CribSheet 12-2
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PPACA: Individual Mandate Requirements and Penalties

The keystone of the Patient Protection and Affordable Care Act (PPACA) is an unprecedented individual mandate requiring virtually all U.S. citizens and legal residents to have health insurance or to pay a financial penalty for not doing so, beginning in 2014.

You must have insurance or else pay a penalty.

Insurance Or Penalty. Beginning in 2014, PPACA requires most U.S. citizens and legal residents to have qualifying health insurance coverage (public or private) or pay a penalty for not carrying insurance. "Qualifying" is broadly defined by the law, with specific definitions left to current and future regulators.

There are a few exceptions.

A relatively small number of Americans will be exempt from the mandate. Those exempted include: (1) People with religious objections; (2) American Indians with coverage through the Indian Health Service; (3) undocumented immigrants; (4) those without coverage for less than three months; (5) those serving prison sentences; (6) those for whom the lowest-cost plan option exceeds 8% of annual income; and (7) those with incomes below the tax filing threshold ($9,500 for singles and $19,000 for couples under 65 in 2011.)

"Insurance" must meet PPACA's definitions.

Defining Insurance. An insurance mandate requires a legal definition of insurance, and PPACA's definitions differ across markets. Government programs like Medicare, Medicaid, and CHIP automatically qualify, as do self-insured ERISA policies (mostly for larger employers). Small-group and individual policies (except for grandfathered plans) must cover services comprising an "essential health benefits" (EHB) package – though the definition of that package is now clouded by uncertainty.

EHB adds costs for small business.

The essential health benefits (EHB) package is a menu of health care services that must be covered by all qualifying insurance plans in the *fully insured market*; this market consists primarily of small-group and individual policies. Self-insured groups (mostly big businesses, labor unions, and governments) and government-provided insurance, in contrast, are exempt from most of the EHB's costly requirements.

EHB adds uncertainty for small business.

In late 2011, the Secretary of Health and Human Services (HHS) drastically changed the EHB rules, adding new uncertainty. As written, the law specifies a process in which the Secretary solicits advice on EHB components, after which the Secretary unilaterally selects and revises a uniform national package. In December, the Secretary upended this scheme by authorizing each state to compile its own list of EHB coverage mandates. In the near term, this change makes it harder to predict future health insurance costs. Over the longer term, the change introduces new state and federal vagaries.

Individual penalties begin in 2014 and rise thereafter.

Penalty Calculations: Penalties begin in 2014 and rise in years following. In each year, the penalty consists of the *higher* of a dollar amount or a percentage of household income. For a given household, the penalty applies to each individual, up to a maximum of three. Following is the schedule of penalties:

- 2014: The higher of $95 or 1.0% of taxable income.
  Maximum $285 (=3x$95) per household.
- 2015: The higher of $325 or 2.0% of taxable income.
  Maximum $975 (=3x$325) per household.
- 2016: The higher of $695 or 2.5% of taxable income.
  Maximum $2,085 (=3x$695) per household.
- After 2016: The same as 2016, but adjusted annually for cost-of-living increases.

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Here are some sample penalty calculations.

(note: line-to-line changes in variables are underlined)

- 2014; family of 2; taxable income=$26,000; **penalty=$260** ($260=$26,000x1% > $190=$95x2.)
- 2014; family of **3**; taxable income=$26,000; **penalty=$285** ($260=$26,000x1% < $285=$95x3.)
- **2016**; family of 3; taxable income=$26,000; **penalty=$2,085** ($650=$26,000x2.5% < $2,085=$695x3.)
- 2016; family of 3; taxable income=**$85,000**; **penalty=$2,125** ($2,125=$85,000x2.5% > $2,085=$695x3.)
- 2016; family of **8**; taxable income=$85,000; **penalty=$2,125** ($2,125=$85,000x2.5% > $2,085=$695x3.)

Some Americans will qualify for subsidies.

The individual mandate requires households to purchase an expensive product. The law softens this blow for some households by providing subsidies, called "health insurance premium tax credits." To be eligible for the subsidies, a household must meet two conditions: (1) Household income must be less than 400% of the Federal Poverty Level (FPL), which varies with family size. For a family of four in 2011, 400% FPL = $89,400. (2) The household's portion of the insurance premium must exceed 9.5% of household income.

The individual mandate faces legal challenges.

Legal Challenge: The individual mandate is unprecedented in American history. This is the first time that Congress has ordered all Americans to purchase a commercial product. The impact of this challenge on liberty is the reason that 26 states and NFIB joined together in challenging PPACA's constitutionality. A federal court in Florida ruled that the mandate was indeed unconstitutional and that PPACA should be overturned in its entirety. A federal appeals court agreed that the individual mandate was unconstitutional but held that the rest of PPACA could stand. These and other arguments will be heard by the U.S. Supreme Court in March 2012, with a ruling expected around June 2012.