Patient Protection and Affordable Care Act (PPACA) Update
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PPACA Timeline

- **2010**: Enacted March 23, 2010
- **2011**: First wave of changes impacting most employer plans
- **2012**: Certain immediate modest changes take effect
- **2013**: Nothing happens!
- **2014**: States may open exchanges to large employers
- **2015**: Excise tax takes effect
- **2016**: Major reform takes effect!
  - Individual mandate
  - Insurance reform
  - Individual premium and cost share subsidy
  - State based insurance exchanges (individuals & small groups)
  - Employer “pay or play” mandate
- **2017**:
- **2018**:
## 2010-2013 Provisions

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dependents to age 26</td>
<td></td>
<td>No FSA/HRA reimbursement of OTC drugs</td>
<td>Women’s preventive care</td>
<td>W-2 reporting</td>
</tr>
<tr>
<td>No pre-ex for under age 19</td>
<td></td>
<td>HSA Penalty increased from 10% to 20%</td>
<td>SBC</td>
<td>$2,500 FSA limit</td>
</tr>
<tr>
<td>No lifetime limits on EHB</td>
<td></td>
<td></td>
<td>MLR Rebates</td>
<td>Notice of Exchange</td>
</tr>
<tr>
<td>Restrictions on annual limits on EHB</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preventive Care with no cost sharing</td>
<td></td>
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</tr>
</tbody>
</table>
2014 Provisions
Where Are We Going in 2014?

2014 Implementation

- Employer Mandate
- Individual Mandate
- Health Insurance Exchanges
- Health Insurance Premium and Cost Sharing Subsidies
- Guaranteed Availability and Renewability
- No Annual Dollar Limits on Essential Benefits Coverage
- Essential Health Benefit Packages
- Fees on Health Insurers / Health Plans
- Wellness Program Incentives Increased to 30% (possibly 50%)
- Reporting on Coverage
- Excessive Waiting Periods
- Automatic Enrollment
- Reinsurance Fee
Individual Mandate
Individual Mandate- Exceptions

Requires all American citizens and legal residents to purchase qualified health insurance coverage. Exceptions are provided for:

- religious objectors,
- Illegal immigrants,
- incarcerated individuals,
- taxpayers with income under 100 percent of poverty, and those who have a hardship waiver
- members of Indian tribes,
- those who were not covered for a period of less than three months during the year
- People with no income tax liability

Effective January 1, 2014
Individual Mandate - What coverage satisfies requirement?

- Minimum Essential Coverage - is the level of coverage that an individual must have in order to avoid the individual mandate penalty.

- Examples of minimum essential coverage:
  - Individual coverage purchased through exchange
  - Employer sponsored coverage
  - Medicare
  - TRICARE
  - Medicaid
  - CHIP
  - State risk pool
  - Student health plan
Individual Mandate Penalty

- Flat dollar method:
  - Per individual, capped at three times, regardless of the number in the household. Half the amount for individuals 18 or younger.

<table>
<thead>
<tr>
<th>Year</th>
<th>Penalty Amount</th>
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<tbody>
<tr>
<td>2014</td>
<td>$95</td>
</tr>
<tr>
<td>2015</td>
<td>$325</td>
</tr>
<tr>
<td>2016 and later</td>
<td>$695</td>
</tr>
</tbody>
</table>

- Percentage of income method:
  - Determined by subtracting the taxpayer’s exemption and standard deductions from the taxpayer’s household income, multiplied by:

<table>
<thead>
<tr>
<th>Year</th>
<th>Penalty Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>1%</td>
</tr>
<tr>
<td>2015</td>
<td>2%</td>
</tr>
<tr>
<td>2016 and later</td>
<td>2.5%</td>
</tr>
</tbody>
</table>

Whichever is greater
Exchange
Exchange - What is it?

