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# Private Health Insurance: Changes Made by H.R. 4872, the Health Care and Education Reconciliation Act of 2010

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# Summary

On March 23, 2010, the President signed into law H.R. 3590, the Patient Protection and Affordable Care Act (PPACA) as passed by the Senate on December 24, 2009, and the House on March 21, 2010. The new law will, among other changes, make statutory changes affecting the regulation of and payment for certain types of private health insurance.

On March 21, 2010, the House passed an amendment in the nature of a substitute to H.R. 4872, the Health Care and Education Reconciliation Act of 2010 (hereafter referred to as the reconciliation bill). The reconciliation bill was written as making amendments to PPACA and is now before the Senate for consideration. On March 25, 2010, the bill passed the Senate with amendments and has been sent back to the House.

This report summarizes *only* the private health insurance provisions in the reconciliation bill and their impact on PPACA. For a description of all the private health insurance provisions in H.R. 3590, see CRS Report R40942, *Private Health Insurance Provisions in Senate-Passed H.R. 3590, the Patient Protection and Affordable Care Act*.

Among the changes that would be made by the reconciliation bill to PPACA are the following which, except for the first two, would apply beginning in 2014:

- extend to grandfathered plans, starting for plan years six months after enactment, the prohibition of lifetime limits, prohibition on rescissions, limitations on excessive waiting periods, and a requirement to provide coverage for non-dependent children up to age 26;
- for coverage of adult dependent children prior to 2014, the requirement on grandfathered group health plans would be limited to adult children without an employer offer of coverage;
- make certain changes to the calculation of the penalties imposed on persons who are not in compliance with the individual mandate;
- modify a rule regarding the exemption from the individual mandate;
- make changes to how the employer penalties would be calculated;
- include full-time equivalents in the counting of full-time employees;
- strike the employer fee based on extended waiting periods;
- for grandfathered group health plans, prohibit pre-existing condition exclusions and restrict annual limits;
- increase premium credits and cost-sharing subsidies to certain low- and middle-income individuals enrolled in private coverage through an exchange; and
- alter how income is counted for purposes of determining eligibility for premium credits and cost-sharing subsidies.

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# Overview of Report

On December 24, 2009, the Senate passed health reform legislation (the Patient Protection and Affordable Care Act, hereafter referred to as H.R. 3590, or the Senate bill) that would, among other changes, make statutory changes affecting the regulation of and payment for certain types of private health insurance. On March 18, 2010, the House Rules Committee issued an amendment in the nature of a substitute to H.R. 4872, the Health Care and Education Affordability Reconciliation Act of 2010 (hereafter referred to as the reconciliation bill).[1] If passed, this reconciliation bill would amend H.R. 3590.

This report summarizes *only* the modifications in the reconciliation bill, as well as the affected provisions in Senate-passed H.R. 3590. This report is a companion report to the one that describes all the private health insurance provisions in H.R. 3590, CRS Report R40942, *Private Health Insurance Provisions in Senate-Passed H.R. 3590, the Patient Protection and Affordable Care Act*.

# Congressional Budget Office Analysis

On March 18, 2010, the Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT) provided a preliminary estimate of the effect of the reconciliation bill.[2] According to the CBO, the combined effect of H.R. 3590 and the changes from the reconciliation bill would reduce federal deficits by $138 billion over the 10-year period of 2010-2019, and by 2019 would insure 95% of the non-elderly, legally present U.S. population.

In pointing out the provisions in the reconciliation bill with larger long-term fiscal impacts, the CBO said the following:

> Relative to H.R. 3590, the reconciliation proposal would make a number of changes that would affect its longer-term impact on the budget. In particular, it would increase the subsidies offered in the new insurance exchanges and would reduce the impact of an excise tax on health insurance plans with premiums above certain thresholds. An important component of the longer-term analysis is that, beginning in 2019, the reconciliation proposal would change the annual indexing provisions so that the premium subsidies offered through the exchanges would grow more slowly; over time, the spending on exchange subsidies would therefore fall back toward the level under H.R. 3590 by itself.[3]

# Reconciliation Bill's Changes to H.R. 3590

## Immediate Individual and Group Market Reforms

Senate-passed H.R. 3590 would implement several reforms to the individual and group markets prior to the start-up of the health insurance exchanges required by 2014. Among the immediate market reforms in H.R. 3590 are provisions that would do the following:

- Prohibit lifetime limits and restrict annual limits on essential health benefits by group health plans and health insurance issuers offering group or individual

[1] Amendment in the Nature of a Substitute to H.R. 4872, "HCEARA_001.XML," March 18, 2010, available at http://docs.house.gov/rules/hr4872/111_hr4872_amndsub.pdf.

