H.R. 4872, THE HEALTH CARE & EDUCATION AFFORDABILITY RECONCILIATION ACT of 2010
SECTION-BY-SECTION ANALYSIS

Prepared by Committees on Ways & Means, Energy & Commerce, and Education & Labor, March 18, 2010

Title I – Coverage, Medicare, Medicaid and Revenues

Subtitle A – Coverage

Sec. 1001. Affordability. Improves the financing for premiums and cost sharing for individuals with incomes up to 400% of the federal poverty level. Subsection (a) improves tax credits to make premiums more affordable as a percent of income; and subsection (b) improves support for cost sharing, focusing on those with incomes below 250% of the federal poverty level. Starting in 2019, constrains the growth in tax credits if premiums are growing faster than the consumer price index, unless spending is more than 10% below current CBO projections.

Sec. 1002. Individual responsibility. Modifies the assessment that individuals who choose to remain uninsured pay in three ways: (a) exempts the income below the filing threshold, (b) lowers the flat payment from $495 to $325 in 2015 and from $750 to $695 in 2016 and (c) raises the percent of income that is an alternative payment amount from 0.5 to 1.0% in 2014, 1.0 to 2.0% in 2015, and 2.0 to 2.5% for 2016 and subsequent years to make the assessment more progressive.

Sec. 1003. Employer responsibility. Improves the transition to the employer responsibility policy for employers with 50 or more full-time equivalent workers (FTE) by subtracting the first 30 full time employees from the payment calculation (e.g., a firm with 51 workers that does not offer coverage will pay an amount equal to 51 minus 30, or 21 times the applicable per employee payment amount). The provision also changes the applicable payment amount for firms with more than 50 FTEs that do not offer coverage to $2,000 per full-time employee. It also eliminates the assessment for workers in a waiting period, while maintaining the 90-day limit on the length of any waiting period beginning in 2014.

Sec. 1004. Income definitions. Modifies the definition of income that is used for purposes of subsidy eligibility and the individual responsibility requirement. The modifications conform the income definition to information that is currently reported on the Form 1040 and to the present law income tax return filing thresholds. The provision also extends the exclusion from gross income for employer provided health coverage for adult children up to age 26.

Sec. 1005. Implementation funding. Provides $1 billion to the Secretary of Health and Human Services to finance the administrative costs of implementing health insurance reform.

Subtitle B – Medicare

Sec. 1101. Closing the Medicare prescription drug "donut hole". Provides a $250 rebate for all Medicare Part D enrollees who enter the donut hole in 2010. Builds on pharmaceutical manufacturers' 50% discount on brand-name drugs beginning in 2011 to completely close the donut hole with 75% discounts on brand-name and generic drugs by 2020.

Sec. 1102. Medicare Advantage payments. Freezes Medicare Advantage payments in 2011. Beginning in 2012, the provision reduces Medicare Advantage benchmarks relative to current levels. Benchmarks will vary from 95% of Medicare spending in high-cost areas to 115% of Medicare spending in low-cost areas. The changes will be phased-in over 3, 5 or 7 years, depending on the level of payment reductions. The provision creates an incentive system to increase payments to high-quality plans by at least 5%. It also extends CMS authority to adjust risk scores in Medicare Advantage for observed differences in coding patterns relative to fee-for-service.

Sec. 1103. Savings from limits on MA plan administrative costs. Ensures Medicare Advantage plans spend at least 85% of revenue on medical costs or activities that improve quality of care, rather than profit and overhead.

Sec. 1104. Disproportionate share hospital (DSH) payments. Advances Medicare disproportionate share hospital cuts to begin in fiscal year 2014 but lowers the ten-year reduction by $3 billion.

Sec. 1105. Market basket updates. Revises the hospital market basket reduction that is in addition to the productivity adjustment as follows: -0.3 in FY14 and -0.75 in FY17, FY18 and FY19. Removes Senate provision that eliminates the additional market basket for hospitals based on coverage levels. Providers affected are inpatient hospitals, long-term care hospitals, inpatient rehabilitation facilities, psychiatric hospitals and outpatient hospitals.

Sec. 1106. Physician ownership-referral. Changes to December 31, 2010 the date after which physician ownership of hospitals to which they self refer is prohibited and 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).

Sec. 1107. Payment for Imaging Services. Sets the assumed utilization rate at 75 percent for the practice expense portion of advanced diagnostic imaging services.

