

**IMPACT OF THE NEW HEALTH CARE BILLS  
ON  
CLOSELY-HELD BUSINESS**

**Tax Update XXXII  
The State Bar of South Dakota  
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# Table A

## Changes in 2010 from the Health Care Bills

- Insurance Reforms
  - Establish a temporary national high-risk pool to provide health coverage to individuals with pre-existing medical conditions. (Effective 90 days following enactment until January 1, 2014)
  - Provide dependent coverage for adult children up to age 26 for all individual and group policies.
  - Prohibit individual and group health plans from placing lifetime limits on the dollar value of coverage and prior to 2014, plans may only impose annual limits on coverage as determined by the Secretary. Prohibit insurers from rescinding coverage except in cases of fraud and prohibit pre-existing condition exclusions for children.
  - Require qualified health plans to provide at a minimum coverage without cost-sharing for preventive services rated A or B by the U.S. Preventive Services Task Force, recommended immunizations, preventive care for infants, children, and adolescents, and additional preventive care and screenings for women.
  - Provide tax credits to small employers with no more than 25 employees and average annual wages of less than \$50,000 that provide health insurance for employees.
  - Create a temporary reinsurance program for employers providing health insurance coverage to retirees over age 55 who are not eligible for Medicare. (Effective 90 days following enactment until January 1, 2014)
  - Require health plans to report the proportion of premium dollars spent on clinical services, quality, and other costs and provide rebates to consumers for the amount of the premium spent on clinical services and quality that is less than 85% for plans in the large group market and 80% for plans in the individual and small group markets. (Requirement to report medical loss ratio effective plan year 2010; requirement to provide rebates effective January 1, 2011)
  - Establish a process for reviewing increases in health plan premiums and require plans to justify increases. Require states to report on trends in premium increases and recommend whether certain plans should be excluded from the Exchange based on unjustified premium increases.
- Medicare
  - Provide a \$250 rebate to Medicare beneficiaries who reach the Part D coverage gap in 2010 and gradually eliminate the Medicare Part D coverage gap by 2020.
  - Expand Medicare coverage to individuals who have been exposed to environmental health hazards from living in an area subject to an emergency declaration made as of June 17, 2009 and have developed certain health conditions as a result.

Source: The Henry J. Kaiser Family Foundation, *Health Reform Implementation Timeline (#8060)* (last modified June 15, 2010) (available at [www.kff.org/healthreform/8060.cfm](http://www.kff.org/healthreform/8060.cfm)).

## Table A (2010, cont.)

- Improve care coordination for dual eligibles by creating a new office within the Centers for Medicare and Medicaid services, the Federal Coordinated Health Care Office.
- Reduce annual market basket updates for inpatient and outpatient hospital services, long-term care hospitals, inpatient rehabilitation facilities, and psychiatric hospitals and units.
- Ban new physician-owned hospitals in Medicare, requiring hospitals to have a provider agreement in effect by December 31; limit the growth of certain grandfathered physician-owned hospitals.
- **Medicaid**
  - Create a state option to cover childless adults through a Medicaid state plan amendment.
  - Create a state option to provide Medicaid coverage for family planning services up to the highest level of eligibility for pregnant women to certain low-income individuals through a Medicaid state plan amendment.
  - Create a new option for states to provide Children's Health Insurance Program (CHIP) coverage to children of state employees eligible for health benefits if certain conditions are met.
  - Increase the Medicaid drug rebate percentage for brand name drugs to 23.1% (except the rebate for clotting factors and drugs approved exclusively for pediatric use increases to 17.1%); increase the Medicaid rebate for non-innovator, multiple source drugs to 13% of average manufacturer price; and extend the drug rebate to Medicaid managed care plans.
  - Provide funding for and expand the role of the Medicaid and CHIP Payment and Access Commission to include assessments of adult services (including those dually eligible for Medicare and Medicaid).
  - Require the Secretary of HHS to issue regulations to establish a process for public notice and comment for section 1115 waivers in Medicaid and CHIP.
- **Prescription Drugs**
  - Authorize the Food and Drug Administration to approve generic versions of biologic drugs and grant biologics manufacturers 12 years of exclusive use before generics can be developed.

Source: The Henry J. Kaiser Family Foundation, *Health Reform Implementation Timeline (#8060)* (last modified June 15, 2010) (available at [www.kff.org/healthreform/8060.cfm](http://www.kff.org/healthreform/8060.cfm)).

## Table A (2010, cont.)

- Quality Improvement
  - Support comparative effectiveness research by establishing a non-profit Patient-Centered Outcomes Research Institute.
  - Establish a commissioned Regular Corps and a Ready Reserve Corps for service in time of a national emergency.
  - Reauthorize and amend the Indian Health Care Improvement Act.
- Workforce
  - Establish the Workforce Advisory Committee to develop a national workforce strategy.
  - Increase workforce supply and support training of health professionals through scholarships and loans.
- Tax Changes
  - Impose additional requirements on non-profit hospitals. Impose a tax of \$50,000 per year for failure to meet these requirements.
  - Limit the deductibility of executive and employee compensation to \$500,000 per applicable individual for health insurance providers.
  - Impose a tax of 10% on the amount paid for indoor tanning services.
  - Exclude unprocessed fuels from the definition of cellulosic biofuel for purposes of applying the cellulosic biofuel producer credit.
  - Clarify application of the economic substance doctrine and increase penalties for underpayments attributable to a transaction lacking economic substance.