[2] The CBO preliminary estimate is available at http://www.cbo.gov/ftpdocs/113xx/doc11355/hr4872.pdf.

[3] Id. p. 4.

plans. Lifetime and annual limits refer to the establishment of a cap on the dollar value of benefits for any participant or beneficiary. This prohibition would not extend to covered benefits that are *not* essential health benefits under section 1302(b) of H.R. 3590 to the extent that such limits are otherwise permitted by federal and state law. The restriction on annual limits would be further defined by the Secretary, who would ensure that there is access to needed services available with minimal impact on premiums.

- Generally prohibit rescissions for a group health plan and a health insurance issuer offering group or individual health insurance coverage. A rescission generally refers to the practice of cancelling a health insurance policy after a plan member or policyholder has submitted medical claims. Rescissions would still be permitted in cases where the covered individual committed fraud or made an intentional misrepresentation of material fact as prohibited by the terms of the plan or coverage. Any cancellation of coverage in this case would require prior notice to the enrollee.
- Require a group health plan and a health insurance issuer offering coverage in the group or individual markets that provides dependent coverage of children to extend that coverage to unmarried adult children until the individual is 26 years old. A health plan or a health insurance issuer would not be required to make coverage available for a child of a child receiving dependent coverage.

Under the reconciliation bill,[4] the prohibition of lifetime limits, prohibition on rescissions, and the requirement to provide coverage for dependent children up to age 26 would also apply to the grandfathered plans[5] starting six months after enactment. For adult dependent coverage, the requirement that the dependent not be married would be removed.

There are also some amendments applicable specifically for grandfathered group health plans. The restriction on annual limits would begin six months after enactment. For coverage of dependent children prior to 2014, the requirement would be limited to those adult children without an employer offer of coverage.

## Individual Mandate and Employer Requirements in 2014

### Individual Mandate

Under H.R. 3590, most individuals would be required to maintain minimum essential coverage for themselves and their dependents. Minimum essential coverage includes coverage under public programs (e.g., Children's Health Insurance Program) and comprehensive coverage purchased from the private health insurance market, as specified in the bill. A person who is not in compliance with the individual mandate may be subject to a financial penalty based on either a percentage of household income or a flat dollar amount, whichever is greater. The penalty amount based on household income would be the product of household income multiplied by 0.5% in 2014, 1.0% in 2015, and 2% for each year thereafter. The annual flat dollar amount would be phased in—$95 in 2014, $495 in 2015, $750 in 2016 (adjusted for inflation thereafter), assessed for each taxpayer and any dependents. Other penalty rules would apply in the case of any

[4] §2301

[5] Per §2051 of Senate passed H.R. 3590, grandfathered plans would be defined at those individual and group plans that an individual or family was enrolled in on the date of enactment. A group health plan that provides coverage on the date of enactment may provide for the enrolling of new employees (and their families) in such plan.

dependents under the age of 18, and a family's penalty would be capped as specified in the bill. No penalty would be imposed on certain individuals if they meet specified criteria. One such individual would be a person whose household income does not exceed the federal poverty level (FPL).

The reconciliation bill would make certain changes to the calculation of the penalties imposed on persons who are not in compliance with the individual mandate, and would modify a rule regarding the exemption from the individual mandate.

For the non-compliance penalty based on percentage of income, the reconciliation bill would change the base income amount and percentages depending on the year. The base income amount would be the amount of household income that exceeds the personal exemption amount for the applicable tax year.[6] The applicable percentages would be 1% in 2014, 2% in 2015, and 2.5% for each year thereafter.[7]

For the non-compliance penalty based on a flat dollar amount, the reconciliation bill changes the penalty amounts for 2015 and 2016: $325 and $695, respectively. This penalty would be adjusted for inflation (based on the 2016 amount) thereafter.[8]

The reconciliation bill would strike the exception to the non-compliance penalty for persons with income below the poverty line included in H.R. 3590. Instead, the reconciliation bill would except from the non-compliance penalty individuals whose household income is less than the personal exemption amount for the applicable tax year.[9]

