility that requires the following.
    - Employers with more than 25 employees must offer "qualifying coverage" and pay at least 60% of monthly premiums.
    - The penalty for noncompliance is $750 per year for each uninsured full-time employee and $375 per year for each uninsured part time employee. The penalties would be indexed to CPI beginning in 2013.

  The AAHCA has a different set of employer responsibility provisions:
    - Employers with more than $250,000 in annual payroll must offer coverage and pay at least 72.5% of the premium for individual coverage and 65% of premium for family coverage. The employer subsidy requirements would be lower for part-time employees.
    - Employers would contribute generally 8% of average salary for employees who do not enroll in the employer's plan and instead pariticipate in the Exchange via the affordability test. In addition, employers who don't offer coverage would have a payroll tax of 8% (phased out for small employers with payroll under $400,000).

Measuring the implications of pay-or-play overall is difficult since the impact will vary by company depending on its unique circumstances and also depending on the various benefit strategies used by that company. A thorough analysis is beyond the scope of this paper.

- **Other Employer Requirements.** There are several other miscellaneous requirements in AHCA that would impact employers:

Item	Where Found	Potential Impact on Large Employers
Notice About Gateways and Exchanges	AHCA, AAHCA	⇒ Increased cost to notify employees about the existence of Gateways
Retiree Reinsurance	AHCA, AAHCA	⇒ Potential reimbursement for employers that offer early retiree health coverage in states without Gateways (80% of claims between $15,000 and $90,000) – must be used to reduce participant costs
Promotion of Wellness Programs	AHCA, AAHCA	⇒ Potential for increased cost to provide information on the advantages of wellness programs and expansion of HIPAA cost incentives.
New HIPAA Standard Transactions	AHCA, AAHCA	⇒ Potential higher administrative costs to implement new transaction requirements, although long-term efficiency may be improved.

- **Financing.** The AHCA has been estimated by the Congressional Budget Office (CBO) to cost $615 billion over 10 years. The AAHCA has been estimated by the CBO to cost $1,042 billion over 10 years. The CBO has also stated that it is doubtful that either of the two bills will slow health care spending by a significant amount. Although the AAHCA has tax increase provisions, much of the financing for either of these bills has yet to be worked out. Some of the financing provisions in AAHCA are summarized below.

    - A health care surcharge for individuals earning over $280,000 per year ($350,000 for married filing jointly). The surcharge would be 1% of gross income above the limit, increasing progressively to 5.4% for incomes over $1 million for married taxpayers.
    - A change in the foreign tax credit rules, delaying for nine years a scheduled liberalization of the rules for allocating interest expenses.
    - Changes in tax rules for foreign multinational corporations resulting in fewer deductions.
    - Strengthening of the "economic substance" doctrine, which would require a higher standard for transactions that generate tax benefits.
    - Medicare Advantage payment decreases, Medicare waste reduction and other savings. As Medicare Advantage carriers make product and price adjustments to compensate, or even withdraw from certain service areas, employers that offer these plans to retirees may be affected.

  There has also been talk about limiting the employer tax exclusion for health benefits, although AHCA and AAHCA do not address it at this point.

- **Downstream Impacts.** If the eventual health reform legislation meets its objectives, the short-term costs of new programs may be offset by long-term reductions in health cost trends and improvements in the overall health status of Americans. In the complicated world of health care, this type of success will require cooperation, innovation, investment, and foresight across the broad spectrum of organizations and individuals involved in health care. Whether the AHCA/AAHCA will be able to achieve that goal remains to be seen.

Current Regulatory Landscape

There is still a considerable amount of work that would have to be done in the House and Senate in order to be able to reach a consensus on health care reform and how it would be financed. This summary is preliminary, and changes are likely to occur throughout the summer and fall as the legislative process continues.

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