

NOVEMBER 27, 2012

## The Patient Protection And Affordable Care Act: Changes In 2013 And Beyond

By: Cynthia J. Borrelli  
Rania V. Sedhom  
Sara Ward Mazzolla

**The Patient Protection and Affordable Care Act (“ACA”) is intended to effect comprehensive healthcare reform.** Boiled down to its essentials, the ACA’s reforms are two-fold. First, the ACA intended to expand access to quality healthcare to the millions of Americans who are without it. Second, the ACA is expected to make healthcare more affordable. Large-scale healthcare reform was intended to be achieved by expanding access, upgrading the quality of care, protecting patients’ rights through a new, more robust, Patient Bill of Rights (purportedly assuring privacy, quality healthcare, treatment on a non-discriminatory basis without regard to race, religion or financial status, and entitling all patients to respectful and courteous treatment) and, above all, making healthcare more affordable to Americans. Whether these goals will be realized has yet to be established given the long, phased-in implementation process.

The ACA attempts to accelerate access to healthcare to those who are currently unable to obtain it by penalizing certain employers for not offering healthcare and by making available a State Exchange where coverage can be purchased at subsidized rates. *See* Appendix “A” for the status of State action regarding the Exchanges. Neither the State Exchanges nor the Employer Penalty Tax has become operational. The ACA is being implemented in phases, which began in June 2010 and shall continue through January 2019, when the per

capita fees sunset. A complete timeline of those phased-in provisions is set forth at Appendix “B.” The ACA impacts private health insurance in the individual, small employer and large commercial markets, as well as public health insurance programs, such as Medicare and Medicaid.

The purpose of this brief update is to examine the changes expected in 2013 and beyond, both for employers and individuals, and with respect to healthcare delivery.

### PPACA TAXES

- Medicare, hospital, insurance tax (tax rate increase from 1.5% to 2.35%) - 2013
- Medical Device Excise Tax (2.3%)
- Cadillac Plan Excise Tax -2018
- Individual Mandate Tax
- Medicine Cabinet Tax
- Medical Itemized Deduction Hurdle
- HSA Withdrawal Tax Hike
- Indoor Tanning Services Tax
- *See* Appendix “C” for a more detailed review of applicable taxes

### New Definition of Full-time Employee

- 30 hours instead of 35 hours per week - 2014

### New Healthcare Compliance Action Steps

- FSA cap decreased to \$2500 - 2013
- Notice of exchange option - 2013

# INSURANCE & EMPLOYEE BENEFITS ALERT

---

■

**Employers should begin to assess whether they will pay or play now. Will you offer your employees employer-sponsored healthcare benefits or direct them to State Exchanges? What financial impact does that have on your business and how does it affect employee relations?**

■

- Extension of dependent coverage to age 26 - 2014
- Prohibition on pre-existing condition limitations - 2014
- Waiting period 90 day maximum - 2014
- Wellness incentive - 2014
- Automatic enrollment (200+ employees) – not before 2014
- No lifetime or annual dollar amount limit on “essential benefits”
- Non-discrimination rules apply to non-grandfathered plans – 2014

## State Exchange Facts

- 17 jurisdictions – established either through legislation, executive order or declaration
- 13 jurisdictions - pending
- 6 jurisdictions - partnership exchange
- 15 jurisdictions - rejected exchanges
- Decision must be made by December 14, 2012

## State Exchanges

- All individuals eligible in 2014
- Only small employers eligible in 2014
  - All employers with less than 100 employees may participate
- Large employers may be eligible in 2017
- Notice of Exchanges - March 2013
- As of 2013, employers must:
  - Advise employees of the availability of coverage from a State Exchange and describe services provided with the Exchange
  - Provide Exchange access information
  - Advise of eligibility for premium tax credits or cost-sharing reductions through the Exchange

- Advise that an employee electing Exchange coverage may not be entitled to an employer contribution towards cost and, further, that all or a portion of employer contributions to employer-provided coverage may be excludable for federal income tax purposes
- Advise that any employee eligible for public coverage (Medicaid) would be ineligible for Exchange premium subsidies, and further (in states without expanded Medicaid Coverage), employees with incomes less than 100% of poverty level will not be eligible for Exchange subsidies