## Employer Requirements

Under H.R. 3590, all employers with more than 50 full-time employees (defined as employees working on average at least 30 hours per week and excluding seasonal workers) who did *not* provide coverage could be required to pay a penalty for certain employees, as well as employers who *did* provide access to coverage but fail to meet certain requirements. For applicable employers who (1) did *not* offer coverage and (2) had a full-time employee receive a premium credit for enrollment in an exchange plan, such employers would be assessed a penalty equal to the number of full-time employees times one-twelfth of $750, for any applicable month in 2014. After that year, the applicable payment amount would be indexed. For applicable employers who *did* offer coverage but had a full-time employee decline that coverage and instead receive a premium credit for enrollment in an exchange plan,[10] such employers would be assessed an annual penalty equal to $3,000 ($250 per month) for each such employee in 2014. The penalty amounts would be indexed after 2014. The total annual penalty for an employer who did offer coverage would be limited to the *total* number of the firm's full-time employees times $750 ($62.50 per month). In addition, a fee would be imposed on applicable large employers that required extended waiting periods (over 60 days) before employees could enroll in a minimum essential coverage under an employer-sponsored plan.

[6] For instance, for tax years 2007, 2008, 2009 and 2010, the personal exemption amounts are $3,400, $3,500, $3,650 and $3,650, respectively.

[7] §1002(a)(1)

[8] §1002(a)(2)

[9] §1002(b)

[10] An individual eligible for, but not enrolled in, an employer-sponsored plan could still be eligible for premium credits if the employee's contribution to premiums exceeded 9.5% of income, or if the plan's payments cover less than 60% of total allowed costs.

The reconciliation bill would make changes to how the employer penalties would be calculated, creating more similarity in penalties among employers who do offer coverage and those that do not offer coverage. The reconciliation bill also would include full-time equivalents in the counting of full-time employees, and strike the employer fee based on extended waiting periods.

Solely for calculating either (1) the penalty for an employer who does not offer coverage with at least one full-time employee who received a premium credit, or (2) the overall limit on the total penalty imposed on an employer who offers coverage with at least one full-time employee who received a premium credit, the number of full-time employees would be reduced by 30 under the reconciliation bill.[11] This reduction would apply only once under (1) or (2) for persons who are treated as 1 employer under the federal tax code.[12] Furthermore, the reconciliation bill would remove the special rule for the construction industry, for purposes of determining whether or not they are a large employer.[13] Under the reconciliation bill, those in the construction industry would be treated the same as other employers.

Under the reconciliation bill, the monthly employer penalty in 2014 for an applicable employer who does *not* offer coverage with at least one full-time employee who received a premium credit would be the product of the number of full-time employees (minus 30 as described above) times one-twelfth of $2,000. The monthly penalty in 2014 for an applicable employer who *offers* coverage with at least one full-time employee who received a premium credit would be the product of the number of full-time employees who received such credits times one-twelfth of $3,000. Moreover, the reconciliation bill would limit the total penalty imposed on such an employer. The monthly penalty limit for 2014 would be calculated by multiplying the number of full-time employees (minus 30 as described above) times one-twelfth of $2,000. The dollar amounts described in this section would be indexed after 2014.[14]

For the purpose of deciding whether an employer is an "applicable large employer" and potentially subject to a penalty, the reconciliation bill would include full-time equivalents (FTEs) in the calculation of full-time employees. The FTE calculation would be the quotient of aggregate hours worked by part-time employees (i.e., individuals working less than 30 hours per week) for a month divided by 120.[15]

The reconciliation bill would eliminate the fee imposed on employers who have extended waiting periods.[16]

## Private Health Insurance Market Reforms Effective in 2014

In addition to the more immediate individual and group market reforms previously discussed, H.R. 3590 would apply new federal health insurance standards to group health plans, and the individual, small group, and large group markets (depending on the standard), effective January 1, 2014. Among the market reforms in H.R. 3590 are provisions that would do the following:

[11] For example, say an employer has 60 full-time employees. When calculating the penalty applicable in either scenario (1) or (2), the number of full-time employees you would use would be 30 (60 minus 30).

[12] §1003(a)

[13] PPACA considers employers in the construction industry with at least five employees and annual payroll expense exceeding $250,000 to be a large employer, for purposes of determining whether or not they could be subject to a penalty.

[14] §1003(b)

[15] §1003(c)

[16] §1003(d)

- Prohibit group health plans and issuers in the individual and group markets from excluding coverage for preexisting health conditions. A "pre-existing health condition" is a medical condition that was present before the date of enrollment for health coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.
- Prohibit group health plans and issuers in the individual and group markets from imposing a waiting period greater than 90 days. A "waiting period" refers to the time period that must pass before an individual is eligible to use health benefits.

