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The Healthcare Playbook

A Small Business Guide to the Patient Protection and Affordable Care Act (PPACA)

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The Patient Protection and Affordable Care Act (PPACA) Timeline

When the president signed the healthcare bill into law, the clock started to tick on a variety of changes. Whether it is new taxes or new mandated requirements on health insurance purchased in the small group and individual insurance markets, this timeline provides a quick glance at changes that can be expected in coming years.

2014

- A **temporary small business tax credit** is available for two consecutive years for certain small businesses that provide qualified health coverage. The rules include:
  - Only firms with 10 or fewer employees are eligible for the full credit. For firms with 11 to 24 employees, the credit is reduced. Firms with 25 employees or more are ineligible for the credit.
  - Only firms that pay their workers an average wage of $25,000 or less are eligible for the full credit. The credit is reduced as the average wage goes up, phasing out at $50,000.
  - Only firms offering a uniform contribution of at least 50 percent of employee insurance costs may be eligible.
  - Health insurance coverage must be purchased in a Small Business Health Options Program (SHOP) exchange.
- **Employers must distribute the Notice of Coverage Options to new employees** within 14 days of the employees' start date. The Notice of Coverage Options document is a written notice describing an employer's health insurance offerings and/or exchange availability:
  - Informing the employee of the existence of an exchange, description of exchange services, and exchange contact information; and
  - Notifying the employee if the employer's plan is below the minimum value threshold (60 percent actuarial value).
- **Employers must determine business size**, whether they will be considered "small," "midsize," or "large," for the requirements of the employer mandate. Penalties will not begin until tax year 2015, but a midsize employer is defined as a business that employed an average of at least 50 full-time equivalent (FTE) employees on business days during the preceding calendar year, and a large employer is defined as a business that employed an average of at least 100 full-time equivalent (FTE) employees on business days during the preceding calendar year. For 2015, the preceding calendar year is 2014. Employers may use six consecutive calendar months during 2014 in order to determine business size for 2015. Business size is determined monthly by adding the number of full-time employees to the number of FTE employees.
- **Full-time employees** are individuals who work an average of 130 or more monthly hours (30 hours or more per week).
- **New counting requirements for part-time and seasonal employees:** Part-time and seasonal employees' hours will be converted into FTE employees for determination of business size. Total monthly part-time and seasonal hours must be added together and divided by 120. For example, if 6 employees each work 20 hours per month, they will count as if the firm had 1 additional FTE employee.
- **Large employers must determine whether employees are full-time employees**: Once an employer has determined their business is "large," they may either track actual monthly hours or utilize a look-back period of 3–12 months to determine whether employees' average hours exceeded 130 hours per month (30 hours per week).
- Filing occurs for **a new 3.8 percent tax** on investment income for higher-income taxpayers for tax year 2013.
- **An $8 billion small business health insurance tax** will begin on the fully insured market, where the majority of individuals and small businesses purchase insurance.
- **Every insured American will pay a $63 reinsurance fee.**
- **Individual health insurance exchanges** begin offering coverage to qualified individuals. Open enrollment for individuals in 2014 ends on March 31, 2014 (or April 15, 2014 for individuals who began, but were unable to complete enrollment). Open enrollment for 2015 will begin on November 15, 2014.
- **Small business exchange begins offering coverage to qualified small businesses with fewer than 50 employees. Employers may only select one health insurance plan and must enroll directly through an insurance agent/broker or an insurer.**

- **Premium tax credits and subsidies begin.** The federal government will subsidize health insurance premiums for individuals with incomes below 400 percent of the federal poverty level. Individuals with incomes below 250 percent of the federal poverty level are eligible for subsidies to assist with cost-sharing.
- **Individual mandate penalty tax begins.** Most individuals without minimum essential coverage by March 31, 2014 are subject to a penalty tax. Individual mandate penalty tax begins at $95 or 1 percent of household income above the filing threshold, whichever is greater.
- **All qualified individual and small group health insurance policies** must provide an Essential Health Benefits package, a comprehensive list of ten broad benefit mandates and service categories.
- **Remaining insurance requirements take effect,** and insurers cannot impose coverage restrictions based on pre-existing conditions. Modified community rating standards go into effect for individual or small business coverage based on geography, age, and smoking status. The law also limits out-of-pocket spending for in-network services. [1]