## Pay Or Play

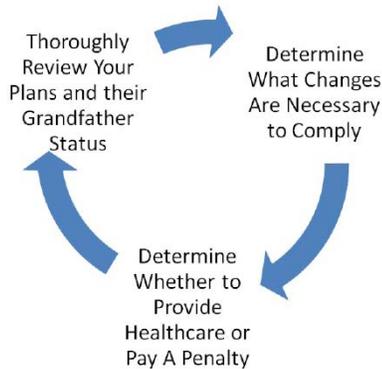
- Coverage or Penalty
- Coverage not affordable or sufficiently valuable
- Minimal essential benefits
- Individual Mandate
- Penalty: Flat Dollar Amount and Percentage of Income Amount – likely to be in place 2015
- There are limited exceptions and exemptions

## Next Steps for Employers

- Review current healthcare plan offerings
- Develop action plan
- Evaluate alternatives

# INSURANCE & EMPLOYEE BENEFITS ALERT

## Employer Healthcare Cycle



Employers should begin assessing whether they will offer healthcare or, instead, direct employees to State Exchanges. Employers who need assistance determining the cost benefit analysis of paying or playing are welcome to contact one of the attorneys who authored this article for assistance. ■

*For more information about any of the topics covered in this issue of the Insurance & Employee Benefits Alert, please contact:*

*Cynthia J. Borrelli, Esq.  
cborrelli@bressler.com  
973.966.9685*

*Rania V. Sedhom, Esq.  
rsedhom@bressler.com  
212.510.3991*

*Sara Ward Mazzolla, Esq.  
smazzolla@bressler.com  
973.937.6891*

The information contained in this Client Alert is for general informational purposes only and is neither presented nor intended to constitute legal advice or a legal opinion as to any particular matter. The reader should not act on the basis of any information contained herein without consulting first with his or her legal or other professional advisor with respect to the advisability of any specific course of action and the applicable law.

The views presented herein reflect the views of the individual author(s). They do not necessarily reflect the views of Bressler, Amery & Ross, P.C. or any of its other attorneys or clients.

17 State Street  
New York, NY 10004  
212.425.9300

325 Columbia Turnpike  
Florham Park, NJ 07932  
973.514.1200

200 E. Las Olas Blvd.  
Ft. Lauderdale, FL 33301  
954.499.7979

[www.bressler.com](http://www.bressler.com)

©2012 Bressler, Amery & Ross, P.C.  
All rights reserved.

ATTORNEY ADVERTISING

# Appendix A: State Exchanges



# Health Insurance Exchange Data (11/19/12)

Will Not Implement State-Based Exchange	Enacted Legislation or Established by Executive Order State-Based Exchange	Planning for Partnership Exchange	Undecided or Legislative Action Not Taken, Pending or Did Not Pass
<b>Alabama</b> <ul style="list-style-type: none"> <li>Will not implement state-based exchange</li> <li>Will not expand Medicaid</li> </ul>	California	<b>Arkansas</b> <ul style="list-style-type: none"> <li>Gov. Beebe acknowledged the possibility of a state-run exchange should the legislature pass exchange authorizing legislation.</li> </ul>	<b>Arizona</b> <ul style="list-style-type: none"> <li>Will use extra time.</li> </ul>
<b>Alaska</b> <ul style="list-style-type: none"> <li>Will not implement state-based exchange</li> </ul>	Colorado	<b>Delaware</b>	<b>Florida</b> <ul style="list-style-type: none"> <li>Though previously stated that Florida will not implement state-based exchange, on Friday 11/16/12 Gov. Rick Scott asked for a meeting w/ Mr. Sebelius to discuss but has not seen evidence that an exchange would lower health costs for Floridians.</li> <li>Open to expanding Medicaid as called for in the law — but the fed. gov. first has to approve his request to require virtually all beneficiaries to get coverage under a private managed care plan. The Centers for Medicare &amp; Medicaid Services has yet to rule on the request submitted in 2011.</li> </ul>
<b>Georgia</b> <ul style="list-style-type: none"> <li>Will not implement state-based exchange.</li> </ul>	Connecticut	<b>Illinois</b>	<b>Idaho</b> <ul style="list-style-type: none"> <li>Gov. Otter to take the extra time to seek more answers from Washington and feedback from constituents</li> </ul>
<b>Kansas</b> <ul style="list-style-type: none"> <li>Kansas Gov. Sam Brownback says he won't support an application from Insurance Commissioner Sandy Praeger to establish a state-federal health insurance marketplace</li> </ul>	District of Columbia	<b>Michigan</b> <ul style="list-style-type: none"> <li>Gov. Snyder acknowledged possibility of a state-run exchange should the legislature pass exchange authorizing legislation.</li> </ul>	<b>Indiana</b> <ul style="list-style-type: none"> <li><b>Undecided</b></li> </ul>