Subtitle C – Medicaid

Sec. 1201. **Federal funding for States**. Strikes the provision for a permanent 100% federal matching rate for Nebraska for the Medicaid costs of newly eligible individuals. Provides federal Medicaid matching payments for the costs of services to newly eligible individuals at the following rates in all states except expansion states: 100% in 2014, 2015, and 2016; 95% in 2017; 94% in 2018; 93% in 2019; and 90% thereafter. In the case of expansion states, reduces the state share of the costs of covering nonpregnant childless adults by 50% in 2014, 60% in 2015, 70% in 2016, 80% in 2017, 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).

Sec. 1202. **Payments to primary care physicians.** Requires that Medicaid payment rates to primary care physicians for furnishing primary care services be no less than 100% of Medicare payment rates in 2013 and 2014 (the first year of the Senate bill's Medicaid coverage expansion to all individuals with incomes under 133% of poverty). Provides 100% federal funding for the incremental costs to States of meeting this requirement.

Sec. 1203. Disproportionate share hospital payments. Lowers the reduction in federal Medicaid DSH payments from $18.1 billion to $14.1 billion and advances the reductions to begin in fiscal year 2014. Directs the Secretary to develop a methodology for reducing federal DSH allotments to all states in order to achieve the mandated reductions. Extends through FY 2013 the federal DSH allotment for a state that has a $0 allotment after FY 2011.

Sec. 1204. **Funding for the territories**. Increases federal funding in the Senate bill for Puerto Rico, Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands by $2 billion. Raises the caps on federal Medicaid funding for each of the territories. Allows each territory to elect to operate a Health Benefits Exchange.

Sec. 1205. Delay in Community First Choice Option. Postpones from October 1, 2010 until October 1, 2011 the effective date of the option established for State Medicaid programs to cover attendant care services and supports for individuals who require an institutional level of care

Sec. 1206. Drug rebates for new formulations of existing drugs. For purposes of applying the additional rebate, narrows the definition of a new formulation of a drug to a line extension of a single source or innovator multiple source drug that is an oral solid dosage form of the drug.

Subtitle D – Reducing Fraud, Waste, and Abuse

Sec. 1301. Community Mental Health Centers. Establishes new requirements for community mental health centers that provide Medicare partial hospitalization services in order to prevent fraud and abuse.
Sec. 1302. Medicare prepayment medical review limitations. Streamlines procedures to conduct Medicare prepayment reviews to facilitate additional reviews designed to reduce fraud and abuse.
Sec. 1303. CMS-IRS data match to identify fraudulent providers. Allows the Secretary of Treasury to share IRS data with HHS employees to help screen and identify fraudulent providers or providers with tax debts, and to help recover such debts. Provides strict controls on the use of such information to protect taxpayer privacy.
Sec. 1304. Funding to fight fraud, waste and abuse. Increases funding for the Health Care Fraud and Abuse Control Fund by $250 million over the next decade. Indexes funds to fight Medicaid fraud based on the increase in the Consumer Price Index.
Sec. 1305. 90-day period of enhanced oversight for initial claims of DME suppliers. Requires a 90-day period to withhold payment and conduct enhanced oversight in cases where the HHS Secretary identifies a significant risk of fraud among DME suppliers.
Subtitle E – Revenues
Sec. 1401. High-cost plan excise tax. Reduces the revenue collected by the tax by 80 percent. This is achieved by: delaying the application of the tax until 2018, which gives the plans time to implement and realize the cost savings of reform; increasing the dollar thresholds to $10,200 for single coverage and $27,500 for family coverage ($11,850 and $30,950 for retirees and employees in high risk professions); excluding stand-alone dental and vision plans from the tax; and permitting an employer to reduce the cost of the coverage when applying the tax if the employer's age and gender demographics are not representative of the age and gender demographics of a national risk pool. Under the modified provision, the dollar thresholds are indexed to inflation and the dollar thresholds are automatically increased in 2018 if CBO is wrong in its forecast of the premium inflation rate between now and 2018.
Sec. 1402. Medicare tax. Modifies the tax to include net investment income in the taxable base. Currently, the Medicare tax does not apply to net investment income. The Medicare tax on net investment income does not apply if modified adjusted gross income is less than $250,000 in the case of a joint return, or $200,000 in the case of a single return. Net investment income is interest, dividends, royalties, rents, gross income from a trade or business involving passive activities, and net gain from disposition of property (other than property held in a trade or business). Net investment income is reduced by properly allocable deductions to such income.
Sec. 1403. Delay of the annual limitation on contributions to a health FSA. Delays the provision by two years until 2013.
Sec. 1404. Brand name pharmaceuticals. Delays the industry fee on sales of brand name pharmaceuticals for use in government health programs by one year to 2011, and increases revenue raised by the fee by $4.8 billion.
Sec. 1405. Excise tax on medical device manufacturers. Delays the tax by two years to 2013 and converts the industry fee to an excise tax on the first sale for use of medical devices at a rate of 2.9 percent. Exempts from the tax Class I medical devices, eyeglasses, contact lenses, hearing aids, and any device of a type that is generally purchased by the public at retail for individual use.
Sec. 1406. Health insurance providers. Delays the industry fee by 3 years to 2014 and modifies the annual industry fee for revenue neutrality. In the case of tax-exempt insurance providers, provides that only 50 percent of their net premiums that relate to their tax-exempt status are taken into account in calculating the fee. Provides exemptions for voluntary employee benefit associations (VEBAs) and nonprofit providers more than 80 percent of whose revenues is received from Social Security Act programs that target low income, elderly, or disabled populations.