2015

- **Employer mandate coverage requirement phases in for "large" businesses. Businesses with 100 or more full-time or full-time equivalent employees** are mandated to offer health insurance to at least 70 percent of full-time employees or pay penalties. The penalties are based on the number of full-time employees during the preceding calendar year; whether the firm offers coverage to a significant percentage of full-time employees; whether coverage is "affordable" and meets "minimum value;" and whether one or more full-time employees qualify for a premium subsidy. A full-time employee qualifies for a subsidy if his or her taxable income is between 100 and 400 percent of the federal poverty level and the employee's share of the self-only portion of the premium exceeds 9.5 percent of their taxable income. Taxable income can be found in Box 1 of an employee's W-2 form. Here are some scenarios:
  - **More than 100 FTE employees and the business does not offer insurance to the full-time employees,** with one or more full-time employees receiving premium subsidies because their taxable income falls between 100 percent and 400 percent of the federal poverty level. The penalty is $2,000 per full-time employee (minus 80 full-time employees).
  - **More than 100 FTE employees and the business offers insurance,** with one or more full-time employees receiving premium subsidies because their share of the self-only portion of the premium exceeds 9.5 percent of their taxable income. The penalty is the lesser of $3,000 per subsidized full-time employee or $2,000 per full-time employee (minus 80 full-time employees).
  - **More than 100 FTE employees and the business offers insurance,** with no full-time employees receiving premium subsidies. There is no penalty on the employer.
  - **Fewer than 50 FTE employees:** No penalty or requirement to offer insurance.
- **Small business health insurance tax rises to** $11.3 billion.
- **Every insured American will pay a $44 reinsurance fee. (Self-insured and self-administered health plans are exempt from the reinsurance fee in 2015.)**
- **Individual mandate tax penalty** increases to $325 or 2 percent of income above the filing threshold, whichever is greater.
- Open enrollment for coverage **in individual health insurance exchanges** for 2015 ends on February 15, 2015.
- **Small business (SHOP) health insurance exchanges** must offer online enrollment and provide more employer health insurance offering opportunities including:
  - Employer choice - allowing employers to choose one of multiple health insurance plans from which employees may select.
  - Employee choice - allowing employers to choose a metallic coverage level from which employees may choose any plan from any insurer within the coverage level.

[1] Nonqualified health insurance policies (including grandfathered plans and early renewal plans) may not be required to cover Essential Health Benefits and remaining insurance requirements until 2015 or 2016.

2016

- **Employer mandate coverage requirement is fully implemented for "midsize" and "large" businesses.** Businesses with 50 or more full-time or full-time equivalent employees are mandated to offer health insurance to at least 95 percent of full-time employees (and dependents) or pay penalties. The penalties are based on the number of full-time employees during the preceding calendar year; whether the firm offers coverage to nearly all full-time employees; whether coverage is "affordable" and meets "minimum value;" and whether one or more full-time employees qualify for a federal premium subsidy. A full-time employee qualifies for a subsidy if his or her taxable income is between 100 and 400 percent of the federal poverty level and the employee's share of the self-only portion of the premium exceeds 9.5 percent of their taxable income. Taxable income can be found in Box 1 of an employee's W-2 form. Here are some scenarios:
  - **More than 50 FTE employees and the business does not offer insurance to the full-time employees,** with one or more full-time employees receiving premium subsidies because their taxable income falls between 100 percent and 400 percent of the federal poverty level. The penalty is $2,000 per full-time employee (minus 30 full-time employees).
  - **More than 50 FTE employees and the business offers insurance,** with one or more full-time employees receiving premium subsidies because their share of the self-only portion of the premium exceeds 9.5 percent of their taxable income. The penalty is the lesser of $3,000 per subsidized full-time employee or $2,000 per full-time employee (minus 30 full-time employees).
  - **More than 50 FTE employees and the business offers insurance,** with no full-time employees receiving premium subsidies. There is no penalty on the employer.
  - **Fewer than 50 FTE employees:** No penalty or requirement to offer insurance.
- **Midsize and large employers must report and verify** the offer of affordable and adequate coverage to employees by January 31, 2016 and to the IRS by February 28, 2016 (March 31, 2016 if submitted electronically). Midsize employers must certify with the IRS they did not reduce employment, reduce employees' hours, or eliminate or materially reduce coverage in order to qualify for transition relief for tax year 2015 from the employer mandate.
- **Small business health insurance tax** remains at $11.3 billion.
- **Every insured American must pay a to-be-determined reinsurance fee.**
- **Individual mandate tax penalty** increases again, to $695 or 2.5 percent of income above the filing threshold, whichever is greater.
- **Small business (SHOP) health insurance exchanges** must open up to qualified businesses with up to 100 employees.
- **Small group market definition** increases to businesses with up to 100 employees, making more businesses subject to the Essential Health Benefits package and other insurance market requirements.

