<u>Section-by-Section Summary of Rules Committee Print 112-23</u>

The text of Rules Committee Print 112-23 reflects the text of H.R. 436, H.R. 5842, and H.R. 1004 as ordered reported by the Committee on Ways and Means with the addition of an offset marked up during the reconciliation process earlier this year.

<u>Section 1. Short title; table of contents:</u> Subsection (a) provides that the short title is the "Health Care Cost Reduction Act of 2012".

Subsection (b) provides the table of contents.

<u>Section 2. Repeal of medical device excise tax:</u> Under the Patient Protection and Affordable Care Act (P.L. 111-148) and Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), effective in 2013, a 2.3 percent excise tax will be imposed on the manufacture or import of certain "medical devices" (as defined by section 201(h) of the Federal Food, Drug, and Cosmetic Act). Eyeglasses, contact lenses, hearing aids, and other devices determined by the Treasury Secretary to be of a type purchased by the general public are exempt. Proposed Treasury regulations have provided additional guidance for determining whether a particular device is exempt from the excise tax. Like most such excise taxes, manufacturers and importers may deduct the excise tax for federal income tax purposes.

Section 2 would repeal the medical device excise tax. *The provision would reduce revenues by $29.1 billion over the period of fiscal years 2012-22.*

<u>Section 3. Repeal of disqualification of expenses for over-the-counter drugs under certain accounts and arrangements:</u> Under the Patient Protection and Affordable Care Act (P.L. 111-148), taxpayers may not use tax-free distributions from flexible spending arrangements (FSAs), health reimbursement arrangements (HRAs), health savings accounts (HSAs), and Archer medical savings accounts (Archer MSAs) for the purpose of purchasing over-the-counter (OTC) medicine other than prescription drugs or insulin. If HSA or Archer MSA funds are used to purchase OTC medicine (other than insulin) that is not prescribed by a physician, those funds are subject to full income taxation plus a 20 percent penalty because it would be considered a "nonqualified withdrawal." With respect to FSAs and HRAs, taxpayers simply would be denied reimbursement from the accounts.

Effective for expenses incurred after 2012, section 3 would repeal the prohibition on using tax-free funds from FSAs, HRAs, HSAs, and Archer MSAs to purchase OTC medicine. *The provision would reduce revenues by $4.0 billion over the period of fiscal years 2012-22.*

<u>Section 4. Taxable distributions of unused balances under health flexible spending arrangements:</u> Health flexible spending arrangements (FSAs) offered through a cafeteria plan allow participants to contribute pre-tax dollars from their paychecks to pay for

approved out-of-pocket health care expenses not covered by insurance. Employees may use salary deductions to fund their FSAs. These funds are excluded from the employee's income and wages and may be used by employees for a variety of medical expenses.

Under the cafeteria plan rules, which apply to FSAs funded by payroll deductions, an employee must forfeit any remaining balance in the cafeteria plan at the end of the year (which may include a grace period of up to two-and-a-half months at the beginning of the following year). This means that if an employee chooses to reduce his or her salary to fund an FSA but does not spend down his or her entire FSA balance by the end of the year (or grace period), the remaining balance is forfeited to the employer under what is known as the "use-it-or-lose-it" rule.

Effective for plan years beginning after 2012, section 4 would allow employees with health FSAs funded through salary deductions to "cash out" any remaining balance at year-end, up to a maximum of $500, and treat it as taxable compensation. Specifically, employers could rebate up to $500 of unused FSA funds to the employee at the end of the year without jeopardizing the tax-favored status of the plan. The rebate would have to occur between the deadline for claims and seven months after the end of the plan year. The rebate would be included as income of the employee for federal income tax purposes and as wages for payroll tax purposes in the year of the rebate. *The provision would reduce revenues by $4.1 billion over the period of fiscal years 2012-22.*

<u>Section 5. Recapture of overpayments resulting from certain federally-subsidized health insurance:</u> Beginning in 2014, the Patient Protection and Affordable Care Act (P.L. 111-148) and Health Care and Education Reconciliation Act of 2010 (P.L. 111-152) provide advanceable and refundable tax credits ("Exchange subsidies") for the purpose of purchasing certain health insurance through state-based Exchanges. Exchange subsidy eligibility is based on two-year old income tax return data, and state-based Exchanges must rely on self-reported changes in income and family size that occurred in the previous two years. Some beneficiaries will fail to properly report changes in their financial situation, resulting in some beneficiaries receiving Exchange subsidies to which they are not entitled based on their actual income for the current year. Under current law, if an overpayment is made, the recipient is required to repay some or all of the overpayment, depending on income level. Beneficiaries earning less than 400 percent of the Federal Poverty Level and receiving a subsidy overpayment only have to return a limited portion of the overpayment.

Section 5 would require those who receive Exchange subsidies to which they are not entitled to repay the full amount of overpayments. This modification aligns the treatment of Exchange subsidy overpayments with that of underpayments, which requires the federal government to remit to beneficiaries the full difference between the subsidy amount received and the amount entitled to under the law. Individuals and families would still be allowed to keep the subsidies they are entitled to receive under the law. *This provision would reduce the deficit by $43.9 billion over the period of fiscal years 2012-2022.*