

## Background & Talking Points for Senate Offices

### Summary of Senate Provisions

HR 3590, The Patient Protection and Affordable Care Act of 2009 released by Senate Majority Leader Reid last week calls for:

1. A \$2,500 cap on FSAs (currently there is no cap on FSAs) that would begin January 1, 2011. **The cap is NOT indexed for future inflation.**
2. An excise tax on high-cost health plans that begins in 2013, such that insurers or employers in the case of self-funded plans will face a 40 percent excise tax on health benefits that exceed \$8,500 for an individual and \$23,000 for families. All health benefits, except for certain excepted health benefits paid for on a post-tax basis, would be included in determining whether a health benefits package exceeds the threshold. The threshold amounts are indexed to CPI+1 in future years
3. A prohibition on reimbursement for OTC drugs without a prescription beginning January 1, 2011.

### Talking Points

- More than 35 million Americans rely on their FSAs to meet their health care needs.
- The average annual income for an FSA participant is \$55,000.
- FSAs are particularly important for patients with chronic illnesses, who even with comprehensive coverage, can face thousands of dollars in total out of pocket costs.
- Most insurance plans do not cover the full cost of care for conditions such as autism, or services, such as wheelchair repairs.
- The legislation will have a devastating effect on Americans who rely on their FSAs.
- First, the cap is much lower than what most states and the federal government allow their employees to set aside.
- Second, since the cap is not indexed to inflation, the bill effectively eliminates FSAs over time.

- That outcome is totally counter to the pledge made by many policy makers and President Obama – that is, if you like what you have you can keep it. And it will have a negative impact on Americans with chronic illnesses and those with middle-class incomes.
- Third, the requirement to obtain a prescription for over the counter (OTC) medicines will drive up costs by requiring individuals to have a doctor’s visit to get reimbursement for an OTC, such medicine for allergies or gastric reflux.
- Finally, the inclusion of FSAs, other account-based plans, along with other types of ancillary coverage, such as coverage for vision, dental and specified diseases, in the high-cost plan excise tax will lead many employers to drop those types of coverage to avoid the tax.
- I urge you to reach out to the Senate Leadership and express your support to address these issues. Specifically,
  1. FSAs should not be capped, but if they are, the cap should be set at a reasonable amount (e.g., \$5,000 as it is for federal employees) and the cap should be indexed for inflation. The indexing issue should be addressed immediately, before the bill goes to the floor.
  2. The OTC requirement should be eliminated or at least modified to ensure ongoing access to OTCs such as allergy and gastric reflux medicines.
  3. The threshold for the high-cost excise tax should be higher, and should only include primary coverage, not ancillary coverage for vision, dental, or specified diseases or employee contributions to FSAs or other account-based plans.