2017

- **Brand-name drug tax** rises to $3.5 billion.
- **Small business health insurance tax** increases to $13.9 billion.
- **Individual mandate tax penalty** is based on 2016 levels and will rise according to a cost-of-living adjustment.
- **States and the federal government** may allow large employers with 100 or more employees to enter the SHOP exchanges. All SHOP health insurance plans must cover Essential Health Benefits and other health insurance market requirements.

2018

- **Cadillac tax** begins on high-cost health insurance plans with an aggregate value that exceeds threshold amounts of $10,200 for individual coverage and $27,500 for family coverage.
- **Brand-name drug tax** rises to $4.2 billion.
- **Small business health insurance tax rises to** $14.3 billion.
- **Individual mandate tax penalty** is based on 2016 levels and will rise according to a cost-of-living adjustment.

PPACA Mandates

Minimum Essential Coverage and the Individual Mandate Tax
Beginning in 2014, the Patient Protection and Affordable Care Act (PPACA) requires nearly all individuals to demonstrate and maintain proof of "minimum essential coverage," which includes: qualified employer-sponsored health insurance plans, qualified plans purchased in the individual market, government-sponsored health insurance programs (e.g., Medicare, Medicaid), and grandfathered individual and group health plans.

Failure to demonstrate and maintain minimum essential coverage by March 31, 2014 will leave an individual subject to the individual mandate tax. For an individual, the tax begins in 2014 and will be $95 or 1 percent of household income above the filing threshold (whichever is greater). In 2015, the individual tax rises to $325 or 2 percent above the filing threshold. In 2016, the mandate tax reaches $695 or 2.5 percent above the filing threshold. After 2016, the amount will rise annually by a cost-of-living adjustment.

Employer Mandate Penalties
Beginning in 2015, the healthcare law requires "large" employers—businesses with 100 or more full-time or full-time equivalent (FTE) employees—to either offer minimum essential coverage to full-time employees or pay a penalty tax. If a "large" employer *does not* offer minimum essential coverage to at least 70 percent full-time employees, and one or more full-time employees claim a subsidy on the individual exchange (income between 100 and 400 percent of the federal poverty level), then the employer will be subject to a $2,000 per full-time employee penalty (minus 80 full-time employees).

In 2016, midsize businesses with 50-99 full-time or FTE employees will also be subject to the employer mandate. Midsize and large businesses will be required to offer minimum essential coverage to at least 95 percent of full-time employees and their dependents or pay penalties. Dependents are defined as children up to age 26. Spouses are not considered dependents.

If a "midsize" or "large" employer *does* offer minimum essential coverage to full-time employees and their dependents, but it is deemed unaffordable (self-only premiums exceed 9.5 percent of employee's taxable income) or not of minimum value (60 percent actuarial value) for certain full-time employees, then the employer will be subject to the lesser of a $3,000 penalty for those certain full-time employees or $2,000 per full-time employee (minus 30 full-time employees).

The employer mandate was originally scheduled to begin in 2014, but regulations from the Treasury Department issued during July 2013 originally delayed the reporting requirements and penalties by one year to 2015. In February 2014, the Treasury Department further delayed and modified the employer mandate offering requirements and penalties for midsize businesses (50-99 FTEs) until 2016. Midsize businesses must still report and verify coverage with the IRS for the 2015 tax year.

Full-Time Employees
PPACA defines a full-time employee as an individual who is employed an average of at least 130 hours per month (30 hours per week).

Large employers may either determine current employees' full-time status by using actual monthly hours or looking back at a standard measurement period of not less than three but not more than twelve consecutive months to determine whether the employee averaged at least 130 hour of service per month (30 hours per week).

Large employers must then offer minimum essential coverage to full-time employees and their dependents for a corresponding 6-12 month stability period if an employee averages full-time hours during the look-back measurement period. If an employer chooses not to offer minimum coverage to full-time employees and their dependents, and if one or more employees claim a tax credit on the individual exchange, they will pay employer mandate penalties annually.

Part-time employees
Part-time employees' hours will be converted into FTE employees for the purposes of determining whether the employer is a large employer subject to the employer mandate. Conversion is done by adding all monthly hours

worked by employees who are not full-time and dividing the total by 120. For example, if 6 part-time employees each work 20 hours per month, they will count as if the firm has one additional FTE employee, calculated monthly (6 employees x 20 hours per month = 120 monthly hours/120 = 1 FTE employee).