Source: The Henry J. Kaiser Family Foundation, *Health Reform Implementation Timeline (#8060)* (last modified June 15, 2010) (available at [www.kff.org/healthreform/8060.cfm](http://www.kff.org/healthreform/8060.cfm)).

## Table B

# Changes in 2011 from the Health Care Bills

- Long-term Care
  - Establish a national, voluntary insurance program for purchasing community living assistance services and supports (CLASS program).
- Medical Malpractice
  - Award five-year demonstration grants to states to develop, implement, and evaluate alternatives to current tort litigations.
- Prevention/Wellness
  - Eliminate cost-sharing for Medicare covered preventive services that are recommended (rated A or B) by the U.S. Preventive Services Task Force and waive the Medicare deductible for colorectal cancer screening tests. Authorize the Secretary to modify or eliminate Medicare coverage of preventive services based on recommendations of the U.S. Preventive Services Task Force.
  - Provide Medicare beneficiaries access to a comprehensive health risk assessment and creation of a personalized prevention plan and provide incentives to Medicare and Medicaid beneficiaries to complete behavior modification programs.
  - Provide grants for up to five years to small employers that establish wellness programs.
  - Establish the National Prevention, Health Promotion and Public Health Council to develop a national strategy to improve the nation's health.
  - Require chain restaurants and food sold from vending machines to disclose the nutritional content of each item.
- Medicare
  - Require pharmaceutical manufacturers to provide a 50% discount on brand-name prescriptions filled in the Medicare Part D coverage gap beginning in 2011 and begin phasing-in federal subsidies for generic prescriptions filled in the Medicare Part D coverage gap.
  - Provide a 10% Medicare bonus payment to primary care physicians, and to general surgeons practicing in health professional shortage areas. (Effective 2011 through 2015)
  - Restructure payments to Medicare Advantage plans by setting payments to different percentages of Medicare fee-for-service rates.

Source: The Henry J. Kaiser Family Foundation, *Health Reform Implementation Timeline (#8060)* (last modified June 15, 2010) (available at [www.kff.org/healthreform/8060.cfm](http://www.kff.org/healthreform/8060.cfm)).

## Table B (2011, cont.)

- Prohibit Medicare Advantage plans from imposing higher cost-sharing requirements for some Medicare covered benefits than is required under the traditional fee-for-service program.
  - Provide Medicare payments to qualifying hospitals in counties with the lowest quartile Medicare spending for 2011 and 2012.
  - Freeze the income threshold for income-related Medicare Part B premiums for 2011 through 2019 at 2010 levels, and reduce the Medicare Part D premium subsidy for those with incomes above \$85,000/individual and \$170,000/couple.
  - Create an Innovation Center within the Centers for Medicare and Medicaid Services.
- **Medicaid**
    - Prohibit federal payments to states for Medicaid services related to health care acquired conditions.
    - Create a new Medicaid state plan option to permit Medicaid enrollees with at least two chronic conditions, one condition and risk of developing another, or at least one serious and persistent mental health condition to designate a provider as a health home. Provide states taking up the option with 90% FMAP for two years for health home related services including care management, care coordination and health promotion.
    - Create the State Balancing Incentive Program in Medicaid to provide enhanced federal matching payments to increase non-institutionally based longterm care services.
    - Establish the Community First Choice Option in Medicaid to provide community-based attendant support services to certain people with disabilities.
- **Quality Improvement**
    - Develop a national quality improvement strategy that includes priorities to improve the delivery of health care services, patient health outcomes, and population health.
    - Establish the Community-based Collaborative Care Network Program to support consortiums of health care providers to coordinate and integrate health care services, for low-income uninsured and underinsured populations.
    - Establish a new trauma center program to strengthen emergency department and trauma center capacity.
    - Improve access to care by increasing funding by \$11 billion for community health centers and by \$1.5 billion for the National Health Service Corps over five years; establish new programs to support school-based health centers and nurse-managed health clinics.

Source: The Henry J. Kaiser Family Foundation, *Health Reform Implementation Timeline (#8060)* (last modified June 15, 2010) (available at [www.kff.org/healthreform/8060.cfm](http://www.kff.org/healthreform/8060.cfm)).

## Table B (2011, cont.)

- Work Force
  - Establish Teaching Health Centers to provide payments for primary care residency programs in community-based ambulatory patient care centers.
- Tax Changes
  - Exclude the costs for over-the-counter drugs not prescribed by a doctor from being reimbursed through a health reimbursement account or health flexible spending account and from being reimbursed on a tax-free basis through a health savings account or Archer Medical Savings Account.
  - Increase the tax on distributions from a health savings account or an Archer MSA that are not used for qualified medical expenses to 20% of the disbursed amount.
  - Impose new annual fees on the pharmaceutical manufacturing sector.

Source: The Henry J. Kaiser Family Foundation, *Health Reform Implementation Timeline (#8060)* (last modified June 15, 2010) (available at [www.kff.org/healthreform/8060.cfm](http://www.kff.org/healthreform/8060.cfm)).

