



# The Affordable Care Act: Summary of Employer Requirements

Washington Council Ernst & Young

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# Disclaimer

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# Major coverage requirements and expansion provisions

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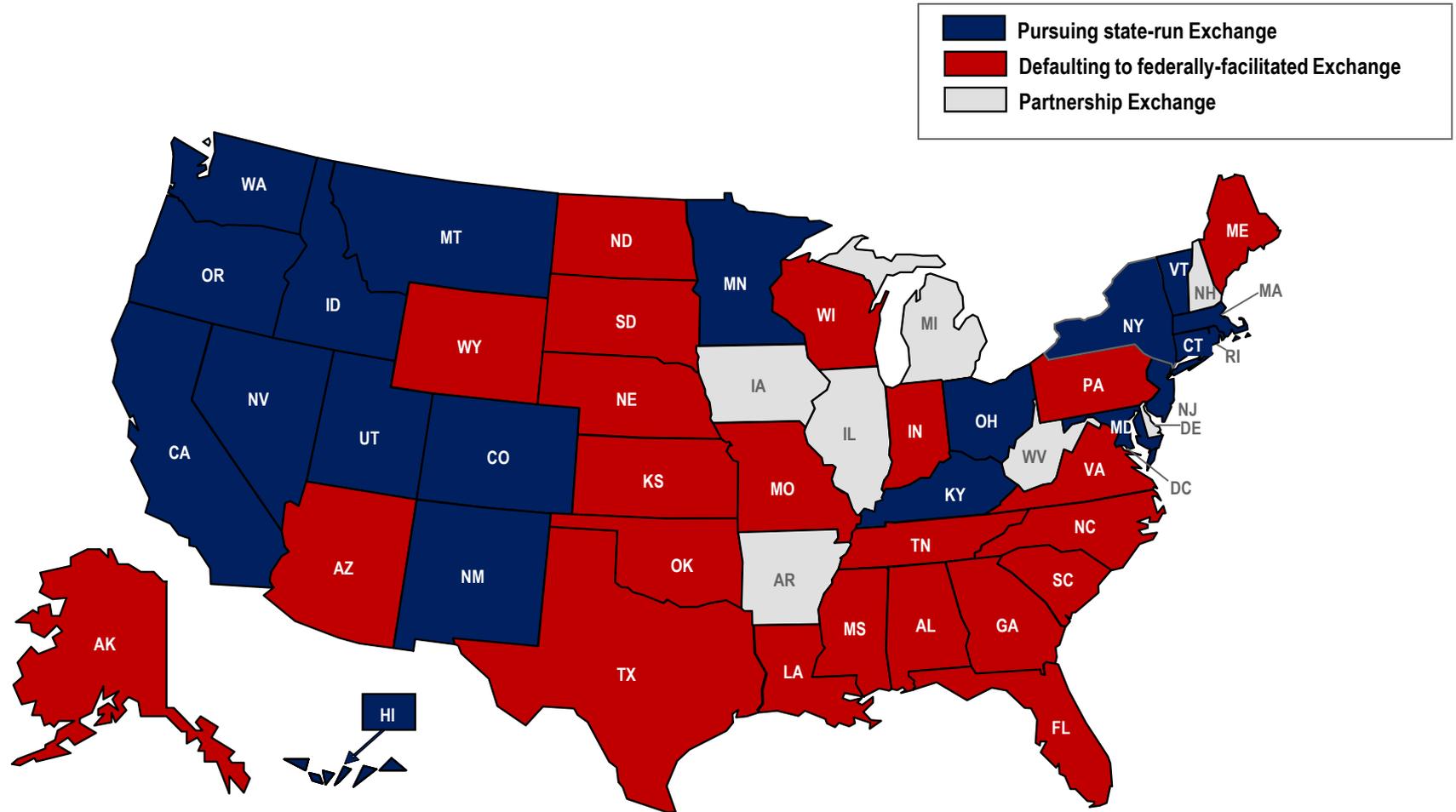
- ▶ The ACA aims to expand health coverage through a series of provisions that generally go into effect on January 1, 2014:
  - ▶ **Individual mandate:** Mandates all Americans, with some exceptions, to maintain a minimum level of health coverage or face a tax.
  - ▶ **Insurance Exchanges:** Creates health insurance Exchanges and provides premium tax credits to assist eligible individuals with the purchase of coverage.
  - ▶ **Medicaid expansion:** Allows states to expand Medicaid up to 138% of federal poverty level.
  - ▶ **Employer mandate:** Mandates employers with 50 or more full-time equivalents to offer coverage to full-time employees and their dependents or pay taxes if an employee obtains Exchange coverage and a premium tax credit.