Under the reconciliation bill,[17] the limitations on excessive waiting periods would apply to all grandfathered plans. Thus, the grandfather exemption would be removed. The prohibition relating to preexisting conditions would be amended to apply to grandfathered group health plans.

## Premium Credits

Under Senate-passed H.R. 3590, some individuals enrolled in private health insurance through an exchange (beginning in 2014) would be eligible for premium credits, based on income. The premium credits would be in the form of advanceable, refundable tax credits. Qualifying individuals at or below 133% federal poverty level (FPL) would pay no more than 2% of income toward premiums (although citizens in this income range would be eligible for Medicaid, rather than premium credits for exchange coverage). Currently, for a family of three in the 48 contiguous states, 133% FPL is $24,352, and 400% FPL is $73,240.[18] Premium credits would be available to individuals up to 400% FPL.

Compared to H.R. 3590, the reconciliation bill makes the premium credits in 2014 somewhat more generous for individuals between 133% FPL and 200% FPL and between 250% FPL and 400% FPL, as illustrated in **Figure 1** and **Table 1**.[19]

For years after 2014, both H.R. 3590 and the reconciliation bill would increase the percentage of income eligible individuals would be required to pay toward premiums (i.e., reducing premium credits) based on how much premium growth exceeded income growth. However, after 2018, if the premium and cost-sharing subsidies exceeded 0.504% of gross domestic product (GDP) for the preceding year, then the required percentage of income paid toward premiums would also be increased by how much premium growth exceeded overall inflation[20] for the preceding year.[21]

In addition to the Senate bill's requirements and limitations when reconciling taxpayers' advanced premium tax credits to levels ultimately reported on their actual tax returns, the reconciliation bill requires exchanges to provide to the Secretary of Health and Human Services the following: each enrollee's level and length of exchange coverage; the premium for the plan (excluding the premium and cost-sharing subsidies); the advanced payments for premium and cost-sharing subsidies; the name, address, and taxpayer ID number of each individual covered; "any information provided to the Exchange, including any change of circumstances, necessary to determine eligibility for, and the amount of, such credit"; and any "other similar information

[17] §2301

[18] CRS computation based on "Annual Update of the HHS Poverty Guidelines," 74 *Federal Register* 4200, January 23, 2009, http://aspe.hhs.gov/poverty/09fedreg.pdf. Per P.L. 111-118, the 2009 FPLs will be in effect until at least March 1, 2010. The FPL in Hawaii and Alaska is set at a higher income than for the 48 contiguous states.

[19] §1001(a)(1)(A) and §1001(a)(2) of the reconciliation bill.

[20] As measured by the Consumer Price Index.

[21] §1001(a)(2) of the reconciliation bill.

necessary to carry out this subsection and determine whether a taxpayer has received excess advance payments."[22]

## Cost-Sharing Subsidies

Even when individuals have health insurance, they may be unable to afford the cost-sharing (deductibles and copayments) required to obtain health care. Thus, under the Senate and reconciliation bills, those eligible for premium credits would also be eligible for cost-sharing subsidies for silver[23] plans sold through an exchange. The cost-sharing subsidies are provided to insurers so that their plans pay for a certain percentage of covered health care expenses. As illustrated in **Figure 2**, compared to the Senate bill, the reconciliation bill increases the cost-sharing subsidies for those up to 250% FPL, to cover a higher percentage of expenses.[24] However, these amounts are still less than those in House-passed H.R. 3962.

**Table 1. Maximum Out-of-Pocket Premium Payments Under Reconciliation Bill, If Currently Implemented**

for the 48 contiguous states and the District of Columbia

| Federal Poverty Line (FPL) | Maximum Premium as a % of Income (2014) | Maximum Annual Premium (current), by Family Size | | | |
|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 |
| 100% | 2.0% | $217 | $291 | $366 | $441 |
| 133.00% | 2.0% | $288 | $388 | $487 | $587 |
| 133.01% | 3.0% | $487 | $656 | $824 | $992 |
| 150% | 4.0% | $650 | $874 | $1,099 | $1,323 |
| 200% | 6.3% | $1,365 | $1,836 | $2,307 | $2,778 |
| 250% | 8.05% | $2,180 | $2,932 | $3,685 | $4,438 |
| 300% | 9.5% | $3,087 | $4,152 | $5,218 | $6,284 |
| 350% | 9.5% | $3,601 | $4,845 | $6,088 | $7,332 |
| 400% | 9.5% | $4,115 | $5,537 | $6,958 | $8,379 |