# Table C

## Changes in 2012 from the Health Care Bills

- Medicare
  - Make Part D cost-sharing for full-benefit dual eligible beneficiaries receiving home and community-based care services equal to the cost-sharing for those who receive institutional care.
  - Allow providers organized as accountable care organizations (ACOs) that voluntarily meet quality thresholds to share in the cost savings they achieve for the Medicare program.
  - Reduce Medicare payments that would otherwise be made to hospitals by specified percentages to account for excess (preventable) hospital readmissions.
  - Reduce annual market basket updates for home health agencies, skilled nursing facilities, hospices, and other Medicare providers.
  - Create the Medicare Independence at Home demonstration program.
  - Establish a hospital value-based purchasing program in Medicare and develop plans to implement value-based purchasing programs for skilled nursing facilities, home health agencies, and ambulatory surgical centers.
  - Provide bonus payments to high-quality Medicare Advantage plans.
  - Reduce rebates for Medicare Advantage plans.
- Medicaid
  - Create new demonstration projects in Medicaid to pay bundled payments for episodes of care that include hospitalizations (effective January 1, 2012 through December 31, 2016); to make global capitated payments to safety net hospital systems (effective fiscal years 2010 through 2012); to allow pediatric medical providers organized as accountable care organizations to share in cost-savings (effective January 1, 2012 through December 31, 2016); and to provide Medicaid payments to institutions of mental disease for adult enrollees who require stabilization of an emergency condition (effective October 1, 2011 through December 31, 2015).
- Quality Improvement
  - Require enhanced collection and reporting of data on race, ethnicity, sex, primary language, disability status, and for underserved rural and frontier populations.

Source: The Henry J. Kaiser Family Foundation, *Health Reform Implementation Timeline (#8060)* (last modified June 15, 2010) (available at [www.kff.org/healthreform/8060.cfm](http://www.kff.org/healthreform/8060.cfm)).

# Table D

## Changes in 2013 from the Health Care Bills

- Insurance Reforms
  - Create the Consumer Operated and Oriented Plan (CO-OP) program to foster the creation of non-profit, member-run health insurance companies in all 50 states and the District of Columbia to offer qualified health plans. (Appropriate \$6 billion to finance the program and award loans and grants to establish CO-OPs by July 1, 2013)
  - Simplify health insurance administration by adopting a single set of operating rules for eligibility verification and claims status (rules adopted July 1, 2011; effective January 1, 2013), electronic funds transfers and health care payment and remittance (rules adopted July 1, 2012; effective January 1, 2014), and health claims or equivalent encounter information, enrollment and disenrollment in a health plan, health plan premium payments, and referral certification and authorization (rules adopted July 1, 2014; effective January 1, 2016). Health plans must document compliance with these standards or face a penalty of no more than \$1 per covered life. (Effective April 1, 2014)
- Prevention/Wellness
  - Provide states that offer Medicaid coverage of and remove cost-sharing for preventive services recommended (rated A or B) by the U.S. Preventive Services Task Force and recommended immunizations with a one percentage point increase in the federal medical assistance percentage (FMAP) for these services.
- Medicare
  - Begin phasing-in federal subsidies for brand-name prescriptions filled in the Medicare Part D coverage gap (to 25% in 2020, in addition to the 50% manufacturer brand-name discount).
  - Establish a national Medicare pilot program to develop and evaluate paying a bundled payment for acute, inpatient hospital services, physician services, outpatient hospital services, and post-acute care services for an episode of care.
- Medicaid
  - Increase Medicaid payments for primary care services provided by primary care doctors for 2013 and 2014 with 100% federal funding.

Source: The Henry J. Kaiser Family Foundation, *Health Reform Implementation Timeline (#8060)* (last modified June 15, 2010) (available at [www.kff.org/healthreform/8060.cfm](http://www.kff.org/healthreform/8060.cfm)).

## Table D (2013, cont.)

- Quality Improvement
  - Require disclosure of financial relationships between health entities, including physicians, hospitals, pharmacists, other providers, and manufacturers and distributors of covered drugs, devices, biologicals, and medical supplies.
- Tax Changes
  - Increase the threshold for the itemized deduction for unreimbursed medical expenses from 7.5% of adjusted gross income to 10% of adjusted gross income for regular tax purposes; waive the increase for individuals age 65 and older for tax years 2013 through 2016.
  - Increase the Medicare Part A (hospital insurance) tax rate on wages by 0.9% (from 1.45% to 2.35%) on earnings over \$200,000 for individual taxpayers and \$250,000 for married couples filing jointly and impose a 3.8% assessment on unearned income for higher-income taxpayers.
  - Limit the amount of contributions to a flexible spending account for medical expenses to \$2,500 per year increased annually by the cost of living adjustment.
  - Impose an excise tax of 2.3% on the sale of any taxable medical device.
  - Eliminate the tax-deduction for employers who receive Medicare Part D retiree drug subsidy payments.

Source: The Henry J. Kaiser Family Foundation, *Health Reform Implementation Timeline (#8060)* (last modified June 15, 2010) (available at [www.kff.org/healthreform/8060.cfm](http://www.kff.org/healthreform/8060.cfm)).