# Status of key coverage provisions affecting employers

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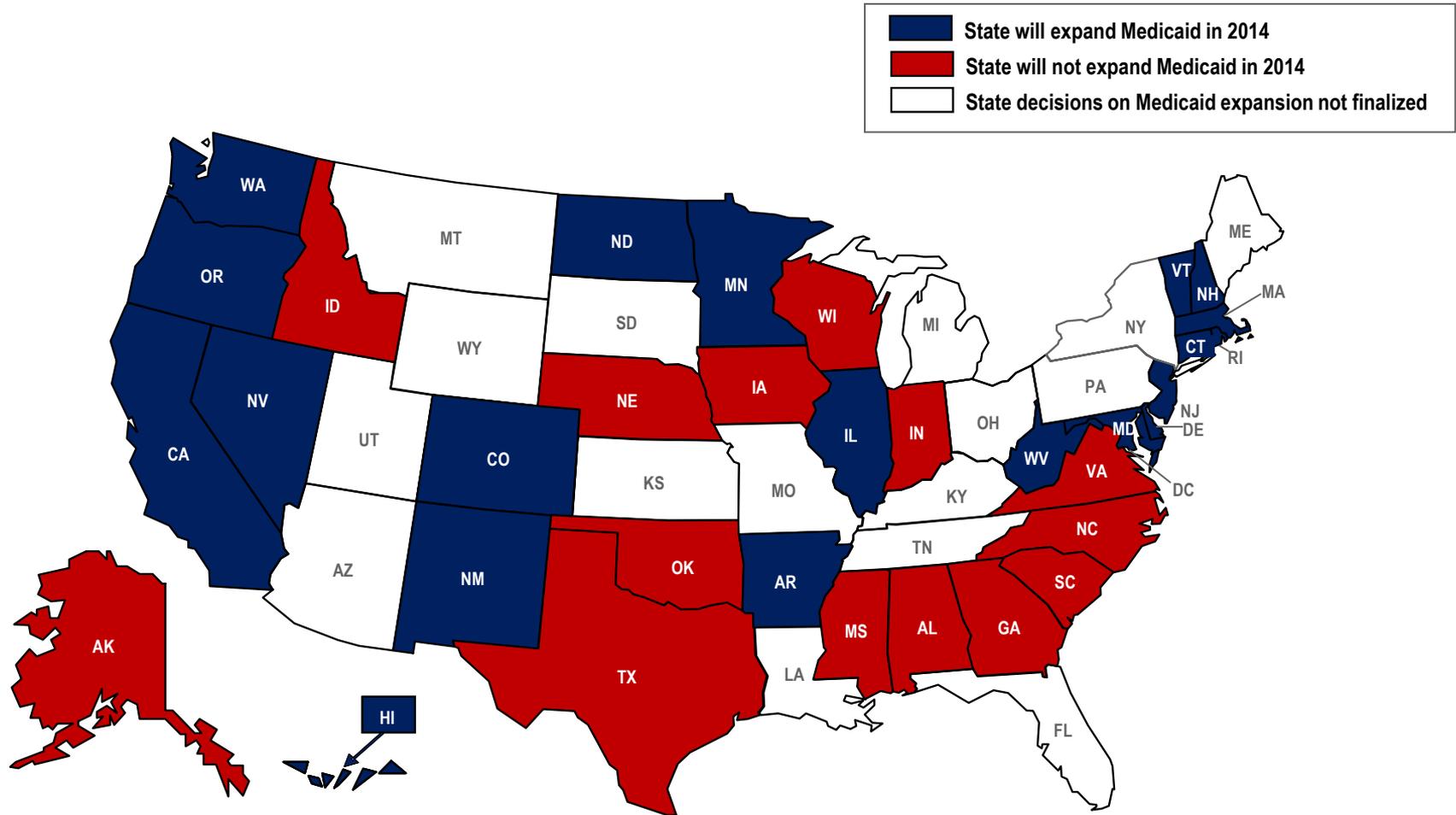
- ▶ **Medicaid expansion:** A number of governors have endorsed Medicaid expansion in their states only to face resistance in the Legislatures.
- ▶ **May 3, 2013:** Deadline for health insurers to file to participate in federally-facilitated Exchanges, which will demonstrate the number of plans participating and premium impact.
- ▶ **June 2013:** CMS plans to open a 24-hour call center to field questions about Exchanges and coverage options. HealthCare.gov is scheduled to be relaunched.
- ▶ **October 1, 2013:** Exchanges begin open enrollment period; employers must begin providing FLSA coverage notices to employees.
- ▶ **January 1, 2014:** Employers generally must be in compliance with coverage requirements.

