

Committee			
Number	Senator	Summary	Offset
465	Rockefeller/ Kerry/ Schumer/ Menendez F1	Exempt workers in high-risk professions from the excise tax on high cost insurance	capping itemized deductions at 35 percent
466	Rockefeller F2	Eliminate health savings accounts (HSAs)	revenue raiser
467	Conrad F1	Tribal Health Care Tax treatment codification	TBD
468	Bingaman F1	Clarifies that "free rider penalty" is calculated as the average penalty within a state or region	Budget neutral
469	Kerry/ Rockefeller/ Schumer/ Stabenow/ Cantwell/ Menendez F1	The amendment would make various changes to the excise tax on high cost insurance. No change would be made to the transition relief.	closing corporate tax loopholes
470	Kerry/ Snowe/ Cantwell F2	The amendment would make various changes to the excise tax on high cost insurance. No changes would be made to the transition relief.	provided when the amendment is offered
471	Kerry F3	The amendment would make various changes to the excise tax on high cost insurance. No change would be made to the transition relief.	capping itemized deductions at 35 percent
472	Lincoln F1	Executive compensation limits on health insurance providers	revenue raiser
473	Schumer F1	Increase FSA contributions limit to \$3,000	Offset will be determined when the amendment is offered for consideration

474	Schumer/ Kerry/ Cantwell/ Menendez F2	Tax equity for Domestic Partners	Offset will be determined when the amendment is offered for consideration
475	Stabenow F1	Exempt plans that cover retirees from the excise tax on high cost insurance	Extending Medicaid price discounts to drugs consumed by dual-eligible populations in Medicare programs. Insurers would continue to negotiate prices on behalf of the other beneficiaries who enroll in their plans
476	Cantwell F1	Equalize the tax treatment of Health Reimbursement Arrangements (HRA) established by all government employers	amendment includes offsets sufficient to ensure that the amendment is revenue neutral
477	Cantwell F2	Clarify that tax-exempt bonds can be used for fixed-wing air ambulances	amendment includes offsets sufficient to ensure that the amendment is revenue neutral
478	Nelson F1	Increase thresholds for the excise tax on high cost insurance plans for employer-sponsored retiree health coverage	the revenue offset is closing corporate tax loopholes
479	Menendez F1	Create a credit that would encourage investments in new therapies to prevent, diagnose, and treat acute and chronic disease	increase annual fees on health insurance providers to offset increase in spending
480	Carper F1	Replace the excise tax on high cost insurance with a medical inflation cap	revenue neutral
481	Carper F2	Eliminate the excise tax on high cost insurance and enact a high limit on the value of excludable employer-provided health premiums and a 35 percent limit on itemized deductions	revenue neutral
482	Carper F3	Eliminate the excise tax on high cost insurance and enact a limit on the value of excludable high-cost employer-provided health premiums	revenue neutral

483	Grassley F1	Strike fee on health insurance providers	corresponding reduction in unspent and unallocated mandatory spending that falls within Finance Committee jurisdiction from the American Recovery and Reinvestment Act of 2009
484	Grassley F2	Strike fee on medical device manufactures	corresponding reduction in unspent and unallocated mandatory spending that falls within Finance Committee jurisdiction from the American Recovery and Reinvestment Act of 2009
485	Grassley F3	Strike fee on clinical laboratories	corresponding reduction in unspent and unallocated mandatory spending that falls within Finance Committee jurisdiction from the American Recovery and Reinvestment Act of 2009
486	Grassley F4	Strike fee on manufactures and importers of branded drugs	corresponding reduction in unspent and unallocated mandatory spending that falls within Finance Committee jurisdiction from the American Recovery and Reinvestment Act of 2009
487	Grassley F5	Fail-safe mechanisms to ensure health care reform does not increase the budget deficit	
488	Grassley F6	Maintains that retiree prescription drug plan subsidies are excludable from the plan sponsor's gross income for income tax and AMT	applying 5 year waiting period for legal immigrants as the basis for determining eligibility for health insurance tax credits proposed in the Chairman's Mark
489	Grassley F7	Clarifying IRS governance reporting requirements for tax-exempt organizations	negligible revenue effect
490	Grassley F8	Remove the safe harbor available to tax-exempt organizations with respect to reasonable compensation of executives	expected to raise revenue
491	Hatch F1	Exempt middle-income families from tax increases in the bill	proportionate reduction as needed in spending in the Chairman's Mark

492	Hatch F2	Allow small business tax credits for those purchasing insurance outside the state insurance exchange	proportionate reduction as needed in spending in the Chairman's Mark
493	Hatch F3	Exclude Health Flexible Spending Accounts (FSAs) from the aggregate amount of health insurance for purpose of the excise tax on high cost health insurance plans	proportionate reduction as needed in spending in the Chairman's Mark
494	Hatch F4	Remove the employee portion of insurance premiums from inclusion in the total amount of insurance subject to the excise tax on high cost insurance	proportionate reduction as needed in spending in the Chairman's Mark
495	Hatch F5	Strike transition relief for excise tax on high cost health insurance	proportionate reduction as needed in spending in the Chairman's Mark
496	Hatch F6	Make the transition relief for excise tax on high cost health insurance plans contingent upon GAO study concluding that the relief is fairly apportioned among the states under the 16TH amendment	proportionate reduction as needed in spending in the Chairman's Mark
497	Hatch F7	Add transition relief for the excise tax on high cost insurance plans for any State with a name that begins with the letter "U"	proportionate reduction as needed in spending in the Chairman's Mark
498	Hatch F8	Allow the excise tax payments on high cost health insurance to be deductible for income tax purposes	proportionate reduction as needed in spending in the Chairman's Mark
499	Hatch F9	Strike cap on FSAs	proportionate reduction as needed in spending in the Chairman's Mark
500	Hatch F10	Strike the provision to conform the definition of medical expenses for the Health FSAs to that of the itemized deductions for medical expenses	proportionate reduction as needed in spending in the Chairman's Mark
501	Hatch F11	Conform the definition of medical expenses for purposes for itemized deduction for medical expenses to that for Health FSAs	proportionate reduction as needed in spending in the Chairman's Mark
502	Hatch F 12	Strike the increased penalty for non-qualified distributions from a health saving account	proportionate reduction as needed in spending in the Chairman's Mark
503	Hatch F13	Make the corporate information reporting requirement applicable only to health care related payments	proportionate reduction as needed in spending in the Chairman's Mark

504	Hatch F14	Strike the annual fee on manufactures and importers of medical devices	proportionate reduction as needed in spending in the Chairman's Mark
505	Hatch F15	Provide that the annual fees assessed on the four health industry segments are deductible for U.S. income tax purposes	proportionate reduction as needed in spending in the Chairman's Mark
506	Hatch F16	Provide that the annual fees assessed on the four health industry segments apply only to the extent that the companies in the industry segments have income in excess of ten times the amount of the assessed fee for each year the fee is assessed	proportionate reduction as needed in spending in the Chairman's Mark
507	Hatch F17	Provide that the annual fees on the four health industry segments not take effect until GAO has certified that no portion of the annual fee is likely to be passed on to consumers of the products manufactured or imported by the companies on which the tax is levied	proportionate reduction as needed in spending in the Chairman's Mark
508	Hatch F18	Provide that the annual fee on manufactures and importers of medical devices, health insurance providers, and clinical laboratories are assessed under the same terms the Chairman's Mark provides for the annual fees on the manufactures and importers of branded drugs	proportionate reduction as needed in spending in the Chairman's Mark
509	Hatch F19	Provide that not more than one of the four annual fees on the various health care industry segments can be assessed on the a single company in any taxable year	proportionate reduction as needed in spending in the Chairman's Mark
510	Hatch F20	Exemption of annual fee for manufactures and importers of medical devices that furnish products that are used to combat H1N1	proportionate reduction as needed in spending in the Chairman's Mark
511	Hatch F21	Prohibits authorized or appropriated federal funds under the Mark from being distributed to or used by ACORN	not applicable
512	Hatch F22	Surcharge on attorney's fees for malpractice lawsuits	not applicable

513	Snowe F1	Provides a higher threshold for the excise tax on the high cost insurance for those over the age of 55 and increase the inflation adjustment of the threshold for plans	offset will be provided at markup
514	Snowe F2	Market basket productivity adjustment	revenue neutral
515	Snowe F3	Increase the \$2,000 contribution cap on FSA to the \$3,000 and implement this cap starting 2011, index the cap for inflation	TBD by JCT, but intended to be revenue neutral
516	Snowe F4	Reduce individual mandate penalty	No score available, offset to be provided at latter date
517	Snowe F5	Replace individual mandate with a defined minimum contribution	No formal score available. Offset will be provided at a later date
518	Snowe F6	Makes the prompt pay requirement for hospitals and nursing homes permanent	
519	Snowe F7	Allows small business owners to participate in SIMPLE cafeteria plan	offset to be provided
520	Snowe F8	Express sense of the Senate that budget points of order should not be waived on amendments to a health care reform bill signed into law	none
521	Snowe F9	Exclude HIPPA-excepted benefits form the excise tax on high cost plans	revenue estimate for provision unavailable, offset to be provided at markup
522	Kyl F1	Eliminate all industry fees	tie tax credit to the lowest cost bronze plan
523	Kyl F2	Eliminate pharmaceutical fee	tie tax credit to the lowest cost bronze plan
524	Kyl F3	Eliminate device fee	tie tax credit to the lowest cost bronze plan
525	Kyl F4	Eliminate health insurance providers' fee	tie tax credit to the lowest cost bronze plan
526	Kyl F5	Eliminate clinical lab fee	tie tax credit to the lowest cost bronze plan
527	Kyl F6	Eliminate flexible spending account cap	tie tax credit to the lowest cost bronze plan

528	Kyl F7	Eliminate 35% excise tax on Health Coverage	tie tax credit to the lowest cost bronze plan
529	Kyl F8	Expand the deduction for catastrophic medical expenses	tie tax credit to the lowest cost bronze plan
530	Bunning F1	Sunset tax increases in the mark on 12/31/19	
531	Bunning F2	Sunset tax increases in the mark that increase the out-of-pocket health care costs for Americans or cause employers to invade the privacy of their workers	
532	Bunning F3	Conform the definition of medical expenses so that over the counter medical products qualify as medical expenses	delaying the effective date of the mandate that states expand Medicaid coverage
533	Bunning F4	Prevent any taxes or fees in Title VI of the Mark from going into effect until the Secretary of U.S. Department of Veterans Affairs certifies that none of the provisions will increase the cost of medical care provided to veterans	corresponding reduction in mandatory outlays in the Chairman's Mark
534	Crapo/ Roberts F1	No fee, tax, or penalty in this legislation can be applied to any individual earning less than \$200,000 per year or any couple earning less than \$250,000 per year	to be provided
535	Roberts/ Hatch F1	Makes changes to the FSA rules	proportionate reduction in spending needed in spending in the Chairman's Mark
536	Roberts/ Hatch F2	Excludes FSAs, HRAs, HSAs, dental, vision and other supplemental plans from threshold amount for excise tax on high cost insurance policies	proportionate reduction in spending needed in spending in the Chairman's Mark
537	Roberts F3	Increases cap on FSAs to \$5,000 and index for inflation	proportionate reduction in spending needed in spending in the Chairman's Mark
538	Roberts F4	Strike provisions that prohibit cost of over-the-counter medicine from being reimbursed through a health FSA, HRA, HAS or Archer MSA	proportionate reduction in spending needed in spending in the Chairman's Mark

