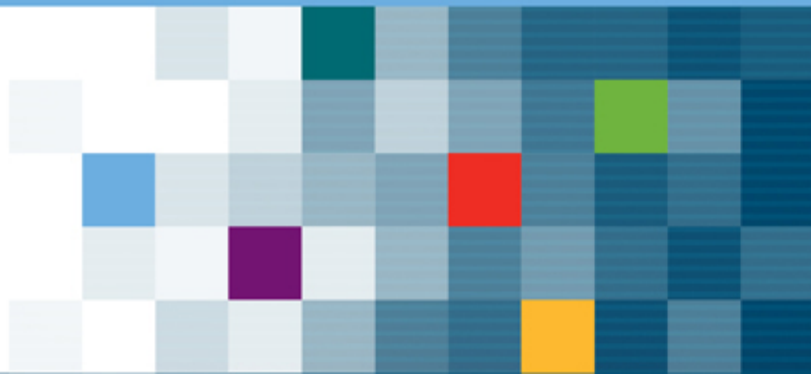


Affordable Care Act: Changing Landscape for Employers and Employees

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September 19, 2013



Stites & Harbison Footprint

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2800 SunTrust Plaza
Atlanta, GA 30308

400 West Market Street
Suite 1800
Louisville, KY 40202

323 East Court Avenue
Jeffersonville, IN 47130

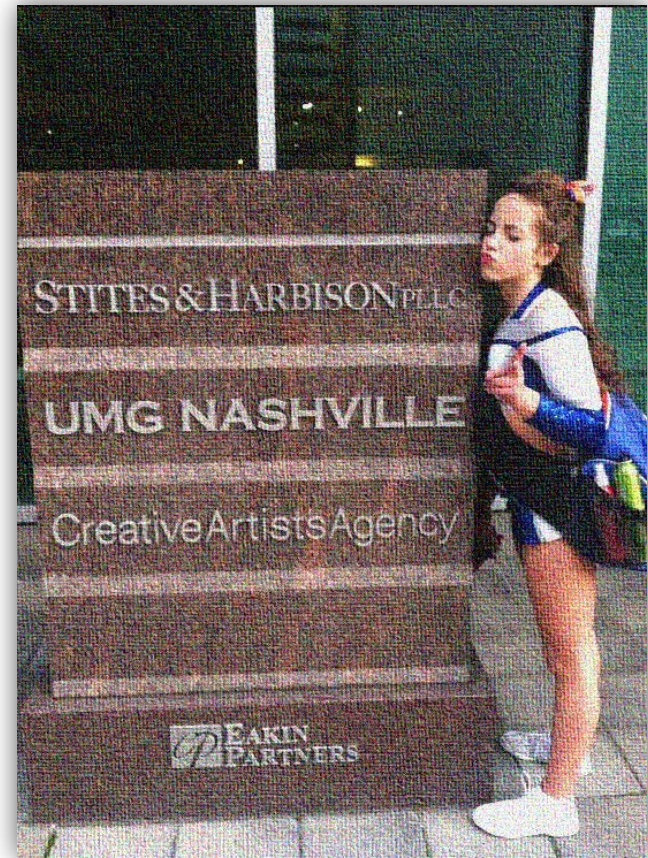
604 West Main Street
Franklin, TN 37064

100 East RiverCenter Blvd.
Suite 450
Covington, KY 41011

401 Commerce Street
Suite 800
Nashville, TN 37219

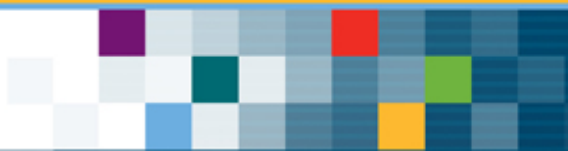
421 West Main Street
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Patient Protection and Affordable Care Act of 2010

- Signed into law on March 23, 2010
- Oral Arguments before U.S. Supreme Court
 - Challenging “Individual Mandate” and “Medicaid Expansion”
 - Argued March 26, 27, and 28, 2012
- U.S. Supreme Court issued Decision on June 28, 2012.
 - *National Federation of Independent Business v. Sebelius*, 567 U.S. _____ (2012)



United States Supreme Court Decision

- “Individual Mandate” – constitutional as a tax.
 - *“[The Court] rules that what a statute declares to be a requirement with a penalty is instead an option subject to a tax.”* Justice Scalia, dissenting.
- “Medicaid Expansion” - unconstitutional
 - *“The threatened loss of over 10 percent of a State’s overall budget, in contrast, is economic dragooning that leaves the States with no real option but to acquiesce in the Medicaid expansion.”* Chief Justice Roberts, opinion



Major Provisions of the Affordable Care Act

- Justice Scalia, dissenting
 - Insurance regulations and taxes;
 - Reductions in federal reimbursements to hospitals and other Medicare spending reductions;
 - Exchange and their federal subsidies;
 - “Employer Responsibility” assessment;
 - And of Course, the Major Provisions before the Court
 - Individual Mandate
 - Medicaid Expansion

Minor Provisions of the Affordable Care Act

- Justice Scalia, dissenting
 - “The ACA is over 900 pages long.”
 - Regulations include requirements ranging from
 - Break time and secluded place at work for nursing mothers;
 - Displays of nutritional content at chain restaurants;
 - Billions of dollars in taxes and fees (medical device tax, tanning bed tax);
 - *“It spends government money on, among other things, the study of how to spend less government money.”*
 - Extends Medicare coverage to individuals exposed to asbestos from a mine in Libby, Montana;
 - Increases Medicaid payments only in Louisiana