# Decisions on operation of Exchanges



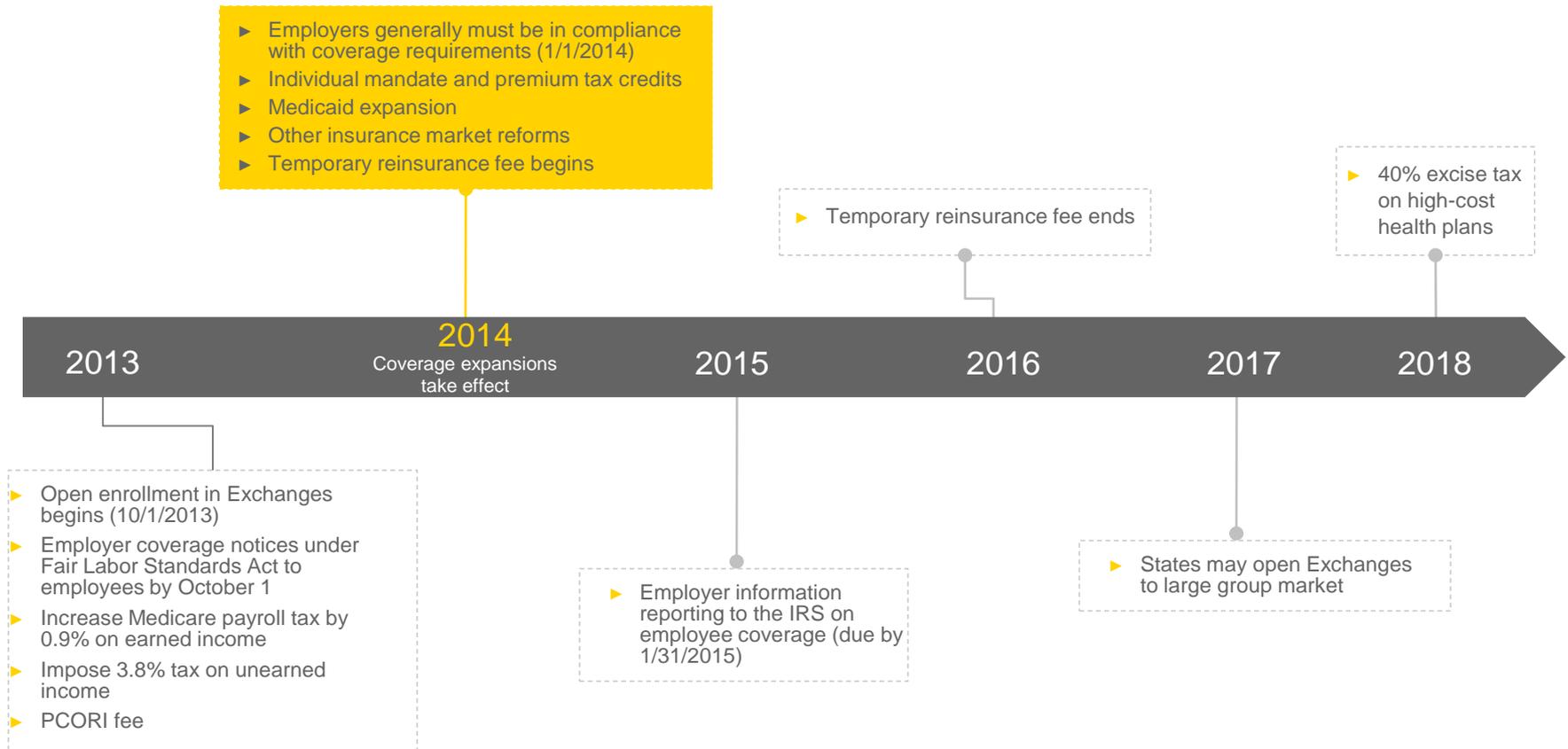
Source: Kaiser Family Foundation

# Medicaid expansion in 2014



Source: Avalere State Reform Insights, Updated May 2, 2013

# Key effective dates for employers



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# KEY DEFINITIONS FOR EMPLOYERS

# Basic employer coverage rules

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- ▶ Large employers may be subject to an excise tax if at least one full-time employee whose household income is between 100% and 400% of the federal poverty level receives a premium tax credit for Exchange coverage and an employer either:

Fails to offer coverage to full-time employees and their dependents

or

Offers coverage to full-time employees that does not meet the law's affordability or minimum value standards

# Who is a large employer under the ACA?

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- ▶ Any employer with 50+ full-time equivalents is considered a large employer.
- ▶ IRC §4980H applies to all common law employers, including governmental entities, churches, tax-exempt organizations with at least 50 full-time equivalent employees.
- ▶ Foreign companies with at least 50 full-time equivalent employees performing work in the US with US-source compensation also are subject to the law.

# Determining large employer status for smaller employers

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- ▶ For each calendar month of the preceding calendar year, employers must:
  1. Count the number of full-time employees (including seasonal employees) who work on average 30 hours per week per month.
  2. Calculate the number of full-time equivalent employees by aggregating the number of hours worked by non-full-time employees (including seasonal employees) and dividing by 120.
  3. Add the number of full-time employees and full-time equivalents calculated in steps (1) and (2) for each of the 12 months in the preceding calendar year.
  4. Add the monthly totals and divide by 12. If the average exceeds 50 full-time equivalents, determine whether the seasonal employee exception applies.

# Seasonal employee exception

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- ▶ IRC §4980H does not apply to employers whose workforce exceeds 50 full-time employees for no more than 120 days or four calendar months during a calendar year if the employees in excess of 50 who were employed during that period were seasonal employees. The 120 days or four calendar months are not required to be consecutive.
- ▶ For purposes of determining large employer status until further guidance is issued, employers may apply a reasonable, good-faith interpretation of the statutory definition of seasonal worker, including a reasonable, good-faith interpretation of the standard set forth under the DOL regulations at 29 CFR 500.20(s)(1).

# Transition relief for smaller employers

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- ▶ Employers can determine whether they are large employers based on a period of six consecutive calendar months as chosen by the employer in the 2013 calendar year, rather than based on the entire 2013 calendar year. The January 1, 2014, compliance deadline is not delayed for smaller employers determined to be large employers based on the six-month calculation.

# Determining large employer status based on controlled group rules

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- ▶ **Definition:** The determination of large employer status is made based on the Internal Revenue Code's controlled group rules under IRC §§414(b), (c), (m) or (o).
  - ▶ Example: A large employer composed of a parent corporation and 10 wholly owned subsidiary corporations that, on a controlled group basis, have 50 or more full-time equivalent employees and, therefore, each corporation, regardless of the number of its employees, is treated as a large employer.
- ▶ **Penalty:** For purposes of assessing liability, the IRC §4980H tax penalties are applied separately to each member of the controlled group. Each member of the controlled group is liable for its own tax penalties under IRC §4980H and is not liable for the IRC §4980H tax penalties of any member of the controlled group that makes up the large employer. In calculating penalties, only one 30-employee reduction is allowed per controlled group and must be distributed proportionally across the control group.

# Who is a full-time employee under the ACA?

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- ▶ **Full-time employee:** Defined as an employee who works on average 30 hours per week, per month or 130 hours of service per calendar month.
- ▶ **Hour of service:** Each hour for which an employee is paid or entitled to payment for the performance of duties, vacation, leave, holiday, illness, incapacity, layoff, jury duty, military duty or other leave of absence
- ▶ **Calculation for hourly and non-hourly employees:**
  - ▶ Hourly employees: Count actual hours served
  - ▶ Non-hourly employees: Select one of three methodologies that does not understate hours:
    - ▶ Count actual hours
    - ▶ Days worked equivalence: Count 8 hours for each day credited with at least one hour of service
    - ▶ Weeks worked equivalence: Count 40 hours of service for each week credited with at least one hour of service
- ▶ **General rule:** Employees who are classified or determined to be full time are eligible for the employer's health plan after the applicable wait period not to exceed 90 days.
- ▶ **Safe harbors:** Available for part-time, seasonal, and variable hour employees to determine when they are treated as full-time employees.