539	Roberts F5	Preventing tax increase on the middle class tax payers	proportionate reduction in spending needed in spending in the Chairman's Mark
540	Ensign F1	Strike the provision in the Chairman's bill that caps Flexible Spending Accounts	proportionate decrease in certain spending provisions in the Chairman's bill except for Medicare spending
541	Ensign F2	Exempt individuals making less than \$200,000 per year and families making less than \$250,000 per year from individuals penalty for failure to have health insurance	not scored: proportionate decrease in certain spending provisions in the Chairman's bill except for Medicare spending
542	Ensign F3	Limit any tax, fee, or penalty in the bill to individuals making more than \$200,000 per year and families making \$250,000 per year	not scored: proportionate decrease in certain spending provisions in the Chairman's bill except for Medicare spending
543	Ensign F4	Strike the word "fee" everywhere it appears in the bill and replace with the word "tax"	amendment has no cost
544	Ensign F5	Exempt small businesses that employ up to 100 employees from all new taxes, fees, or penalties in the bill	proportionate decrease in certain spending provisions in the Chairman's bill except for Medicare spending
545	Ensign F6	Change the index of the high cost insurance in the Chairman's' bill to CPI-medical	proportionate decrease in certain spending provisions in the Chairman's bill except for Medicare spending
546	Ensign F7	Ensure the high cost of insurance tax shall apply to FEHB plans of Members of Congress and staff, the President of the United States, all Administration Czars, and other federal employees	proportionate decrease in certain spending provisions in the Chairman's bill except for Medicare spending
547	Ensign F8	Strike the provision in the Chairman's bill that raises the penalty on non-qualified medical expenses withdrawals from HSA's	to be derived from proportionate decrease in certain spending provisions in the Chairman's bill except for Medicare spending
548	Enzi F1	Change the cap on FSAs to \$3,000, index to CPI, and create a cash-out provision	reduce subsidies to make amendment budget neutral with subsidies awarded to individuals earning 400% of poverty

549	Enzi F2	Protecting patient access to life saving medial equipment	reduce subsidies to make amendment budget neutral with subsidies awarded to individuals earning 400% of poverty
550	Enzi F3	Exempt products sold to Medicare beneficiaries and veterans from the excise tax on medical devices	reduce subsidies to make amendment budget neutral with subsidies awarded to individuals earning 400% of poverty
551	Cornyn F1	Strike clinical laboratires fee	offsets to be provided at mark-up
552	Cornyn F2	Protecting patient from higher health costs - strikes medical device manufatrures fee	offsets to be provided at mark-up
553	Cornyn F3	Protecting patients from higher health costs - strike health insurance providers fee	offsets to be provided at mark-up
554	Cornyn/ Roberts F4	Strike \$2000 cap on fSA	offsets to be provided at mark-up
555	Cornyn F5	Protecting small businesses from higher costs - certify no provison will impose additional costs on small business	
556	Cornyn F6	Protecting patients from higher health costs - certify that fees won't be passed on	
557	Cornyn F7	Protecting patients from higher health costs - certify that health insurance fee won't be passed on to consumers	
558	Cornyn F8	Protecting patients from higher health costs - certify pharmaceutical fee won't be passed	
559	Cornyn F9	Protecting patients from higher health costs - certify that medcial device fee won't be passed on	
560	Cornyn F10	Protecting patients from higher health costs - certify clinical lab won't be passed on	
561	Cornyn F11	No spending on new federal entitlements under this act until the national debt is under \$12 trillian	not necessary
562	Cornyn F12	Reducing health care costs for American Families - certify the will reduce health core costs by \$2,500 for every family	not necessary

563	Cornyn F13	New charitable hospital requirements do not apply to hospitals in states that have passed certain community benefit laws	offsets to be provided at mark-up
564	Cornyn F14	reducing health care costs	not necessary

## **Rockefeller Financing Amendment #1 to America's Healthy Future Act**

### **Rockefeller Amendment #F1 to Title VI (Excise Tax on High Cost Insurance)**

**Cosponsor: Kerry, Schumer, Menendez**

**Short Title:** The amendment would exempt workers in high-risk professions from the excise tax thresholds.

#### **Description of Amendment:**

- The Secretary of the Treasury shall issue guidance exempting plans that cover employees working in high-risk fields that due to the nature of their work require health insurance plans more expensive than the excise tax limits.

**Offset:** Capping itemized deductions at 35%.

[NOTE – Amendment sponsors reserve the right to modify the amendment for technical, revenue-neutrality, or other purposes.]

## **Rockefeller Financing Amendment #2 to America's Healthy Future Act**

### **Rockefeller Amendment #F2 to Title VI**

**Short Title:** The amendment would eliminate Health Savings Accounts.

#### **Description of Amendment:**

- Eliminate Health Savings Accounts effective January 1, 2010.

**Offset:** The amendment would be a revenue raiser.

## **Conrad Amendment #F1 to Clarify the Tax Treatment of Health Benefits Provided by Indian Tribal Governments**

**Short Title:** Tribal Health Care Tax Treatment Codification

### **Description of Amendment:**

Amend the Internal Revenue Code of 1986 to provide an exclusion from gross income for the following categories of medically necessary health care:

- the value of health services provided or purchased by the Indian Health Service (IHS)
- medical care provided by an Indian tribe or tribal organization to a member of an Indian tribe, including the member's spouse or dependents
- the value of accident or health plan coverage provided by an Indian tribe or tribal organization for medical care to a member of an Indian tribe under an accident health plan
- any other medical care provided by an Indian tribe that supplements, replaces, or substitutes for federal Indian health care programs

Specifies no inference as to prior law, or to tribal government benefits other than health benefits

Effective date: date of

## **Bingaman Amendment # F-1 to America's Healthy Future Act of 2009**

### **Protecting Rural Employers in Low Cost States and other Employers in Low Cost States**

**Summary:** Clarifies that “free rider penalty” is calculated as the average penalty within a state or region.

**Offset:** Budget neutral

#### **Description:**

The Chairman's Mark includes a penalty on employers with 50 or more employees for costs associated with their employees receiving federal tax credits in the exchange. Currently, the Mark requires employers to pay a penalty based on the “average tax credit in the state exchanges.” It is unclear if this would be based on a national or state/regional specific average. If applied on a national basis, the penalty would be higher for many rural states, which often have lower health insurance premiums costs, and other states with lower than average insurance premiums. This amendment clarifies that the penalty must be calculated based on state/regional average penalty costs and not national average costs.

**Kerry//Rockefeller/Schumer/Stabenow/Cantwell/Menendez Amendment #F-1**

Amendment to Title VI Excise Tax on High Cost Insurance

Short Description: The amendment would make various changes to the excise tax on high cost insurance. No changes would be made to the transition relief.

- 1) The threshold for individual coverage would be increased from \$8,000 to \$9,800.
- 2) The threshold for family coverage would be increased from \$21,000 to \$25,000.
- 3) The percent of the excise tax is increased from 35 to 40 percent.
- 4) The threshold would be indexed to CPI plus 1.
- 5) The threshold for individual coverage for age 55 to 65 and non Medicare retirees would be increased by \$750. This amount is indexed to CPI plus 1.
- 6) The threshold for family coverage for age 55 to 65 and non-Medicare retirees would be increased by \$2,000. This amount will be indexed to CPI plus 1.
- 7) The Secretary of the Treasury shall issue guidance exempting plans that cover employees working in a high-risk field that due to the nature of their work require health insurance plans more expensive than the excise tax limits.
- 8) Grandfather plans subject to existing collective bargaining agreements.

The offset is closing corporate tax loopholes.

## **Kerry/Snowe/Cantwell Amendment #F-2**

### Amendment to Title VI Excise Tax on High Cost Insurance

Short Description: The amendment would make various changes to the excise tax on high cost insurance. No changes would be made to the transition relief.

- 1) The threshold would be indexed to CPI plus 1
- 2) There threshold for individuals age 55 to 65 and non Medicare retirees would be increased by \$762. This amount is not indexed for inflation.
- 3) The threshold for families age 55 to 65 and non-Medicare retirees would be increased by \$2,000. This amount is not indexed for inflation.

A revenue offset will be provided when the amendment is offered.

### **Kerry Amendment #F-3**

#### Amendment to Title VI Excise Tax on High Cost Insurance

Short Description: The amendment would make various changes to the excise tax on high cost insurance. No changes would be made to the transition relief.

- 1) The threshold for individual coverage would be increased from \$8,000 to \$9,800.
- 2) The threshold for family coverage would be increased from \$21,000 to \$25,000.
- 3) The percent of the excise tax is increased from 35 to 40 percent.
- 4) The threshold would be indexed to CPI plus 1.
- 5) The threshold for individual coverage for age 55 to 65 and non Medicare retirees would be increased by \$750. This amount is indexed to CPI plus 1.
- 6) The threshold for family coverage for age 55 to 65 and non-Medicare retirees would be increased by \$2,000. This amount will be indexed to CPI plus 1.
- 7) The Secretary of the Treasury shall issue guidance exempting plans that cover employees working in a high-risk field that due to the nature of their work require health insurance plans more expensive than the excise tax limits.
- 8) Grandfather plans subject to existing collective bargaining agreements.

The offset is capping itemized deductions at 35 percent.

## **Lincoln Amendment #F1 to The America's Healthy Future Act**

**Short Title:** Executive Compensation Limits on Health Insurance Providers

### **Description of Amendment:**

This amendment would create a special rule under Section 162(m) regarding the deductibility of excessive remuneration (including deferred deduction remuneration) by a health insurance provider, if at least 25 percent of the health insurance provider's gross premium income is derived from health insurance plans that meet the minimum creditable coverage requirements in the Chairman's mark ("covered health insurance provider"). Employers with self-insured plans are excluded from the definition of covered health insurance provider.

Specifically, in the case of a covered health insurance provider, no deduction shall be allowed for remuneration which is attributable to services performed by an applicable individual for such covered health insurance provider during a taxable year to the extent that such remuneration exceeds \$500,000. This special rule applies without regard to whether such remuneration is paid during the taxable year or a subsequent taxable year (in applying this rule, rules similar to those in section 162(m)(5)(A)(ii) will be applied). Applicable individuals include all officers, employees, and directors, of a covered health insurance provider. Further, in determining whether the remuneration of an applicable individual for a year exceeds \$500,000, all remuneration from all members of any controlled group of corporations (within the meaning of section 414(b)), other businesses under common control (within the meaning of section 414(c)), or affiliated service group (within the meaning of section 414(m) and(o)) are aggregated.

This amendment would raise revenue.

**SCHUMER #R1**

Short Title: Increase FSA contribution limit to \$3,000

Chairman's Mark: Beginning in 2013, the Chairman's Mark would limit a taxpayer's contribution to a Flexible Spending Account to \$2,000.

Description of Amendment:

The amendment would set a maximum FSA contribution in 2013 of \$3,000 and index the annual maximum for inflation going forward. The index used shall be the same index used for inflating the levels above which the High-Premium Excise Tax is imposed (i.e. whatever final index is approved by the Committee for the excise tax shall also be used for inflating the FSA limit).

Revenue Cost Relative to the Mark: Approximately \$6 billion over the 10-year budget window.

Offset: Offset will be determined when the amendment is offered for consideration.

## **SCHUMER #R2**

(Cosponsored by Senators Kerry, Cantwell, and Menendez)

Short Title: Tax Equity for Domestic Partners

Chairman's Mark: The Chairman's Mark does not correct the tax inequity that exists for private plans that voluntarily cover non-spouse, non-dependent beneficiaries. Under current law, even when an employer plan covers such beneficiaries, it generates income and payroll tax liability for the employee and payroll tax liability for the employer, thereby creating a disincentive for covering these individuals – as well as an inequity in the tax code.

