House Energy and Commerce Committee
Republicans

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To: **Republican Members**

From: **Republican Committee Staff**

Subject: **Summary of the House Health Reform Package**

Summary

House Democratic leaders released the final component of the Slaughter Solution package this week in the form of an amendment in the nature of a substitute to H.R. 4872, the *Reconciliation Act of 2010*. When combined with the Senate-passed bill, the Slaughter Solution package would (1) require individuals and large employers to purchase health insurance or face financial penalties, (2) mandate new national regulations on health insurance plans, (3) create government agencies called "Exchanges" to regulate and sell insurance, (4) provide for the creation of non-profit "co-op" health plans, (5) increase taxes, (6) mandate all states expand their Medicaid programs, (7) create a new trust-fund based, government-run program to help finance long-term care services, and (8) cut Medicare spending by over $500 billion. Unlike the House-passed bill, the Reconciliation package includes: (1) no new government-run health insurance plan and (2) weaker abortion protections.

Most experts agree that these policies increase health costs and the number of Americans enrolled in government-run health programs. CBO's score of the legislative package (including the Manager's Amendment) finds it would spend $938 billion on coverage subsidies, reduce deficits by $114 billion (on-budget for the 2010-2019 period), reduce the projected number of uninsured individuals by 32 million (16 million of whom will be forced into the Medicaid program), and leave 23 million people uninsured in 2019.

In advocating for the legislation, Democrats claim that CBO projects the legislation will reduce the deficit by $143 billion over 10 years. However, this claim is misleading for several reasons. First, the legislation raises revenue by more than it spends during the first 10 years. Second, the bill delays the vast majority of the spending provisions that expand coverage until 2014, which produces 10-year budget savings by including 10 years of spending cuts and tax hikes but only 6 years of phased-in coverage increases. Third, CBO notes that only $114 billion goes towards on-budget deficit reduction; the remainder of the money goes to off-budget purposes such as the Social Security Trust Fund, which should not be counted as on-budget savings because additional Trust Fund revenues generate additional benefit obligations in later years. Fourth, CBO has found that $70.2 billion of the $114 billion in projected savings comes from the CLASS program, a trust-fund based, long-term care program that CBO clearly states "would add to budget deficits in future decades." Finally, CBO states: "[t]he reconciliation proposal and H.R. 3590 would maintain and put into effect a number of policies that might be difficult to sustain over a long period of time. Under current law, payment rates for physicians' services in Medicare would be reduced by about 21 percent in 2010 and then decline further in subsequent years; the proposal

makes no changes to those provisions. At the same time, the legislation includes a number of provisions that would constrain payment rates for other providers of Medicare services. In particular, increases in payment rates for many providers would be held below the rate of inflation (in expectation of ongoing productivity improvements in the delivery of health care)."

A more accurate picture of the bill's true cost was provided by the Senate Budget Committee Republicans, which estimate at $2.5 trillion the 10-year cost of the bill once fully implemented.

Individual Mandates

Senate-passed Bill (H.R. 3590)

Under the Senate-passed bill, most individuals would be required to maintain minimum essential coverage for themselves and their dependents (defined as health coverage under part A of Medicare, Medicaid, SCHIP, the TRICARE for Life program, the veterans' health care program, the Peace Corps program, an eligible employer-sponsored plan, plans in the individual market, a grandfathered health plan, and any other health benefits coverage, such as a state health benefits risk pool, as recognized by the Secretary of HHS). Individuals who fail to comply with the health insurance coverage mandate would be required to pay a penalty for themselves and their dependents for each month they were in non-compliance. The penalty would be calculated as the greater of either (1) a percentage of household income or (2) a flat dollar amount. The penalty amount based on household income would be 0.5% in 2014, 1.0% in 2015, and 2% in 2016 and later years. The annual flat-dollar penalty would be phased in ($95 in 2014, $495 in 2015, $750 in 2016, and adjusted for inflation thereafter), and the penalty would be assessed for each taxpayer and any dependents. The flat-dollar penalty would be reduced by 50% for dependents under the age of 18. Furthermore, regardless of family size, a family's penalty would be capped at 300% the flat-dollar amount, and the penalty for noncompliance could not exceed the national average premium for bronze level qualified health plans (described below) offered through an Exchange (for the relevant family size).

Individuals exempted from paying a penalty for the lack of coverage would include those with certain qualifying religious exemptions, those in a health care sharing ministry, individuals not lawfully present in the United States, incarcerated individuals, those without coverage for less than 90 days (with only one period of 90 days allowed in a year), members of Indian tribes, individuals whose household income did not exceed 100% of the federal poverty level, or any individual who the Secretary of HHS determines to have suffered a hardship with respect to the capability to obtain coverage under a qualified health plan.