# Definition of full-time employee: safe harbors

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- ▶ The Department of Treasury provides a “measurement/stability period” safe harbor to allow for a measuring period for employees where it cannot be determined if the employee is reasonably expected to work on average at least 30 hours per week. Employers can select a measurement period of three to 12 months.
  - ▶ If the employee is determined to be full time during the measurement period, then the employee is treated as full time during a subsequent stability period in which coverage must be offered. A measurement period must be at least six months long.
  - ▶ Specific safe harbor methods are provided for ongoing employees, and newly hired variable hour and seasonal employees.
  - ▶ Employers can use an optional administrative period not to exceed 90 days between the standard measurement period and the associated stability period to determine which employees are eligible for coverage, and notify and enroll them. For newly hired variable hour or seasonal employees, the combined length of the initial measurement period and administrative period is effectively limited to no more than 13 months.
- ▶ Proposed Treasury regulations reserve the definition of “seasonal employee” and confirm that through 2014 large employers are permitted to use a reasonable, good-faith interpretation of the term for purposes of determining full-time status.
- ▶ Proposed regulations also provide special rules for change in employee status, multiemployer plans, education organizations, and temporary staffing.
- ▶ **Transition relief:** Employers may adopt measurement periods in 2013 shorter than their plan’s stability period for 2014. To do so, the measurement period must be no less than six months and end no sooner than 90 days before the start of the plan year beginning in 2014.

# Small Employer Provisions

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- ▶ Employers with fewer than 50 full-time equivalent employees will not face tax penalties if they do not offer coverage to full-time employees.
- ▶ Provisions of the ACA affecting small employers include:
  - ▶ **SHOP Exchange:** Businesses with fewer than 50 or fewer than 100 employees (depending on state) can select and pay for coverage through special insurance market place. SHOP Exchange will manage administrative elements for employers.
  - ▶ **Small Employer Tax Credit:** Credit is available to small employers with up to 25 full-time equivalents with average wages of no more than \$50,000 if employer covers at least 50% of cost of health insurance coverage. The sliding scale credit will cover up to 35% of employer cost in 2013 and up to 50% of employer cost in 2014.
  - ▶ **New Rating Rules:** Health insurers may no longer price coverage based on health of employee population. May vary based on age and smoking status.
  - ▶ **Essential Health Benefits:** Plans offered in the small group and individual markets are required to cover the 10 categories of essential health benefits.

# Part-time employees

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- ▶ Large employers are not required to offer coverage to part-time employees (those who work less than 30 hours per week per month).
- ▶ For large employers who offer coverage to part-time employees:
  - ▶ The application of the limitation of 90-day waiting period prior to coverage applies.
  - ▶ Proposed rules jointly issued by IRS, HHS and the Department of Labor state that other conditions for eligibility under the plan are permissible as long as the conditions do not avoid compliance with the 90-day waiting period. Example: *A cumulative hours of service requirement of no more than 1,200 hours for part-time employees may be utilized before the 90-day waiting period applies.*
  - ▶ Certain insurance market reforms apply, such as preventive care without cost sharing, and no annual and lifetime limits on Essential Health Benefits.

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# TAX PENALTIES AND OTHER FEES

# Employer tax penalties linked to employees receiving tax credits

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- ▶ Employers will face taxes under IRC §4980H if they do not offer minimum essential coverage or if the coverage they offer is unaffordable or not of minimum value to employees with household income between 100% and 400% of the federal poverty level and they receive a tax credit for Exchange coverage.
- ▶ If an employee is enrolled in an eligible employer-sponsored plan, regardless of the cost or value of the plan, such employee will be ineligible for a premium tax credit.
- ▶ Medicaid-eligible employees will not be eligible for tax credits and therefore, employers will not face tax penalties for those employees. States can expand Medicaid eligibility effectively to 138% of federal poverty level.

# Calculation of non-deductible excise taxes under IRC §4980H

## Tax for *no coverage* - IRC §4980H(a)

- ▶ If a large employer does not offer minimum essential coverage to full-time employees and their dependents, an employer may face a tax of:
  - ▶ \$2,000 x the total number of full-time employees (FTE) if at least one FTE is receiving a premium assistance tax credit

Large employers who do not offer coverage may subtract the first 30 workers when calculating their liability for taxes under IRC §4980H(a).

# Tax for no coverage under IRC §4980H(a)

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- ▶ The proposed regulations state that in general, a large employer that is a single entity or a large employer member will not be subject to the penalty under IRC §4980H(a) so long as the employer offers minimum essential coverage under an eligible employer-sponsored plan to its full-time employees and their dependents.
- ▶ Such minimum essential coverage does not have to meet the law's affordability and minimum value standards to avoid penalties under IRC §4980H(a). The proposed regulations also state that a large employer that is a single entity or large employer member cannot be liable for tax penalties under both IRC §§4980H(a) and (b) for the same month.
  - ▶ **Minimum essential coverage:** Includes governmental plans, self-insured and insured coverage offered in the small or large group market offered by an employer to an employee (see IRC §5000A). Excludes HIPAA-excepted benefits and standalone HRAs.
  - ▶ **Dependents:** Defined as an employee's child under age 26 (see IRC §152(f)(1)). Employers will not face tax penalties for not offering coverage to spouses.