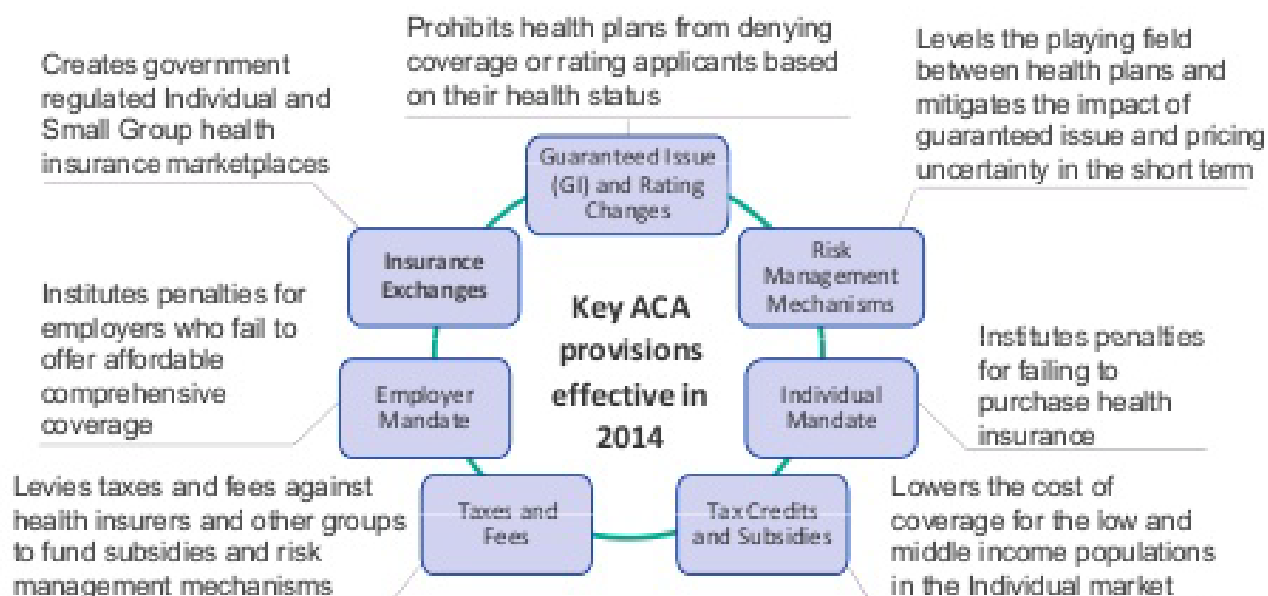
The ACA in less than 100 words

- Requires most Americans to have some type of health insurance or pay a penalty/tax (**Individual Mandate**)
- Intended to make it easier for Americans to obtain coverage by
 1. Expanding Medicaid eligibility
 2. Removing barriers to obtain coverage for those with medical problems by requiring insurers to:
 - Cover pre-existing conditions
 - Guarantee the issuance/renewal of policies
 - Base premium costs upon community ratings
 3. Requiring certain employers to provide coverage to “substantially all” full time employees or pay a penalty/tax (**Employer Mandate**) – **ENFORCEMENT DELAYED**
 4. Creating insurance “Exchanges” or “Marketplaces”



ACA's Impact on the Health Care Market

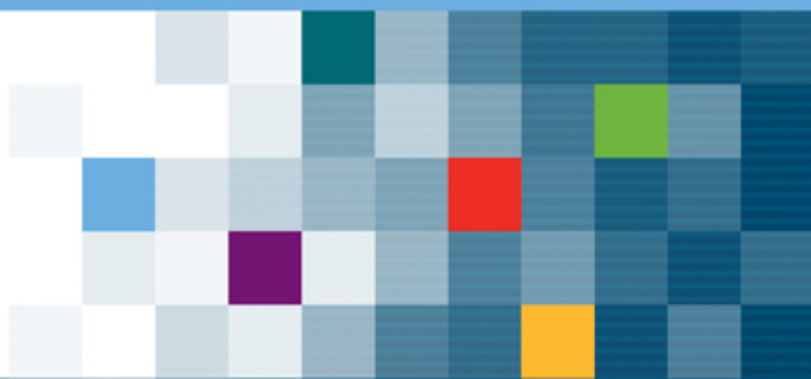
PPACA provisions, effective in 2014, will have a significant impact on the health care market and significantly increase the number of insured individuals



Source: Congressional Budget Office

Exchange Notice Requirement:

Employer Compliance
Deadline – October 1, 2013



Exchange Notice Deadline



- The ACA's Exchange notice requirement applies to employers what are subject to the Fair Labor Standards Act (FLSA)
- Employers must provide the Exchange notice to each employee, regardless of plan enrollment status or of part-time or full-time status
- The deadline for all employers to provide the required Exchange notice to their employees is **OCTOBER 1, 2013**



Exchange Notice: Required Content

- Inform employees about the existence of the Exchange and describe the services provided by the Exchange as well how an employee may contact the Marketplace to request assistance;
- Explain how employees may be eligible for a premium tax credit or cost-sharing reduction if the employer's plan does not meet certain requirements;
- Notify employees that if they purchase coverage through the Exchange, they may lose any employer contribution toward the cost of employer-provided coverage, and that all or a portion of employer contribution may be excludable for federal income tax purpose; and
- Provide contact information for the Exchange and an explanation of appeal rights



Exchange Notice: Employer Distribution

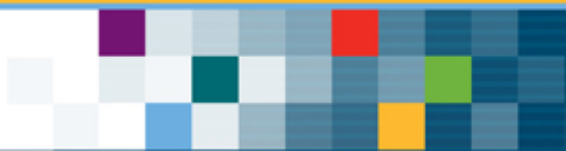
The Department of Labor (DOL) requires employers to distribute the Exchange notices, some acceptable methods of providing notice to your employees are:

- First Class U.S. Mail
- Electronic/E-Mail if the requirements of the DOL's electronic disclosure safe harbor are met
- Attach Exchange notice to employees paycheck
- Personally give Exchange notice to each and every employee (simply leaving a stack of Exchange notices in a break room is NOT an acceptable form of distribution)
- Include in employee renewal packets and/or new hire kits

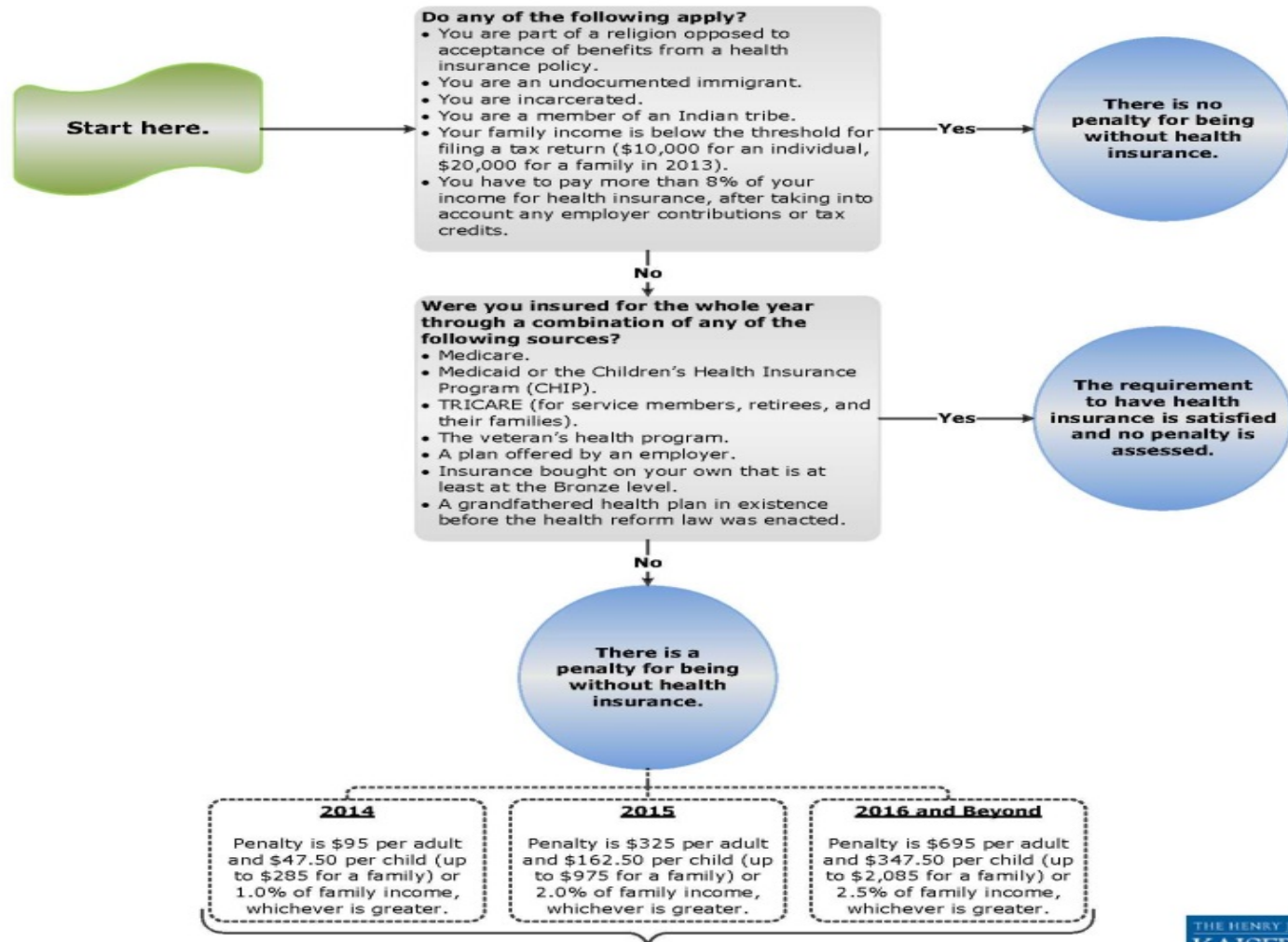


Individual Mandate

- Every American citizen must have “minimum essential coverage.”
 - Or pay a tax penalty (“pay or play”)
- Coverage Options (“minimum essential coverage”)
 - Medicare
 - Medicaid
 - TRICARE
 - Veteran’s health program
 - Employer Sponsored Coverage
 - Insurance through Marketplace (at least Bronze level)
 - Grandfathered health plan (in existence before the ACA)



The Requirement to Buy Coverage Under the Affordable Care Act Beginning in 2014



Income is defined as total income in excess of the filing threshold (\$10,000 for an individual and \$20,000 for a family in 2013). The penalty is pro-rated by the number of months without coverage, though there is no penalty for a single gap in coverage of less than 3 months in a year. The penalty cannot be greater than the national average premium for Bronze coverage in an Exchange. After 2016 penalty amounts are increased annually by the cost of living.

Key Facts:

- Premiums for health insurance bought through Exchanges would vary by age. The Congressional Budget Office estimates that the national average annual premium in an Exchange in 2016 would be \$4,500-5,000 for an individual and \$12,000-12,500 for a family for Bronze coverage (the lowest of the four tiers of coverage that will be available).
- In 2012 employees paid \$951 on average towards the cost of individual coverage in an employer plan and \$4,316 for a family of four.
- A Kaiser Family Foundation subsidy calculator illustrating premiums and tax credits for people in different circumstances is available at <http://healthreform.kff.org/subsidycalculator.aspx>.