### Description of Amendment:

The amendment would add the text of S. 1153, the Tax Equity for Health Plan Beneficiaries Act, to the Chairman's Mark. This bill would remedy the problem outlined above by making clear that health benefits provided to any eligible beneficiary of an employee under an employer plan would not give rise to additional taxable income to the employee or to payroll tax obligations on the part of the employee or employer. Thus, enacting the legislation would prevent significant tax penalties for employees and employers when families take advantage of insurance plans that choose to cover adult children, domestic partners, and other non-spouse, non-dependent beneficiaries. (More than half of Fortune 500 companies now offer such plans to their employees.)

Revenue Cost Relative to the Mark: Approximately \$4 billion over the 10-year budget window.

Offset: Offset will be determined when the amendment is offered for consideration.

## **Stabenow Amendment F-1 to the Chairman's Mark**

**Short title/purpose:** To protect plans covering pre-Medicare retirees.

**Description of Amendment:** Seniors are currently being hardest hit by increases in health care costs. It is important to ensure that we do not unfairly penalize plans covering pre-Medicare retirees who have higher costs due to the higher average age of persons in the plans. To ensure that they are not hit with additional costs, this amendment would exempt plans that cover retirees from the excise tax on high cost insurance. If the plan only covers retirees, it is entirely exempted. If it covers both active workers and retirees, then retirees and the costs associated with them are excluded when calculating the premium equivalent cost of the plan.

**Offset:** To offset this amendment, this amendment would extend the Medicaid price discounts to the drugs consumed by the dual-eligible population in the Medicare program in order to maintain the previous price breaks. Insurers would continue to negotiate prices on behalf of the other beneficiaries who enroll in their plans.

**Contact:** Colleen Briggs (tax)/Oliver Kim (health)

## **Cantwell Amendment #F1 to the America's Healthy Future Act of 2009**

**Title:** Equalize the tax treatment of Health Reimbursement Arrangements (HRA) established by all governmental employers.

**Description:** Under current law, distributions from an HRA are excluded from gross income if they are used for qualified medical expenses. When a participant dies, the HRA can still be used to pay for qualified medical expenses of the participant's surviving spouse or qualified dependents and these amounts will not be included in the spouse/dependent's income.

IRS Revenue Ruling 2006-36, which took effect this year (2009), prohibits an HRA from providing excludable medical reimbursements to nondependent beneficiaries when no surviving spouse or qualified dependents remain after a participant's death.

The elimination of medical reimbursements to non-dependent heirs is a concern for employees contemplating continued participation in their HRA plan. The fear of potentially losing accumulated assets within this key retiree medical savings tool, due to an untimely death, strongly discourages individual HRA savings for future health care expenses.

Congress partially addressed these concerns in the Worker, Retiree, and Employer Recovery Act of 2008 for participants in plans provided by certain governmental employers. The criteria laid out in the law, which covers plans established in connection with a public retirement system that has been authorized by a state legislature, however, leaves out plans provided to governmental employees using VEBA's and plans that are established by local government employers.

The amendment would correct this disparity by including plans established by or on behalf of a state or a political subdivision thereof and qualified VEBA's in the special rule under IRC Section 105(j).

The amendment will include offsets sufficient to ensure that the amendment is revenue neutral.

## **Cantwell Amendment #F2 to the America's Healthy Future Act of 2009**

**Title:** Clarify that tax-exempt bonds can be used for fixed-wing air ambulances.

**Description:** Under current law, tax-exempt bonds can not be issued for the purchase of any “airplane, skybox or other privacy luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.” Unfortunately, these rules have been interpreted to also exclude the purchase of new, fixed-wing planes to provide air ambulance services.

The amendment would modify section 147(e) by clarifying that this restriction does not apply to apply to any fixed-wing aircraft equipped for, and exclusively dedicated to providing, acute care emergency medical services.

The amendment will include offsets sufficient to ensure that the amendment is revenue neutral.

## **Nelson Amendment #F-1 to America's Healthy Future Act of 2009**

**Short Title:** An Amendment to Prevent Taxation of Retiree Health Benefits

**Description of Amendment:** The Chairman's Mark imposes an excise tax on insurers if the aggregate value of employer-sponsored health coverage for an employee exceeds a threshold amount. The threshold amount is \$8,000 for individual coverage and \$21,000 for family coverage in 2013. After 2013, the threshold amounts are adjusted annually based on an inflation measurement.

In general, health insurance costs are higher for pre-Medicare retirees. The higher cost of health insurance for retirees reflects the greater health care expenses older populations incur. Older individuals are disproportionate users of health care because they have more frequent and more severe health problems. Average per capita health care spending among individuals age 55-64 is more than double the per capita health care spending of 19-44 year olds. As a result, employer-sponsored health coverage provided to pre-Medicare retirees is generally more expensive than coverage for active employees.

The amendment will reduce the likelihood that employer-provided retiree health coverage will be taxed, reduced, or eliminated under the legislation. The amendment modifies the Chairman's Mark by increasing the high cost health insurance excise tax threshold amount to \$10,000 for individual coverage and \$25,000 for family coverage for employer-sponsored retiree health coverage. After 2013, the higher threshold amounts shall be indexed using the same inflation measurement as the lower threshold amounts. The definition of retiree health coverage shall be established by the Department of Treasury and shall not include coverage for individuals under the age of 55. The Secretary of the Treasury shall prescribe such regulations as are necessary to carry out the purposes of this amendment.

**Offset:** The revenue offset is closing corporate tax loopholes.

## **Menendez Amendment F# 1 to Chairman's Mark of America's Healthy Future Act**

### **Title III, Subtitle A**

**Short Title:** To create a credit that would encourage investments in new therapies to prevent, diagnose, and treat acute and chronic diseases.

**Cosponsors:** Cantwell

#### **Background:**

The biotechnology industry develops cutting edge technologies that improve the quality of health care through life-saving and cost-saving medical breakthroughs. It is a critical industry overwhelmingly made up of small entrepreneurial businesses which create high-paying jobs and increase the quality of people's lives. Yet this is an industry that is today at risk of collapse due to an acute lack of capital. In 2008, funds raised by the industry fell by more than half, with funds raised by IPOs dropping by 97 percent. If we do not act, many of these businesses will not survive the economic downturn. America is at risk of losing potentially revolutionary medical therapy research and the quality jobs created by these therapies.

#### **Amendment:**

Modeled after existing tax credits for investments in qualifying advanced energy projects (IRC §48C), the proposal would create a temporary credit subject to an overall cap of \$2 billion to encourage investments in new therapies to prevent, diagnose, and treat acute and chronic diseases.

The proposal would have the following features:

- Limited to “small companies” defined as a business having 250 or fewer employees.
- Credit amount would be equal to 50% of investments in “qualified therapeutic discovery projects”.
- “Qualified therapeutic discovery project” would include projects that are designed to—
  - (a) treat or prevent diseases or conditions by conducting pre-clinical activities, clinical trials, or clinical studies, or carrying out research protocols, for the purpose of securing approval of a drug or biologic;
  - (b) determine molecular factors related to diseases or conditions by developing molecular diagnostics to guide therapeutic decisions; or
  - (c) develop processes, technologies, or products to further the delivery or administration of therapeutics.
- Qualifying investments would include those made during 2009, 2010 and 2011.
- Total of \$2B would be allotted for the program over the 3-year period.
- Eligible companies who are unable to utilize the credits would have the option to receive such credits in the form of Treasury grants.
- Treasury, in consultation with HHS, would award certifications for qualified investments eligible for credits allocated for tax years 2009 through 2011.

- Companies would have to apply to Treasury to certify projects that include certain “qualified investments”.
- Treasury, in determining qualifying projects, would:
  - (A) take into consideration only those projects that show reasonable potential—
    - (1) to result in new therapies to treat areas of unmet medical need or to prevent, detect, or treat chronic or acute disease and conditions, (2) to reduce long-term health care costs in the United States, or (3) to significantly advance the goal of curing cancer within a 30-year periodAND
  - (B) take into consideration which projects would have the greatest potential—
    - (1) to create and sustain (directly or indirectly) high quality, high-paying jobs in the United States, and (2) to advance United State competitiveness in the fields of life, biological, and medical sciences.
- “Qualified therapeutic discovery project” expenditures would not qualify for the R&D credit, orphan drug credit, or bonus depreciation.

**Offset:** Increase annual fee on health insurance providers by amount necessary to offset the increase in spending.

## **Carper Amendment #F1 to Chairman's Mark of the America's Healthy Future Act of 2009**

**Short Title:** To replace the excise tax on high cost insurance with a medical inflation cap

### **Description of Amendment:**

The Chairman's Mark imposes an excise tax on high cost insurance. This amendment would eliminate that excise tax on high cost insurance and would enact the following provisions:

***Medical Inflation Cap:*** This amendment imposes an excise tax, beginning in 2013, on insurance providers to the extent that the annual percentage increase in the aggregate value of employer-sponsored health coverage for an employee exceeds a national standard for medical inflation.

***National Standard for Medical Inflation Set at CPI+4%:*** The national standard for medical inflation shall be established Consumer Price Index for Urban Consumers (CPI-U) for the previous year, as determined by the Department of Labor, plus 4 percent.

***Rate:*** The excise tax shall be equal to 35 percent of the amount by which the aggregate value of employer-sponsored coverage exceeds the national standard for medical inflation.

(E.g., if CPI-U is 2 percent in 2013, the standard for medical inflation shall be 6 percent. Therefore, any insurance provider choosing to offer a plan in 2013 that is 7 percent more expensive than it was in 2012 will be taxed at 35 percent of the amount equal to the excess inflation of 1 percent.)

***Current Plans Established as Baseline:*** The excise tax shall be imposed only on plans, beginning January 1, 2013, to the extent that such plans exceed the national standard for medical inflation. This amendment shall not impose any tax, in 2013 or in any year thereafter, on the annual value of any plan prior January 1, 2013, regardless of the actual cost of the plan.

***Exemption for Currently Inexpensive Plans:*** Beginning in 2013, the Secretary of the Treasury shall have the authority to exempt from this excise tax any insurance plans for which aggregate value of employer-sponsored health coverage for an employee is below a certain threshold dollar amount. Employees that are exempted shall not be subject to the excise tax until the aggregate value of employer-sponsored health coverage exceeds the threshold amount. This exemption amount shall not result in the number of exempted employees exceeding 10 percent of the number of employed individuals in the United States.

***Employer's Calculation of Annual Premium Increase Subject to the Cap:*** This amendment adopts the provisions in the Chairman's Mark regarding reporting requirements and requirements that the insurer, plan, administrator, or employer with a self-administered plan shall be responsible for paying the excise tax.

For each employer, the organization responsible for paying the tax shall calculate the current and previous year's annual average premium using COBRA rules in the same manner that the Chairman's Mark specifies. This organization shall adjust the calculation of the premiums so that the increase reflects only medical inflation and not other factors such as a change in cost-sharing, a change in the average age of employees, or a change in the claims experience of employees. After making adjustments, the percent difference between the current year and the previous year shall be the employer's medical inflation rate. The Secretary of the Treasury shall issue actuarial guidance as necessary to ensure compliance with this provision.

**Offset:** This amendment is intended to be revenue neutral with respect to the Chairman's Mark; the national standard for medical inflation established in this amendment may be adjusted by any level necessary to equal the revenues generated by the high cost excise tax in the Chairman's Mark.

