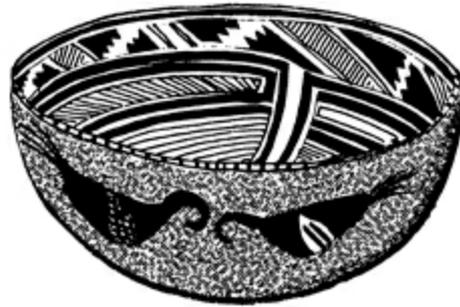




What the PPACA Means for Employers and Employees

Office of the Arizona Attorney General
Continuing Legal Education
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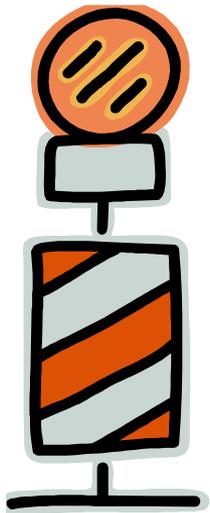
Lovitt & Touché inc.



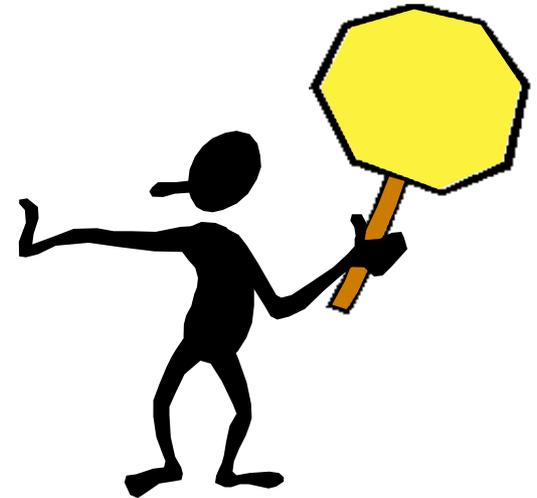
Why is Everyone So Upset About Obamacare?



