



Legislative Bulletin.....June 7, 2012

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H.R. 436 – Health Care Cost Reduction Act of 2012

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Order of Business: Consideration of the bill is scheduled to begin on Thursday, June 7, 2012, under a closed rule providing for 90 minutes of general debate equally divided and controlled by the Chair and Ranking Member of the Committee on Ways and Means with no amendments permitted. It also provides for one motion to recommit.

Summary: H.R. 436 repeals two revenue-raising provisions originally included in Obamacare as “offsets” and reforms how Flexible Spending Arrangements (FSA) holders manage their account balances. First, it immediately repeals the 2.3% excise tax on manufacturers and importers of medical device products¹ scheduled to take effect January 1, 2013². [Many industry reports](#) estimate that this tax will lead to the loss of at least 43,000 American device-related jobs impacting every state as well as increase the cost of medical devices for health care providers and consumers. Secondly, beginning in 2013, it repeals the prohibition on the use of tax-preferred accounts, such as FSAs, Health Savings Accounts (HSA), Archer Medical Savings Accounts (MSA), or Health Reimbursement Accounts (HRA), to purchase over-the-counter (OTC) medications (except insulin) *without a prescription*.³ Thirdly, beginning in 2013, the bill allows FSA holders to “cash out” (and be treated as normal, taxable wages) up to \$500 of their unused FSA/HRA balance at the end of their health care plan year. Under current law, unused FSA balances are forfeited back to the employer. In other words, FSA balances are considered “use it, or lose it.”

According to the Joint Committee on Taxation (JCT) and Congressional Budget Office (CBO), these provisions reduce taxes by approximately \$37 billion over ten years. To prevent increases in budget deficits as a result of decreased revenue, the bill includes an Obamacare offset that has been previously tapped this Congress: recapture of

¹ The U.S. Food and Drug Administration (FDA) defines a medical device to be “an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part.” U.S. Food and Drug Administration, U.S. Dep’t of Health and Human Services, available at <http://www.fda.gov/medicaldevices/deviceregulationandguidance/overview/classifyyourdevice/ucm051512.htm>

² Section 1405 of P.L. 111-152. Subchapter E of Chapter 32 of the Internal Revenue Code of 1986.

³ This provision is based off of H.R. 5842 introduced by Representative Lynn Jenkins (R-KS). Prior to Obamacare becoming law in March 2010, these tax-preferred accounts could be used to purchase OTC medicines without a prescription.

overpayments from Obamacare's premium exchange subsidies.⁴ According to JCT and the CBO, this offset increases revenue by \$12 billion and cuts spending by \$31.9 billion resulting in overall deficit reduction of \$6.7 billion over ten years.

Potential Conservative Concerns/Supporting Arguments: Some conservatives question the timing and strategy of bringing Obamacare partial repeal bills to the floor a few weeks before the Supreme Court is expected to rule on Obamacare's constitutionality. Discussion on the strategy to fully repeal Obamacare among some conservatives and outside groups has intensified since the Supreme Court concluded oral arguments on this landmark case at the end of April. Before oral arguments began, 18 leading conservative groups sent a [letter](#) to House Leadership expressing their concern about bringing bills to the floor that partially repeal onerous parts of Obamacare. Also, Representative Steve King and Senator Jim DeMint penned a Washington Times [Op-ed](#) expressing this idea as well.

However, other conservatives have expressed that these partial repeal bills present opportunities to educate Americans about Obamacare's many policy flaws and negative effects on the health care industry, state and federal budgets, and health care consumers. The vast majority of conservatives agree that the Obamacare provisions within this bill merit being repealed. Also, the bill cuts taxes by \$25.1 billion and cuts federal spending by \$31.9 billion.

Outside Groups in Support: Americans for Tax Reform, Americans for Prosperity (key vote), the Business Roundtable, International Franchise Association, National Restaurant Association, National Restaurant Federation, National Federation of Independent Business, U.S. Chamber of Commerce, and hundreds of trade associations and medical specialty groups.

Committee Action: Representative Erik Paulsen (R-MN) introduced H.R. 436 on January 25, 2011. On May 31, 2012, the Committee on Ways and Means marked up and reported the amended bill out favorably by a 23-11 vote. On Friday, June 1, 2012, a Rules Committee print of the bill was released which added provision to the base text to include the OTC, FSA "cash out," and pay-for described within this bulletin.

Administration Position: The Obama Administration released Statement of Administration Policy (SAP) which opposes the bill.

Cost to Taxpayers: The Congressional Budget Office (CBO) released a cost [estimate](#) for the Rules Committee print of H.R. 436 on June 5, 2012. It explains that the bill reduces the deficit by \$6.7 billion by cutting \$25.1 billion in taxes and reducing direct spending by \$31.9 over the FY2013-FY2022 period.

⁴ Offset for [H.R. 4](#), the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (P.L. 112-9).

Does the Bill Expand the Size and Scope of the Federal Government?: The bill cuts taxes by \$25.1 billion and cuts federal spending by \$31.9 billion over the FY2013-FY2022 period.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: The JCT explains that the recapture of Obamacare premium exchange subsidies is considered a private-sector mandate since it eliminates “existing limits⁵ on the amounts taxpayers would be required to repay...in the event of an overpayment.” Many conservatives might argue that recapturing federal subsidies which taxpayers were never originally entitled to receive represents proper federal oversight to prevent waste, fraud, and abuse of taxpayer dollars.

Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No.

Constitutional Authority: The Constitutional Authority Statements accompanying each introduced bill which comprises the main H.R. 436 are listed below:

Medical device tax repeal (provision from H.R. 436): “Congress has the power to enact this legislation pursuant to the following: Article 1, Section 8.”

OTC Reforms (provision from H.R. 5842): Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 3: The Congress shall have Power--To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

FSA “cash out” (provision from H.R. 1004): Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 1: The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States. Sixteenth Amendment: The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

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⁵ These limits are described on page 5 of [this](#) Budget Committee’s Reconciliation Memo.