Individuals Eligible for Premium Tax Credit

- Individuals between 100% and 400% of the federal poverty level and who enroll in coverage through an Exchange/Marketplace;
- Not eligible for coverage through a government-sponsored program like Medicaid or CHIP, and
- Not eligible for coverage offered by an employer or are eligible only for employer coverage that is unaffordable or that does not provide minimum value.



Penalties—Individual Mandate

- January 1, 2014: Individuals must enroll in medical coverage or pay a penalty
 - Penalty Amount: The **GREATER** of a dollar amount or percentage of income
 - 2014 = **\$95 per adult (\$285 household max) or 1%**
 - 2015 = **\$325 per adult (\$975 household max) or 2%**
 - 2016 = **\$695 per adult (\$2,085 household max) or 2.5%**
- Penalty for an individual under 18 is one half of the adult penalty, household max assumes two children
- The government cannot file notice of lien or levy on any property for a taxpayer who does not pay the penalty.



Who is Exempt from the Individual Penalty?

- Financial hardship
- Religious objections
- American Indians
- Without coverage for less than 3 months
- Undocumented immigrants
- Incarcerated individuals
- An individual/family that has to pay more than 8% of their income for health insurance, after taking into account any employer contributions or tax subsidy/credits



Individual Mandate – 2014

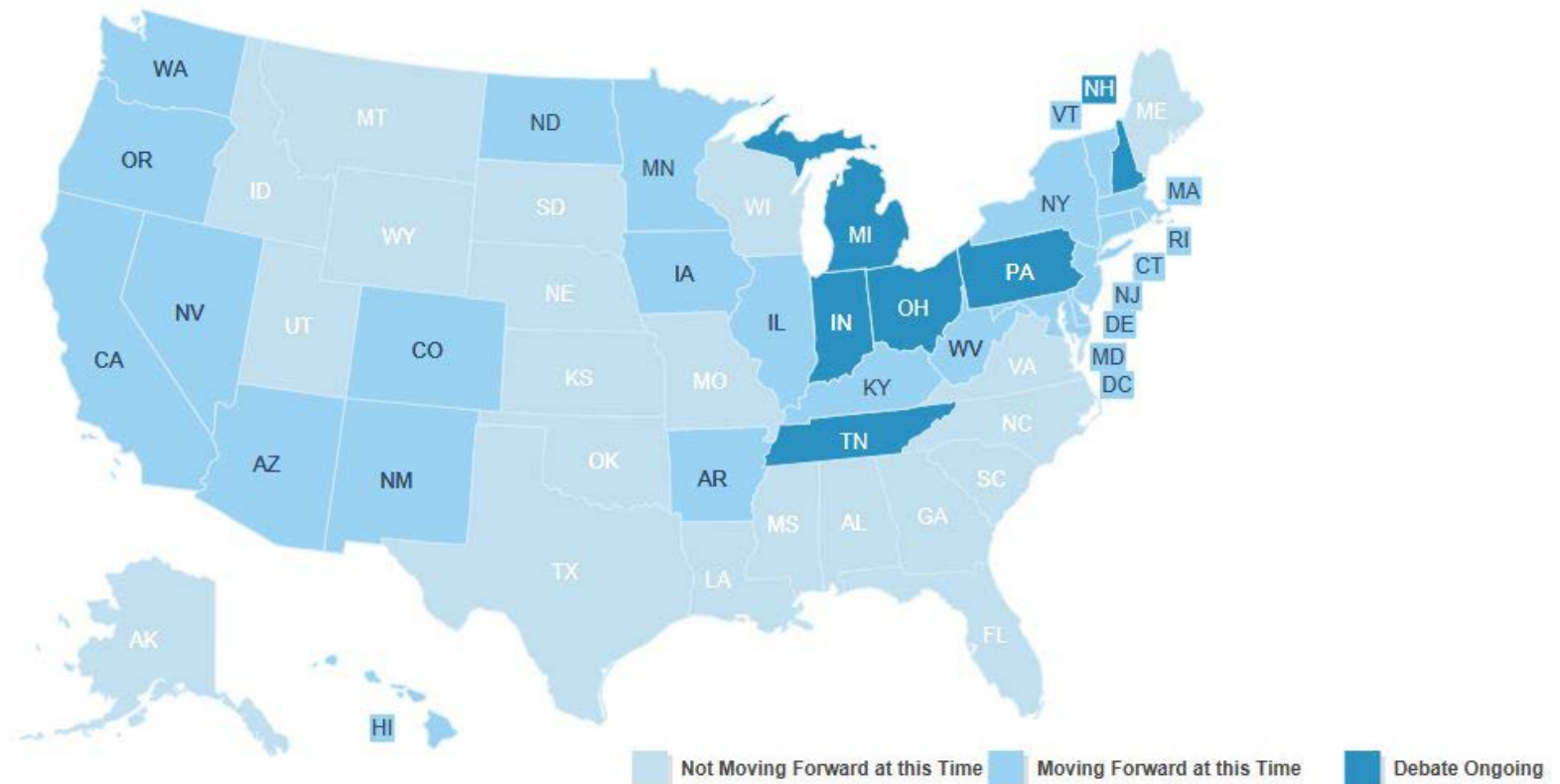
What if Individual Can't Afford Health Coverage?

- Individuals below 133% of federal poverty level will be eligible for coverage through an expanded Medicaid program, **unless** their State of residency opts out.
- Premium tax credits available throughout the year IF
 - Coverage is obtained through a public “exchange”, **AND**
 - Income is between 100% and 400% of federal poverty level
- Employees can receive subsidy if employer sponsored health plan **does not** meet certain requirements (WITH DELAY WHAT DOES THIS MEAN?)