Warning!
www.healthcare.gov



CAUTION



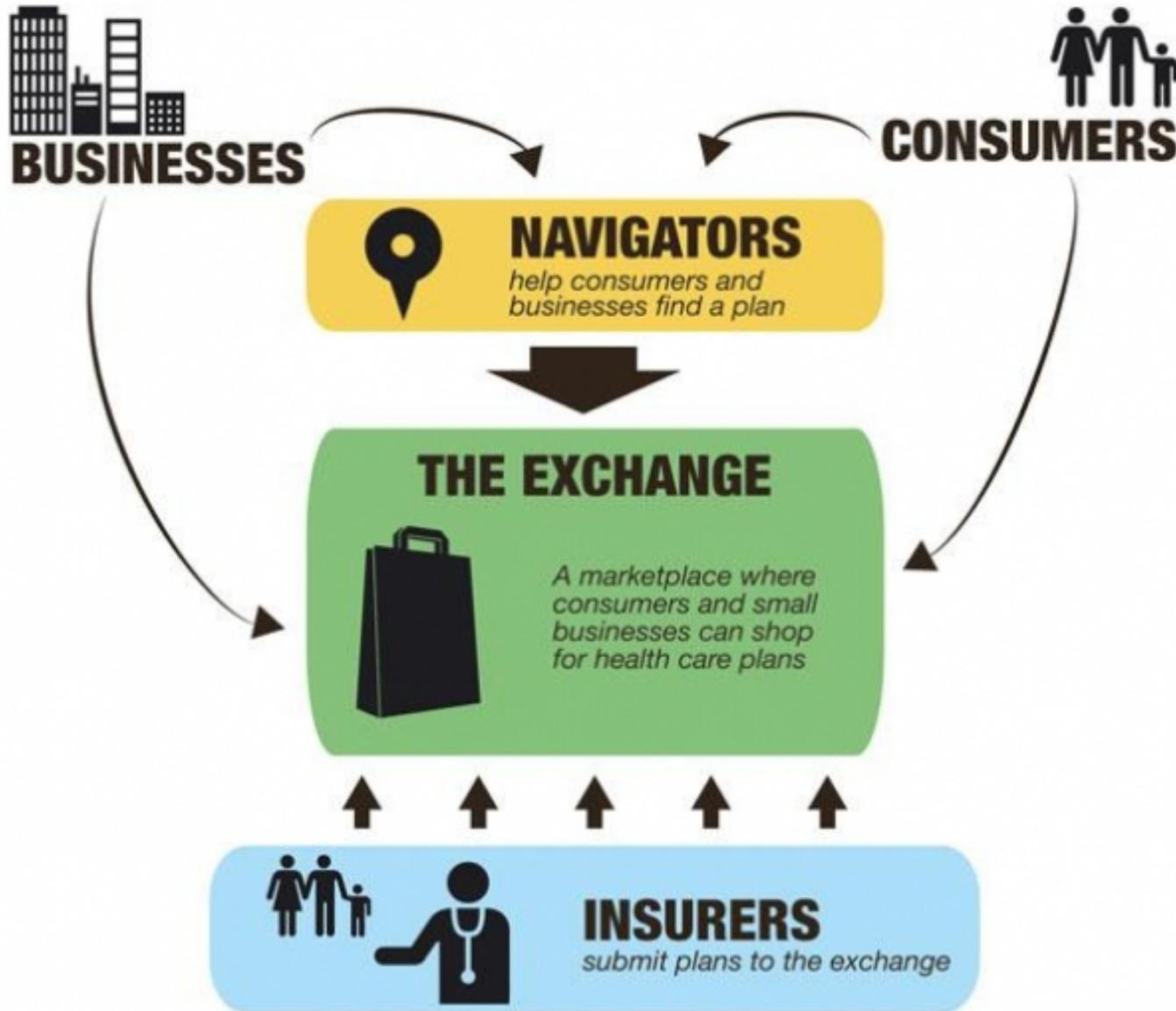
TOPICS OF DISCUSSION

- Basic elements of PPACA
- Insurance and tax issues
- Legal issues for employers
- Legal issues for employees

SOME HISTORY

- 1920s Blue Cross plan at Baylor University
- WWII competitive edge – Kaiser Plan
- 1954 exemption from income tax
- 1960s 70% of US workforce has insurance
- 2014 46% of employers to keep status quo

What is an Exchange?



HEALTHCARE EXCHANGES

- Marketplace to purchase Qualified Health Plans
- PPACA requires State to manage BUT 36 states have federal management AKA www.healthcare.gov
- Provide affordable insurance options (with the help of government subsidies/tax credits)
- Simplify the purchasing process
- Improve competition
- Give small businesses more buying power