- Each state required to implement an Exchange
- It is a marketplace for individuals and small businesses to purchase health insurance.
- Small Business Health Options Program (SHOP)
  - Voluntary
  - 2014 through 2016: employers with 100 or fewer employees. States have the option of limiting eligibility to employers with 50 or fewer.
  - 2017 and beyond: States have the option to open eligibility up for employers with more than 100 employees.
Premium Tax Credits
Premium Tax Credits

- Premium tax credit available for lower income individuals
  - Advanced credit on estimated owed tax
- To be eligible:
  - Household income is between 100% and 400% of federal poverty
  - NOT eligible for qualified employer coverage
    - Affordable: Employee’s cost for employer sponsored coverage is less than 9.5% of household come
    - Minimum value: Employer’s coverage pays at least 60% of allowed costs
- NOT eligible for Medicare or TRICARE
## Federal Poverty Levels

<table>
<thead>
<tr>
<th>Household Size</th>
<th>100% FPL</th>
<th>400% FPL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$11,170</td>
<td>$44,680</td>
</tr>
<tr>
<td>2</td>
<td>$15,130</td>
<td>$60,520</td>
</tr>
<tr>
<td>3</td>
<td>$19,090</td>
<td>$76,360</td>
</tr>
<tr>
<td>4</td>
<td>$23,050</td>
<td>$92,200</td>
</tr>
<tr>
<td>Household income as % of FPL</td>
<td>Initial Percentage</td>
<td>Final Percentage</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>-------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Less than 133% of FPL</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>133% to 150%</td>
<td>3.0</td>
<td>4.0</td>
</tr>
<tr>
<td>150% to 200%</td>
<td>4.0</td>
<td>6.3</td>
</tr>
<tr>
<td>200% to 250%</td>
<td>6.3</td>
<td>8.05</td>
</tr>
<tr>
<td>250% to 300%</td>
<td>8.05</td>
<td>9.5</td>
</tr>
<tr>
<td>300% to 400%</td>
<td>9.5</td>
<td>9.5</td>
</tr>
</tbody>
</table>
2014: Employer Mandate
Large Employers

- There is no requirement for an employer of any size to offer coverage to employees.
- Large employers who wish to avoid an employer mandate penalty, will want to offer affordable and minimum value coverage

Other considerations:
- Competition
- Employee morale
- Wellness and productivity
- Tax savings of health plans vs. penalty taxes
Who is subject to the employer mandate?

- **Large employer**
  - 50 or more full-time equivalent employees
  - Include employees of controlled group employer
  - Based on the average number of employees in the previous calendar year
  - For 2013 only, an employer may use 6 months of data rather than 12 months
How to count full-time equivalents

For each month:

- Step 1: Number of employees that work 30 hours or more per week. This is your full-time employee count.
- Step 2: For employees that do not work 30 hours or more. Total all hours for the month and divide by 120. These are your equivalents.
- Step 3: Add full-time employees plus equivalents.
- Step 4: Calculate average for the year (2013: 6 months)

If the employer has 50 or more full-time equivalents (FTE), they are an applicable large employer and subject to the employer mandate.

*Seasonal employee exception: If the employer has 50 or more FTE for 4 months only (or 120 days) because of seasonal employees, then the seasonal employees can be disregarded and the employer would not be subject to the mandate.
An employer will be subject to penalty if:

- The employer does not offer coverage to **full-time employees (and children)** OR the employer offers coverage, but the coverage is not affordable or meet minimum value standard; **AND**

- One **full-time employee** goes to the Exchange, purchases coverage and receives a premium tax credit or coverage subsidy
If an employer **does not** provide coverage*:

$2,000 \times \text{each full time employee} - 30 \text{ full time employees}$

* Must offer coverage to at least 95% of full time employees
Who are full-time employees that must be offered coverage (to avoid the employer mandate penalty?)

- Employees who work 30 hours or more
  - For this purpose, it is based on hours worked on a monthly basis in 2014.