# Health Insurance Exchange Data (11/19/12)

<p><b>Louisiana</b></p> <ul style="list-style-type: none"> <li>• Will return grant \$</li> <li>• Will not implement state-based exchange</li> </ul>	<p>Hawaii</p>	<p><b>North Carolina</b></p> <ul style="list-style-type: none"> <li>• Will join the fed government in adopting a hybrid form of exchange.</li> </ul>	<p><b>Iowa</b></p> <ul style="list-style-type: none"> <li>• Will use extra time.</li> </ul> <p>Ltr. to Mr. Sebelius included 50 questions that unless answered, Iowa might have to adopt fed. exchange.</p>
<p><b>Maine</b></p> <ul style="list-style-type: none"> <li>• Will not use its Level 1 grant \$</li> <li>• Will not implement state-based exchange.</li> </ul>	<p>Kentucky</p> <ul style="list-style-type: none"> <li>• Executive Order</li> </ul>	<p><b>Ohio</b></p>	<p><b>Montana</b></p> <ul style="list-style-type: none"> <li>• Undecided on implementation.</li> </ul>
<p><b>Missouri</b></p> <ul style="list-style-type: none"> <li>• Missouri will be unable to implement a key provision of federal health care law, Gov. Jay Nixon announced Thursday</li> <li>• Though the Gov. supports state-based exchange, Missouri is unable to implement it at this time</li> </ul>	<p>Maryland</p>		<p><b>New Jersey</b></p> <ul style="list-style-type: none"> <li>• Undecided on implementation</li> <li>• Likely Gov. Christie will not implement state-based exchange based on recent comments made.</li> <li>• Gov. to take the extra time to seek more answers from Washington and feedback from constituents.</li> </ul>
<p><b>Nebraska</b></p> <ul style="list-style-type: none"> <li>• Will not implement state-based exchange</li> </ul>	<p>Massachusetts</p>		<p>Oklahoma</p> <ul style="list-style-type: none"> <li>• Undecided on implementation</li> </ul>
<p><b>New Hampshire</b></p> <ul style="list-style-type: none"> <li>• Will not implement state-based exchange</li> </ul>	<p><b>Minnesota</b></p> <ul style="list-style-type: none"> <li>• Declared state-based exchange.</li> </ul>		<p><b>Pennsylvania</b></p> <ul style="list-style-type: none"> <li>• Gov. Corbett to take the extra time to seek more answers from Washington and feedback from constituents.</li> </ul>
<p><b>North Dakota</b></p>	<p><b>Mississippi</b></p> <ul style="list-style-type: none"> <li>• 11/16/12 Mississippi Ins. Dept. Declared state-based exchange despite objections of Gov.</li> </ul>		<p>Tennessee</p> <ul style="list-style-type: none"> <li>• Gov. Haslam to take the extra time to seek more answers from Washington and feedback from constituents.</li> </ul>
<p><b>South Carolina</b></p> <ul style="list-style-type: none"> <li>• Will not accept establishment grant</li> <li>• Will not implement state-based exchange</li> </ul>	<p>Nevada</p>		<p><b>Utah</b></p> <ul style="list-style-type: none"> <li>• While legislation was passed in 2008 and 2009 allowing small employers to participate in state-based program, still undecided on implementing ACA</li> </ul>