## **Carper Amendment #F2 to Chairman's Mark of the America's Healthy Future Act of 2009**

**Short Title:** To eliminate the excise tax on high cost insurance and enact a high limit on the value of excludable employer-provided health premiums and a 35 percent limit on itemized deductions

### **Description of Amendment:**

The Chairman's Mark imposes an excise tax on high cost insurance. This amendment would eliminate that excise tax on high cost insurance and would enact the following provisions:

**35% Limit on Itemized Deductions:** Beginning in tax year 2010, this amendment shall limit the tax rate at which itemized deductions reduce tax liability to a maximum of 35 percent.

**Threshold on Exclusion:** This amendment imposes ordinary income tax on the value of employer-sponsored coverage that exceeds a threshold amount. Any amount above that threshold is subject to the ordinary individual income tax. The value of the employer-provided health coverage excluded from an employee's gross income shall be limited to \$9,400 for individual coverage and \$24,000 for family coverage for 2013. The threshold amounts are indexed to the Consumer Price Index for Urban Consumers (CPI-U) as determined by the Department of Labor beginning in 2014. In determining the amount by which the value of employer sponsored health insurance coverage exceeds the threshold amount, the aggregate value of all employer-sponsored health insurance coverage is taken into account, including coverage in the form of reimbursements under a Health FSA or an HRA, employer contributions to an HSA, and coverage for dental, vision, and other supplementary health insurance coverage.

This amendment includes additional provisions relating to the threshold on the exclusion:

**Transition Relief for High-Cost States:** Under a transition rule for health insurance plans maintained in the 17 states in which health care was least affordable for the year ended December 31, 2012, as determined by the Secretary, the threshold amount is initially increased by 20 percent. The initial 20 percent increase is reduced by half each year thereafter (e.g., to ten

percent for the first taxable year beginning after December 31, 2013 and to 5 percent for the first taxable year beginning after December 31, 2014) until the additional premium amount is eliminated entirely for taxable years beginning after December 31, 2015.

***Transition Relief for Collective Bargaining Agreements:*** This amendment grandfathers the current law tax exclusion for employer-provided health insurance coverage under a group health plan maintained pursuant to one or more collective bargaining agreements in effect when the change is enacted. In this situation, any change to the tax exclusion would only apply when the last relevant agreement terminates.

***Exemption for First Responders and Other Risky Professions:*** The Secretary of the Treasury shall issue guidance that exempts from the cap on the exclusion those employees who are working in a high-risk field, including first responders, if the Secretary determines that the nature of the profession results in higher average higher insurance premiums.

***Immediate Phase-In for High Incomes:*** This amendment imposes the cap on the exclusion for high-income taxpayers beginning in 2010. Specifically, for each of tax years 2010, 2011, and 2012, single filers with an adjusted gross income exceeding \$200,000, and other filers (including joint filers) with an AGI exceeding \$300,000, shall be subject to ordinary income tax on the value of employer-provided health coverage that exceeds the threshold amounts established for 2013, above.

***Supermajority on Capping the Exclusion:*** This amendment establishes that, beginning in calendar year 2014, Congress may not alter the value of employer-provided health coverage that is subject to income tax unless such legislation is agreed to by at least 60 percent of the members in both the House and Senate.

This amendment adopts other provisions regarding reporting requirements, similar to those in the Chairman's Mark, as appropriate.

**Offset:** This amendment is intended to be revenue neutral with respect to the Chairman's Mark; the threshold amounts established in this amendment may be adjusted by any amount necessary to equal the revenues generated by the high cost excise tax in the Chairman's Mark.

## **Carper Amendment #F3 to Chairman's Mark of the America's Healthy Future Act of 2009**

**Short Title:** To eliminate the excise tax on high cost insurance and enact a limit on the value of excludable high-cost employer-provided health premiums

### **Description of Amendment:**

The Chairman's Mark imposes an excise tax on high cost insurance. This amendment would eliminate that excise tax on high cost insurance and would enact the following provisions:

***Threshold on Exclusion:*** This amendment imposes ordinary income tax on the value of employer-sponsored coverage that exceeds a threshold amount. Any amount above that threshold is subject to the ordinary individual income tax. The value of the employer-provided health coverage excluded from an employee's gross income shall be limited to \$8,000 for individual coverage and \$21,000 for family coverage for 2013. The threshold amounts are indexed to the Consumer Price Index for Urban Consumers (CPI-U) as determined by the Department of Labor beginning in 2014. In determining the amount by which the value of employer sponsored health insurance coverage exceeds the threshold amount, the aggregate value of all employer-sponsored health insurance coverage is taken into account, including coverage in the form of reimbursements under a Health FSA or an HRA, employer contributions to an HSA, and coverage for dental, vision, and other supplementary health insurance coverage.

***Transition Relief for High-Cost States:*** Under a transition rule for health insurance plans maintained in the 17 states in which health care was least affordable for the year ended December 31, 2012, as determined by the Secretary, the threshold amount is initially increased by 20 percent. The initial 20 percent increase is reduced by half each year thereafter (e.g., to ten percent for the first taxable year beginning after December 31, 2013 and to 5 percent for the first taxable year beginning after December 31, 2014) until the additional premium amount is eliminated entirely for taxable years beginning after December 31, 2015.

***Supermajority on Capping the Exclusion:*** This amendment establishes that Congress may not alter the value of employer-provided health coverage that is subject to ordinary income tax unless such legislation is agreed to by at least 60 percent of the members in both the House and Senate.

***Transition Relief for Collective Bargaining Agreements:*** This amendment grandfathers the current law tax exclusion for employer-provided health insurance coverage under a group health plan maintained pursuant to one or more collective bargaining agreements in effect when the change is enacted. In this situation, any change to the tax exclusion would only apply when the last relevant agreement terminates.

This amendment adopts other provisions regarding reporting requirements, similar to those in the Chairman's Mark, as appropriate.

**Offset:** This amendment is intended to be revenue neutral with respect to the Chairman's Mark; the threshold amounts established in this amendment may be adjusted by any amount necessary to equal the revenues generated by the high cost excise tax in the Chairman's Mark.

## **Grassley Amendment #F-1**

Protecting health care consumers from increased health insurance premiums.

### **Purpose:**

To prevent fees imposed on the health insurance industry from being passed onto health care consumers in the form of higher insurance premiums.

### **Description:**

Title VI of the Chairman's Mark imposes a fee, in the form of a nondeductible excise tax, of \$60 billion on health insurance providers that sell health insurance policies to individuals and employees. The fee would be apportioned among all health insurance providers subject to the fee based on the market share of that provider.

This amendment would strike the fee on health insurance providers contained in the Chairman's Mark. This amendment would be fully offset by a corresponding reduction in unspent and unallocated mandatory spending that falls within the jurisdiction of the Senate Committee on Finance from the American Recovery and Reinvestment Act of 2009.

## **Grassley Amendment #F-2**

Protecting health care consumers from increased premiums, fees, or other costs associated with higher costs of medical devices.

### **Purpose:**

To prevent fees imposed on medical device manufacturers from being passed on to health care consumers in the form of increased premiums, fees, or other costs associated with higher costs of medical devices.

### **Description:**

Title VI of the Chairman's Mark imposes a fee, in the form of a nondeductible excise tax, of \$40 billion on medical device manufacturers or importers who offer medical devices for sale in the United States. The fee would be allocated by the manufacturer's market share.

This amendment would strike the fee on medical device manufacturers. This amendment would be fully offset by a corresponding reduction in unspent and unallocated mandatory spending that falls within the jurisdiction of the Senate Committee on Finance from the American Recovery and Reinvestment Act of 2009.

### **Grassley Amendment #F-3**

Protecting health care consumers from increased premiums, fees, or other costs associated with higher costs on services provided by clinical laboratories.

#### **Purpose:**

To prevent fees imposed on clinical laboratories from being passed on to health care consumers in the form of increased premiums, fees, or other costs associated with higher costs on services provided by clinical laboratories.

#### **Description:**

Title VI of the Chairman's Mark imposes a fee, in the form of a nondeductible excise tax, of \$7.5 billion on clinical laboratories. The fee would be allocated by the laboratory's market share.

This amendment would strike the fee on clinical laboratories. This amendment would be fully offset by a corresponding reduction in unspent and unallocated mandatory spending that falls within the jurisdiction of the Senate Committee on Finance from the American Recovery and Reinvestment Act of 2009.

## **Grassley Amendment #F-4**

Protecting health care consumers from increased premiums, fees, or other costs associated with higher costs on branded prescription drugs.

### **Purpose:**

To prevent fees imposed on pharmaceutical manufacturing companies from being passed on to health care consumers in the form of increased premiums, fees, or other costs associated with higher costs on branded prescription drugs.

### **Description:**

Title VI of the Chairman's Mark imposes fee, in the form of a nondeductible excise tax, of \$23 billion on manufacturers and importers of branded drugs. The fee would be allocated by the manufacturer's market share. Fees collected would be credited to the Medicare SMI trust fund.

This amendment would strike the fee on manufacturers and importers of branded drugs. This amendment would be fully offset by a corresponding reduction in unspent and unallocated mandatory spending that falls within the jurisdiction of the Senate Committee on Finance from the American Recovery and Reinvestment Act of 2009.

## **Grassley Amendment #F-5**

### **Short Title:**

Fail-Safe Mechanism to Ensure Health Care Reform Does Not Increase the Budget Deficit

### **Description of Amendment:**

Amend Title VI of the Chairman's Mark, "Revenue Items" to add the requirement that beginning in 2012, the Director of the White House Office of Management and Budget (OMB) would certify annually in the President's Budget that the provisions in this bill will not increase the budget deficit in the coming year. In the event the OMB Director determines that the provisions in this bill will increase the deficit, he or she would be required to notify Congress and the aggregate amount of exchange subsidies provided would automatically be adjusted commensurate with the deficit increase.

## **Grassley Amendment #F-6**

### **Short Title:**

Protecting Retiree Benefits for American Workers

### **Purpose:**

To protect retiree benefits by maintaining that qualified prescription drug plan subsidies are excludable from the plan sponsor's gross income for the purposes of income tax and alternative minimum tax.

### **Background:**

Under current law, sponsors of qualified retiree prescription drug plans are eligible for subsidy payments from the Secretary of Health and Human Services with respect to a portion of each qualified covered retiree's gross covered prescription drug costs.

A qualified retiree prescription drug plan is employment-based retiree health coverage that has an actuarial value at least as great as the Medicare Part D standard plan for the risk pool and that meets certain other disclosure and recordkeeping requirements.

These qualified retiree prescription drug plan subsidies are excludible from the plan sponsor's gross income for the purposes of regular income tax and alternative minimum tax.

### **Description:**

This amendment would protect current retiree benefits by maintaining that retiree prescription drug plan subsidies are excludible from the plan sponsor's gross income for the purposes of regular income tax and alternative minimum tax. This change in revenue would be offset by applying the 5 year waiting period for legal immigrants as the basis for determining eligibility for the health insurance tax credits proposed in the Chairman's Mark.

## **GRASSLEY AMENDMENT #F-7**

### Clarifying IRS Governance Reporting Requirements for Tax-exempt Organizations

#### **Purpose:**

To ensure that tax-exempt organizations report governance and conflict of interest information as part of their annual reporting requirements with the IRS

#### **Description:**

The Chairman's Mark contains several significant provisions regarding tax-exempt organizations. In addition to new requirements for charitable hospitals, the Mark creates tax-exempt cooperatives and a tax-exempt organization to conduct comparative effectiveness research.