# Tax for no coverage under IRC §4980H(a)

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- ▶ **De minimis rule:** A large employer that is a single entity or a large employer member will be treated as offering coverage to full-time employees if they offer coverage to all but the greater of 5 or 5% of their full-time employees (and their dependents).
- ▶ **Offer of coverage:** Proposed regulations do not propose any new specific rules for demonstrating that an offer of coverage was made. The normal rules for substantiation and recordkeeping requirements apply.
- ▶ **Nonpayment of premiums:** A large employer will not be treated as failing to offer coverage if the coverage is terminated solely due to the employee's failure to pay the employee's share of premium on a timely basis.

# Assessment and administration of taxes

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- ▶ **Penalty assessment for controlled groups:**
  - ▶ For purposes of assessing liability, the IRC §4980H tax penalties are applied separately to each member of the controlled group.
  - ▶ Each member of the controlled group is liable for its own tax penalties under IRC §4980H and is not liable for the IRC §4980H tax penalties of any member of the controlled group that makes up the large employer.
  - ▶ For purposes of calculating penalties under IRC §4980H, only one 30-employee reduction is allowed per controlled group. The reduction is allocated among the members that make up the controlled group on the basis of the number of employees employed by each.

# Calculation of non-deductible excise taxes under IRC §4980H

## Tax for *unaffordable coverage* - IRC §4980H(b)

- ▶ If a large employer offers minimum essential coverage to full-time employees and their dependents but the coverage is unaffordable to certain employees or does not provide minimum value, an employer may face a tax of:
  - ▶ The lesser of \$3,000 x the number of FTEs receiving a premium assistance tax credit or \$2,000 x the total number of FTEs

Taxes under §4980H(b) are capped not to exceed an employer's potential tax under §4980H(a).

# Tax for coverage that is unaffordable, does not provide minimum value under IRC §4980H(b)

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- ▶ **Affordability general rule.** Employee's share of the self-only premium for the employer's lowest-cost plan that provides minimum value cannot exceed 9.5% of household income or the employee may be eligible for a premium tax credit to purchase Exchange coverage
- ▶ **Safe harbors.** Employers can demonstrate they offer coverage meeting the affordability standard by showing the employee premium share for self-only coverage under their lowest-cost plan that meets the minimum value standard utilizing the following safe harbors:
  - ▶ **Form W-2 safe harbor.** Employee premium share does not exceed 9.5% of the amount required to be reported in Box 1 of Form W-2. The proposed regulations provide guidance for using the W-2 safe harbor for an employee who was not a full-time employee for the entire calendar year. Application of this safe harbor is determined after the end of the calendar year and on an employee-by-employee basis, taking into account the employee's Form W-2 wages from the employer and the employee contribution.
  - ▶ **Rate of pay safe harbor.** Employee premium share does not exceed 9.5% of the product of multiplying the hourly rate of pay (either each employee's individual rate of pay or the lowest rate of pay paid by a large employer that is a single entity or a large employer member) by 130 hours per month (the benchmark for full-time status for a month under IRC §4980H).
  - ▶ **Federal poverty line safe harbor.** Employee premium share does not exceed 9.5% of the Federal poverty line for one person. The calculation could be done using the most recently published federal poverty guidelines as of the first day of the plan year for the plan offered by a large employer that is a single entity or a large employer member.

# Estimates for Affordability Safe Harbors

## Estimates for individual eligibility for Medicaid or tax credits and affordability safe harbor<sup>1</sup>

Scenario	Percent of FPL	Annual income <sup>5</sup>	Hourly wage <sup>5</sup>	Estimated employee monthly premium share for self-only coverage for affordability test safe harbor <sup>6</sup>
<i>In states that expand Medicaid under the ACA:</i>				
Minimum wage worker <sup>2</sup> eligible for Medicaid	98%	\$11,310	\$7.25	Medicaid-eligible employees not eligible for tax credits; employers will not face excise taxes for these employees
Effective upper limit for Medicaid eligibility <sup>3</sup>	138%	\$15,856	\$10.16	\$125
Upper limit for eligibility for tax credits	400%	\$45,960	\$29.46	\$364
<i>In states that do not expand Medicaid under the ACA:</i>				
Minimum wage worker may not be eligible for Medicaid or Exchange credits <sup>4</sup>	98%	\$11,310	\$7.25	Exchange credits not available for individuals with household income below 100% of FPL; employers may not face excise taxes for these employees, but wage analysis insufficient to determine household income
Federal poverty line safe harbor	100%	\$11,490	\$7.37	\$91
Upper limit for eligibility for tax credits	400%	\$45,960	\$29.46	\$364

1. This is based on the 2013 HHS Federal Poverty Guidelines for the 48 contiguous states and the District of Columbia for a single person (\$11,490). All numbers are estimates and have been rounded to the nearest dollar.
2. Federal minimum wage (\$7.25 per hour). Note: As of January 1, 2013, minimum wage rates are higher than the federal minimum wage in the District of Columbia and 19 states (Alaska, Arizona, California, Colorado, Connecticut, Florida, Illinois, Massachusetts, Maine, Michigan, Missouri, Montana, Nevada, New Mexico, Ohio, Oregon, Rhode Island, Vermont and Washington).
3. ACA §2001 sets Medicaid eligibility at 133% of FPL. However, ACA §2002 requires states to apply an "income disregard" of 5% of the FPL in meeting the income test, resulting in an effective income threshold of 138% of FPL for Medicaid eligibility.
4. Exchanges credits are available only for individuals with household income between 100% and 400% of the federal poverty level.
5. This is based on the ACA threshold for classification as a full-time employee (average 30 hours per week) multiplied by 52 weeks.
6. This is 9.5% of current wages divided by 12 months

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# Assembling the pieces for employers – states that expand Medicaid

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- ▶ In states that expand Medicaid, large employers could face potential excise taxes for full-time employees with hourly wages ranging from \$10.16 to \$29.46 if they do not provide affordable coverage to full-time employees within these wage bands.
  - ▶ Using the rate-of-pay safe harbor, the estimated employee monthly premium share for self-only coverage would range from \$125 per month for a full-time employee with hourly wages of \$10.16 to \$364 per month for a full-time employee with hourly wages of \$29.46.