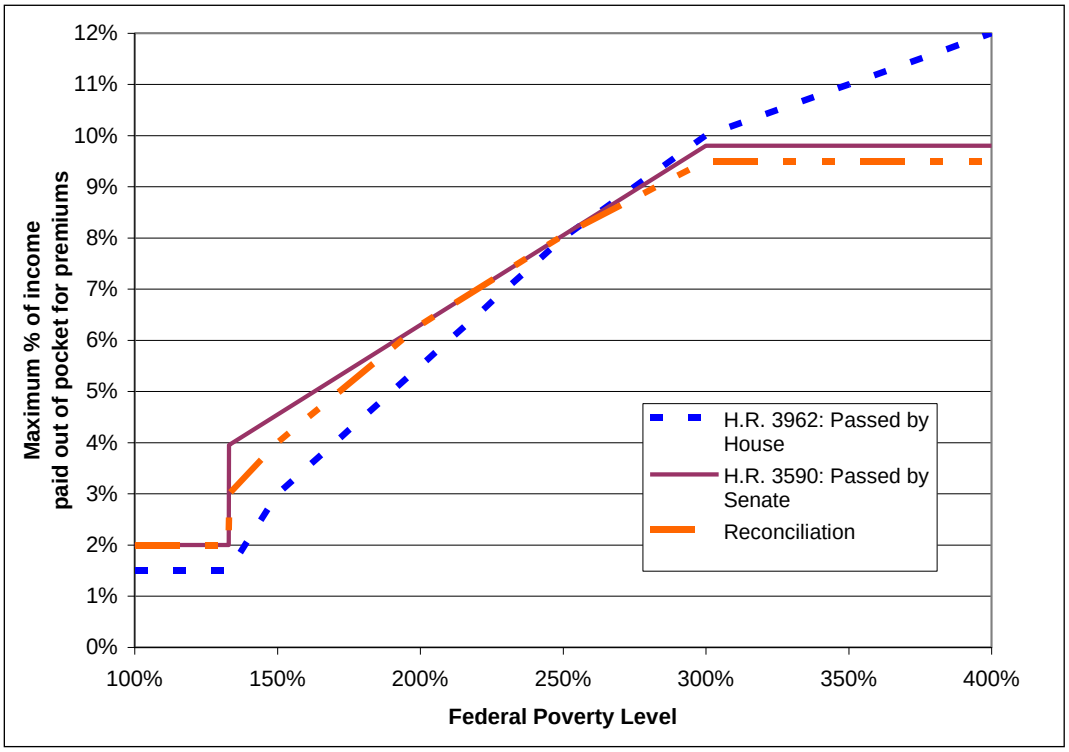
**Source:** CRS computation based on "Annual Update of the HHS Poverty Guidelines," 74 *Federal Register* 4200, January 23, 2009, http://aspe.hhs.gov/poverty/09fedreg.pdf, and the "reconciliation bill" (i.e., Amendment in the Nature of a Substitute to H.R. 4872, "HCEARA_001.XML," March 18, 2010), for the second least expensive silver plan available to eligible individuals. Per P.L. 111-144, the 2009 FPLs will be in effect until at least March 31, 2010. If individuals choose more expensive plans, they would be responsible for additional premiums.

[22] §1004(c) of the reconciliation bill.

[23] Silver plans are those in one of four cost-sharing tiers established in exchanges (the other tiers being bronze, gold and platinum). Of the four tiers, silver plans would have the second highest enrollee cost-sharing.