# Table E

## Changes in 2014 from the Health Care Bills

- Individual and Employer Requirements
  - Require U.S. citizens and legal residents to have qualifying health coverage (phase-in tax penalty for those without coverage).
  - Assess employers with 50 or more employees that do not offer coverage and have at least one full-time employee who receives a premium tax credit a fee of \$2,000 per full-time employee, excluding the first 30 employees from the assessment. Employers with 50 or more employees that offer coverage but have at least one full-time employee receiving a premium tax credit, will pay the lesser of \$3,000 for each employee receiving a premium credit or \$2,000 for each full-time employee, excluding the first 30 employees from the assessment.
  - Require employers with more than 200 employees to automatically enroll employees into health insurance plans offered by the employer. Employees may opt out of coverage.
- Insurance Reforms
  - Create state-based American Health Benefit Exchanges and Small Business Health Options Program (SHOP) Exchanges, administered by a governmental agency or non-profit organization, through which individuals and small businesses with up to 100 employees can purchase qualified coverage.
  - Require guarantee issue and renewability and allow rating variation based only on age (limited to 3 to 1 ratio), premium rating area, family composition, and tobacco use (limited to 1.5. to 1 ratio) in the individual and the small group market and the Exchanges.
  - Reduce the out-of-pocket limits for those with incomes up to 400% FPL to the following levels:
    - 100-200% FPL: one-third of the HSA limits (\$1,983/individual and \$3,967/family in 2010);
    - 200-300% FPL: one-half of the HSA limits (\$2,975/individual and \$5,950/family in 2010);
    - 300-400% FPL: two-thirds of the HSA limits (\$3,987/individual and \$7,973/family in 2010).
  - Limit deductibles for health plans in the small group market to \$2,000 for individuals and \$4,000 for families unless contributions are offered that offset deductible amounts above these limits.
  - Limit any waiting periods for coverage to 90 days.
  - Create an essential health benefits package that provides a comprehensive set of services, covers at least 60% of the actuarial value of the covered benefits, limits annual cost-sharing to the current law HSA limits (\$5,950/individual and \$11,900/family in 2010), and is not more extensive than the typical employer plan.
  - Require the Office of Personnel Management to contract with insurers to offer at least two multi-state plans in each Exchange. At least one plan must be offered by a non-profit entity and at least one plan must not provide coverage for abortions beyond those permitted by federal law.

Source: The Henry J. Kaiser Family Foundation, *Health Reform Implementation Timeline (#8060)* (last modified June 15, 2010) (available at [www.kff.org/healthreform/8060.cfm](http://www.kff.org/healthreform/8060.cfm)).

## Table E (2014, cont.)

- Permit states the option to create a Basic Health Plan for uninsured individuals with incomes between 133-200% FPL who would otherwise be eligible to receive premium subsidies in the Exchange.
  - Allow states the option of merging the individual and small group markets.
  - Create a temporary reinsurance program to collect payments from health insurers in the individual and group markets to provide payments to plans in the individual market that cover high-risk individuals.
  - Require qualified health plans to meet new operating standards and reporting requirements.
- Premium Subsidies
    - Provide refundable and advanceable premium credits and cost sharing subsidies to eligible individuals and families with incomes between 133-400% FPL to purchase insurance through the Exchanges.
  - Medicare
    - Reduce the out-of-pocket amount that qualifies an enrollee for catastrophic coverage in Medicare Part D (effective through 2019).
    - Establish an Independent Payment Advisory Board comprised of 15 members to submit legislative proposals containing recommendations to reduce the per capita rate of growth in Medicare spending if spending exceeds a target growth rate.
    - Reduce Medicare Disproportionate Share Hospital (DSH) payments initially by 75% and subsequently increase payments based on the percent of the population uninsured and the amount of uncompensated care provided.
    - Require Medicare Advantage plans to have medical loss ratios no lower than 85%.
  - Medicaid
    - Expand Medicaid to all non-Medicare eligible individuals under age 65 (children, pregnant women, parents, and adults without dependent children) with incomes up to 133% FPL based on modified adjusted gross income (MAGI) and provide enhanced federal matching for new eligibles.
    - Reduce states' Medicaid Disproportionate Share Hospital (DSH) allotments.
    - Increase spending caps for the territories.

Source: The Henry J. Kaiser Family Foundation, *Health Reform Implementation Timeline (#8060)* (last modified June 15, 2010) (available at [www.kff.org/healthreform/8060.cfm](http://www.kff.org/healthreform/8060.cfm)).

## Table E (2014, cont.)


- Prevention/Wellness
  - Permit employers to offer employees rewards of up to 30%, increasing to 50% if appropriate, of the cost of coverage for participating in a wellness program and meeting certain health-related standards. Establish 10-state pilot programs to permit participating states to apply similar rewards for participating in wellness programs in the individual market.
- Tax Changes
  - Impose fees on the health insurance sector.

Source: The Henry J. Kaiser Family Foundation, *Health Reform Implementation Timeline (#8060)* (last modified June 15, 2010) (available at [www.kff.org/healthreform/8060.cfm](http://www.kff.org/healthreform/8060.cfm)).

# Table F

## Changes in 2015 and later from the Health Care Bills

- Insurance Reforms
  - Permit states to form health care choice compacts and allow insurers to sell policies in any state participating in the compact. (Compacts may not take effect before January 1, 2016)
- Medicare
  - Reduce Medicare payments to certain hospitals for hospital-acquired conditions by 1%. (Effective fiscal year 2015)
- Tax Changes
  - Impose an excise tax on insurers of employer-sponsored health plans with aggregate values that exceed \$10,200 for individual coverage and \$27,500 for family coverage. (Effective January 1, 2018)