Reconciliation Bill (H.R. 4872)

The Reconciliation bill modifies the individual mandate penalty in three ways: (1) exempts the income below the filing threshold from the calculation of the penalty, (2) lowers the flat dollar penalty from $495 to $325 in 2015, and from $750 to $695 in 2016, and (3) for individuals paying a penalty based on family income, changes the penalty from 0.5% to 1.0% of family income in 2014, from 1.0% to 2.0% of family income in 2015, and from 2.0% to 2.5% of family income for 2016 and subsequent years.

Employer Mandates

Senate-passed Bill (H.R. 3590)

Beginning in 2014, all employers with more than 50 full-time employees (defined as non-seasonal employees working on average at least 30 hours per week) who do not provide qualified health insurance coverage would be required to pay a penalty for each employee who is not enrolled in a qualified health plan. In 2014, the penalty assessed to the employer would be equal to the number of full-time employees times $62.50 for any applicable month ($750 per year). After 2014, the penalty amount would be indexed.

Reconciliation Bill (H.R. 4872)

The Reconciliation bill keeps the employer mandate but increases the annual per-employer penalty from $750 per employee ($62.50 per month) to $2,000 per employee ($166.67 per month). It also subtracts 30 full-time employees from the penalty calculation (e.g., a firm with 100 employees would have to pay the $2,000 annual penalty on 70 employees; (100 – 30) x $2,000 = $140,000 total annual penalty).

Insurance Regulation and Exchanges

Senate-passed Bill (H.R. 3590)

The Senate-passed bill would increase significantly federal regulation of health insurance, give the HHS Secretary authority to impose additional standards and provide for the eventual creation of a federal "Exchange" to regulate and sell health insurance.

Health insurers would face new federal regulations requiring them to (1) accept all applicants for coverage, (2) comply with new, price-setting limits that allow policy prices for individual and small group plans to vary only according to an applicant's age (on a 3-to-1 ratio), family structure, geographic location, and tobacco use, (3) spend at least 80% (85% for a large group plan) of total expenditures on medical costs (this is what is known as the "medical loss ratio"), (4) cover dependent "children" up to age 26, (5) no longer rescind any policy unless the covered individual commits fraud, (6) justify premium increases to the government, and (7) cover specific benefits (e.g., emergency services, mental health, and prescription drugs) as defined in law, with authority given to the Secretary to expand the list of mandated benefits.

Unlike the House bill which created a new federal "Exchange" to provide for the sale of insurance, the Senate bill purports to leave this responsibility to the states. The bill directs states to create by 2014 at least one insurance "Exchange," which could sell health insurance to individuals and employers. Exchanges would offer private insurance and a new federally-chartered health plan (described below). If a state does not take sufficient action to set up an Exchange by 2013, then HHS will set one up for them. The likely consequence of this approach is that the federal government will assume the responsibility for serving as an insurance broker, as states probably will prefer to not take on these requirements if there is a clear pathway for the federal government to do so. Either way, the government will displace unnecessarily functions that the private sector assumes today.

Plans sold within the Exchange face an additional degree of regulation, including limits on permissible cost-sharing (e.g., limits on deductibles of no more than $2000 for an individual and $4000 for a family, indexed for future growth.) Exchange-eligible plans will be defined by actuarial value as follows: bronze (covering approximately 60% of the enrollees' projected health care costs), silver (70%), gold (80%), and platinum (90%). These plans must be sold at the same price regardless of whether the plan is sold in or outside the Exchange.

Although President Obama has promised repeatedly that everyone who likes their current health insurance plan can keep it, the Exchange likely will become over time the dominant marketplace for insurance, as tax subsidies for people with income up to 400% of the federal poverty level (about $90,000 for a family of 4 in 2014) are available only for insurance sold through the Exchange.

Reconciliation Bill (H.R. 4872)

The Reconciliation bill places requirements on grandfathered plans, including prohibitions on lifetime limits. Group plans will have to cover all pre-existing conditions by 2014, restrict annual limits within six months of enactment and eliminate these limits by 2014, and cover adult "children" up to age 26 without access to employer-provided health insurance.

National Insurance Plans

Senate-passed Bill (H.R. 3590)

The Senate-passed bill would create a new national insurance program under the authority of the Office of Personnel Management (OPM), which today runs the Federal Employee's Health Benefits Program. OPM would contract with insurance companies to offer at least 2 plans that are offered in all states within 4 years. At least one plan must offer abortion coverage (in contrast to current law which prohibits FEHBP from covering elective abortion), and at least one plan must be non-profit. The OPM-contracted plans will be made available through the Exchanges.