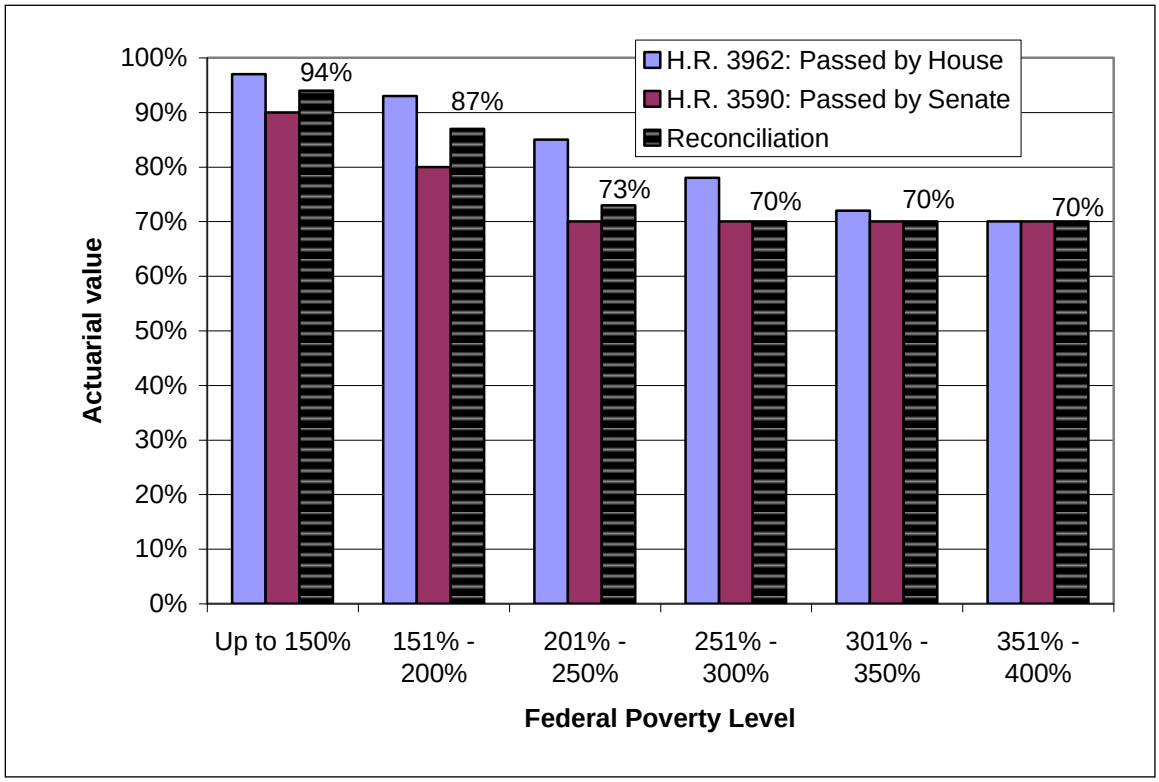
[24] §1001(b) of the reconciliation bill.

**Figure 1. Maximum Out-of-Pocket Premiums for Eligible Individuals, by Federal Poverty Level (FPL)**




**Source:** CRS analysis.

**Figure 2. Required Effect of Cost-Sharing Subsidies on Percentage of Health Care Expenses Paid by Plan for Eligible Individuals**




## Counting Income

Under Senate-passed H.R. 3590, Modified Gross Income (MGI) would be used for determining eligibility for premium and cost-sharing credits,[25] as well as for Medicaid[26] and CHIP,[27] beginning in 2014. MGI was defined as gross income decreased by trade and business deductions, losses from sale of property, and alimony payments, but including tax-exempt interest and income earned in the territories and by U.S. citizens or residents living abroad.[28]

The reconciliation bill would use a different definition and term, Modified Adjusted Gross Income (MAGI), and apply it to the premium and cost-sharing credits as well as to Medicaid and CHIP.[29] MAGI is defined as the Internal Revenue Code's Adjusted Gross Income (AGI), which reflects a number of deductions, including trade and business deductions, losses from sale of property, and alimony payments, increased by tax-exempt interest and income earned by U.S. citizens or residents living abroad.

[25] New IRC §36B(d)(2) in §1401 of H.R. 3590.

[26] New §1902(e)(14)(G) of the Social Security Act, created by §2002(a) of H.R. 3590.

[27] New §2102(b)(1)(B)(v) of the Social Security Act, created by §2101(d) of H.R. 3590.

[28] Medicaid enrollees who would otherwise lose coverage because of the change in income-counting would be able to maintain eligibility (i.e., grandfather provision appears in the new §1902(e)(14)(D)(v) of the Social Security Act, created by §2002(a) of H.R. 3590).

[29] Subsections (a) and (b) of §1004 of the reconciliation bill.

## Implementation Funding

The reconciliation bill would establish a Health Insurance Reform Implementation Fund within the Department of Health and Human Services (HHS) for federal administrative expenses for carrying out the legislation. The reconciliation bill appropriates $1 billion to the fund.[30]

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[30] §1005 of the reconciliation bill.