 = Tax Changes

 = Major Market Reforms

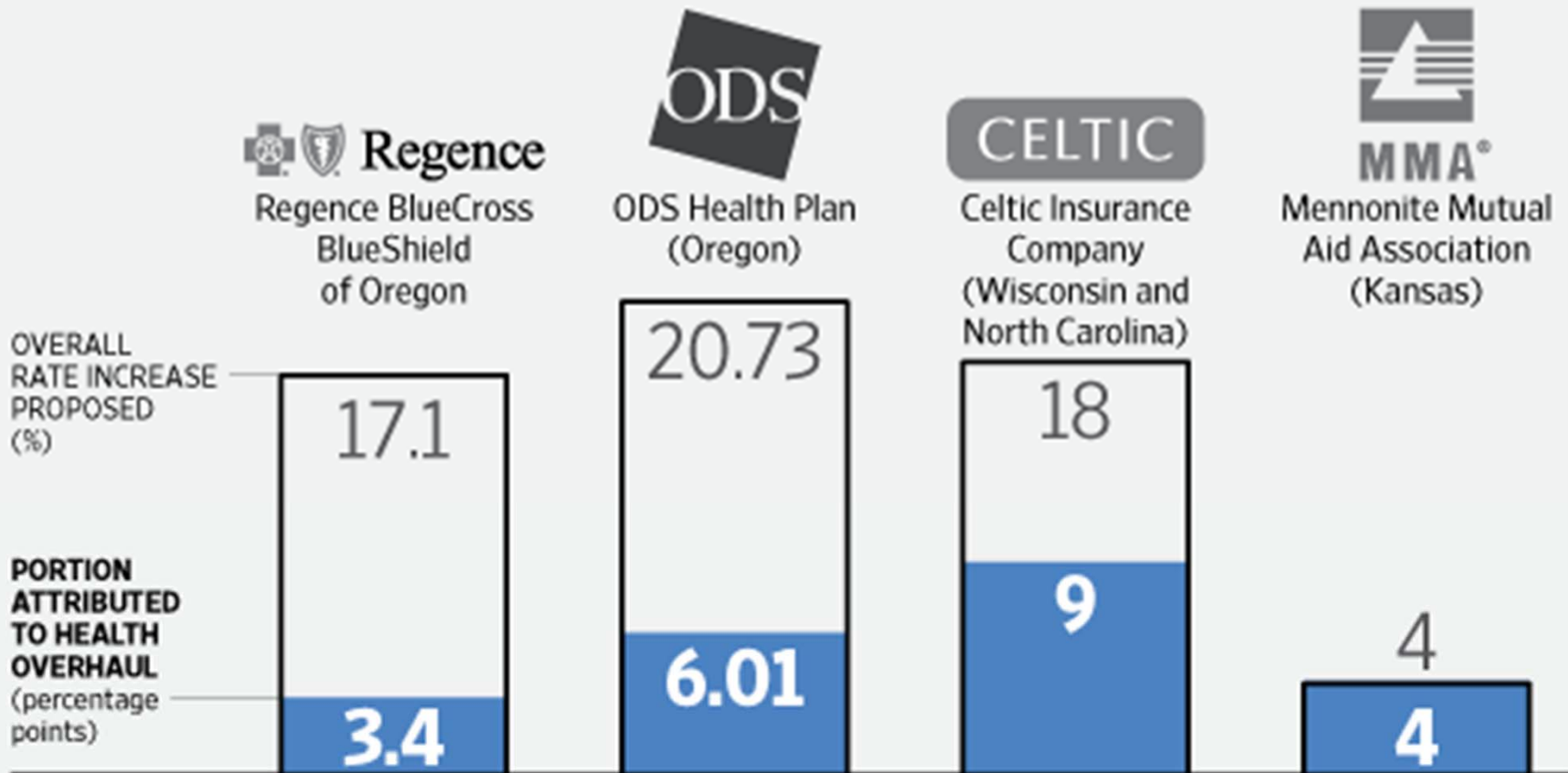
 = Cost Factors

Source: The Henry J. Kaiser Family Foundation, *Health Reform Implementation Timeline (#8060)* (last modified June 15, 2010) (available at [www.kff.org/healthreform/8060.cfm](http://www.kff.org/healthreform/8060.cfm)). The information in Tables A-F was reprinted with permission from the Henry J. Kaiser Family Foundation. The Kaiser Family Foundation is a non-profit private operating foundation, based in Menlo Park, California, dedicated to producing and communicating the best possible analysis and information on health issues.

## Table G Rate Increases

### Rising Rates

Some insurers are blaming the health overhaul for part of their premium increases, while others say the impact is small. A sampling of proposed increases for individual and small-group plans:



Sources: the insurers and regulatory filings

Source: Janet Adamy, *Health Insurers Plan Hikes*, WALL STREET JOURNAL (Sept. 7, 2010).

# Illustration #1

## Passive Activities (Aggregation)

Activity	Material Participation Treas. Reg. § 1.469 – 5T(a)			Significant Participation Treas. Reg. § 1.469 – 5T(c)		Low Participation		No Participation		
	#1	#2	#3	#4	#5	#6	#7	#8	#9	#10
Participation	900	600	500	250	100	90	60	0	0	0
Income/(Loss)	\$1M	\$500K	\$(200K)	\$100K	\$(110K)	\$150K	\$80K	\$(50K)	\$100K	\$(20K)

	Separate Activities	Single Activity
Material participation Income /(Loss)	\$1,300,000	\$1,520,000
Significant Participation Income/(Loss)	\$(10,000)	- 0 -
Low Participation Income/(Loss)	\$230,000	- 0 -
No Participation Income/(Loss)	<u>\$30,000</u>	<u>\$30,000</u>
Total Income	\$1,550,000	\$1,550,000
Times Top Tax Rate	<u>x 40.788%</u> \$632,214	<u>x40.788%</u> \$632,214
Net Investment Income	\$250,000	\$30,000
Times Medicare Tax Rate	<u>X 3.8%</u> \$9,500	<u>X 3.8%</u> \$1,140