Reconciliation Bill (H.R. 4872)

The Reconciliation bill makes no changes to these provisions.

Mandated Expansion of the Medicaid Program

Senate-passed Bill (H.R. 3590)

Under the Senate-passed bill, essentially all individuals under the age of 65 with family incomes less than 133% of the federal poverty level (approximately $35,000 for a family of four in 2015) would be mandated to be eligible for Medicaid and strictly prohibited from purchasing private health insurance through an Exchange. The federal government would pay all of the costs of covering newly eligible enrollees through 2016; in subsequent years, the share of federal spending for these newly eligible populations would vary somewhat from year to year but ultimately would average approximately 90%. Under current law, the federal government pays, on average, approximately 57 percent of the costs of Medicaid benefits, leaving states responsible

for the remaining 43 percent; the Senate-passed bill roughly holds this federal-state share constant for these currently eligible Medicaid populations.

In addition to the mandated expansion of eligibility, states would be required to maintain current coverage levels for Medicaid beneficiaries until the Exchanges are fully operational. For children, states would have to maintain current coverage levels for through 2019. Beginning in 2014, states would receive higher federal reimbursement for SCHIP beneficiaries, increasing from an average of 70 percent to 93 percent. CBO estimates that this provision causes state Medicaid spending to increase by about $30 billion during 2010–2019.

Reconciliation Bill (H.R. 4872)

The Reconciliation bill would increase federal outlays on the Medicaid program by $434 billion during 2010-2019, $48 billion more than the Senate-passed bill. The bill would provide federal Medicaid matching payments for the costs of services to newly eligible individuals (populations made eligible by the bill) at the following rates in all states except "expansion states" (states who currently cover childless adults whose income is at least 100% of the federal poverty level): 100% in 2014, 2015, and 2016; 95% in 2017; 94% in 2018; 93% in 2019; and 90% thereafter. In the case of "expansion states," the Reconciliation bill would reduce the state share of the costs of covering nonpregnant childless adults by 50% in 2014, 60% in 2015, 70% in 2016, 80% in 2017, and 90% in 2018. In 2019 and thereafter, expansion states would bear the same state share of the costs of covering nonpregnant childless adults as non-expansion states (e.g., 7% in 2019, 10% thereafter). The Reconciliation bill would also eliminate the "Cornhusker Kickback," (the permanent 100% federal financing for Nebraska's newly eligible Medicaid populations) but it still includes the "Louisiana Purchase" (the increased federal funding for the State of Louisiana).

Other Key Policies

Abortion: The Reconciliation bill does not change the Senate-passed bill, which does not protect life as much as the House-passed bill because it permits people who receive federal health-plan subsidies to enroll in plans that cover abortion.

Illegal Immigrants: The Reconciliation bill leaves intact the Senate provisions, which provide that illegal immigrants could not buy insurance from the Exchanges – even if they were willing to pay the full cost themselves. However, the Senate bill contains the same, weak Social Security Number-based citizenship verification system, which does not require applicants to document that they actually are the person they are claiming to be. In contrast, the House bill let illegal immigrants buy insurance through the new national health insurance Exchange.

Medicare Advantage: The Democratic bill cuts $205.9 billion from Medicare Advantage plans.

Medicare "donut hole:" Under current law, the Medicare prescription drug benefit provides financial help to seniors who take prescription drugs, stops paying for prescriptions after the plan and beneficiary hit a certain threshold of spending, and starts paying again after out-of-pocket spending hits a second threshold. The legislative package fills in the "donut hole" but hides the true cost of doing so by not fully phasing in the provision until 2020, which is outside the current

2010-2019 budget window. In addition, the Reconciliation bill provides a $250 rebate for all Medicare Part D enrollees who enter the donut hole in 2010.

Physician-Owned Hospitals: The legislative package will prohibit Medicare from issuing new provider agreements with physician-owned hospitals after December 31, 2010 (up from the August 1, 2010 date in the Senate-passed bill), which will essentially prevent the establishment of any new physician-owned hospitals after this date. The Reconciliation bill provides a limited exception to the growth restrictions for grandfathered physician-owned hospitals that treat the highest percentage of Medicaid patients in their county (and are not the sole hospital in a county). This change will allow an unknown – but likely limited – number of additional physician-owned hospitals to qualify for an exemption.

Transparency: Similar to Energy and Commerce Committee-passed language, the Senate bill will allow individuals to learn their health care coverage options (including any cost-sharing at the point of care), and develop standards to allow consumers to compare this information. Unlike Energy and Commerce Committee-passed language, the Senate bill does not require hospitals to publish their charges. Instead, hospitals must release annually their "standard" charges, an undefined term in the bill. The Reconciliation bill does not change this language.