- Must offer coverage to full-time employees and dependents (i.e. children)

- Part-time employees (those working less than 30 hours) are not required to be offered coverage

- Special provision for variable hour employees and seasonal employees
Variable Hour and Seasonal Employees

- Variable hour employees are:
  - Employees whose hours are expected to vary such that, on an employee's start date, the employer can't reasonably conclude the employee will average at least 30 hours per week/130 hours per month over a measurement period of up to 12 months; and
  
  - Employees whose hours, at least initially, are expected to be at least 30 hours per week/130 hours per month, but whose hours thereafter will vary, so that the employer similarly cannot reasonably determine, on the start date, whether the employee will average at least 30 hours per week/130 hours per month over the employee's initial measurement period.
Seasonal Employees

- Seasonal employees are defined as:

  a worker who performs labor or services on a seasonal basis, as defined by the Secretary of Labor, including (but not limited to) workers covered by 29 CFR 500.20(s)(1) and retail workers employed exclusively during holiday seasons. The statute does not address how the term “seasonal employee” might be defined for purposes other than the determination of applicable large employer status, such as the determination of whether a new employee of an applicable large employer is reasonably expected to work full time for purposes of determining the amount of any assessable payment under § 4980H. Through at least 2014, employers are permitted to use a reasonable, good faith interpretation of the term “seasonal employee” for purposes of this notice.
Teachers

- Teachers and educational staff are not seasonal staff even if they only work during the academic year.

- Determine their hours by:
  - **Averaging method**: Averaging hours over the academic year; or
  - **Alternative method**: Credit the employee with hours of service during the employment break period based on a rate equal to the average weekly rate at which the employee was credited with hours of service.

- No more than 501 hours of service during an employment break are required to be excluded (under averaging method) or credited (under alternative method).
Teacher’s Hours of Service Example

- Facts: Teacher B is employed by High School X, an educational organization. Teacher B is employed for 38 hours of service per week on average from September 7, 2013 through May 22, 2014, and then does not provide service (and is not paid) during the summer break. Teacher B resumes providing services for High School X on September 5, 2014.

- Conclusion: Employee B is credited, under the average method, for the employment break period, as having averaged 38 hours per week for the summer break. The break is not greater than 501 hours. Teacher B is a full-time employee for employer mandate purposes.
Measurement and Stability Periods

- New Employees: Measurement starts on date of hire
- Initial Measurement Period and Initial Stability Period will overlap with Standard Measurement Period and Standard Stability Period

Example: ABC Company
- Initial Measurement Period: 12 months
- Initial Administrative Period: 1 month
- Initial Stability Period: 12 months

- Standard Measurement Period: 12 months (Oct 1 through Sept 30)
- Standard Administrative Period: 3 months (Oct 1 through Dec 31)
- Standard Measurement Period: 12 months (January 1 through Dec 31)
Transition from New EE to Ongoing

- Joe’s Date of Hire May 1, 2013

If Joe has 30 hrs or more during Initial Measurement, he will be offered coverage through June 1, 2014 through May 31, 2015. His hours would be measured again from Oct. 1, 2013 through September 31, 2014. If he had 30 hours or more during Standard Measurement, he would drop into Standard Stability Period on June 1, 2015 and continue to be offered coverage through December 31, 2015. If he less than 30 hours during the Standard Measurement Period, his coverage would terminate May 31, 2015.

If Joe has less than 30 hours during Initial Measurement, he will not be offered coverage effective June 1, 2014. His hours would be measured again from Oct. 1, 2013 through September 31, 2014. If he had 30 hours or more during Standard Measurement, he would be offered coverage effective Jan. 1, 2015.
If an employer **offers coverage**, but the coverage is not affordable and does not provide minimum value coverage.

$3,000 \times \text{each full time employee receiving credit OR}$

$2,000 \times \text{each full time employee} – 30 \text{ full time employees},$

**Whichever is less**
Affordability Strategies

The cost of the self-only coverage does not exceed 9.5% of:

- **W-2 Safe Harbor**: The employee’s W-2 Box 1 income. Retroactive application.
- **Rate of Pay Safe Harbor**: The employee’s hourly rate of pay. Prospective application.
- **Federal Poverty Line Safe Harbor**: The federal poverty line for a single individual. Using 2013 figures, no greater than $94.53/mo)
- Alternative method: Basing employee contributions on percentage of pay.

**Affordable Coverage**

Employers must offer coverage to children of an employee, but there is no penalty if it is considered unaffordable. Moreover, there is no requirement to offer coverage to a spouse of an employee. Affordability is based on single coverage of cheapest qualifying coverage.
Minimum Value

• The plan must pay at least 60% of the allowed costs.