# Illustration #2

## Passive Activities (Separate)

Activity	Material Participation Treas. Reg. § 1.469 – 5T(a)			Significant Participation Treas. Reg. § 1.469 – 5T(c)		Low Participation		No Participation		
	#1	#2	#3	#4	#5	#6	#7	#8	#9	#10
Participation	900	600	500	250	100	90	60	0	0	0
Income/(Loss)	\$1M	\$500K	\$(200K)	\$100K	\$(110K)	\$150K	\$80K	\$(250K)	\$100K	\$(20K)

	Separate Activities	Single Activity
Material participation Income /(Loss)	\$1,300,000	\$1,520,000
Significant Participation Income/(Loss)	\$(10,000)	- 0 -
Low Participation Income/(Loss)	\$230,000	- 0 -
No Participation Income/(Loss)	\$(170,000)	- 0 -
<b>Total Income</b>	<b>\$1,350,000</b>	<b>\$1,520,000</b>
Times Top Tax Rate	<u>x 40.788%</u> \$550,638	<u>x40.788%</u> \$619,978
Net Investment Income	\$50,000	- 0 -
Times Medicare Tax Rate	<u>X 3.8%</u> \$1,900	<u>X 3.8%</u> - 0 -

# Slide I

## Summary re: Net Investment Income

1. Interest, Dividends, Annuities, Royalties and Rents unless “derived in the ordinary course of a trade or business”
2. Passive Activity Income
3. “trading in financial instruments or commodities”
4. Net gain “attributable to the disposition of property other than property held in a trade or business” (not covered in item 2 or 3)

## Slide II

# Passthrough Entity Disposition Language

“In the case of a disposition of an interest in a partnership or S Corporation . . . gain from such disposition shall be taken into account . . . *only to the extent of the net gain which would be so taken into account by the transferor if all property of the partnership or S corporation were sold for fair market value immediately before the disposition of such interest.*”

- I.R.C. §1411(c)(4)(A)

“Thus, only net gain or loss attributable to property held by the entity which is not attributable to an active trade or business is taken into account.

-JCT Technical Explanation at 135

# Illustration #3

## Choice of Entity

**Assumptions:** No additional amendments (except 20% top rate for qualified dividends and no special 18% for 5-year property)  
 Owners in top tax bracket, active in business and paid reasonable compensation  
 Entity level earnings: \$1,000,000  
 Not personal service corporation  
 Partnership not exempt from self-employment tax  
 No basis at entity or owner level  
 Calendar year 2013 taxable year  
 No § 1202 stock, but long-term capital gain  
 No state income tax

		<u>C Corporation</u>		<u>S Corporation</u>		<u>Partnership/ Sole Proprietorship</u>
Annual Earnings		\$1,000,000		\$1,000,000		\$1,000,000
Initial Tax	(34%)	<u>( 340,000 )</u>	(40.788%)*	<u>( 407,880 )</u>	(43.95%)**	<u>( 439,500 )</u>
Retained Earnings		660,000		592,120		560,500
Double Tax	(24.988%)***	<u>( 164,921 )</u>		<u>( -0- )</u>		<u>( -0- )</u>
Distributed Earnings		\$ 495,079		\$ 592,120		\$ 560,500
Sales Proceeds		\$10,000,000		\$10,000,000		\$10,000,000
Initial Tax	(34%)	<u>( 3,400,000 )</u>	(21.188%)****	<u>( 2,118,800 )</u>	(21.188%)****	<u>( 2,118,800 )</u>
		6,600,000		7,881,200		7,881,200
Double Tax	(24.988%)***	<u>( 1,649,208 )</u>		<u>( -0- )</u>		<u>( -0- )</u>
		\$4,950,792		\$7,881,200		\$7,881,200

\*  $1.03 \times 39.6\% = 40.788\%$

\*\*  $40.788\% + [(1-1.45\%) \times 3.8\% \times (1-1.45/3.8 \times 40.788\%)] = 40.788\% + 3.162\% = 43.95\%$

\*\*\*  $20\% + (.03 \times 39.6\%) + 3.8\% = 24.988\%$

\*\*\*\*  $20\% + (.03 \times 39.6\%) = 21.188\%$

# Illustration #4

## Marginal Tax on Additional \$100,000 of Income (2013)

- Assumptions:**
- Corporate taxable income above \$10M or personal services
  - Wages/SE Income at least \$250,000/\$125,000/\$200,000
  - Exemptions fully phased out; itemized deductions still reduced
  - No additional amendments (except 20% rate for qualified dividends)
- Individual taxable income (2010 rates): Joint – > 373,650, Separate - > 186,825, Other – 373,650
  - No portfolio, non-TOB income
  - No state income tax