QHP Metal Levels



90% of benefit costs covered



80% of benefit costs covered

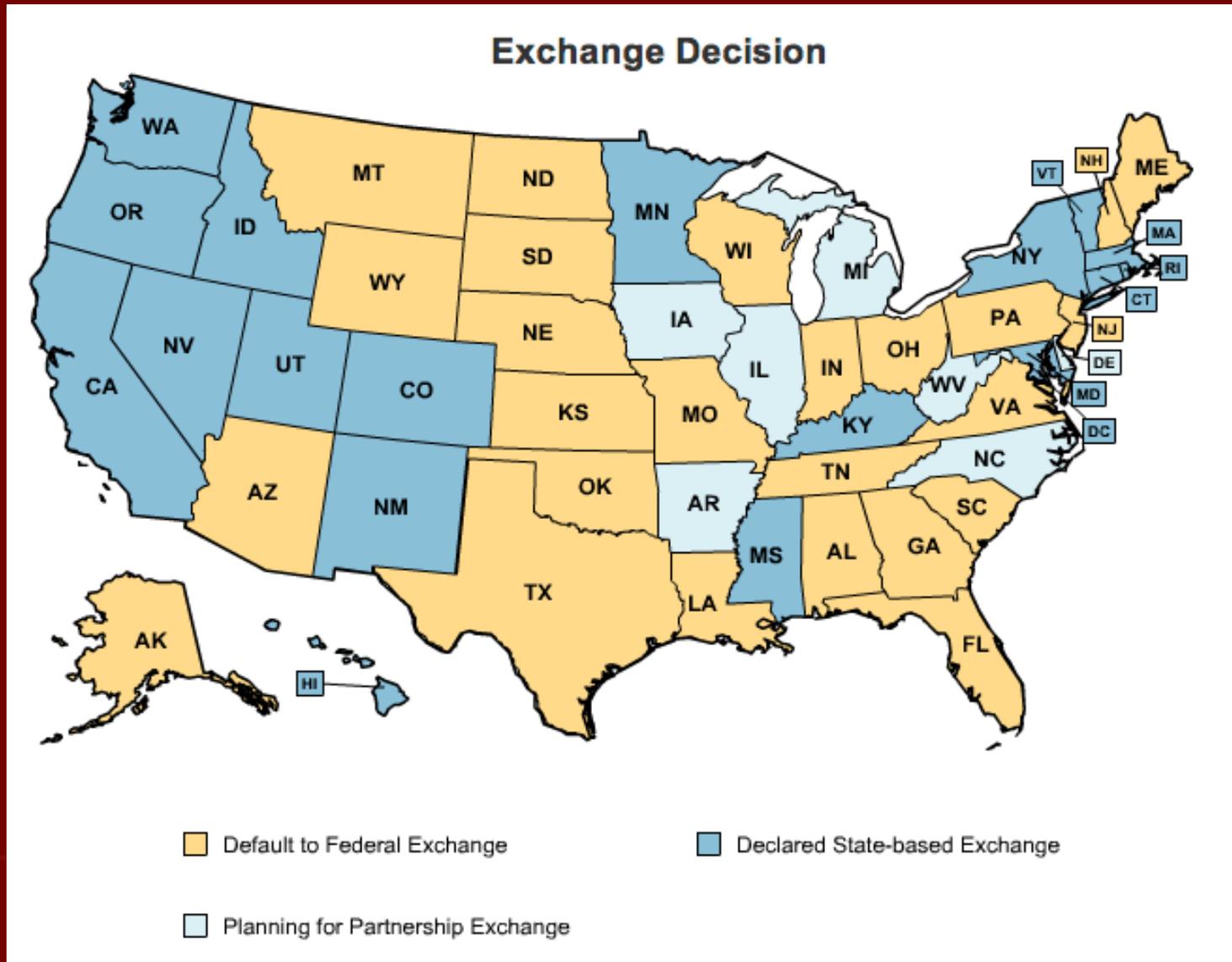


70% of benefit costs covered



60% of benefit costs covered

Arizona has a federal exchange



PPACA CHANGES ALREADY IN EFFECT

Rate Review

Grandfathering

Small business Tax Credits

“Patient Bill of Rights”