# Assembling the pieces for employers – states that do not expand Medicaid

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- ▶ In states that do not expand Medicaid and use the federal minimum wage, employers could face potential excise taxes for full-time employees with hourly wages ranging from \$7.37 to \$29.46, based on the affordability safe harbor estimates.
  - ▶ Using the rate of pay safe harbor, the estimated employee monthly premium share for self-only coverage would range from \$91 per month for a full-time employee with hourly wages of \$7.37 to \$364 per month for a full-time employee with hourly wages of \$29.46.
  - ▶ Based on 2013 FPL guidelines, an employee who is paid the federal minimum wage (\$7.25 per hour) and works 30 hours per week, 52 weeks a year would have annual income of \$11,310, or 98% of FPL. Such employees may be ineligible for Medicaid. Employees in this situation may not be entitled to premium assistance tax credits if their household income is less than the 100% of FPL eligibility standard set in the statute.

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# Tax for coverage that is unaffordable, does not provide minimum value under IRC §4980H(b)

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- ▶ **Minimum value:** A plan fails to provide minimum value (MV) if “the plan’s share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs.”
  - ▶ Generally understood to be a 60% actuarial value test (percentage of medical expenses -- deductibles, co-insurance, co-payments, etc. -- paid for by the plan for a standard population and set of allowed charges)

# Tax for coverage that is unaffordable, does not provide minimum value under IRC §4980H(b)

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- ▶ Proposed rules from IRS/Treasury state that in determining MV, employers must use the MV calculator made available by HHS and IRS to measure standard plan features unless a safe harbor applies.
- ▶ The MV calculator allows an employer to input in-network cost-sharing features of their health plan for different categories of benefits into an online calculator.
  - ▶ Employers would not be able to use the MV calculator if they have “non-standard” features, such as atypical quantitative or cost-sharing limits on the four core benefit categories: hospital/ER services, physician/mid-level practitioner care, pharmacy benefits and lab/imaging services
  - ▶ The proposed rules provide that the percentage may be adjusted based on an actuarial analysis of plan features that are outside the parameters of the calculator.
- ▶ Under the proposed rules, plans with non-standard features that cannot determine MV using the calculator or a safe harbor may obtain an actuarial certification from a member of the American Academy of Actuaries.
- ▶ For smaller employers, any plan in the small group market that provides the bronze, silver, gold or platinum level of coverage based on an actuarial value test will be considered to satisfy the MV requirement.

# Tax for coverage that is unaffordable, does not provide minimum value under IRC §4980H(b)

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- ▶ Treasury/IRS has proposed the following plan designs as safe harbors for determining MV if the plans cover the four core benefit categories included in the MV Calculator:
  1. A plan with a \$3,500 integrated medical and drug deductible, 80% plan cost sharing, and a \$6,000 maximum out-of-pocket limit for employee cost-sharing
  2. A plan with a \$4,500 integrated medical and drug deductible, 70% plan cost sharing, a \$6,400 maximum out-of-pocket limit, and a \$500 employer contribution to an HSA
  3. A plan with a \$3,500 medical deductible, \$0 drug deductible, 60% plan medical expense cost-sharing, 75% plan drug cost-sharing, a \$6,400 maximum out-of-pocket limit, and drug co-pays of \$10/\$20/\$50 for the first, second and third prescription drug tiers, with 75% coinsurance for specialty drugs

# Treatment of employer contributions to HSAs, HRAs under IRC §4980H(b)

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- ▶ **Minimum value**
  - ▶ Certain health reimbursement arrangement (HRA) or health-savings account (HSA) dollars may be counted toward plan's share of costs for minimum value purposes in specified circumstances
  - ▶ HSA dollars may be counted if:
    - ▶ Employer contributions; and
    - ▶ For current plan year
  - ▶ HRA dollars may be counted if
    - ▶ Newly made available for current plan year;
    - ▶ HRA is integrated with an eligible employer-sponsored plan; and
    - ▶ Amounts may only be used for cost-sharing and may not be used to pay insurance premiums.
- ▶ **Affordability**
  - ▶ HRA dollars may be deducted from employee's share of premium for affordability purposes if HRA amounts either:
    - ▶ May be used only for premiums or
    - ▶ May be used for either premiums or cost-sharing

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# Treatment of employer contributions to wellness programs under IRC §4980H(b)

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- ▶ Only nondiscriminatory tobacco cessation initiatives may be taken into account in determining affordability and minimum value
- ▶ **Transition rule:** Only for 4980H purposes, plans may count wellness incentive discounts for plan years beginning before January 1, 2015 in determining minimum value or affordability if:
  - ▶ Employee was eligible for program
  - ▶ Program was in place as of May 3, 2013