	<u>C Corporation</u>		<u>S Corporation</u>		<u>Partnership / LLC / Sole Proprietorship</u>		
	<u>Dividends</u>	<u>Wages</u>	<u>Passive/ Trading</u>	<u>Typical</u>	<u>Passive/ Trading</u>	<u>Other SE Tax-Exempt</u>	<u>Typical</u>
Income	100,000	100,000	100,000	100,000	100,000	100,000	100,000
Corporate income tax	( 35,000) <sup>a</sup>	( -0- )	( -0- )	( -0- )	( -0- )	( -0- )	( -0- )
Corporate FICA tax	( -0- )	( 1,429) <sup>b</sup>	( -0- )	( -0- )	( -0- )	( -0- )	( -0- )
	65,000	98,571	100,000	100,000	100,000	100,000	100,000
Individual income tax	( 16,242) <sup>c</sup>	( 40,205) <sup>d</sup>	( 40,788) <sup>d</sup>	( 40,788) <sup>d</sup>	( 40,788) <sup>d</sup>	( 40,788) <sup>d</sup>	( 40,205) <sup>e</sup>
Individual FICA/SE tax		( 2,316) <sup>f</sup>	( 3,800) <sup>g</sup>	( -0- )	( 3,800) <sup>g</sup>	( -0- )	( 3,745) <sup>h</sup>
	48,758	56,050	55,412	59,212	55,412	59,212	56,050
Overall Tax Rate	51.24%	43.95%	44.59%	40.79%	44.59%	40.79%	43.95%

- a. 35%
- b.  $1.45\% \div 1.0145 = 1.429\%$
- c.  $20\% + (03 \times 39.6\%) + 3.8\% = 24.988\%$
- d.  $1.03 \times 39.6\% = 40.788\%$
- e.  $40.788\% \times (1 - 1.429\%) = 40.205\%$
- f.  $1.45\% + .9\% = 2.35\%$
- g. 3.8%
- h.  $3.8\% \times (1 - 1.45\%) = 3.745\%$

## Table H

### Small Business Tax Credit as a Percent (Maximum of 35%) of Employer Contribution to Premiums, For-Profit Firms in 2010-2013 and Nonprofit Firms in 2014+

Firm size	Average Wage					
	Up to \$25,000	\$30,000	\$35,000	\$40,000	\$45,000	\$50,000
Up to 10	35%	28%	21%	14%	7%	0%
11	33%	26%	19%	12%	5%	0%
12	30%	23%	16%	9%	2%	0%
13	28%	21%	14%	7%	0%	0%
14	26%	19%	12%	5%	0%	0%
15	23%	16%	9%	2%	0%	0%
16	21%	14%	7%	0%	0%	0%
17	19%	12%	5%	0%	0%	0%
18	16%	9%	2%	0%	0%	0%
19	14%	7%	0%	0%	0%	0%
20	12%	5%	0%	0%	0%	0%
21	9%	2%	0%	0%	0%	0%
22	7%	0%	0%	0%	0%	0%
23	5%	0%	0%	0%	0%	0%
24	2%	0%	0%	0%	0%	0%
25	0%	0%	0%	0%	0%	0%

Source: CONGRESSIONAL RESEARCH SERVICE, SUMMARY OF SMALL BUSINESS HEALTH INSURANCE CREDIT UNDER PPACA (P.L. 111-148) 3 (Apr. 5, 2010).

# Table I

## Small Business Tax Credit as a Percent (Maximum of 50%) of Employer Contribution to Premiums, For-Profit Firms in 2014+

Firm size	Average Wage					
	Up to \$25,000	\$30,000	\$35,000	\$40,000	\$45,000	\$50,000
Up to 10	50%	40%	30%	20%	10%	0%
11	47%	37%	27%	17%	7%	0%
12	43%	33%	23%	13%	3%	0%
13	40%	30%	20%	10%	0%	0%
14	37%	27%	17%	7%	0%	0%
15	33%	23%	13%	3%	0%	0%
16	30%	20%	10%	0%	0%	0%
17	27%	17%	7%	0%	0%	0%
18	23%	13%	3%	0%	0%	0%
19	20%	10%	0%	0%	0%	0%
20	17%	7%	0%	0%	0%	0%
21	13%	3%	0%	0%	0%	0%
22	10%	0%	0%	0%	0%	0%
23	7%	0%	0%	0%	0%	0%
24	3%	0%	0%	0%	0%	0%
25	0%	0%	0%	0%	0%	0%

Source: CONGRESSIONAL RESEARCH SERVICE, SUMMARY OF SMALL BUSINESS HEALTH INSURANCE CREDIT UNDER PPACA (P.L. 111-148) 3 (Apr. 5, 2010).

# Illustration #5

## Full-Time Employees

Minimum essential coverage	99
Other	<u>1</u>
Total	100

## Part-Time Employees

None

One employee certified for premium tax credit or cost-sharing reduction

## Penalty Calculation

Full-time employees	100
Less: Reduction	<u>(30)</u>
	70
	<u>x \$2,000</u>
	\$140,000

“fails to offer its full-time employees (and their dependants) the opportunity to enroll in minimum essential coverage”

-I.R.C. § 4980H(a)(1)

# Illustration #6

## Full-Time Employees

Minimum essential coverage	100
Other	<u>0</u>
Total	100

## Part-Time Employees

None

One employee certified for premium tax credit or cost-sharing reduction

## Penalty Calculation

Full-time employees	100
Less: Reduction	<u>( 30)</u>
	70
	<u>x \$2,000</u>
Cap	\$140,000
Penalty	\$3,000
	<u>x 1</u>
	\$3,000

# Illustration #7

Assume: February in non-leap year

Full-time employees:  $48 \times 160 \text{ hrs./mo.} = 7,680 \text{ hrs.}$

Not “applicable large employer”

Part-time employees:  $52 \times 116 \text{ hrs./mo.} = 6,032 \text{ hrs.}$

Divided by equivalency	$\div \underline{120}$
Full-time equivalency	50.3

Is “applicable large employer”

No penalty because no full-time employees

# Illustration #8

Wages	\$90,000
Sole proprietorship loss	<u>(2,000)</u>
Modified adjusted gross income	\$88,000