Large employers will not be required to offer minimum essential coverage to part-time employees, but part-time employee hours will be used to determine whether the employer is large and subject to the employer.

Seasonal Employees
Seasonal employee hours will count toward an employer's FTE monthly total. An employee is seasonal if they are employed for 6 months or fewer during a calendar year. An employer is not considered "large" (and thus, subject to the employer mandate) if the employer has 50 FTE employees for 120 days (or 4 calendar months) or fewer during a calendar year. This situation is known as the seasonal worker exception.

How Will the Employer Mandate Affect Your Business?[2]
How the employer mandate affects a particular business depends on a number of factors, including:

1. The number of full-time employees (or part-time and seasonal employees counted as FTEs; see the section Part-time Employees); http://nfib.com/business-resources/healthcare/mandates#Part-time_employee_counting_requirements
2. whether the business offers minimum essential coverage to full-time employees and dependents (full-time only for 2015; full-time and dependents in 2016); and
3. whether one or more employees qualify for and claim subsidies toward the purchase of health insurance in the individual exchange. An employee qualifies for a subsidy in the individual exchange if his or her required contribution for the self-only health insurance premium exceeds 9.5 percent of taxable income or if the insurance does not meet the 60 percent minimum actuarial value threshold.

Here are some scenarios:

Midsize and Large Non-Offering Firms:

- 50 or more FTE employees.
- Does not offer minimum essential coverage to full-time employees and dependents. One or more full-time employees receive premium subsidies.
- Penalty = $2,000 per full-time employee (minus 30 full-time employees).
- For example, in 2016, Employer A has 100 full-time employees and does not offer health insurance coverage to full-time employees, 10 of whom receive a premium subsidy for the year for enrolling in an individual exchange. Employer A owes $2,000 per full-time employee (minus 30 full-time employees), for a total penalty of $140,000 (100 full-time employees – 30 full-time employees = 70, multiplied by $2,000 each).

Small Non-Offering Firms:

- Fewer than 50 FTE employees.
- Does not offer minimum essential coverage to full-time employees.
- No penalty.

Midsize and Large Offering Firms (coverage "unaffordable" or not meeting "minimum value"):

- 50 or more FTE employees and offers minimum essential coverage to full-time employees.
- One or more full-time employees receiving premium subsidies because premiums exceed 9.5 percent of taxable income affordability test or no health insurance policies offered meet the 60 percent minimum value test.
- Penalty equals the lesser of $3,000 per subsidized full-time employee or $2,000 per full-time employee (minus 30 full-time employees).

[2] For the purpose of describing the employer mandate requirements and penalties, the Playbook assumes the mandate is fully implemented for "midsize" (50-99 FTEs) and "large" (100+ FTEs) businesses in 2016. For 2015, only "large" (100+ FTEs) businesses must offer coverage to full-time employees or pay penalties. Non-offering "large" businesses may subtract 80 from their non-offering penalty liability in 2015.

- For example, in 2016, Employer B has 100 full-time employees and offers health coverage to full-time employees, 20 of whom receive a tax credit for the year for enrolling in an individual exchange because their contribution to the self-only premiums exceeds 9.5 percent of their taxable income. For each employee receiving a tax credit, the employer owes $3,000, for a total penalty of $60,000 (20 full-time employees x $3,000). The maximum penalty for Employer B is capped at the penalty amount that it would have been assessed for a failure to provide minimum essential coverage to full-time employees, or $140,000 ($2,000 multiplied by 70 (100-30)). Since the calculated penalty of $60,000 is less than the maximum amount, Employer B pays the lesser $60,000 penalty.

Midsize and Large Offering Firms ("affordable" coverage that meets "minimum value"):

- 50 or more FTE employees.
- Offers minimum essential coverage (to full-time employees) that passes both "affordability" and "minimum value" tests.
- Has no full-time employees receiving premium subsidies.
- No penalty on employer.

Other Factors Affecting "Large" Employers Subject to the Employer Mandate:

- **Auto-Enrollment:** Beginning in 2015, employers with more than 200 employees will be required to auto-enroll employees in the employer's health insurance coverage and allow employees to opt out. Auto-enrollment was scheduled to begin in 2014, but guidance from the Department of Labor has indicated this auto-enrollment requirement is delayed beyond 2014.
- **W-2 Reporting Requirements:** Beginning in 2013, businesses with more than 250 employees must report the aggregate cost of health insurance coverage under an employer-sponsored group health plan in Box 12 (using code DD) of an employee's W-2 form. The amount reported should include both the portion paid by the employer and the portion paid by the employee. Businesses with fewer than 250 employees have transition relief from this increased employer reporting requirement until the IRS issues further regulations.