# Transition relief for §IRC 4980H

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- ▶ **Employers with non-calendar year plans:** A large employer who offered a non-calendar year plan prior to December 27, 2012, and meets other coverage criteria will not be liable for tax penalties for months prior to the first day of their plan year beginning in 2014. This transition relief means that a large employer would not have to make mid-year changes to a non-calendar year plan in order to meet the law's coverage requirements.
  - ▶ For example, if an employer maintained a plan with a July 1 through June 30 plan year as of December 27, 2012, that employer would need to ensure that the eligible employees are offered coverage that meets the law's affordability and minimum value standards by June 30, 2014 (the beginning of the 2014 plan year).
- ▶ **Coverage for dependents:** Employers will not face tax penalties relating to the offering of dependent coverage provided that employers take steps during plan years that begin in 2014 toward satisfying the dependent coverage requirements.
- ▶ **Cafeteria plans:** Employers have the option of amending one or more of their cafeteria plans to permit an employee to make a one time mid-year change in election without a qualifying event.
- ▶ **Multi-employer plans:** An employer will not be subject to IRC §4980H tax penalties if
  - ▶ The employer is required to make a contribution to a multiemployer plan with respect to a full-time employee pursuant to a collective bargaining agreement or appropriate related participation agreement
  - ▶ Coverage under the multiemployer plan is offered to the full-time employee (and the employee's dependents)
  - ▶ The coverage offered to the full-time employee meets the law's affordability and minimum value standards

# Additional taxes and fees under the ACA

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- ▶ **PCORI:** Plan years ending after September 30, 2012, per capita fee that funds the Patient-Centered Research Outcome Institute (PCORI)
  - ▶ \$1 per covered life during fiscal year 2013 and \$2 thereafter through 2019 applies to both insured and employer self-insured plans
- ▶ **Transitional reinsurance:** HHS estimates a per capita contribution rate of \$5.25 per month in benefit year 2014 (\$63 per capita for all of 2014). The program will be in place in 2014, 2015 and 2016, and collect \$25 billion over that time frame. The amount will decrease each year when HHS recalculates the contribution rate.
- ▶ **High-cost plans:** Beginning in 2018, 40% excise tax on the value of health plan coverage that exceeds certain dollar thresholds under IRC §4980I

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# COMMUNICATION WITH EMPLOYEES, EXCHANGES AND IRS

# Employer communications with employees, Exchanges and the IRS

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## Step 1

- ▶ Employer under FLSA provides employees with information about coverage and availability of Exchanges

## Step 2

- ▶ Employee provides Exchange with information to determine eligibility for the premium tax credit

## Step 3

- ▶ Exchange verifies information and makes preliminary eligibility determination regarding the premium tax credit

## Step 4

- ▶ Exchange notifies employer that employee may receive a premium tax credit
- ▶ Employer has right to appeal Exchange's determination of employee's eligibility within 90 days

## Step 5

- ▶ Employer files information with IRS and employee
- ▶ Employee files personal return

## Step 6

- ▶ Assessment of employer tax penalties
- ▶ Employer has right to appeal tax liability to IRS

# Employer communications with employees, Exchanges and the IRS

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- ▶ **Fair Labor Standards Act.** The Department of Labor has issued guidance for a new requirement that employers provide a notice to employees of coverage options available through Exchanges. DOL also released model notices for employers who offer coverage (including details about coverage offered and contact information for who should be contacted about health coverage at this job) and a model notice for employers who do not offer coverage (including employer contact information).
- ▶ Employers must provide the notices to current employees by October 1 and to new employees upon hire beginning October 1.
- ▶ **Employer coverage form.** HHS has issued final applications to be submitted to Exchanges by families, single adults whose employers do not offer health coverage and who are seeking premium assistance tax credits or coverage through Medicaid/CHIP, and individuals applying for Exchange coverage without financial assistance.
- ▶ Notably, the application for families includes an appendix focused on “Health Coverage from Jobs” to help Exchanges determine whether the employee has access to employer coverage, determine eligibility for tax credits, and notify an employer if a full-time employee is determined to be eligible for a tax credit.

# Summary of annual employer reporting requirements to Treasury/IRS

Provision	9002 (amends IRC §6051)	1502 (IRC §6055)	1514 (IRC §6056)
Applies to:	Employers who issue at least 250 W2 forms annually	Health insurance issuers, government agencies, employers that sponsor self-insured plans, and other persons that provide minimum essential coverage to an individual	Large employers who are subject to §4980
Due by:	1/31/2013 (first due date, 1/31 each year thereafter)	1/31/2015 (first due date, 1/31 each year thereafter)	1/31/2015 (first due date, 1/31 each year thereafter)
Data elements:	<ul style="list-style-type: none"> <li>The aggregate cost of applicable employer-sponsored coverage, except that this paragraph shall not apply to— <ul style="list-style-type: none"> <li>For employer-sponsored coverage: <ul style="list-style-type: none"> <li>Contributions to Archer MSAs or health savings accounts; or</li> <li>Contributions to a flexible spending arrangement.</li> </ul> </li> </ul> </li> </ul> <p><i>Note: Guidance requires employers to include in reporting:</i></p> <ul style="list-style-type: none"> <li>Major medical</li> <li>Health Flexible Spending Arrangement for the plan year in excess of employee's cafeteria plan salary reduction for all qualified benefits</li> <li>Hospital indemnity or specified illness (insured or self-funded), paid through salary reduction (pre-tax) or by employer</li> <li>Domestic partner coverage included in gross income</li> </ul>	<ul style="list-style-type: none"> <li>Name, address, tax ID number of insured and all others covered under the policy</li> <li>Dates of coverage during the calendar year</li> <li>Whether coverage is a qualified health plan (QHP) offered through an Exchange</li> <li>For QHPs offered through an Exchange, the amount of cost-sharing subsidies or premium assistance tax credits received</li> <li>For employer-sponsored coverage: <ul style="list-style-type: none"> <li>Name, address and employer ID number of the employer maintaining the plan</li> <li>The portion of the premium paid by the employer</li> <li>If the coverage is a QHP in the small group market offered through an Exchange</li> </ul> </li> <li>Statements to individuals: <ul style="list-style-type: none"> <li>Name and address of the person required to submit the return, including phone number of the information contact</li> <li>Information included in return with respect to the individual</li> </ul> </li> <li>Notification of non-enrollment (included in ACA §1502 only): Not later than June 30 of each year, the Secretary of the Treasury, acting through the IRS and in consultation with the Secretary of HHS, shall send a notification to each individual who files an individual income tax return and who is not enrolled in minimum essential coverage. Such notification shall contain information on the services available through the Exchange operating in the State in which such individual resides.</li> </ul>	<ul style="list-style-type: none"> <li>Name, date and employer ID number of the employer</li> <li>Certification as to whether the employer offers full-time employees and their dependents the opportunity to enroll in minimum essential coverage offered under an eligible employer-sponsored plan <ul style="list-style-type: none"> <li>Length of any waiting period</li> <li>Months during the year for which coverage was available</li> <li>Monthly premium for the lowest-cost option under the plan</li> <li>Applicable large employer's share of total allowed cost of benefits under the plan</li> </ul> </li> <li>The number of full-time employees for each month during the calendar year</li> <li>The name, address, and TIN of each full-time employee during the calendar year and the months (if any) during which such employee (and any dependents) were covered under any such health benefits plans, and</li> <li>Such other information as the Secretary may require</li> <li>Statements to individuals: <ul style="list-style-type: none"> <li>Name and address of the person required to submit the return, including phone number of the information contact</li> <li>Information included in return with respect to the individual</li> </ul> </li> </ul>