# Health Insurance Exchange Data (11/19/12)

<b>South Dakota</b> <ul style="list-style-type: none"> <li>Will not implement state-based exchange</li> </ul>	<b>New Mexico</b> <ul style="list-style-type: none"> <li>Gov. Martinez stated that the NM continues to plan for state-based exchange.</li> </ul>		<b>Virginia</b> <ul style="list-style-type: none"> <li>Undecided on implementation</li> <li>Governor McDonnell made comments on not being ready to expand Medicaid nor adopt state-based exchange but still lacks sufficient information on the fed exchange to make a decision.</li> </ul>
<b>Texas</b> <ul style="list-style-type: none"> <li>Will not implement state-based exchange</li> <li>Will not implement optional parts of the federal health law</li> </ul>	<b>New York</b> <ul style="list-style-type: none"> <li>Executive Order</li> </ul>		<b>West Virginia</b> <ul style="list-style-type: none"> <li>Executive Order</li> <li>Legislation passed in 2011; however, since then Gov. Tomblin indicated reconsidering whether to fully operate a state-based exchange.</li> </ul>
<b>Wisconsin</b> <ul style="list-style-type: none"> <li>Will not implement state-based exchange</li> </ul>	<b>Oregon</b>		
<b>Wyoming</b> <ul style="list-style-type: none"> <li>Will not implement state-based exchange</li> </ul>	<b>Rhode Island</b> <ul style="list-style-type: none"> <li>Executive Order</li> </ul>		
	<b>Vermont</b>		
	<b>Washington</b>		

Planning Grant Only	Planning Grant and Level 1	Planning Grant and Level 1, 2	Territory Establishment Grant	Did Not Apply
Florida	Alabama	Connecticut	American Samoa	Alaska
Georgia	Arizona	District of Columbia	Guam	Fed States of Micronesia

# Health Insurance Exchange Data (11/13/12)

Kansas	Arkansas	Maryland	Puerto Rico	Northern Mariana Islands
Louisiana	California	Nevada	Virgin Islands	Palau
Montana	Colorado	Rhode Island		
New Hampshire	Delaware	Vermont		
North Dakota	Hawaii	Washington		
Ohio	Idaho			
Oklahoma	Illinois			
South Carolina	Indiana			
Texas	Iowa			
Utah	Kentucky			
Virginia	Maine			
Wisconsin	Massachusetts			
Wyoming	Michigan			
	Minnesota			
	Mississippi			
	Missouri			
	Nebraska			
	New Jersey			
	New Mexico			
	New York			
	North Carolina			
	Oregon			
	Pennsylvania			
	South Dakota			
	Tennessee			
	West Virginia			

# Appendix B: Employer Healthcare Reform Timeline



## • 2010

- Grandfathered Plan Determination (plan years on or after September 23, 2010)
- Small Employer tax credit
- No incentives to opt out

## • 2011

- OTC drug restrictions
- Increased penalties for non-medical HSA withdrawals

## • 2012

- Uniform summaries of benefits and coverage (SBCs) – July, 2012
- Report value of coverage on employee W-2s
- \$1 per capita fee applies to years *ending after 9/30/12*
- Refunds for medical loss ratios <85% or 80% for small plans

## • 2013

- FSA contributions capped at \$2500
- Per capita fee increases to \$2
- Medicare Part D subsidy no longer deductible
- Notice of state exchanges and premium assistance availability
- Medicare payroll tax increases to 2.35% for individuals earning at least \$200k and couples earning at least \$250k

## • 2014

- Pay or play penalties begin
- Individual mandate
- Employer reporting to IRS re individual coverage (how IRS determines whether to fine taxpayers)
- *Automatic enrollment >200 EEs – required*

# Appendix B: Employer Healthcare Reform Timeline (Continued)



- **2014 (continued)**

- Insurance exchanges open to individuals and small employers (less than 50 FTEs)
- Wellness incentives up to 30%
- Employers offering exchange plan may allow pre-tax premiums
- Reinsurance fee collection (through 2016)
- Coverage mandates
  - ✦ Out of pocket max - \$5950/\$11900 (adjusted to 2014 limits for grandfathered plans)
  - ✦ Deductible limit \$2,000/\$4,000 for grandfathered plans
  - ✦ Guarantee Issue/Guaranteed renewability
  - ✦ No preexisting condition exclusion
  - ✦ No waiting periods greater than 90 days