Factors Affecting All Employers Offering Health Insurance, Whether or Not Businesses are Subject to the Employer Mandate:

Individual and Small Group Market Changes

There are many changes being made in the individual and small group marketplaces for health insurance (both inside and outside of exchanges). The small group market is currently defined as 1–50 or 2–50 employees in every state. In 2016, the small group market will increase to businesses with up to 100 employees in every state.

These markets have historically been regulated at the state level. Currently, differences exist in how the individual market and small group market function in each state. The state rules dictate how insurers can determine their expected costs, and therefore, price your premium. The changes created by the healthcare law will adjust these differences, making the two marketplaces more similar, and will shift much of insurance regulation from state governments to the federal government.

Nondiscrimination Requirements

Employers cannot provide more generous health insurance benefits or higher employer contributions to highly-compensated employees. This prohibition was supposed to begin in 2010, but was delayed. It will not be enforced until the IRS issues further regulations.

Essential Health Benefits

Beginning in 2014, all non-grandfathered and early renewed individual and small group market health insurance plans must cover a broad list of ten mandated benefit categories known as Essential Health Benefits. The Department of Health and Human Services (HHS) has mandated that states choose base-benchmark plans for transition years 2014-2015 from a limited menu of options or HHS will select the largest small group plan in the state as the default base-benchmark plan.

Section 1302 of the PPACA specifies that all plans meeting Essential Health Benefits requirements will include at least the following categories:

- Ambulatory patient services
- Emergency services
- Hospitalization
- Maternity and newborn care
- Mental health and substance use disorder services, including behavioral health treatment
- Prescription drugs
- Rehabilitative and habilitative services and devices
- Laboratory services
- Preventive and wellness services and chronic disease management
- Pediatric services, including oral and vision care

No base-benchmark plans cover all Essential Health Benefit categories. Thus, all base-benchmark plans must be supplemented with additional services in order to comply with the law. The more costly supplemented plans will be known as Essential Health Benefit-Benchmark Plans.

The Secretary of the HHS will be allowed to review and update the Essential Health Benefits package annually beginning in January 2016. Also in 2016, the small group market will expand to businesses with up to 100 employees, forcing more businesses to comply with the Essential Health Benefits package.

Prohibition from Offering Stand-Alone Health Reimbursement Arrangements (HRAs)
Beginning in 2014, employers can no longer offer stand-alone health reimbursement arrangements (HRAs) that allow employees tax-free funds to purchase health insurance in the individual market. The Department of Labor (DOL), Internal Revenue Service (IRS), and Department of Health and Human Services (HHS) issued regulations requiring HRAs to be integrated with group health insurance coverage (such as a high-deductible health plan). Employers can provide employees with funds to purchase health insurance on the individual market, but it must now be considered taxable income to the employee.

Waiting Period Limitations
Beginning in 2014, there are extra penalties for businesses that have a waiting period exceeding 90 days before eligible employees must be enrolled in minimum essential coverage. Waiting period limitations apply to all group coverage, not just large employers.

Prohibition of Annual and Lifetime Limits
Beginning on September 23, 2010, new plans are prohibited from placing annual and lifetime limits on the dollar value of coverage. For example, some policies previously had a $1 million dollar lifetime cap on the amount an insurance company would pay out on a policy. The prohibition on lifetime limits took full effect on January 1, 2014. The new rules on lifetime limits apply to all plans. The rules on annual limits apply to all plans, except for individual market plans that maintain grandfathered status.

Annual Limitations on Out-of-Pocket Spending
Beginning in 2014, there are limits on annual cost sharing for in-network services, and they are tied to current Health Savings Account (HSA) maximum out-of-pocket limits (for 2014, the limits are $6,350 for individuals and $12,700 for families).

Separate plan service providers may impose different levels of out-of-pocket spending maximums. For example, a major medical coverage insurer may have one maximum and a prescription drug plan may have a separate maximum.

Dependent Coverage
Beginning on September 23, 2010, all employers that offer dependent coverage are required to provide dependent coverage for children up to age 26.

