

## **ABC OVERVIEW OF PASSED HEALTH CARE REFORM BILLS**

On November 7, 2009, the House passed its health care reform bill, H.R. 3962, the Affordable Health Care for America Act. Six weeks later, on December 24, the Senate passed its own version, H.R. 3590, the Patient Protection and Affordable Care Act. While there are significant differences between the two bills, both include employer mandates and vast tax increases that ABC opposes. In addition, the Senate bill contains the “Merkley Amendment” language, which specifically and unfairly targets small employers in the construction industry. The “Merkley Amendment” language was added to the Senate bill at the last minute, unbeknownst to almost every senator and all of the business community.

Before the President can sign any health care reform bill, the House and Senate must work out the differences between the two bills. Currently, Senate and House leadership are meeting to resolve the differences.

Over the Christmas break, ABC National contacted many Congressional offices about the “Merkley Amendment” language, including the offices of several Democratic Senators, who expressed a strong interest in working with ABC National to have it removed from any final legislation. ABC National will continue to work with key offices on both sides of the aisle to do everything possible to prevent our members from being unfairly targeted by the “Merkley Amendment.” We will continue to keep you apprised of any developments and future calls to action on the “Merkley Amendment” and on the health care reform package.

### **1) What does the Merkley Amendment (included in Senate Bill) mean for the construction industry?**

- Under the Senate bill, businesses with more than 50 full-time employees (as defined as on average at least 30 hours a week) will be subject to penalties for failing to offer “adequate” coverage (see details below).
- During the debate over the Senate bill, Senator Jeff Merkley (D-OR) proposed an Amendment that would lower the threshold for construction firms. While the Amendment was never officially offered by Senator Merkley, Democratic Leadership inserted the Merkley Amendment language at the last minute into the bill that the Senate approved.
- As a result, construction companies with at least 5 full-time employees and a payroll that exceeds \$250,000 are subject to penalties if they offer no coverage or inadequate coverage.

### **2) What is the definition of Construction Industry in the Senate bill for purposes of the Merkley language?**

- To be determined by the IRS. Currently, “construction industry” is not defined.

### **3) What are the employer mandates?**

#### **➤ What is the effective date of the employer mandates?**

- **House Bill** – January 1, 2013.
- **Senate Bill** – January 1, 2014.

➤ **What are the employer contribution requirements and coverage?**

- **House Bill** – Covers full-time employees, employers are required to contribute 72.5% of cost for individual coverage, 65% for family coverage, and meet benefit standards. “Benefits standards” include, minimum benefit coverage with an actuarial value of 70% (this means the plan must on average cover 70% of employee and/or family health care costs).
- **Senate Bill** – Covers full-time employees (as defined as on average at least 30 hours a week), employers are required to pay a fee if: 1) they fail to offer coverage; or (2) they offer coverage, but the employee’s share of the premium is more than 9.8% and employees obtain coverage through the health insurance exchanges; or 3) the employer plan fails to meet benefit standards. Minimum benefit standard is coverage with an actuarial value of 60% (this means the plan must on average cover 60% of employee and/or family health care costs).

➤ **What are the auto enrollment requirements if the employer offers coverage?**

- **House Bill** – Employers are required to automatically enroll employees. Opportunity for employees to opt-out within 30 days.
- **Senate Bill** – Employers with more than 200 full-time employees are required to automatically enroll new full-time employees. Opportunity for employees to opt-out. Fines will be applied to employer if waiting period exceeds 30 days. Waiting period cannot exceed 90 days.

➤ **What fees must employers pay if they fail to comply with the requirements of the mandate?**

- **House Bill** – 8% of payroll, which includes full-time, part-time and temporary employees.
- **Senate Bill** - \$750 to \$3,000 per employee depending on the circumstances.

4) **What is the grandfather clause?**

- **House Bill** – According to the House Committee on Energy and Commerce, employers offering coverage have a five-year grace period to meet some of the benefit standards. At this time, the language is unclear. ABC National will continue to look into this language.
- **Senate Bill** – According to the House Committee on Energy and Commerce, H.R. 3590 permanently grandfathers existing employer plans that offer any level of coverage (few exceptions apply). At this time, the language is unclear. ABC National will continue to look into this language.