The Internal Revenue Service recently revised the annual information reporting requirements for tax-exempt organizations. As part of this revision, the IRS began asking questions regarding an organization's governance that cover topics such as relationships among management officials and whether the organization has a conflicts of interest policy and whether conflicts are required to be disclosed. IRS's position is that governance and management practices can be indicators of compliance with the tax laws. This position is echoed by the Panel on the Nonprofit Sector in its June 2005 report where it recommended that the IRS ask information about the independence of an organization's board members.

Section 6033(a)(1) of the Internal Revenue Code specifies certain items that an organization exempt under section 501(a) must report on its annual return. In addition, organizations must report all "such other information as the Secretary may by forms or regulations prescribe".

Section 6033(a)(1) clearly provides the IRS with authority to ask questions about governance and management policies. However, some lawyers have publicly questioned IRS's authority and have indicated an intent to encourage clients to not answer such questions in order to mount a legal challenge should IRS assess a penalty for filing an incomplete return.

This amendment would protect IRS from such wasteful legal challenges by adding language to 6033(a)(1) to specifically mandate that IRS require governance and management information be reported in annual filings.

This provision is expected to have negligible revenue effect.

## GRASSLEY AMENDMENT #F-8

### Reform Intermediate Sanctions Rules for Tax-Exempt Organizations

**Purpose:**

To remove the safe harbor available to tax-exempt organizations with respect to reasonable compensation of executives

**Description:**

The Chairman's Mark contains several significant provisions regarding tax-exempt organizations. In addition to new requirements for charitable hospitals, the Mark creates tax-exempt cooperatives and a tax-exempt organization to conduct comparative effectiveness research.

Currently, the only tool available to IRS to combat unreasonable compensation paid by tax-exempt organizations are section 4958 excess benefit taxes. Section 4958 was enacted in 1996 in response to concerns that revoking an organization's tax-exempt status, the only remedy available to IRS prior to 1996, punished a tax-exempt organization for the bad acts of its officers and directors. Treasury issued final regulations regarding section 4958 in 2002.

These regulations allow an exempt organization to create a rebuttable presumption of reasonableness if it follows certain processes and procedures in determining the compensation of its officers and directors. IRS recently conducted studies of executive compensation of charities overall and then specifically of charitable hospitals. The studies indicated that, despite very high salaries in these organizations, the ability to challenge the reasonableness of compensation paid by these organizations was very difficult. Almost all of the organizations had complied with the rebuttable presumption procedures.

Public scrutiny of executive compensation in exempt organizations is frequent. Committee staff has encountered abuse of the rebuttable presumption procedures in its review of charitable hospitals, foundations, supporting organizations and certain media based ministries. Many of these organizations were able to use the rebuttable presumption procedures to justify paying compensation comparable to executives in for-profit organizations, including comparables from for-profit entities that had nothing in common with the tax-exempt organization.

The Joint Committee on Taxation, in its January 2005 report, *Options to Improve Tax Compliance and Reform Tax Expenditures*, recommended changes to section 4958. These changes include retaining the due diligence requirements but removing the rebuttable presumption. The Panel on the Nonprofit Sector in its June 2005 report also recommended similar changes to the reasonable compensation rules.

This amendment would adopt the JCT's 2005 recommendation. In addition, it would require organizations to disclose, in its annual filing with the IRS, a summary of the comparable information used to determine an executive's compensation. This amendment is expected to raise revenue.

## **Hatch Amendment #F1 to America's Healthy Future Act of 2009**

**Short Title:** Exempt middle-income families from tax increases in the bill.

**Description:** Notwithstanding any other provision of the Chairman's Mark, this amendment would provide that individuals making less than \$200,000 per year in adjusted gross income and families making less than \$250,000 per year in adjusted gross income would be exempt from any tax increases that are otherwise included in the Chairman's Mark.

**Rationale:** President Obama has pledged not to raise taxes on middle-income families, which he defined as individuals making less than \$200,000 per year or families making less than \$250,000 per year. This Chairman's Mark should reflect this pledge.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F2 to America's Healthy Future Act of 2009**

**Short Title:** Allow small business tax credits for those purchasing insurance outside the state insurance exchange.

**Description:** This amendment would make every small business eligible for the Small Business Tax Credits (described on pages 22-23 of the Chairman's Mark), after December 31, 2012, even if they do not purchase health insurance through the state exchange.

**Rationale:** President Obama pledged that those who like their health insurance plan can keep their plan. However, the Chairman's mark provides tax incentives only for small businesses that purchase their insurance through the state exchange after 2012. This could encourage small businesses to give up their current plan and buy a health insurance plan from the state exchange. Such plans might not be as high quality as employees of these small businesses currently have. In keeping with the spirit of the President's pledge, this amendment would also extend the same tax incentives for small businesses to purchase insurance outside the state exchange.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F3 to America's Healthy Future Act of 2009**

**Short Title:** Exclude Health Flexible Spending Accounts (FSAs) from the aggregate amount of health insurance for purposes of the excise tax on high cost health insurance plans.

**Description:** The amendment would exclude Health FSAs from the aggregate value of employer-sponsored health coverage for subject to the excise tax on high cost employer-sponsored coverage, as described on page 200 of the Chairman's Mark.

**Rationale:** Health FSAs are effective tools that employees use to help manage the ever-increasing out-of-pocket costs of health care. They are part of the solution to lowering health care costs, not part of the problem. Moreover, the money used to fund Health FSAs is the employee's own money and is not an employer contribution. Thus, they are fundamentally different from other employer-provided health benefits and should not be treated the same. These employee-provided contribution should not be counted in with employer-provided amounts for the purpose of determining the excise tax on high cost insurance plans.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F4 to America's Healthy Future Act of 2009**

**Short Title:** Remove the employee portion of insurance premiums from inclusion in the total amount of insurance subject to the excise tax on high cost insurance.

**Description:** The amendment would modify the provision in the Chairman's Mark on page 199 that states that employer-provided health insurance coverage is health coverage offered to an employee without regard to whether the employer pays for the coverage or the employee pays for coverage with after-tax dollars to provide that only amounts provided by the employer would count in the total for purposes of assessing the excise tax.

**Rationale:** Employee-paid health care premiums (whether before-tax or after-tax) should not count toward the total of employer-provided insurance subject to the excise tax on high-cost plans.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F5 to America's Healthy Future Act of 2009**

**Short Title:** Strike transition relief for excise tax on high cost health insurance.

**Description:** The amendment would strike the transition relief found on page 201 of the Chairman's Mark for health insurance plans maintained in the 17 states in which health care was least affordable for the year ended December 21, 2012.

**Rationale:** The Chairman's Mark imposes an excise tax on insurers if the aggregate value of employer-sponsored health coverage for an employee exceeds a threshold amount. For a transitional period of time, the health plans in 17 states would enjoy an increase in the threshold of 20 percent, with reductions in subsequent years. This provision is arbitrary and does not apportion taxes among the states based upon population as described under the 16<sup>th</sup> Amendment or Article I, Section 8 of the United States Constitution. An individual or employer would pay higher taxes solely based upon the state in which the individual resides.

Because the excise tax is imposed on the employer that provides high cost health insurance, it creates an unfair tax burden for those living in a state with high cost health insurance but work in a state with low cost health insurance. The employer in the state with low cost health insurance would be less likely to provide higher cost health insurance plans than employers in a state with high cost health insurance due to the transition relief.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F6 to America's Healthy Future Act of 2009**

**Short Title:** Make the transition relief for the excise tax on high cost health insurance plans contingent upon a GAO study concluding that the relief is fairly apportioned among the states under the 16<sup>th</sup> Amendment.

**Description:** The amendment would make the transition relief found on page 201 of the Chairman's Mark, which would provide tax relief for health insurance plans maintained in the 17 states, contingent upon a Government Accountability Office study concluding that the relief is fairly apportioned among the states based upon population under the 16<sup>th</sup> Amendment or the Uniformity Clause of Article I, Section 8 of the Constitution.

**Rationale:** The Chairman's Mark imposes an excise tax on insurers if the aggregate value of employer-sponsored health coverage for an employee exceeds a threshold amount. For a transitional period of time, the health plans in 17 states would enjoy an increase in the threshold of 20 percent, with reductions in subsequent years. This provision is arbitrary and does not apportion taxes among the states based upon population as described under the 16<sup>th</sup> Amendment or Article I, Section 8 of the United States Constitution. An individual or employer would pay higher taxes solely based upon the state that the individual resides.

Because the excise tax is imposed on the insurer that provides the employer with high cost health insurance, it creates an unfair tax burden for those living in a state with high cost health insurance but works in a state with low cost health insurance. The employer in the state with low cost health insurance would be less likely to provide higher cost health insurance plans

than employers in a state with high cost health insurance due to the transition relief.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F7 to America's Healthy Future Act of 2009**

**Short Title:** Add transition relief for the excise tax on high cost insurance plans for any State with a name that begins with the letter "U."

**Description:** The Chairman's Mark on page 201 provides certain transition relief for health insurance plans maintained in the 17 states in which health care was the least affordable for the year ending December 31, 2012, as determined by the Secretary, by increasing the threshold by 20 percent. This amendment would add a similar 20 percent increase in the threshold for any State with a name that begins with the letter "U."

**Rationale:** The transition relief provided in the Chairman's mark for the 17 states with the least affordable health care is obviously arbitrary and unfair. What about the 18<sup>th</sup> state? This amendment would add further transition relief in another, but no less arbitrary way to certain states.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F8 to America's Healthy Future Act of 2009**

**Short Title:** Allow the excise tax payments on high cost health insurance to be deductible for income tax purposes.

**Description:** The amendment would strike the provision on page 201 of the Chairman's Mark that disallows the excise tax as a deduction for federal income tax purposes.

**Rationale:** The excise tax imposed on insurers and others on the excess cost of high cost health insurance plans would be an ordinary cost of doing business, whether to an insurance company or to a self-insured business. Therefore, it should be allowed as a deduction for federal income tax purposes. Unless there is a public policy purpose for denying their deductibility, such as in the case of fines and penalties, ordinary and necessary business expenses are almost always allowed in the Internal Revenue Code.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F9 to America's Healthy Future Act of 2009**

**Short Title:** Strike the FSA Limit

**Description:** The amendment would strike the provision in the Chairman's Mark on page 207 that would limit salary reductions by an employee for a taxable year for purposes of coverage under a Health FSA under a cafeteria plan to \$2,000.

**Rationale:** Health FSAs are effective tools that employees use to help manage the ever-increasing out-of-pocket costs of health care. They are part of the solution to lowering health care costs, not part of the problem. Moreover, the money used to fund Health FSAs is the employee's own money and is not an employer contribution. Thus, they are fundamentally different from other employer-provided health benefits and should not be treated the same. Limiting Health FSAs would have a negative effect on millions of middle-income families.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F10 to America's Healthy Future Act of 2009**

**Short Title:** Strike the provision to conform the definition of medical expenses for Health FSAs to that of the itemized deduction for medical expenses

**Description:** The amendment would strike the provision in the Chairman's Mark on page 204 that would conform the definition of medical expense for purposes of employer provided health coverage, HSAs, and Archer MSAs to the definition for purposes of the itemized deduction for medical expenses (except for doctor prescribed over-the-counter medicine).

**Rationale:** Americans use a wide variety of medical products, including over-the-counter medicines. In recent years, the number of important medicines that have become available over the counter that were once available by prescription only has increased. The liberalization of the over-the-counter medicine rule for HSAs, HRAs, Health FSAs, and Archer MSAs has been a positive development in making health care costs more affordable. A bill that purports to help Americans manage the high costs of health care should not reverse this positive development.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F11 to America's Healthy Future Act of 2009**

**Short Title:** Conform the definition of medical expenses for purposes of the itemized deduction for medical expenses to that for Health FSAs.