Network access

Appeals

No pre-ex for kids

Dependents up to age 26

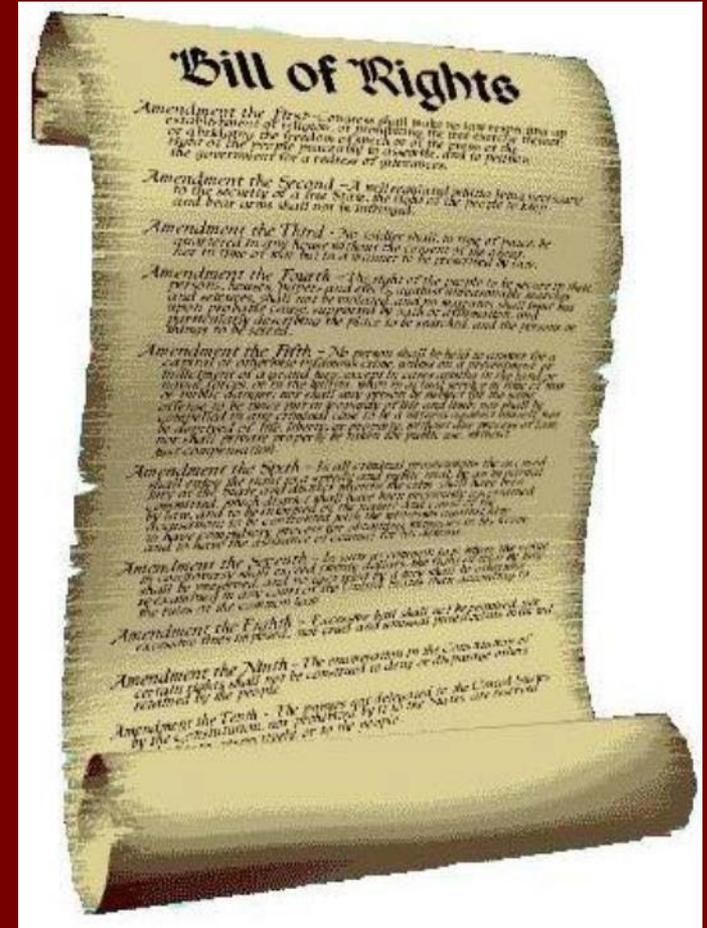
100% coverage for wellness/prevention

No Rescissions

No Annual and lifetime limits

Dependent coverage

Medical Loss Ratio



MORE ALREADY IN EFFECT

- **Nursing Mother's Break**
- **Whistleblower Protection**
- *Automatic enrollment delayed*

2014 – WE'RE HERE

Health FSA – contributions limited to \$2,500

Form W-2 Reporting – 250 and above

Exchange Notice – Model Notice

EMPLOYERS REQUIRED TO SEND OUT NOTICES TO EMPLOYEES

- Due to new hires within 14 days
- Notice provides “baseline of information” on whether employees covered by healthcare insurance – this is what they take to the Exchange

MORE FOR 2014

Guaranteed Issue - Insurers must issue a policy to any applicant, regardless of health condition. No pre-existing condition limitations!!!!

Community Rating – Everyone is charged essentially the same amount for insurance.

Variations for geography, smoking and age (3:1), was 7:1.

DANGEROUS EQUATION

Tight Rating Bands
+ Weak Mandate
+ Guaranteed Issue

Incentive *not* to
Buy Insurance

GRANDFATHERED HEALTH PLANS (3/2010)

Some provisions of ACA still apply

- Lifetime limit elimination
- Rescission prohibition
- Waiting period – 90 day absolute limit
- Dependent coverage to age 26
- Wellness program requirements
- Annual limit elimination (group)
- Pre-existing condition elimination

BEWARE 2018 CADILLAC PLAN TAX



\$10,200 single
\$27,500 family
40% tax

ASK YOUR ACCOUNTANT

- Do NEW W-2 requirements apply to you?
- SHOP Exchange Eligibility
- Small business tax credits
- Increase in Medicare taxes
- Additional Reporting & Recordkeeping for 2016
 - Code 6055 for self-insured; Code 6056 for carrier covered – no IRS form

Employer & Individual Mandates



INDIVIDUAL MANDATE

- Upheld by US Supreme Court in 2012
- Every man, woman and child **MUST** have healthcare coverage - with some exceptions
- Penalty tax begins in 2014
 - Flat amount vs. income formula
 - Rising rates through 2016
 - Bronze Floor

INDIVIDUAL PENALTY-TAX

All individuals must have coverage.

Flat Fee

\$95 in 2014

\$325 in 2015

\$695 in 2016

+ CPI after

If not through work or the government, then through the Individual market.

**** OR ****

Percent of Income

1% in 2014

2% in 2015

2.5% in 2016

WHAT IS A FT EMPLOYEE?

- 30 hours per week
- 130 hours per month
- $\text{PT hours per month} / 120 = \text{FT equivalent (FTE)}$
- *Changes coming to employee handbooks*

PPACA & THE SMALL EMPLOYER

- Mandate Does Not Apply to Employers with < 50 FTEs
- \$6,350 Max out of pocket
- Copays apply to out-of-pocket
- No waiting period in excess of 90 calendar days
- Only HIPAA bona fide wellness programs allowed
- Able to purchase through the SHOP exchange (delayed)

PPACA & THE LARGE EMPLOYER

Variable Hour vs. Seasonal

Variable Hour

- If reasonably expected to work 30+ hours per week.
- 12 months to figure it out
- 6 month minimum “stability” period

Seasonal

- 120 days or less per year
- Don't count in FT employee calculation

Safe Harbor for Variable Hour/Seasonal Employees

Measurement Period

Counting hours of service (3-12 months)



Administrative Period

Time for enrollment/disenrollment (Up to 90 days)



Stability Period

Coverage provided (or not) – length depends on type of employee and whether FT or not

PLAY OR PAY IN 2015-2016

100+ EMPLOYEES IN 2015

50+ EMPLOYEES IN 2016

- What is a “large employer” covered by PPACA?
 - Full-time and FTEs – how to count
 - Affiliated with larger entity
 - Seasonal exception
- Do you offer healthcare insurance?
 - 90 day waiting limit CHECK EMPLOYEE HANDBOOK
 - Offer to 70% in 2015 and 95% in 2016 of full-time employees
 - Minimum Essential Coverage = 60% floor
 - Affordable = 9.5% of AGI

ESSENTIAL AND AFFORDABLE COVERAGE

Minimum Essential Coverage

“You can keep your coverage and doctor.”