Poverty line for family of four: \$88,200

**Table J**  
**2010 Federal Poverty Line**

<b>% Gross Yearly Income</b>							
Family Size	100%	133%	150%	200%	250%	300%	400%
1	\$10,830	\$14,404	\$16,245	\$21,660	\$27,075	\$32,490	\$43,320
2	\$14,570	\$19,378	\$21,855	\$29,140	\$36,425	\$43,710	\$58,280
3	\$18,310	\$24,352	\$27,465	\$36,620	\$45,775	\$54,930	\$73,240
4	\$22,050	\$29,327	\$33,075	\$44,100	\$55,125	\$66,150	\$88,200
5	\$25,790	\$34,301	\$38,685	\$51,580	\$64,475	\$77,370	\$103,160
6	\$29,530	\$39,275	\$44,295	\$59,060	\$73,825	\$88,590	\$118,120
7	\$33,270	\$44,249	\$49,905	\$66,540	\$83,175	\$99,810	\$133,080
8	\$37,010	\$49,223	\$55,515	\$74,020	\$92,525	\$111,030	\$148,040

Source: 74 F.R. 4199-4201 (available at <http://aspe.hhs.gov/poverty/09extension.shtml>).

# Slide III

Notwithstanding any provision of this title (or the amendments made by this title) or Section 6103 of the Internal Revenue Code of 1986, an employer shall not be entitled to any taxpayer return information with respect to an employee for purposes of determining whether the employer is subject to the penalty under Section 4980H of such Code with respect to the employee, except that –

- (i) the employer may be notified as to the name of an employee and whether or not the employee's income is above or below the threshold by which the affordability of an employer's health insurance coverage is measured; and
- (ii) this subparagraph shall not apply to an employee who provides a waiver (at such time and in such manner as the Secretary may prescribe) authorizing an employer to have access to the employee's taxpayer return information.

-PPACA § 1411(f)(2)(B)

# Table K

<b>For a family of 4: Gross Income (% of Poverty Line)</b>	<b>Applicable % from § 36B(b)(3)(A)(i)</b>	<b>Applicable % x Gross Income</b>
\$22,050 (100%)	2%	\$441
\$29,327 (133%)	3%	\$879.81
\$33,075 (150%)	4%	\$1,323
\$44,100 (200%)	6.3%	\$2,778.30
\$55,125 (250%)	8.05%	\$4,437.56
\$66,150 (300%)	9.5%	\$6,284.25
\$88,200 (400%)	9.5%	\$8,379

## Illustration #9

$$\frac{30,000 - 29,327}{X} = \frac{33,075 - 29,327}{4.0\% - 3.0\%}$$

X = the “increase, on a sliding scale in a linear manner, from the initial premium percentage to the final premium percentage specified in such table for such income tier” – I.R.C. § 36B(b)(3)(A)(i)

$$\begin{aligned} \frac{673}{X} &= \frac{3,748}{1\%} \\ 1\% * 673 &= 3,748x \\ 6.73 &= 3,748x \\ X &= \frac{6.73}{3,748} \\ X &= .179532438\% \end{aligned}$$

Applicable percentage for family of 4 with gross income of \$30,000 = 3.179592438%

# Slide IV

## **(3) Other terms and rules relating to premium assistance amounts.—**

For purposes of paragraph (2)—

### **(A) Applicable percentage.—**

(i) In general.—

Except as provided in clause (ii), the applicable percentage for any taxable year shall be the percentage such that the applicable percentage for any taxpayer whose household income is within an income tier specified in the following table shall increase, on a sliding scale in a linear manner, from the initial premium percentage to the final premium percentage specified in such table for such income tier:

<b>In the case of household income (expressed as a percent of poverty line) within the following income tier:</b>	<b>The initial premium percentage is—</b>	<b>The final premium percentage is—</b>
Up to 133%	2.0%	2.0%
133% up to 150%	3.0%	4.0%
150% up to 200%	4.0%	6.3%
200% up to 250%	6.3%	8.05%
250% up to 300%	8.05%	9.5%
300% up to 400%	9.5%	9.5%

## Slide IV (cont.)

### **(ii) Indexing.—**

#### **(I) In general.—**

Subject to subclause (II), in the case of taxable years beginning in any calendar year after 2014, the initial and final applicable percentages under clause (i) (as in effect for the preceding calendar year after application of this clause) shall be adjusted to reflect the excess of the rate of premium growth for the preceding calendar year over the rate of income growth for the preceding calendar year.

#### **(II) Additional adjustment.—**

Except as provided in subclause (III), in the case of any calendar year after 2018, the percentages described in subclause (I) shall, in addition to the adjustment under subclause (I), be adjusted to reflect the excess (if any) of the rate of premium growth estimated under subclause (I) for the preceding calendar year over the rate of growth in the consumer price index for the preceding calendar year.

#### **(III) Failsafe.—**

Subclause (II) shall apply for any calendar year only if the aggregate amount of premium tax credits under this section and cost-sharing reductions under section 1402 of the Patient Protection and Affordable Care Act for the preceding calendar year exceeds an amount equal to 0.504 percent of the gross domestic product for the preceding calendar year.

## Illustration #10

$$\begin{array}{r} \$14,774,000,000,000 \\ \times .504\% \\ \hline \$74,460,960,000 \end{array}$$

Source: St. Louis Federal Reserve, Series: GNP, Gross National Product (Q2 2010 data), *available at* <http://research.stlouisfed.org/fred2/series/GNP>.