**Description:** The amendment would conform the definition of medical expenses for the itemized deduction for medical expenses under section 213 to the definition of medical expense for purposes of employer provided health coverage (including Health FSAs and HRAs), HSAs, and Archer MSAs.

**Rationale:** Americans use a wide variety of medical products, including over-the-counter medicines. In recent years, the number of important medicines that have become available over the counter that were once available by prescription only has increased. The liberalization of the over-the-counter medicine rule for HSAs, HRAs, Health FSAs, and Archer MSAs has been a positive development in making health care costs more affordable. A bill that purports to help Americans manage the high costs of health care should not reverse this positive development. Therefore, the policy of allowing a deduction for over-the-counter medicine should also be allowed for purposes of the itemized deduction for medical expenses.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F12 to America's Healthy Future Act of 2009**

**Short Title:** Strike the increased penalty for non-qualified distributions from a health savings account.

**Description:** The amendment would strike the provision on page 205 of the Chairman's Mark that increases the additional tax on distributions from an HSA that are not used for qualified medical expenses from 10 percent to 20 percent.

**Rationale:** The proposed increase in the Chairman's Mark is arbitrary and no case has been made that the current 10 percent penalty is not adequate for purposes of policing the HSA rules.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F13 to America's Healthy Future Act of 2009**

**Short Title:** Make the corporate information reporting requirement applicable only to healthcare related payments.

**Description:** The amendment would modify the provision on page 208 of the Chairman's Mark that expands the general information reporting requirements by eliminating the exception for payments to corporations. The provision would be modified by limiting the new requirements to cover only payments to corporations that are related to health care. Thus, only payments for health care related expenses to corporations would be subject to the information reporting requirements.

**Rationale:** The Chairman indicated his desire to limit the revenue offsets in the bill to the health care arena. The provision in the Chairman's Mark that expands information reporting to payments to corporations clearly goes beyond the health care realm. This amendment would limit this offset in such a way as to keep this offset health care related.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F14 to America's Healthy Future Act of 2009**

**Short Title:** Strike the annual fee on manufacturers and importers of medical devices.

**Description:** The amendment would strike the provision on page 215 of the Chairman's mark that imposes a fee on any person that manufactures or imports medical devices offered for sale in the United States.

**Rationale:** Medical devices have saved many millions of lives in America. They are key innovations in health care that should be encouraged rather than discouraged through a tax that will apply even if a medical device manufacturer or importer does not earn a profit.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F15 to America's Healthy Future Act of 2009**

**Short Title:** Provide that the annual fees assessed on the four health industry segments are deductible for U.S. income tax purposes.

**Description:** The amendment would provide that the annual fees on manufacturers and importers of branded drugs, on manufacturers and importers of medical devices, on health insurance providers, and on clinical laboratories (which appear on pages 213 through 219 of the Chairman's Mark) would be deductible for U.S. income tax purposes.

**Rationale:** The annual fees that the Chairman's Mark would assess on four segments of the health care industry would represent additional operating costs to the businesses that would be required to pay them. As such, they should constitute ordinary and necessary business expenses that are fully deductible for U.S. income tax purposes. Unless there is a public policy purpose for denying their deductibility, such as in the case of fines and penalties, ordinary and necessary business expenses are almost always allowed in the Internal Revenue Code. These annual fees appear to have the sole purpose of raising revenue within the health care arena, and thus should be fully deductible.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F16 to America's Healthy Future Act of 2009**

**Short Title:** Provide that the annual fees on the four health industry segments apply only to the extent that the taxable income from the various companies in the respective industry segments affected have taxable income in excess of ten times the amount of the otherwise assessed fee for each year the fee is assessed.

**Description:** The amendment would provide that the annual fees listed on pages 213 through 219 of the Chairman's Mark on manufacturers and importers of branded drugs, on manufacturers and importers of medical devices, on health insurance providers, and on clinical laboratories would apply only to the extent that the taxable income of each company in the various industry segments affected exceeds an amount that is equal to ten times the amount of the annual fee that is otherwise assessed under the provisions.

**Rationale:** The annual fees that the Chairman's Mark would levy on four segments of the health care industry would be assessed on the affected companies whether or not such firms made a profit, lost money for the year, or broke even. Such a fee is unfair and goes against the general principles of U.S. taxation that assess a tax only when there is a means of paying the tax. Requiring the payment of the fee only when the company affected has earned taxable income would ensure that the fee would not place an undue burden on the company.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F17 to America's Healthy Future Act of 2009**

**Short Title:** Provide that the annual fees on the four health industry segments not take effect until the General Accountability Office has certified that no portion of the annual fee is likely to be passed on to consumers of the products manufactured or imported by the companies on which the tax is levied.

**Description:** The amendment would provide that the annual fees listed on pages 213 through 219 of the Chairman's Mark on manufacturers and importers of branded drugs, on manufacturers and importers of medical devices, on health insurance providers, and on clinical laboratories would not take effect until the General Accountability Office certified that no portion of the annual fee in each industry segment is likely to be passed on from the company on which the annual fee is levied to any consumer of the products of any of such company.

**Rationale:** The Chairman has stated his belief that the costs of these annual fees would be borne by the companies on which they are assessed and not on the consumers of the products which the companies manufacture or import. This amendment would ensure that this intent is not violated.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F18 to America's Healthy Future Act of 2009**

**Short Title:** Provide that the annual fees on manufacturers and importers of medical devices, on health insurance providers, and on clinical laboratories are assessed under the same terms the Chairman's Mark provides for the annual fees on manufacturers and importers of branded drugs.

**Description:** The amendment would provide that the annual fees listed on pages 215 through 219 of the Chairman's Mark on manufacturers and importers of medical devices, on health insurance providers, and on clinical laboratories would have the same specifications that the Chairman's Mark provides for the annual fee on manufacturers and importers of branded drugs (on page 214). Specifically, the amendment would provide that "covered domestic sales" or its equivalent would include only sales to "specified government programs" and that the "covered domestic sales" for medical devices, health insurance providers, and clinical laboratories would have the same thresholds of applicable sales as that which the Chairman's Mark provides for manufacturers and importers of branded drugs (i.e., 0 percent of sales up to \$5 million; ten percent of sales over \$5 million and up to \$125 million; 40 percent of sales over \$125 million and up to \$225 million; 75 percent of sales over \$225 million and up to \$400 million; and 100 percent of sales over \$400 million).

**Rationale:** The Chairman's Mark includes provisions governing the application of the annual fee that are much more favorable for manufacturers and importers of branded drugs than for companies in the other three affected industry segments. There seems to be little or no reason for such disparate treatment, so this amendment would apply the same terms to all four industry segments.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F19 to America's Healthy Future Act of 2009**

**Short Title:** Provide that not more than one of the four annual fees on the various health care industry segments can be assessed on a single company in any taxable year.

**Description:** The amendment would provide that not more than one of the annual fees described on pages 213 through 219 of the Chairman's Mark could apply to the same company in the same taxable year.

**Rationale:** Some companies may find themselves falling into more than one of the definitions of "covered domestic sales" under the four health care industry segment annual fees. It is not fair that the same company be subject to more than one of these fees in the same year.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F20 to America's Healthy Future Act of 2009**

**Short Title:** Exemption of annual fee for manufacturers and importers of medical devices that furnish products that are used to combat H1N1.

**Description:** The amendment would provide an exemption of the annual fee for manufacturers and medical devices for any company that furnishes products that are used to combat the H1N1 virus.

**Rationale:** Companies that are involved in the fight against the current flu pandemic should not be subject to this onerous new fee.

**Offset:** A proportionate reduction as needed in spending in the Chairman's Mark.

## **Hatch Amendment #F21 to America's Healthy Future Act of 2009**

**Short Title:** Prohibits authorized or appropriated federal funds under this Mark from being distributed to or used by the Association of Community Organizations for Reform Now (ACORN).

### **Description:**

See above.

**Offset:** Not applicable.

## **Hatch Amendment #F22 to America's Healthy Future Act of 2009**

**Short Title:** Surcharge on Attorney's Fees for Malpractice Lawsuits

**Description:** The amendment would impose a 50 percent surcharge on any attorneys' fees that exceed one-quarter of the total amount awarded in a health care lawsuit.

Revenues redirected Medicare Part A Trust Fund.

**Offset:** N/A

## **SNOWE AMENDMENT # 1 Financing**

Short Title: Provide a higher threshold for the Excise Tax on High Cost Insurance for those over age 55 and increase the inflation adjustment of the thresholds for plans.

Description of Amendment: The amendment would allow Americans over the age of 55 to have a higher threshold at which the excise tax on high cost insurance would be effective. The amendment would also increase the inflation adjustment by an additional percent to CPI+1.

Cost: No revenue estimates are currently available. The offset will be provided at markup.

## **SNOWE AMENDMENT # 2 -- Financing**

Short Title: Market Basket Productivity Adjustment

Description of Amendment: The Chairman's Mark contains adjustments to payment updates for productivity gains for various providers including inpatient and outpatient hospital services, inpatient psychiatric facilities, inpatient rehabilitation, long term care hospital services, nursing homes, hospice providers and home health providers. This amendment would revise those adjustments to better account for provider efficiency, quality and value in a budget neutral manner.

### **SNOWE AMENDMENT – #3 Financing**

Short Title: Increase the \$2,000 contribution cap on FSAs to \$3,000 and implement this cap starting in 2011, index the cap for inflation.

Description of Amendment: The Chairman's mark includes a cap on Flexible Spending Accounts (FSAs) at \$2,000 starting in 2013. The amendment would implement a higher cap and index that amount to inflation. Awaiting final JCT estimate but the amendment is intended to be revenue neutral through implementation of the cap starting in 2011.

Cost: TBD by JCT but intended to be revenue neutral.

## **SNOWE AMENDMENT #4 - FINANCING**

Short Title: Reduce individual mandate penalty

Under the Chairman's Mark, the penalty for failing to obtain coverage for an individual between 100-300 percent of poverty is \$750 per year, and for individuals above 300% of poverty, that penalty increases to \$950 annually. Families would be hit hardest with a mandate penalty of up to \$3,800 for families with incomes over 300 percent of the federal poverty level. This amendment would reduce the mandate penalty.

Cost: No score available, offset to be provided at later date.

## **SNOWE AMENDMENT #5 FINANCING**

Short Title: Replace Individual Mandate with Minimum Contribution

Description of Amendment: The Chairman's Mark currently provides substantial individual mandate penalties which do not alleviate the need for health coverage. This amendment would eliminate the current individual mandate penalty and institute a defined minimum contribution, which would be made by those not obtaining coverage which was determined to be affordable, and which would be directed to providing limited health care services.

Cost: No formal score available. Offset will be provided at a later date.

## **SNOWE AMENDMENT # 6 -- Financing**

Short Title: Prompt Pay

Description of Amendment: Under Medicaid prompt pay requirements, states must pay 90 percent of clean claims within 30 days of the date of receipt of the claim and 99 percent of claims within 90 days of the date of receipt. While these rules previously only applied to practitioners, in individual or group practice; the American Recovery and Reinvestment Act newly extended this requirement to apply to nursing facilities and hospitals as a condition of a state receiving the increased FMAP. This amendment makes the prompt pay requirement for hospitals and nursing homes permanent.

## **SNOWE AMENDMENT #7 FINANCING**

Short Title: Allows small business owners to participate in SIMPLE cafeteria plan

Description of Amendment: The amendment would allow small business owners to be considered as employees in order to enable them to participate in a cafeteria plan. Awaiting revenue estimate from Joint Tax but cost expected to be minimal.