Sec. 1407. Delay of elimination of deduction for expenses allocable to Medicare part D subsidy. Delays the provision by two years to 2013.

Sec. 1408. Elimination of unintended application of cellulosic biofuel producer credit. Adds an additional revenue provision. In 2008, Congress enacted a $1.01 per gallon tax credit for the production of biofuel from cellulosic feedstocks in order to encourage the development of new production capacity for biofuels that are not derived from food source materials. Congress is aware that some taxpayers are seeking to claim the cellulosic biofuel tax credit for unprocessed fuels, such as black liquor. The provision would limit eligibility for the tax credit to processed fuels (i.e., fuels that could be used in a car engine or in a home heating application).

Sec. 1409. Codification of economic substance doctrine and penalties. Adds an additional revenue provision. The economic substance doctrine is a judicial doctrine that has been used by the courts to deny tax benefits when the transaction generating these tax benefits lacks economic substance. The courts have not applied the economic substance doctrine uniformly. The provision would clarify the manner in which the economic substance doctrine should be applied by the courts and would impose a penalty on understatements attributable to a transaction lacking economic substance.

Sec. 1410. Time for payment of corporate estimated taxes. Provides for a one-time adjustment to corporate estimated taxes for payments made during calendar year 2014.

Sec. 1411. No impact on Social Security trust funds. Provides that Title II of the Social Security Act (the old age, survivor, and disability benefits program (OASDI)) is not amended or modified by the bill.

Subtitle F – Other Provisions

Sec. 1501. TAA for communities. Appropriates $500 Million a year for fiscal years 2010 through 2014 in the Community College and Career Training Grant program for community colleges to develop and improve educational or career training programs. Ensures that each state receives at least 0.5 percent of the total funds appropriated.

Title II – Health, Education, Labor, and Pensions

Subtitle A – Education

Section 2001. Short Title; References. Provides that this subtitle may be cited as the "SAFRA Act," and that, except as otherwise provided, whenever an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Higher Education Act of 1965.

Part I—Investing in Students and Families

Section 2101. Federal Pell Grants. Amends the Higher Education Act to include mandatory funding for the Pell Grant. This provides additional mandatory funding to augment funds appropriated to increase the federal maximum Pell Grant award by the change in the Consumer Price Index. The mandatory component of the funding is determined by inflating the previous year's total and subtracting the maximum award provided for in the appropriations act for the previous year or $4860, whichever is greater. Beginning in the 2018-2019 academic year, the maximum Pell award will be at the 2017-2018 level.

Section 2102. Student Financial Assistance. This section provides $13.5 billion in mandatory appropriations to the Federal Pell Grant program.

Section 2103. College Access Challenge Grant Program. This section amends section 786 of the Higher Education Act by authorizing and appropriating $150 million for fiscal years 2010 through 2014 for the College Access Challenge Grant program created under the College Cost Reduction and Access Act of 2007. Provides that the allotment for each State under this section for a fiscal year shall not be an amount that is less than 1.0 percent of the total amount appropriated for a fiscal year.

Section 2104. Investment in Historically Black Colleges and Universities and Minority Serving Institutions. This section amends section 371(b) of the Higher Education Act by extending funding for

programs under this section created under the College Cost Reduction and Access Act of 2007 for programs at Historically Black Colleges and Universities and minority-serving institutions through 2019, including programs that help low-income students attain degrees in the fields of science, technology, engineering or mathematics by the following annual amounts: $100 million to Hispanic Serving Institutions, $85 million to Historically Black Colleges and Universities, $15 million to Predominantly Black Institutions, $30 million to Tribal Colleges and Universities, $15 million to Alaska, Hawaiian Native Institutions, $5 million to Asian American and Pacific Islander Institutions, and $5 million to Native American non-tribal serving institutions.