Coverage of Preventive Services
Beginning on September 23, 2010, all non-grandfathered plans are required to provide 100 percent coverage (no cost-sharing – deductibles or co-pays) for:

- Items or services with an "A" or "B" rating in the current recommendations of the United States Preventive Services Task Force (USPSTF);
- Immunizations for routine use as recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention;
- Preventive care and screenings for infants, children and adolescents provided for in the guidelines supported by the Health Resources and Services Administration (HRSA); and
- Preventive care and screening for women provided for in guidelines supported by HRSA.

Minimum Value
Beginning in 2014, all non-grandfathered health insurance plans must meet a 60 percent minimum actuarial value standard. Actuarial value is the amount of expected healthcare expenses that health insurance plans must cover once an individual has met their deductible. Enrollees are responsible for the remaining costs in the form of coinsurance and co-pays. Annual employer contributions to Health Savings Accounts (HSAs) and amounts made available under Health Reimbursement Arrangements (HRAs) for the current year will count toward the actuarial value threshold.

Other Insurance Requirements
In 2014, all plans in the individual and small group markets (both inside and outside of exchanges) will be required to have guaranteed issue and renewability.

Premiums may only vary by:

- Age (3:1 maximum)
- Tobacco (1.5:1 maximum)
- Geographic rating area
- Individual or family coverage (family size)

PPACA Tax Information

Small Business Health Insurance Tax Credit
A temporary tax credit is available for certain small businesses that provide qualified health insurance. The maximum credit equal to 35 percent of the employer contribution was available from 2010 to 2013. Beginning in 2014, a 50 percent credit is available for an additional two consecutive years, if the small business purchases health insurance through a Small Business Health Options Program (SHOP) health insurance exchange. The business must pass a series of tests to determine if they qualify and how much credit they may receive. Businesses with 10 or fewer employees paying $25,000 or less in average wages are potentially eligible for the full credit. Businesses with between 11 to 24 employees and average annual wages of less than $50,000 may be eligible for a partial credit. Businesses with 25 or more employees and/or $50,000 or more in average annual wages are not eligible for any credit. Employers must uniformly contribute at least 50 percent toward employees' health insurance premiums.

The rules and calculations to determine eligibility for the credit are complicated. The tax credit can be claimed using Form 8941.[3] There are a number of tools to help you determine whether you may receive a credit and how much it is worth. Also, please be sure to consult an accountant or tax professional to determine your eligibility.

- **NFIB background information on the small business health insurance tax credit**
  http://www.nfib.com/advocacy/item?cmsid=51232
- **NFIB tax credit calculator**
  http://www.nfib.com/advocacy/healthcare/credit-calculator
- **IRS guidance on the tax credit**
  http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-for-Small-Employers

Tanning Salon Tax
On July 1, 2010, a 10 percent tax was imposed on certain indoor tanning services. Specifically, the tax applies to the use of tanning devices utilizing ultraviolet lamps. Certain businesses, such as qualified physical fitness facilities, were exempt. The tax is collected from the purchases of tanning services and is remitted quarterly to the IRS using Form 720.[4]

Brand-Name Drug Tax
In 2011, the manufacturers and importers of brand-name prescription drugs began paying an annual tax based on their share of the total brand-name drug market.

Flexible Spending Account (FSA) Limitations under Cafeteria Plans
FSAs are a qualified benefit that may be offered to employees under a cafeteria plan. Beginning in 2013, for an FSA to qualify as a benefit under a cafeteria plan, the maximum amount available for reimbursement cannot exceed $2,500. A cafeteria plan that includes an FSA that exceeds the maximum limitation will fail to qualify as a cafeteria plan.

Increased Penalty for Non-Qualified Distributions from Health Savings Accounts (HSAs)
Distributions from an HSA can only be used for qualified medical expenses and a nonqualified distribution is subject to a penalty. The penalty for making nonqualified distributions from an HSA increased from 10 percent to 20 percent in 2011.

Cafeteria Plan Safe Harbor Rules
In 2011, the application of nondiscrimination rules did not apply to cafeteria plans established by certain small businesses. Cafeteria plans were subject to nondiscrimination rules to ensure that benefits were not disproportionately allocated to highly compensated employees. Many smaller businesses struggled to meet the nondiscrimination tests because of the employee size calculation in the test.