- **2016**

- Insurance exchanges must open to employers with less than 100 employees

- **2017**

- States may open insurance exchanges to any size employer

- **2018**

- Excise tax on high-cost plans

- **2019**

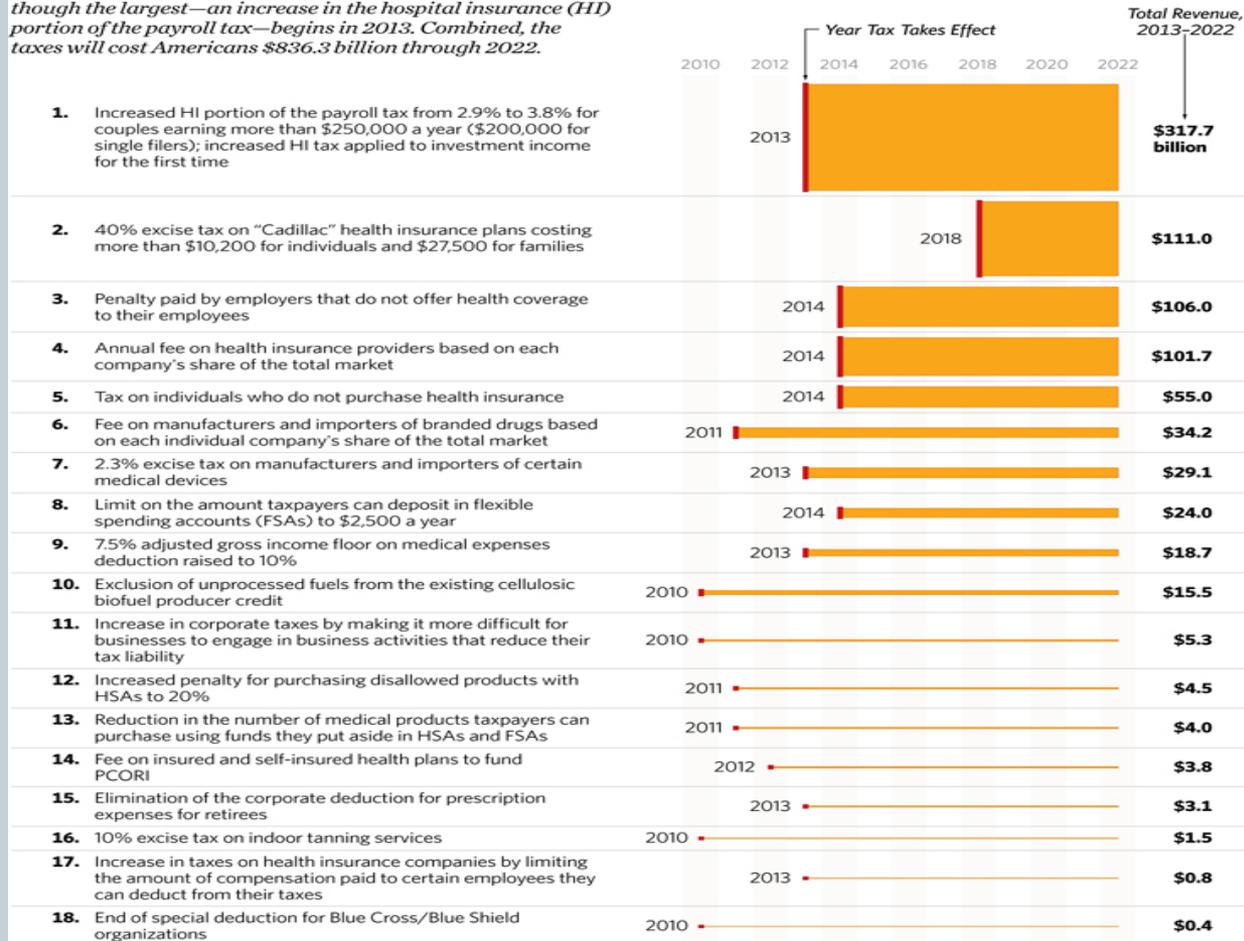
- Per capita fee sunsets

# Appendix C: Tax Timetable



## Timetable of Taxes from Obamacare

Several taxes from Obamacare have already taken effect, though the largest—an increase in the hospital insurance (HI) portion of the payroll tax—begins in 2013. Combined, the taxes will cost Americans \$836.3 billion through 2022.



Sources: Joint Committee on Taxation and Congressional Budget Office.

Health Care heritage.org