Cost: Offset to be provided.

## **SNOWE AMENDMENT #8 FINANCING**

Short Title: Express Sense of Senate That Budget Points of Order Should Not Be Waived On Amendments to a Health Care Reform Bill Signed Into Law

Description of Amendment: To address the concern that future Congresses could seek to amend any final bill Congress may pass and that is signed into law in a manner that would add to the deficit, this amendment would state that it is the Sense of the Senate that the Senate should not waive the Senate Pay-As-You-Go point of order and the Senate point of order against long-term deficits when considering future legislation that would amend a final bill.

Cost: NONE

## **SNOWE AMENDMENT #9 FINANCING**

Short Title: Exclude HIPPA excepted benefits from the excise tax on high cost plans.

Description of Amendment: The amendment would exclude HIPPA excepted insurance benefits from the excise tax on high cost plans.

Offset: Revenue estimate for provision unavailable, offset to be provided at markup.

**KYL AMENDMENT #F1**  
**America's Healthy Futures Act of 2009**

Short Title: Eliminate All Industry Fees

Description of Amendment: The amendment would eliminate all industry fees.

Offset: Tie tax credit to lowest cost bronze plan.

**KYL AMENDMENT #F2**  
**America's Healthy Futures Act of 2009**

Short Title: Eliminate Pharmaceutical Fee

Description of Amendment: The amendment would eliminate the pharmaceutical fee.

Offset: Tie tax credit to lowest cost bronze plan.

**KYL AMENDMENT #F3**  
**America's Healthy Futures Act of 2009**

Short Title: Eliminate Device Fee

Description of Amendment: The amendment would eliminate the device fee.

Offset: Tie tax credit to lowest cost bronze plan.

**KYL AMENDMENT #F4**  
**America's Healthy Futures Act of 2009**

Short Title: Eliminate Health Insurance Providers' Fee

Description of Amendment: The amendment would eliminate the health insurance providers' fee.

Offset: Tie tax credit to lowest cost bronze plan.

**KYL AMENDMENT #F5**  
**America's Healthy Futures Act of 2009**

Short Title: Eliminate Clinical Lab Fee

Description of Amendment: The amendment would eliminate the clinical lab fee.

Offset: Tie tax credit to lowest cost bronze plan.

**KYL AMENDMENT #F6**  
**America's Healthy Futures Act of 2009**

Short Title: Eliminate Flexible Spending Account Cap

Description of Amendment: The amendment would eliminate the \$2,000 cap on flexible spending accounts.

Offset: Tie tax credit to lowest cost bronze plan.

**KYL AMENDMENT #F7**  
**America's Healthy Futures Act of 2009**

Short Title: Eliminate 35% Excise Tax on Health Coverage

Description of Amendment: The amendment would eliminate the 35% excise tax on health coverage in excess of \$8,000/\$21,000.

Offset: Tie tax credit to lowest cost bronze plan.

**KYL AMENDMENT #F8**  
**America's Healthy Futures Act of 2009**

Short Title: Expand the Deduction for Catastrophic Medical Expenses

Description of Amendment: Under current law individuals may itemize catastrophic medical expenses if they exceed 7.5% of AGI. This amendment would reduce that threshold to 5.0%

Offset: Tie tax credit to lowest cost bronze plan.

## **Bunning Financing Amendments**

### **Bunning Amendment #F1 to America's Healthy Future Act of 2009**

**Short Title:** Amendment to sunset tax increases

#### **Description of Amendment:**

The amendment would sunset on December 31, 2019, any provision of the Chairman's Mark that increases the federal tax liability of any taxpayer. This would include:

- the health plan tax used to finance the Patient-Centered Outcomes Research Trust Fund;
- the excise tax penalty on uninsured Americans;
- the excise tax penalty on businesses with low-wage workers who receive a premium subsidy for health insurance purchased through the Exchange;
- the excise tax penalty on high-cost insurance plans;
- the limit on contributions to flexible spending accounts;
- the tax increase on employers that offer prescription drug coverage to Medicare-eligible retirees;
- the provision increasing taxes on the purchase of over-the-counter medical products by taxpayers with FSAs, HRAs, HSAs or Archer MSAs;
- the provision increasing the tax penalty for nonqualified distributions from health savings accounts.
- the excise tax on manufacturers of branded drugs;
- the excise tax on health insurance providers;
- the excise tax on medical device manufacturers; and
- the excise tax on clinical labs.

## **Bunning Amendment #F2 to America's Healthy Future Act of 2009**

**Short Title:** Amendment to sunset tax increases that increase the out-of-pocket health care costs of Americans or cause employers to invade the privacy of their workers.

### **Description of Amendment:**

The amendment would sunset on December 31, 2019, any provision of the Chairman's Mark increasing the federal tax liability of any taxpayer that has the economic effect of increasing out-of-pocket health care costs for Americans. This would include:

- the health plan tax used to finance the Patient-Centered Outcomes Research Trust Fund;
- the excise tax penalty on uninsured Americans;
- the excise tax penalty on businesses with low-wage workers who receive a premium subsidy for health insurance purchased through the Exchange;
- the excise tax penalty on high-cost insurance plans;
- the limit on contributions to flexible spending accounts;
- the tax increase on employers that offer prescription drug coverage to Medicare-eligible retirees;
- the provision increasing taxes on the purchase of over-the-counter medical products by taxpayers with FSAs, HRAs, HSAs or Archer MSAs;
- The excise tax on manufacturers of branded drugs;
- the excise tax on health insurance providers;
- the excise tax on medical device manufacturers; and
- the excise tax on clinical labs.

## **Bunning Amendment #F3 to Title VI of America's Healthy Future Act of 2009**

**Short Title:** Amendment to conform the definition of medical expenses for all taxpayers in a manner that allows people who like the health coverage they have to keep it.

### **Description of Amendment:**

Currently, an itemized deduction for medical expenses is available to taxpayers with high medical expenses relative to their income (taxpayers may only deduct medical expenses that exceed 7.5% of their adjusted gross income). These taxpayers with high medical costs are not allowed to deduct the cost of over-the-counter medical products. The Chairman's Mark conforms the definition of medical expenses by eliminating the ability of taxpayers with flexible spending accounts, health reimbursement accounts, health savings accounts and Archer medical savings accounts to use these arrangements for the purchase of non-prescribed over-the-counter medical products. This amendment would conform the definition of medical expense for purposes of FSAs, HRAs, HSAs, Archer MSAs and the itemized deduction so that over-the-counter medical products qualify as a medical expense.

The amendment would be fully offset by delaying the effective date of the mandate that states expand Medicaid coverage.

## **Bunning Amendment #F4 to Title VI of America's Healthy Future Act of 2009**

**Short Title:** Amendment to prevent tax increases from increasing the cost of medical care provided to veterans.

### **Description of Amendment:**

The amendment prohibits any of the taxes or fees outlined in Title VI of the Chairman's Mark from going into effect unless the Secretary of the U.S. Department of Veterans Affairs certifies that none of provisions will increase the cost of medical care provided to veterans.

The amendment is fully offset by a corresponding reduction in mandatory outlays in the Chairman's Mark.

**Crapo-Roberts Amendment F-1 to Chairman's Mark, America's Healthy Future Act of 2009**

**Short Title:** Preventing tax increases on the middle class

**Description of Amendment:**

This amendment provides that no tax, fee or penalty imposed by this legislation shall be applied to any individual earning less than \$200,000 per year or any couple earning less than \$250,000 per year.

**Offset:**

To be provided.

**Roberts-Hatch Financing Amendments**  
**Roberts Amendment #1**  
**to the America's Healthy Future Act of 2009**

Short Title: Improving Individual and Family Access to Health Care Benefits

Amendment Description: The amendment eliminates the use-it-or-lose-it rule that requires participants in a health Flexible Spending Account (FSA) who set aside money in a FSA during the year but do not use all of the funds, to forfeit those dollars.

The amendment allows health FSA participants to roll over any unused amounts at the end of each calendar year into the following year. However, the participant could at no point have an account balance higher than the maximum amount that an employer allows to be contributed to a FSA.

In addition, the amendment caps the annual contribution to a FSA at \$5,000 and indexes the amount for inflation. Employers may, but are not required to provide a FSA with the maximum cap amount.

The amendment does not eliminate the requirement that the participant re-enroll each year. If the participant chooses not to re-enroll, they forfeit any balance remaining at the end of the year.

Revenue estimate pending.

Offset: A proportionate reduction as needed in spending in the Chairman's Mark.

**Roberts-Hatch Financing Amendments**  
**Roberts Amendment #2**  
**to the America's Healthy Future Act of 2009**

Short Title: Ensuring Individuals and Families Can Keep Their Health Care Benefits

Amendment Description: The Chairman's Mark imposes a 35% tax on health insurance companies and administrators for any health insurance plan that is above \$8,000 per individual and \$21,000 for a family plan. This threshold includes any contributions to a FSA, HRA, HSA, and coverage for dental, vision and other supplemental plans. To preserve these important benefits and ensure that individuals and families can keep these benefits the amendment excludes FSAs, HRAs, HSAs, dental, vision and other supplemental plans from the threshold amount.

Offset: A proportionate reduction as needed in spending in the Chairman's Mark.

**Roberts Financing Amendments**  
**Roberts Amendment #3**  
**to the America's Healthy Future Act of 2009**

Short Title: Improving Access to Flexible Spending Accounts for Individuals and Families

Amendment Description: Increase the cap on Flexible Spending Accounts (FSAs) in the Chairman's Mark from \$2,000 to \$5,000, and index the amount for inflation.

Offset: A proportionate reduction as needed in spending in the Chairman's Mark.

**Roberts Financing Amendments**  
**Roberts Amendment #4**  
**to the America's Healthy Future Act of 2009**

Short Title: Preserving Health Care Benefits for Individuals and Families

Amendment Description: Strike the provision in the Chairman's Mark that prohibits the cost of over-the-counter medicine from being reimbursed through a health FSA, HRA, HSA or Archer MSA.

Offset: A proportionate reduction as needed in spending in the Chairman's Mark.

**Roberts Financing Amendments**  
**Roberts Amendment #5**  
**to the America's Healthy Future Act of 2009**

Short Title: Preventing Tax Increases on Middle Class Taxpayers

Amendment Description: Strike any provision in the Chairman's Mark that imposes higher health care costs in the form of higher insurance premiums, higher prescription drug costs, higher laboratory fees or higher costs for medical devices on individuals and families earning less than \$200,000/\$250,000 respectively.

Offset: A proportionate reduction as needed in spending in the Chairman's Mark.

## **Ensign Amendment #F1 to America's Healthy Future Act of 2009**

**Short Title:** An amendment to strike the provision in the Chairman's bill that caps Flexible Spending Accounts.

**Description of Amendment:** The amendment would strike the provision in the chairman's mark that caps Flexible Spending Accounts at \$2,000.

The provision in the Chairman's bill would raise tax liability on middle income families who make less than \$250,000 per year (and individuals making less than \$200,000 per year), contrary to President Obama's promise in his first statement to the Congress and contrary to the similar statement of the Senate as voiced in the Senate amendment in April 2009 that passed 98 to 0 against tax increases on middle income families. The provision would also deprive many Americans of a key component of their current healthcare plan, contrary to President Obama's promise that Americans will be able to keep their current healthcare plans.

JCT scored the Chairman's provision as raising \$16.5 billion over ten years; offset to be derived from a proportionate decrease in certain spending provisions in the Chairman's bill except for Medicare spending.