Status of State Action on the Medicaid Expansion Decision

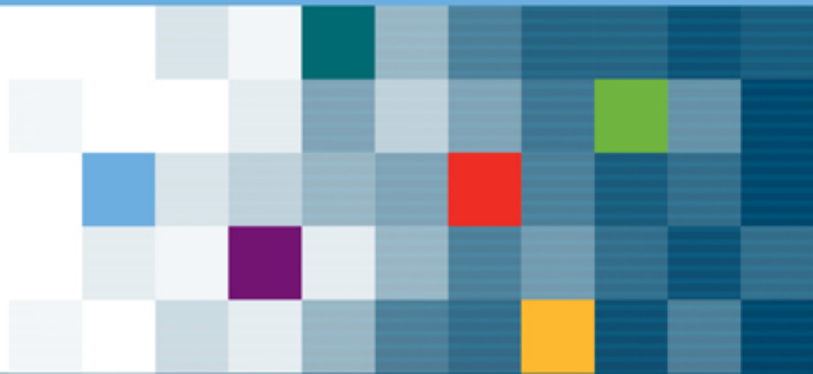
24 States Moving Forward at This Time; 21 Not Moving Forward at this Time; 6 Debate Ongoing



as of July 1, 2013
SOURCE: www.kff.org

Exchanges

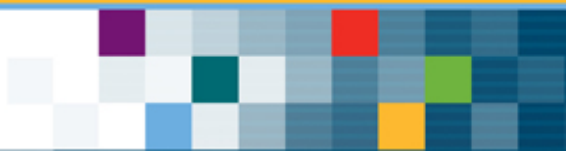
“Public Marketplace”



What is the Health Benefit Exchange?

- The Health Benefit Exchange (“Exchange”) is an organized Health Insurance Marketplace for individuals and employees of small businesses to shop for health insurance offered by insurers based on price and quality:
- Individuals will also be able to apply for Medicaid or CHIP through the Exchange

... It's a One Stop Shop!

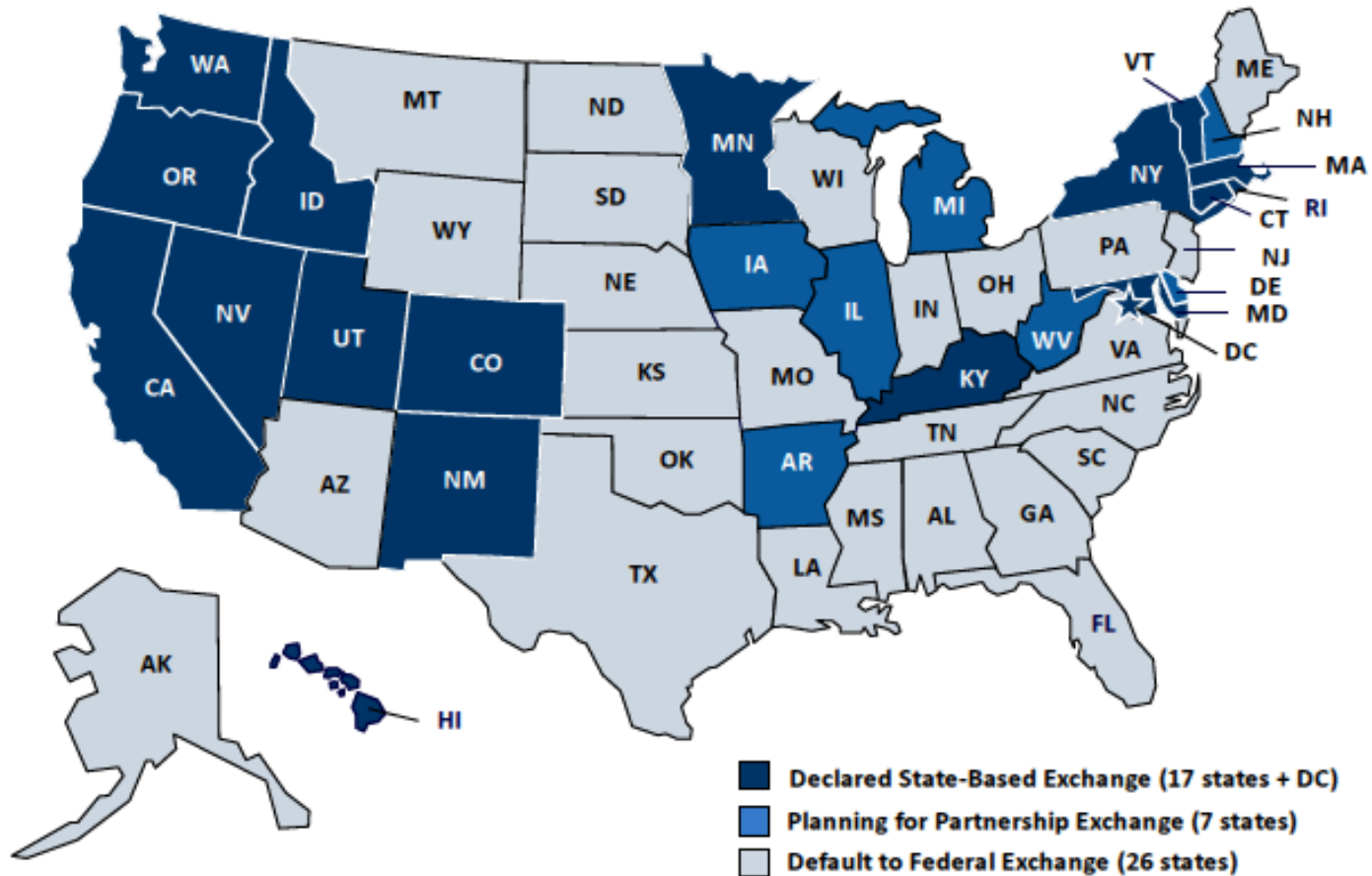


Public Exchanges/Marketplace – What Is A Public Exchange?