[3] For copies and instructions of Form 8941 visit http://www.irs.gov/uac/Form-8941,-Credit-for-Small-Employer-Health-Insurance-Premiums
[4] For IRS guidance and copies of Form 720 visit http://www.irs.gov/businesses/small/article/0,,id=224600,00.html

An eligible small employer is provided a safe harbor from the nondiscrimination rules if the cafeteria plan satisfies minimum eligibility and participation requirements and minimum contribution requirements. An eligible small employer is an employer who employed an average of 100 or fewer employees during either of the two preceding years. A cafeteria plan satisfies the eligibility requirements if all employees are eligible to participate and able to elect any benefit available under the cafeteria plan. The minimum contribution requirement is met if the employer provides a minimum contribution for each employee who is not highly compensated, equal to, not less than, two percent of each eligible employee's compensation for the plan year.

Medical Device Tax
Beginning in 2013, an annual 2.3 percent excise tax is imposed on manufacturers and importers of certain medical devices.[5]

Limitation of Deduction Medical Expenses
Beginning in 2013, the medical expense threshold is increased to costs exceeding 10 percent of the taxpayer's Adjusted Gross Income (AGI). Previously, an individual could deduct the cost of medical expenses exceeding 7.5 percent of the taxpayer's AGI on their individual tax return.

Limited Use of Certain Medical Accounts for the Purchase of Over-the-Counter Drugs
Beginning in 2011, the cost of over-the-counter medicine could not be reimbursed with funds from an FSA, HRA, HSA or Archer MSA, unless the over-the-counter medicine was prescribed by a physician, except for insulin.

Medicare Payroll Tax Increase
Beginning in 2013, the employee portion of the Medicare payroll tax (specifically the Hospital Insurance portion of the tax) is increased by 0.9 percent from the current 1.45 percent. The increase only applies to wages over $250,000 for joint return filers, $200,000 for individual filers, and $125,000 for married individuals filing separate returns. The tax increase also applies to the Medicare portion of SECA taxes for self-employment income.

New Medicare Payroll Investment Income Tax
Beginning in 2013, a new 3.8 percent Medicare payroll tax is assessed on certain investment income. This tax imposes a 3.8 percent tax on unearned income above $200,000 for individual filers or $250,000 for joint filers. In other words, it imposes an additional layer of tax on passive investment income, which includes investors in pass-through businesses, such as S corporations, LLC's and partnerships. Income received in the ordinary course of a trade or business is not subject to the tax.

Calculating the tax, however, is complicated because it is imposed on the lesser of this investment income or the amount by which an individual's modified adjusted gross income exceeds $200,000 for single filers or $250,000 for joint filers. The tax will be assessed annually using Form 8960.[6]

Small Business Health Insurance Tax
In 2014, a new tax on fully insured health insurance products begins. The small business health insurance tax will cost small businesses and their employees $145 billion in the first 10 years. Although the tax is levied on health insurance providers, it will be passed on to small businesses and the self-employed in the fully insured market in the form of increased premiums. The tax will raise $8 billion in 2014, rise to $18 billion in 2024, and the amount will continue to increase by the rate of premium growth for subsequent years.

Tax on Cadillac Health Insurance Plans
Beginning in 2018, businesses providing employer-sponsored health insurance coverage that exceeds a threshold amount will be charged a 40 percent excise tax. The threshold amounts are $10,200 for individual coverage and $27,500 for family coverage.

[5] For final regulations from the IRS, visit medical device final regulation.
https://www.federalregister.gov/articles/2012/12/07/2012-29628/taxable-medical-devices
[6] For copies of IRS Form 8960 visit http://www.irs.gov/pub/irs-pdf/f8960.pdf and for IRS Form 8960 Instructions visit http://www.irs.gov/pub/irs-pdf/i8960.pdf

PPACA Compliance

Requirement to Provide "Summary of Benefits and Coverage"

Beginning in 2012, health insurance plans (fully insured products) and health insurance sponsors (self-insured products) must create an easy-to-read, plain language summary of benefits and coverage (SBC) for each enrollee. If an employer is fully insured, the plan must create the SBC and the employer must distribute the SBC to employees. If an employer is self-insured, the business or the third-party administrator must create and distribute the SBC to employees.