# Washington Council Ernst & Young

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Anne Phelps, Principal

Heather Meade, Senior manager

Sarah Egge, Senior manager

Daniel Esquibel, Senior manager

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# Appendix



# Links to guidance

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- ▶ Employer requirements:
  - ▶ <http://www.irs.gov/pub/newsroom/reg-138006-12.pdf>
- ▶ Minimum essential coverage
  - ▶ <http://www.irs.gov/PUP/newsroom/REG-148500-12%20FR.pdf>
  - ▶ <http://www.gpo.gov/fdsys/pkg/FR-2013-02-01/pdf/2013-02139.pdf>
- ▶ Definition of full-time employee
  - ▶ <http://www.irs.gov/pub/irs-drop/n-12-58.pdf>
  - ▶ <http://www.irs.ustreas.gov/pub/irs-drop/n-12-17.pdf>
  - ▶ <http://www.irs.ustreas.gov/pub/irs-drop/n-11-36.pdf>
- ▶ Affordability
  - ▶ [http://www.ofr.gov/OFRUpload/OFRData/2013-02136\\_PI.pdf](http://www.ofr.gov/OFRUpload/OFRData/2013-02136_PI.pdf)
  - ▶ <http://www.irs.ustreas.gov/pub/irs-drop/n-11-73.pdf>
- ▶ Minimum value
  - ▶ [http://www.ofr.gov/OFRUpload/OFRData/2013-10463\\_PI.pdf](http://www.ofr.gov/OFRUpload/OFRData/2013-10463_PI.pdf)
  - ▶ [http://www.ofr.gov/OFRUpload/OFRData/2013-04084\\_PI.pdf](http://www.ofr.gov/OFRUpload/OFRData/2013-04084_PI.pdf)
  - ▶ <http://cciio.cms.gov/resources/files/mv-calculator-final-2-20-2013.xlsm> (MV calculator)
  - ▶ <http://www.irs.ustreas.gov/pub/irs-drop/n-12-31.pdf>
- ▶ 90-day waiting period limitation
  - ▶ <http://www.irs.gov/PUP/newsroom/REG-122706-12.pdf>
  - ▶ <http://www.irs.gov/pub/irs-drop/n-12-59.pdf>

# Links to guidance (cont'd.)

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- ▶ Role of Agents, Brokers, and Web-brokers in Health Insurance Marketplaces
  - ▶ <http://cciio.cms.gov/resources/regulations/Files/agent-broker-5-1-2013.pdf>
- ▶ Exchange application
  - ▶ Individual short form: [http://cciio.cms.gov/resources/other/Files/AttachmentB\\_042913.pdf](http://cciio.cms.gov/resources/other/Files/AttachmentB_042913.pdf)
  - ▶ Family: [http://cciio.cms.gov/resources/other/Files/AttachmentC\\_042913.pdf](http://cciio.cms.gov/resources/other/Files/AttachmentC_042913.pdf)
  - ▶ Individual without financial assistance: [http://cciio.cms.gov/resources/other/Files/AttachmentD\\_042913.pdf](http://cciio.cms.gov/resources/other/Files/AttachmentD_042913.pdf)
- ▶ Exchange eligibility, verification and appeals
  - ▶ <http://www.gpo.gov/fdsys/pkg/FR-2013-01-22/pdf/2013-00659.pdf>
- ▶ Fair Labor Standards Act employee communication
  - ▶ <http://www.dol.gov/ebsa/newsroom/tr13-02.html>
  - ▶ Model notice for employers who offer coverage: <http://www.dol.gov/ebsa/pdf/FLSAwithplans.pdf>
  - ▶ Model notice for employers who do not offer coverage: <http://www.dol.gov/ebsa/pdf/FLSAwithoutplans.pdf>
- ▶ W2 Guidance:
  - ▶ <http://www.irs.gov/uac/Form-W-2-Reporting-of-Employer-Sponsored-Health-Coverage>
  - ▶ <http://www.irs.ustreas.gov/pub/irs-drop/n-12-09.pdf>
- ▶ The IRS in April 2012 issued requests for comments on how to facilitate compliance with IRC §§6055 and 6056.
  - ▶ <http://www.irs.ustreas.gov/pub/irs-drop/n-12-32.pdf>
  - ▶ <http://www.irs.ustreas.gov/pub/irs-drop/n-12-33.pdf>