- It is a place where individuals are able to “easily” compare available health insurance options
- It is where individuals earning 400% of Federal Poverty Level can receive a premium subsidy/credit
- It is NOT an entity that actually provides the insurance – merely oversees the options that are available
- Similar to Travelocity® or Kayak® for travel tickets, but recent guidance shows it will be closer to **TurboTax®**
- HHS recently renamed “Exchange” to “Marketplace”



State Decisions for Creating Health Insurance Exchanges



As of March 1, 2013

SOURCE: Data compiled through review of state legislation and other exchange documents by the Kaiser Family Foundation



Financial Assistance Available on the Exchange

TWO TYPES OF ASSISTANCE:

1. Advance Premium Tax Credit

- For individuals that are 100% to 400% of FPL
- Ensures that individuals do not have to pay more than a percentage of their income for health **insurance premiums**

2. Cost-Sharing Subsidies

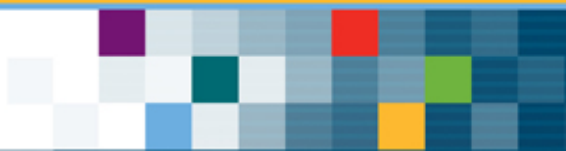
- For individuals that are 100% to 250% of FPL
- Protects individuals from high out-of-pocket **costs at point of service**
(Coverage with lower deductible and copayments)
- If enrolled in Silver Level plan, automatic adjustments



Public Exchanges –

What is the Impact to the Employer?

- IF an employer **doesn't** provide affordable minimum value coverage, the employee can go into the exchange:
 - Affordability is defined as Employee Cost for Single coverage less than 9.5% of household income.
 - If “unaffordable” the employee may receive a tax subsidy if they’re between 100%-400% FPL (see chart)
 - The employee is no longer tied to the employer for benefits
 - Small group health plans are not penalized by not offering affordable coverage
 - Large group health plans are penalized either \$2,000 or \$3,000
 - Low wage earners will be comparing the cost of employer sponsored health insurance and public exchange subsidized coverage



Public Exchanges: Particulars of Plans

- All plans sold or renewed in 2014 (inside and outside of exchange) will limit out-of-pocket exposure:
 - \$6,350 for individual
 - \$12,700 for family
 - Totals include copayments and deductibles, but not premiums.
 - Does not apply to Grandfathered Plans
 - Indexed to average premium growth in future years, will no longer be linked to the out-of-pocket maximums for HDHP/HSAs.
- Small Group Market (Deductible Plans): \$2,000 for individuals and \$4,000 for families in 2014 (indexed to average premium growth in future years).
- The public exchange will offer Platinum/Gold/Silver/Bronze coverage levels (based on a percentage of expected costs for average individual).
- Also, the public exchange will have a Catastrophic Plans for the under 30 year old or those with limited incomes.
- HHS has released guidance that if employer's plan meets affordability and 60% AV then not only is the employee blocked but also the spouse and children are blocked from receiving subsidized coverage in the exchange.



Federal Poverty Level → 400%

Maximum employee premium payment in the Federal exchange under the ACA if a household income is at or below 400% of FPL
 – Silver Medal Platform Plan

Percent of FPL	Max Premium as % of Income (2014)	Maximum Amount of Monthly Premium By Family Size			
		1	2	3	4
FPL in 2012		\$11,170	\$15,130	\$19,090	\$23,050
100%	2.00%	\$19	\$25	\$32	\$38
133%	2.00%	\$25	\$34	\$42	\$51
133.01%	3.00%	\$37	\$50	\$63	\$77
150%	4.00%	\$56	\$76	\$95	\$115
200%	6.30%	\$117	\$159	\$200	\$242
250%	8.05%	\$187	\$254	\$320	\$387
300%	9.50%	\$265	\$359	\$453	\$547
350%	9.50%	\$310	\$419	\$529	\$639
400%	9.50%	\$354	\$478	\$605	\$730

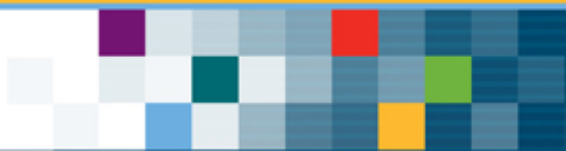
* Average subsidy of \$5,000-\$6,000 per subsidized enrollee

SHOP Exchanges (for Groups)

- SHOP Exchange
 - Small Business Health Options Program
 - Employers 2-50 in 2014 and 2015 / 2-100 in 2016
 - The SHOP exchange would provide the employer one list bill invoice for multiple carriers **DELAYED for Federal Exchange**
 - Employer may be eligible for a temporary two year tax credit
 - Beginning in 2017, States will have the option to make SHOP exchanges available to large employers (more than 100 employees).
 - **Individual government subsidies not available**
 - **Employee “Choice” option is delayed for 2014 per HHS early April announcement**

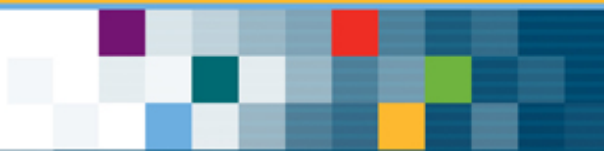
Eligibility Standards for SHOP

- Employer must be:
 - Small (2 to 50 employees)
 - Elect to offer to all full-time employees, coverage under a QHP purchased through the SHOP;
- Small Business may qualify for Tax Credits if:
 - The employer has fewer than 25 full-time equivalent employees for the taxable year;
 - The average annual wage of employees in the group is less than \$50,000; and
 - The employer pays at least 50% of the premium for each employee.