W-2 Reporting Provisions

In 2013, Section 9002 of the healthcare law requires employers who file more than 250 W-2s to calculate and report the aggregate cost of employer-sponsored insurance coverage on employees' Form W-2s for their 2012 benefits. Eventually, all offering employers will be required to include this information on employees' Form W-2s. Previously, there was no requirement that the employer report the total value of employer-sponsored insurance coverage on Form W-2. *Healthcare benefits continue to be a tax-free benefit; the new reporting requirement is for informational purposes.*

Reportable employer-sponsored costs include:

- Medical plans
- Prescription drug plans
- Health Reimbursement Accounts (HRAs)
- On-site medical clinics
- Amounts contributed by the employer to a Health Savings Account (HSA) or Medical Savings Account (MSA)
- Medicare supplemental coverage
- Employee assistance programs
- Dental and vision plans **unless** they are stand-alone plans

Flexible spending accounts, long-term care coverage, workers' compensation insurance, coverage only for accidents, and specific disease or hospital/fixed indemnity plans are *excluded* from the reporting requirement. This requirement was scheduled to begin in 2011, but was delayed until 2013. Businesses filing fewer than 250 W-2 Forms have temporary relief from this requirement until the IRS releases further guidance or regulations.

Paperwork Reporting Requirements

In 2016, Section 6055 and 6056 of the law will require health insurers (on behalf of offering small employers) and midsize and large employers to report certain information to both the IRS and their full-time employees.

- The information required to be reported includes: (1) name, address, and employer identification number of the employer; (2) certification as to whether the employer offers its full-time employees and their dependents the opportunity to enroll in "minimum essential coverage" under an eligible employer-sponsored plan; (3) the number of full-time employees of the employer for each month during the calendar year; (4) name, address, and taxpayer identification number of each full-time employee employed by the employer during the calendar year and the number of months, if any, during which the employee (and any dependents) was covered under a plan sponsored by the employer during the calendar year; and (5) other information as the government may require.
- Employers who offer the opportunity to enroll in "minimum essential coverage" must also report: (1) in the case of an applicable large employer, the length of any waiting period with respect to such coverage; (2) the months during the calendar year during which the coverage was available; (3) the monthly premium for the lowest-cost option in each of the enrollment categories under the plan; (4) the employer's share of the total allowed costs of benefits under the plan; and (5), in the case of an offering employer, the option for which the employer pays the largest portion of the cost of the plan and the portion of the cost paid by the employer in each of the enrollment categories under each option.
    - Employers are required to report to each full-time employee the above information required to be reported with respect to that employee, along with the name, address, and contact information of

the reporting employer, on or before January 31 of the year following the calendar year for which the information is required to be reported to the IRS.[7]

Notice of Coverage Options Document Requirement
Employers must provide a written Notice of Coverage Options document to newly hired employees within 14 days of the employees' start date. This notice informs employees of coverage options and must describe the availability of individual health insurance exchanges, including a description of services and methods of participation.

Employers are also required to inform employees that they may be eligible for a premium tax credit and a subsidy within an individual health insurance exchange if the plan the employer provides covers less than 60 percent of total allowed health costs or if the self-only premium exceeds 9.5 percent of the employee's taxable income. Employers must notify employees that they would lose employer contributions for health coverage if that employee chose to purchase coverage through an individual health insurance exchange.

[7] Model language can be found on the Department of Labor's website, http://www.dol.gov/ebsa/newsroom/tr13-02.html.

Additional Resources

NFIB Healthcare Reform: www.nfib.com /healthcare

Employer Mandate Resources:

- IRS Final Rule on Shared Responsibility for Employers Regarding Health Coverage www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions
- IRS Final Regulation on Reporting Requirements www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions
- Transition Relief for 2014 Under §§ 6055 (§ 6055 Information Reporting), 6056 (§ 6056 Information Reporting) and 4980H (Employer Shared Responsibility Provisions) http://www.irs.gov/pub/irs-drop/n-13-45.pdf
- Questions and Answers on Employer Shared Responsibility Provision Under the Affordable Care Act http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act

Health Insurance Exchange Resources:

- HHS Final Rule on Health Insurance Exchanges www.regulations.gov/#!documentDetail;D=HHS-OS-2011-0020-2420

Essential Health Benefits Resources:

- HHS Final Rule on Essential Health Benefits Package http://www.gpo.gov/fdsys/pkg/FR-2013-02-25/pdf/2013-04084.pdf
- HHS Essential Health Benefits FAQs cciio.cms.gov/resources/files/Files2/02172012/ehb-faq-508.pdf

IRS PPACA Tax Provisions: http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions

HHS Regulations and Guidance: http://www.healthcare.gov/law/resources/regulations

HHS Nonqualified Plan Extension: www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/transition-to-compliant-policies-03-06-2015.pdf

Department of Labor Health Reform Regulations: http://www.dol.gov/ebsa/healthreform/