What is included

Hobby Lobby and Conestoga cases

Affordable

9.5% of Adjusted Gross Income (AGI)

Safe Harbor

PLAY OR PAY (MORE)

- Penalty only if full-time employee receives tax credit
- \$2,000 times # of full-time employees less 30 [or 80 in 2015] if large employer fails to even offer coverage
- If large employer offers coverage that fails ANY of 90-day limit, offer to 95% of full-time workforce, minimum essential coverage or unaffordable THEN the penalty is the LESSER of \$2000 times # of full-time employees less 30 [or 80 in 2015] OR # of full-time employees receiving tax credit times \$3000.

LARGE EMPLOYERS

Shared Responsibility TAX

(Penalty for not offering health coverage)

- If an employer fails to provide its full-time employees (and their dependents) the opportunity to enroll in “minimum essential coverage,” and
- One or more full-time employees enrolls for coverage in an exchange and qualifies for a premium tax credit or cost-sharing reduction, then
- **Employer penalty** - \$2,000 for each of its full-time employees. (Less 80 in 2015 and 30 in 2016)
- This penalty is not tax-deductible.

EXAMPLE

2016

35 FT EE's

40 PT's working 80 hrs/month

$3,200 \text{ PT hours} / 120 = 26 \text{ FTE's}$

$35 + 26 = 61 \text{ total employees}$

Penalty = $61 - 30 \times \$2,000 = \$62,000/\text{yr}$

LARGE EMPLOYERS

UNAFFORDABLE COVERAGE

- Employer offers minimal essential coverage
- One or more full-time employees enrolls for coverage in an exchange and qualifies for a premium tax credit or cost-sharing reduction because:
 - Employees share exceeds 9.5% of income
- **Employer Penalty** = \$3,000 per employee receiving tax credit at the exchange

WHEN PENALTIES DON'T APPLY

- Employee is in her waiting period (less than 90 days)
- Variable Hour employee is in his measurement period or has worked less than 30 hours per week on average.
- The employer offered coverage but the employee didn't elect it.

CALCULATING SAFE HARBOR LIMITS

Employee Only Rate	\$325.00			
	Employer Contribution			
Hourly Wage	80%	70%	60%	50%
\$7.65	6.54%	9.80%	13.07%	16.34%
\$8.15	6.13%	9.20%	12.27%	15.34%
\$8.65	5.78%	8.67%	11.56%	14.45%
\$9.15	5.46%	8.20%	10.93%	13.66%
\$9.65	5.18%	7.77%	10.36%	12.95%
\$10.15	4.93%	7.39%	9.85%	12.32%
\$10.65	4.69%	7.04%	9.39%	11.74%
\$11.15	4.48%	6.73%	8.97%	11.21%
\$11.65	4.29%	6.44%	8.58%	10.73%
\$12.15	4.12%	6.17%	8.23%	10.29%
\$12.65	3.95%	5.93%	7.91%	9.88%
\$13.15	3.80%	5.70%	7.60%	9.51%
\$13.65	3.66%	5.49%	7.33%	9.16%
\$14.15	3.53%	5.30%	7.07%	8.83%