Part II—Student Loan Reform

Section 2201. Termination of Federal Family Education Loan Appropriations. This section terminates the authority to make or insure any additional loans in the Federal Family Education Loan program after June 30, 2010.

Section 2202. Termination of Federal loan Insurance Program. This section is a conforming amendment with regard to the termination of the FFEL program, limiting Federal insurance to those loans in the Federal Family Education Loan program for loans first disbursed prior to July 1, 2010.

Section 2203. Termination of Applicable Interest Rates. This section makes a conforming amendment with regard to the termination of the FFEL program limiting interest rate applicability to Stafford, Consolidation, and PLUS loans to those loans made before July 1, 2010.

Section 2204. Termination of Federal payments to Reduce Student Interest Costs. This section makes a conforming amendment with regard to the termination of the FFEL program by limiting subsidy payments to lenders for those loans for which the first disbursement is made before July 1, 2010.

Section 2205. Termination of FFEL PLUS Loans. This section makes a conforming change with regard to the termination of the FFEL program for federal PLUS loans by prohibiting further FFEL origination of loans after July 1, 2010.

Section 2206. Federal Consolidation Loans. This section makes conforming changes with regard to the termination of the FFEL program for federal consolidation loans. This section also provides that, for a 1 year period, borrowers who have loans under both the Direct Lending program and the FFEL program, or who have loans under either program as well as loans that have been sold to the Secretary, may consolidate such loans under the Direct Lending program regardless of whether such borrowers have entered repayment on such loans.

Section 2207. Termination of Unsubsidized Stafford loans for Middle-Income Borrowers. This section makes conforming changes with regard to the termination of the FFEL program for Unsubsidized Stafford loans by prohibiting further FFEL origination of loans after July 1, 2010.

Section 2208. Termination of Special Allowances. This section makes conforming changes with regard to the termination of the FFEL program by limiting special allowance payments to lenders under the FFEL program to loans first disbursed before July 1, 2010.

Section 2209. Origination of Direct Loans at Institutions Outside the United States. This section provides for the origination of federal Direct Loans at institutions located outside of the United States, through a financial institution designated by the Secretary.

Section 2210. Conforming amendments. This section makes conforming technical changes with regard to the termination of the FFEL program for Department of Education agreements with Direct Lending institutions.

Section 2211. Terms and Conditions of Loans. This section makes conforming technical changes with regard to the termination of the FFEL program to clarify the terms and conditions of Direct Loans.

Section 2212. Contracts. This section directs the Secretary to award contracts for servicing federal Direct Loans to eligible non-profit servicers. In addition, this section provides that for the first 100,000 borrower loan accounts, the Secretary shall establish a separate pricing tier. Specifies that the Secretary is to allocate the loan accounts of 100,000 borrowers to each eligible non-profit servicer. The section

also permits the Secretary to reallocate, increase, reduce or terminate an eligible non-profit servicer's allocation based on the performance of such servicer. In addition, this section appropriates mandatory funds to the Secretary to be obligated for administrative costs of servicing contracts with eligible non-profit servicers. This section also requires the Secretary to provide technical assistance to institutions of higher education participating or seeking to participate in the Direct Lending program. This section appropriates $50 million for fiscal year 2010 to pay for this technical assistance. Additionally, this section authorizes the Secretary to provide payments to loan servicers for retaining jobs at location in the United States where such servicers were operating on January 1, 2010. This section appropriates $25,000,000 for each of fiscal years 2010 and 2011 for such purpose.

Section 2213. Agreements with State-Owned Banks. This section amends Part D of Title IV to direct the Secretary to enter into an agreement with an eligible lender for the purpose of providing Federal loan insurance on student loans made by state-owned banks.

Section 2214. Income-Based Repayment. The section amends the Income-Based Repayment program to cap student loan payments for new borrowers after July 1, 2014 to 10% of adjusted income, from 15% percent, and to forgive remaining balances after 20 years of repayment, from 25 years.

Subtitle B – Health

Sec. 2301. Insurance Reforms. Extends 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 to all existing health insurance plans starting six months after enactment. For group health plans, prohibits pre-existing condition exclusions in 2014, restricts annual limits beginning six months after enactment, and prohibits them starting in 2014. For coverage of non-dependent children prior to 2014, the requirement on group health plans is limited to those adult children without an employer offer of coverage.

Sec. 2302. Drugs Purchased by Covered Entities. Repeals the underlying 340B expansion to inpatient drugs and exemptions to GPO exclusion. Exempts orphan drugs from required discounts for new 340B entities.

Sec. 2303. Community Health Centers. Increases mandatory funding for community health centers to $11 billion over five years (FY 2011 – FY 2015).