Modified Community Rating

- Impacts Small Employers
- Groups with 2 to 50 employees in 2014 and 2015
- Groups with 2 to 100 employees in 2016 and beyond
- What are the FACTORS:
 - Age
 - Geographic Area
 - Tobacco Use
 - Family Status

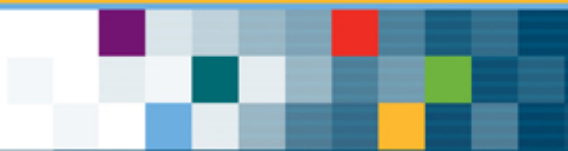


Qualified Health Plans and Essential Health Benefits

- Only **Qualified Health Plans** (QHPs) will be offered (determined by the state)
- All health insurance plans sold to individuals and small employers, must provide a minimum package of services in 10 categories called **Essential Health Benefits** (EHBs):
 - Ambulatory Patient Services;
 - Emergency Services;
 - Hospitalization;
 - Maternity and Newborn Care;
 - Mental Health and Substance Abuse Disorder Services;
 - Prescription Drugs;
 - Rehabilitative and Habilitative Services and Devices;
 - Laboratory Services;
 - Preventive/Wellness Services/Chronic Disease Management; and
 - Pediatric Services, including Dental and Vision.

Four Levels of QHPs providing EHBs

- Bronze Plan (the standard for “minimum creditable coverage”) covers 60% of the benefit costs;
- Silver Plan covers 70% of the benefit costs;
- Gold Plan covers 80% of the benefit costs;
- Platinum Plan covers 90% of the benefit costs;
 - Plus Catastrophic Plan (for those up to age 30 or those who are exempt from the individual mandate)



Health Care Reform...



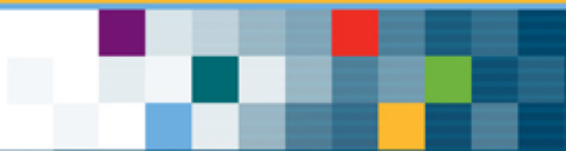
Employer Shared Responsibility Tax

- ENFORCEMENT DELAYED!



Employer Shared Responsibility Tax

- Enforcement Now Delayed until 2015
 - IRS heard concerns about the complexity of the reporting requirements for insurers and employers.
 - Provides additional year before ACA mandatory employer and insurer reporting requirements begin.
 - Allows time for simplification;
 - Allows time to adapt health and reporting systems while employers are moving toward making health coverage affordable and accessible.
 - Encourage voluntary reporting in 2014 – after proposed rules published (this summer)
 - No Shared Responsibility Payments for 2014 – will apply in 2015.
- ❑ *U.S. Department of the Treasury, Treasury Notes, "Continuing to Implement the ACA in a Careful, Thoughtful Manner," July 2, 2013.*

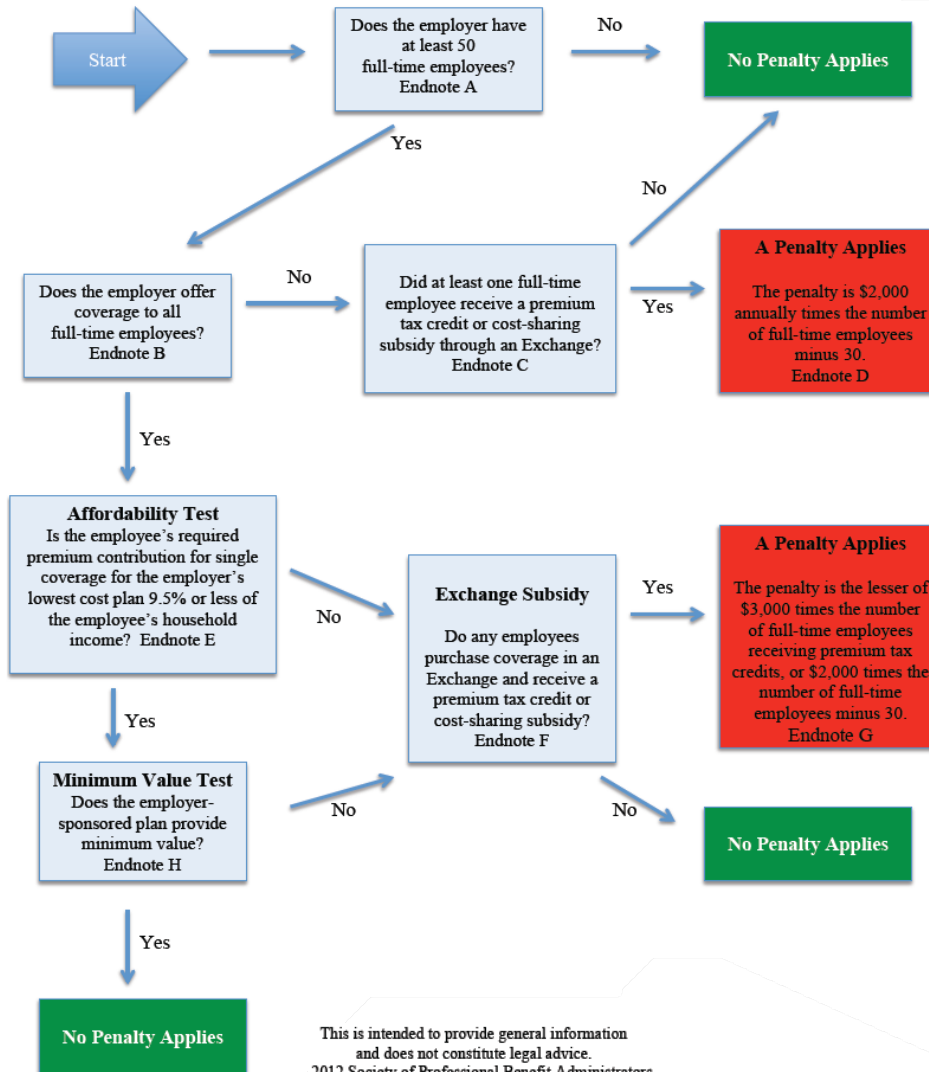


Employer Responsibility Provisions

- Applies to only “Applicable Large Employers”
 - Are you an “Applicable Large Employer?”
 - Generally Fifty Full Time Equivalents (FTE) (decide in 2013)
 - Effective January 1, 2014
 - If Large Employer does not offer “*affordable*” health coverage that provides a “*minimum level of coverage*” to full-time employees, *they may be subject* to Employer Shared Responsibility payment
 - “Full-time employee” is an employee that is employed on average at least 30 hours per week or more.