• Calculating the value:
  – A minimum value (MV) calculator. In this method, employers would be able to enter information about their health plan’s benefits, the coverage of services, and cost-sharing information.
  – A checklist containing “an array of design-based safe harbors.” This methodology would allow an employer to discern whether its health plans meet minimum value thresholds without performing complex calculations or retaining an actuary.
  – An actuarial certification option for plans with substantial non-standard benefits that would preclude the use of the AV or MV calculator. The actuarial review would be performed according to recognized actuarial standards, using prescribed continuance tables and other administratively prescribed conditions.

• HRA, HSA, and health FSA contributions are taken into consideration
Employer Mandate Penalties

Does the employer have at least 50 full-time equivalent employees?

No

Penalties do not apply to small employers.

Yes

Employees working at least 30 hours per week + total part-time hours / 120
Employer Mandate Penalties

Does the employer offer coverage to its workers? 

Yes → Does at least one employee receive a premium tax credit/subsidy in the Exchange? 

No → The employer must pay a penalty 

Yes → The penalty = $2000 annually × # of full-time workers (- 30)
Employer Mandate

Does ER plan pay for 60% of covered health care expenses?

Yes

- Employees will qualify for a premium tax credit in the Exchange.

No

- Employees will qualify for a premium tax credit in the Exchange.

Does the employer offer affordable coverage to its workers?

Yes

- Employees will qualify for a premium tax credit in the Exchange.

No

- The penalty = $3000 x # of employees receiving premium tax credit (capped at total from above)

No Penalty
Penalty Payments- How and When?

● Throughout 2014, HHS will send a certification to employer when an employee has qualified for credit or subsidy through the exchange. Response required from employer.

● In 2015, the IRS will contact employers to inform them of potential liability.

● The employer then has the opportunity to respond to the IRS.

● The IRS will then follow-up with a notice of payment.

● The initial contact from the IRS will not occur until after April of the following year (when individuals file tax returns)
Informational Reporting under Section 6056

- Required of each applicable large employer
- Annual reporting, beginning in 2015
- Report to IRS
  - Identification of full-time employees for each month
  - Are full-time employees and their dependents offered minimum essential coverage in an employer sponsored plan
  - Monthly premium for lowest cost option, length of waiting period, employer’s share of total allowed costs
  - This information will be used to administer employer and individual mandate
- Written statement to full-time employees - prior to January 31 of the following year
- Regulations forthcoming
Fees/Taxes and other factors impacting premium cost
<table>
<thead>
<tr>
<th>Description</th>
<th>PCOR</th>
<th>Reinsurance</th>
<th>HIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>What &amp; When</td>
<td>Annual fee on plans from 2013-2018</td>
<td>3-year annual fee on plans (2014-2016)</td>
<td>Permanent annual fee on health insurers</td>
</tr>
<tr>
<td>Purpose</td>
<td>Fund outcomes-based research for clinical</td>
<td>Fund reinsurance program for state</td>
<td>Help fund federal and state exchanges and PPACA implementation</td>
</tr>
<tr>
<td></td>
<td>effectiveness</td>
<td>exchanges</td>
<td></td>
</tr>
<tr>
<td>Who Pays</td>
<td>Fully insured: Insurer</td>
<td>Fully Insured: Insurer</td>
<td>Insurers</td>
</tr>
<tr>
<td></td>
<td>Self-insured: Employer</td>
<td>Self-Insured: Employer</td>
<td></td>
</tr>
<tr>
<td>How Much</td>
<td>$2 per covered life ($1 per covered life 1st year)</td>
<td>$64 per covered life in 2014 (decreases for 2015 and 2016)</td>
<td>$8 billion apportioned among insurers (Increases each year)</td>
</tr>
<tr>
<td>How Paid</td>
<td>Self-reported on IRS Form 720</td>
<td>Report filed Nov. 14 Payment due Jan. 15</td>
<td>Report on IRS Form 8963 Paid after IRS Assessment</td>
</tr>
<tr>
<td>Tax Treatment</td>
<td>Not tax deductible</td>
<td>Tax deductible</td>
<td>Not tax deductible</td>
</tr>
<tr>
<td>Types of Plans</td>
<td>Major medical, continuation coverage,</td>
<td>Major medical, continuation coverage,</td>
<td>Major medical, stand-alone dental/vision, retiree-only</td>
</tr>
<tr>
<td></td>
<td>retiree-only, HRA, non-excepted FSA,</td>
<td>retiree-only, HRA, non-excepted FSA,</td>
<td>coverage</td>
</tr>
<tr>
<td></td>
<td>prescription</td>
<td>prescription</td>
<td></td>
</tr>
<tr>
<td>Notable Plan Type</td>
<td>Stand-alone dental/vision, excepted FSA, HSA</td>
<td>Stand-along dental/vision, HRA, HSA,</td>
<td>Voluntary, fixed-indemnity, supplemental, specified</td>
</tr>
<tr>
<td>Exclusions</td>
<td></td>
<td>integrated HRA, prescription drug</td>
<td>disease/illness, stop-loss</td>
</tr>
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<td></td>
<td></td>
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</tr>
</tbody>
</table>
Coverage Requirements