## **Ensign Amendment #F2 to America's Healthy Future Act of 2009**

**Short Title:** An amendment to exempt middle income families from the provision in the Chairman's bill that applies an individual tax penalty for failure to have health insurance.

**Description of Amendment:** The amendment would limit that new tax liability by exempting individuals making less than \$200,000 per year and families making less than \$250,000 per year.

Under current law there is no requirement to have health insurance. The Chairman's bill would impose a new requirement to have health insurance subject to a significant tax penalty for failing to do so. This provision in the Chairman's bill would raise tax liability on middle income families who make less than \$250,000 per year (and individuals making less than \$200,000 per year), contrary to President Obama's promise in his first statement to the Congress and contrary to the similar statement of the Senate as voiced in the Senate amendment in April 2009 that passed 98 to 0 against tax increases on middle income families. The amendment would implement the President's promise, which was endorsed by the Senate, by ensuring that middle income individuals and families do not have their taxes raised by the Chairman's bill.

This amendment has not been scored yet; offset to be derived from a proportionate decrease in certain spending provisions in the Chairman's bill except for Medicare spending.

## **Ensign Amendment #F3 to America's Healthy Future Act of 2009**

**Short Title:** An amendment to implement the President's promise not to raise taxes on middle income families.

**Description of Amendment:** The amendment would limit any tax, fee, or penalty within the Chairman's bill to individuals making more than \$200,000 per year and families making more than \$250,000 per year.

Provisions in the chairman's mark would raise tax liability on middle income families who make less than \$250,000 per year (and individuals making less than \$200,000 per year), contrary to President Obama's promise in his first statement to the Congress and contrary to the similar statement of the Senate as voiced in the Senate amendment in April 2009 that passed 98 to 0 against tax increases on middle income families. The amendment would implement the President's promise, which was endorsed by the Senate, by ensuring that middle income individuals and families do not have their taxes raised by the Chairman's bill.

This amendment has not been scored yet; offset to be derived from a proportionate decrease in certain spending provisions in the Chairman's bill except for Medicare spending.

## **Ensign Amendment #F4 to America's Healthy Future Act of 2009**

**Short Title:** An amendment to strike the word "fee" everywhere it appears in the bill and replace with the word "tax."

**Description of Amendment:** The amendment would strike the word "fee" everywhere it appears in the bill and replace with the word "tax." The bill uses the word "fee" to describe the significant extraction of monies from various sources without providing any service or consideration in return. The proper word to describe such provisions is a "tax."

The amendment has no cost.

## **Ensign Amendment #F5 to America's Healthy Future Act of 2009**

**Short Title:** An amendment to exempt small businesses that employ up to 100 employees from all new taxes, fees, or penalties in the bill.

**Description of Amendment:** This amendment would exempt small businesses that employ up to 100 employees from all new taxes, fees, or penalties in the bill.

Small businesses are the engine of job creation in the United States and are struggling during the current economic downturn. As the President recently said regarding rising healthcare costs, "It's why so many employers – especially small businesses – are forcing their employees to pay more for insurance, or are dropping their coverage entirely. It's why so many aspiring entrepreneurs cannot afford to open a business in the first place, and why American businesses that compete internationally – like our automakers – are at a huge disadvantage." Dumping more taxes on small businesses will not help them provide healthcare coverage for their employees and will jeopardize their economic future and that of the U.S. economy.

This amendment has not been scored yet; offset to be derived from a proportionate decrease in certain spending provisions in the Chairman's bill except for Medicare spending.

## **Ensign Amendment #F6 to America's Healthy Future Act of 2009**

**Short Title:** An amendment to change the index of the high cost insurance tax in the Chairman's bill.

**Description of Amendment:** The amendment would change the index of the high cost insurance tax from regular CPI to CPI-medical to prevent erosion of coverage for Americans with this health plan.

Under the Chairman's bill, this tax would increase the cost of insurance for many Americans and thus constitutes an indirect tax on Americans. Indexing the plans for regular inflation means the tax will hit more Americans as the cost of healthcare increases under a higher inflation rate, and there will be "threshold creep" as the tax captures more and more plans that rise in cost due to medical inflation rates. Within just a few years, this so-called "high cost" insurance tax will result in taxes on many more Americans.

This amendment has not been scored yet; offset to be derived from a proportionate decrease in certain spending provisions in the Chairman's bill except for Medicare spending.

## **Ensign Amendment #F7 to America's Healthy Future Act of 2009**

**Short Title:** An amendment to ensure the high cost insurance tax shall apply to FEHB plans of Members of Congress and staff, the President of the United States, all Administration czars, and other federal employees.

**Description of Amendment:** The amendment would clarify the Chairman's bill with regard to the scope of coverage of plans and ensure that FEHB plans for federal employees are covered and subject to the same tax as insurance plans held by other Americans.

This amendment has not been scored yet; offset to be derived from a proportionate decrease in certain spending provisions in the Chairman's bill except for Medicare spending.

## **Ensign Amendment #F8 to America's Healthy Future Act of 2009**

**Short Title:** An amendment to strike the provision in the Chairman's bill that raises the penalty on non-qualified medical expense withdrawals from HSAs.

**Description of Amendment:** This amendment would maintain the current penalty of 10% on non-qualified medical expense withdrawals from HSAs rather than raise it to 20% per the Chairman's bill.

Given the economic downturn and hardship on all Americans, the 10% tax penalty is sufficient to penalize Americans when they make non-qualified medical expense withdrawals. Americans who make such non-qualified withdrawals and are willing to pay a 10% tax penalty in the near future are under economic duress already, and further penalizing them would be too extreme and contrary to the President's promise not to raise taxes on middle income families.

JCT scored the Chairman's provision as raising \$1.3 billion over ten years; offset to be derived from a proportionate decrease in certain spending provisions in the Chairman's bill except for Medicare spending.

## **Enzi Amendment #F1**

Enzi Amendment #F1 to the America's Healthy Future Act of 2009

Short Title: Preserving access to Flexible Spending Accounts.

Description of Amendment: Change the cap on Flexible Spending Accounts in Title VI to \$3,000; index its growth to CPI; and create a cash-out provision. The cash-out provision would allow individuals to withdraw the funds from their FSA and pay income tax on the amount withdrawn. The provision would take effect in 2011.

Offset: reduce the subsidies as much as necessary to make this amendment budget neutral starting with subsidies awarded to individuals earning 400% of poverty.

## **Enzi Amendment #F2**

Enzi Amendment #F2 to the America's Healthy Future Act of 2009

Short Title: Protecting patient access to life saving medical devices.

Description of Amendment: Exempt the following medical devices from the application of the new excise tax on medical devices:

Products used in a neo-natal intensive care unit

Products used to treat pediatric cancers

Products currently on the market through a humanitarian device exemption

All diagnostic tests and supplies associated with the prevention and treatment of HIV/AIDS

All diagnostic tests and supplies associated with the treatment and prevention of H1N1.

Offset: reduce the subsidies as much as necessary to make this amendment budget neutral starting with subsidies awarded to individuals earning 400% of poverty.

### **Enzi Amendment #F3**

Enzi Amendment #F3 to the America's Healthy Future Act of 2009

Short Title: Protecting veterans' and Medicare beneficiaries' access to life saving medical devices.

Description of Amendment: Exempt products sold to Medicare beneficiaries and veterans from the application of the new excise tax on medical devices.

Offset: reduce the subsidies as much as necessary to make this amendment budget neutral starting with subsidies awarded to individuals earning 400% of poverty.

Cornyn Amendment #F1 to America's Healthy Future Act of 2009

Short Title: Protecting Patients from Higher Health Costs

Description of Amendment: Strike the clinical laboratories fee. Offset to be provided at mark-up.

Cornyn Amendment #F2 to America's Healthy Future Act of 2009

Short Title: Protecting Patients from Higher Health Costs.

Description of Amendment: Strike the medical device manufacturers fee. Offset to be provided at mark-up.

Cornyn Amendment #F3 to America's Healthy Future Act of 2009

Short Title: Protecting Patients from Higher Health Costs.

Description of Amendment: Strike health insurance providers fee. Offset to be provided at mark-up.

Cornyn Amendment #F4 to America's Healthy Future Act of 2009

Short Title: Allowing Americans to Keep the Health Care They Have Now.

Description of Amendment: Strike \$2,000 limit on flexible spending accounts. Offset to be provided at mark-up.

Cosponsor: Roberts.

Cornyn Amendment #F5 to America's Healthy Future Act of 2009

Short Title: Protecting Small Businesses From Higher Costs.

Description of Amendment: Prior to implementation, the Secretary of Treasury must certify that no provision of the Act will impose additional costs on small businesses (defined as an employer with less than 500 employees).

Cornyn Amendment #F6 to America's Healthy Future Act of 2009

Short Title: Protecting Patients from Higher Health Costs.

Description of Amendment: Prior to implementation, the Secretary of Treasury must certify that no portion of any of the new industry fees (pharmaceutical fee, health insurance providers fee, medical device manufacturers fee, and clinical laboratories fee) will be passed through to consumers by those upon whom the fees are imposed in the form of higher prices, including higher premiums for health insurance.

Cornyn Amendment #F7 to America's Healthy Future Act of 2009

Short Title: Protecting Patients from Higher Health Costs.

Description of Amendment: Prior to implementation, the Secretary of Treasury must certify that no portion of the new health insurance providers fee will be passed through to consumers by those upon whom the fees are imposed in the form of higher prices, including higher premiums for health insurance.

Cornyn Amendment #F8 to America's Healthy Future Act of 2009

Short Title: Protecting Patients from Higher Health Costs.

Description of Amendment: Prior to implementation, the Secretary of Treasury must certify that no portion of any of the new pharmaceutical fee will be passed through to consumers by those upon whom the fees are imposed in the form of higher prices, including higher premiums for health insurance.

Cornyn Amendment #F9 to America's Healthy Future Act of 2009

Short Title: Protecting Patients from Higher Health Costs.

Description of Amendment: Prior to implementation, the Secretary of Treasury must certify that no portion of any of the new medical device manufacturers fee will be passed through to consumers by those upon whom the fees are imposed in the form of higher prices, including higher premiums for health insurance.

Cornyn Amendment #F10 to America's Healthy Future Act of 2009

Short Title: Protecting Patients from Higher Health Costs.

Description of Amendment: Prior to implementation, the Secretary of Treasury must certify that no portion of any of the new clinical laboratories fee will be passed through to consumers by those upon whom the fees are imposed in the form of higher prices, including higher premiums for health insurance.

Cornyn Amendment #F11 to America's Healthy Future Act of 2009

Short Title: Controlling the national debt.

Description of Amendment: No spending on new federal entitlements under this Act is authorized until the national debt is less than \$12 trillion.

Offset: Not necessary.

Cornyn Amendment #F12 to America's Healthy Future Act of 2009

Short Title: Reducing Health Care Costs for American Families.

Description of Amendment: Prior to implementation, the Secretary of Health and Human Services must certify that the Act will reduce health care costs by \$2,500 for every American family.

Offset: Not necessary.

Cornyn Amendment #F13 to America's Healthy Future Act of 2009

Short Title: Preserving What Works.

Description of Amendment: The new requirements for Section 501(c)(3) hospitals under the Chairman's Mark shall not apply to hospitals in states that have passed community benefit laws requiring certain investments from nonprofit hospitals.

Offset: Offset to be provided at mark-up.

Cornyn Amendment #F14 to America's Healthy Future Act of 2009

Short Title: Reducing health care costs.

Description of Amendment: Prior to implementation, the Secretary of Health and Human Services must certify that the bill will not increase health insurance premiums for any Americans.

Offset: Not necessary.