ACA Play or Pay Penalties Beginning 2014



This is intended to provide general information and does not constitute legal advice.
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Employer Shared Responsibility Tax

- Failure to Offer Coverage:
 - Employer Shared Responsibility payment equal to the number of full-time employees the employer employed for the year (minus 30) multiplied by \$2,000 will be due to the IRS – IF
 - At least one full-time employee receives a premium tax credit for insurance purchased through the Exchange/Marketplace.

Employer Shared Responsibility Tax

- Offers Coverage (but either unaffordable or not minimum value)
 - If a full-time employee receives a premium tax credit through the Exchange/Marketplace, the amount of the Tax due is equal to the number of full-time employees who receive a premium tax credit for that month multiplied by 1/12 of \$3,000. The amount of the payment for any calendar month is capped at the number of the employer's full-time employees for the month (minus up to 30) multiplied by 1/12 of \$2,000.
 - The cap ensures that the payment for an employer that offers coverage can never exceed the payment that an employer would owe if it did not offer coverage.

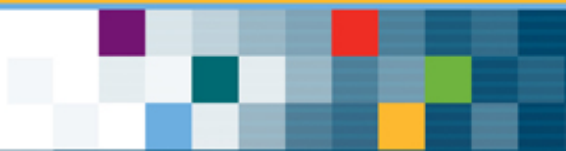
Enforcement

- Internal Revenue Service (IRS)
- www.irs.gov
- Tax will be assessed in 2015 for plan year 2014 if:
 - The employer does not offer health coverage or offers coverage to less than 95% of its full-time employees, and at least one of the full-time employees receives a premium tax credit to help pay for coverage in the Kentucky Exchange/Marketplace; OR
 - The employer offers health coverage to at least 95% of its full-time employees, but at least one full-time employee receives a premium tax credit to help pay for coverage in the Exchange/Marketplace, which may occur because the employer did not offer coverage to that employee OR because the coverage the employer offered that employee was either unaffordable to the employee or did not provide “minimum value.”
- Must also offer to dependents (defined as children under 26 years of age)
- The IRS will notify employers and provide them an opportunity to respond before any liability is assessed or notice and demand for payment is made.



Will the IRS “get you?”

- Employers will be contacted by the IRS and notified of a “potential liability.”
- Contact will be made after the employee’s individual tax returns are due.
- Employer will have the opportunity to respond.
- If determined that the payment is due, a notice and demand will be sent to the employer.
- Affordable Care Act required study to ensure that employers due process rights are protect

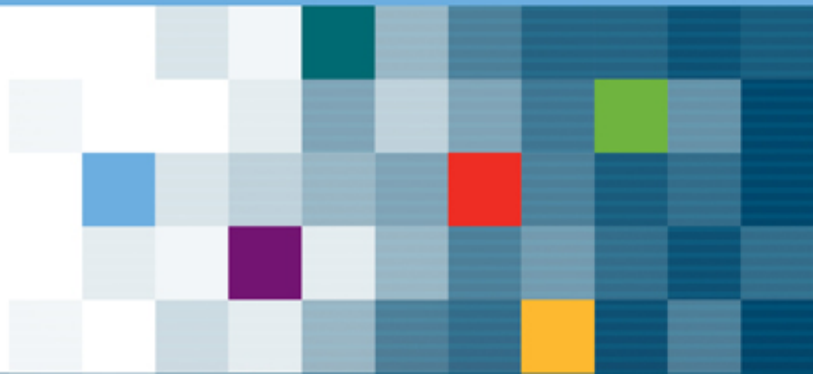


Tools for Employer to Determine Full-Time Status – Safe Harbor

IRS Proposed Rule published on December 28, 2012 (adopted many provisions of the Notices that were issued in 2012);

- Standard Measurement Period – The Standard Measurement Period is the defined time period of not less than 3 but not more than 12 consecutive calendar months, as chosen by the employer, in which the employer determines the employee's classification depending upon hours worked. Employer may choose, but must be uniform and consistent for all employees in the same category;
- Stability Period – If the employer determines that the employee averaged at least 30 hours per week during the Standard Measurement Period, the employer must treat the employee as a full-time employee during any subsequent Stability Period, regardless of the employee's hours of service during the Stability Period, so long as the employee remains employed;
- Administrative Period – An Employer may choose to apply an Administrative Period (up to 90 days) between the end of the Standard Measurement Period and the beginning of the Stability Period to allow the employer time to determine which employees are eligible for coverage and to notify and enroll such employees.

How Do We Prepare?



How do we prepare?

- Begin by building your Advisor Team
 1. Qualified Health Insurance Advisor
 2. Attorney versed with ACA requirements
 3. HR Supervisor
- Plan aggressively to meet with your team and map out your **THREE STRATEGIES**
 1. Determine if you can avoid penalties
 2. Determine what coverage you can offer
 3. Map out Notice Requirements and how you will communicate with your workforce



Contact Information

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