- Waiting periods for full time employees cannot exceed 90 days
- No pre-existing condition exclusions
- No annual limits on essential health benefits
- No lifetime limits on essential health benefits
- Preventive care services (non-grandfathered plans)
Coverage Requirements

- Out-of-pocket expenses limited
  - Adjusted annually based on a certain benchmark- as an example, the benchmark for 2012 is $6,250 for single/ $12,500 for family

- 4 levels of coverage
  - Bronze- plan pays 60% of allowed costs
  - Silver- 70%
  - Gold- 80%
  - Platinum- 90%

Effective 2014
Cost of coverage?

- Applies to non-grandfathered individual and small group policies
- Premium rating can only be based on:
  - Self or family coverage; Rating area; Age (3:1); Tobacco usage (1.5:1)
  - Age bands are: 1 to 20; 21 to 63 (one year bands); 64+
- Premium rating cannot be based on:
  - Gender; pre-existing conditions; health status; claims experience; occupation
Wellness Programs

- Program that requires participant to satisfy health standard
- Example: providing a reward to those who do not use tobacco or achieving a specified cholesterol level or weight
- Rewards are permitted in the following forms:
  - discount or rebate of a premium or contribution
  - a waiver of all or part of a cost sharing mechanism (deductible, copayment, coinsurance)
  - the absence of a surcharge
  - the value of a benefit that otherwise would not be provided under the plan or other financial or nonfinancial incentives or disincentives
Wellness Programs

- Five criteria continue to apply, but with slight changes
  - Incentive/reward can be no greater than 30% of total cost of coverage (up from 20%); if program is designed to reduce tobacco usage, incentive may be up to 50% of total cost
  - Must be reasonably designed to promote health or prevent disease
  - Must offer a reasonable alternative for those who it is unreasonably difficult to meet standard or medically inadvisable
    - the plan or issuer must make an educational program available instead of requiring an individual to find such a program unassisted, and may not require an individual to pay for the cost of the program.
    - the plan or issuer is not required to pay for the cost of food for a diet program, but must pay any membership or participation fee
  - All plan materials describing the program’s terms must include an explanation of the alternative standard, model language is available
  - Individuals must be given the opportunity to qualify for reward at least once per year
2018 Cadillac Tax
Where Are We Going in 2018?

- Tax on High Cost Plans (Cadillac Plans)
  - 40% tax on Cadillac Plans imposed on
    - insurers
    - and administrators of self funded plans
  - Aggregate value cannot exceed $10,200 for single and $27,500 for family
  - Total Aggregate value includes reimbursements for FSA or HRA, Contributions to HSA
  - Threshold may be adjusted if health care costs increase more than expected
Next Steps
Planning for employer mandate

- Evaluate plan cost and design: Affordable and Qualified?
- Develop definition of eligible employee (and dependents)
- Evaluate employee population
- Consider tax consequences
- Consider employee compensation and retention
- Assess total rewards strategy
Questions?