CALCULATING 2014 SAFE HARBOR LIMITS

Employee Only Rate	\$455.00	** Represents 40% increase in 2014			
	Employer Contribution				
Hourly Wage	80%	70%	60%	50%	
\$7.65	9.15%	13.73%	18.30%	22.88%	
\$8.15	8.59%	12.88%	17.18%	21.47%	
\$8.65	8.09%	12.14%	16.18%	20.23%	
\$9.15	7.65%	11.48%	15.30%	19.13%	
\$9.65	7.25%	10.88%	14.51%	18.13%	
\$10.15	6.90%	10.34%	13.79%	17.24%	
\$10.65	6.57%	9.86%	13.15%	16.43%	
\$11.15	6.28%	9.42%	12.56%	15.70%	
\$11.65	6.01%	9.01%	12.02%	15.02%	
\$12.15	5.76%	8.64%	11.52%	14.40%	
\$12.65	5.53%	8.30%	11.07%	13.83%	
\$13.15	5.32%	7.98%	10.65%	13.31%	
\$13.65	5.13%	7.69%	10.26%	12.82%	
\$14.15	4.95%	7.42%	9.89%	12.37%	
\$14.65	4.78%	7.17%	9.56%	11.95%	
\$15.15	4.62%	6.93%	9.24%	11.55%	
\$15.65	4.47%	6.71%	8.95%	11.18%	
\$16.15	4.33%	6.50%	8.67%	10.84%	
\$16.65	4.20%	6.31%	8.41%	10.51%	
\$17.15	4.08%	6.12%	8.16%	10.20%	
\$17.65	3.97%	5.95%	7.93%	9.92%	
\$18.15	3.86%	5.79%	7.71%	9.64%	

THE EXCHANGES

The only place that tax credits and cost-sharing subsidies will be available.

Caveat: Circuit split on State vs. Federal Exchange

- Tax credits to 400% of Federal Poverty Level (FPL)
- Subsidies to 250% of FPL
- Tax Credits from 250% to 400% of FPL
- Medicaid (AHCCCS) does not entitle an individual to a subsidy or tax credit

2014 – EXCHANGE SUBSIDIES

Sliding scale subsidies based on household income

0-133%	FPL pays no more than 2% of earnings
133-150%	FPL pays no more than 3% of earnings
150-200%	FPL pays no more than 4% of earnings
200-250%	FPL pays no more than 6.3% of earnings
250-300%	FPL pays no more than 8.05% of earnings
300-400%	FPL pays no more than 9.5% of earnings

2013-2014 Federal Poverty Levels:

- Single Person \$11,490
- Family of 4 \$ 23,550

ACTUAL ARIZONA TAX CREDIT EXAMPLE

Single Household, non-smoking

Income	% FPL	% max of income	21 year old	30 year old	40 year old	50 year old	60 year old
\$15,282	133%	3.30%	\$1,380/year, \$115/mo	\$1,632/year, \$136/mo	\$1,896/year, \$158/mo	\$2,832/year, \$236/mo	\$4,548/year, \$379/mo
\$17,235	150%	4.00%	\$1,158/year, \$97/mo	\$1,407/year, \$117/mo	\$1,672/year, \$139/mo	\$2,610/year, \$218/mo	\$4,324/year, \$360/mo
\$20,108	175%	5.15%	\$812/year, \$68/mo	\$1,061/year, \$88/mo	\$1,325/year, \$110/mo	\$2,264/year, \$188/mo	\$3,978/year, \$332/mo
\$22,980	200%	6.30%	\$400/year, \$33/mo	\$649/year, \$54/mo	\$913/year, \$76/mo	\$1,852/year, \$154/mo	\$3,566/year, \$297/mo
\$25,853	225%	7.18%	-	\$242/year, \$20/mo	\$506/year, \$42/mo	\$1,444/year, \$120/mo	\$3,159/year, \$263/mo
\$28,725	250%	8.05%	-	-	-	\$987/year, \$82/mo	\$2,702/year, \$225/mo
\$31,598	275%	8.78%	-	-	-	\$527/year, \$43/mo	\$2,241/year, \$186/mo
\$34,470	300%	9.50%	-	-	-	-	\$1,739/year, \$144/mo
\$37,343	325%	9.50%	-	-	-	-	\$1,466/year, \$122/mo
\$40,215	350%	9.50%	-	-	-	-	\$1,193/year, \$99/mo
\$43,088	375%	9.50%	-	-	-	-	\$921/year, \$76/mo
\$45,960	400%	9.50%	-	-	-	-	\$648/year, \$54/mo

2014...PAY OR PLAY?

Employers must ask:

Is my plan as it is today in compliance?

What is the real net cost of my plan today?

What will it cost me if I cancel my plan and send my employees to the exchanges?

What penalties am I subject to based on my plan today?

How much will it cost me to make the changes necessary to get into compliance?

POSSIBLE STRATEGIES FOR 2014/2015

- Increase PT Employees
 - What about ERISA Section 510?
 - What about PPACA retaliation?
 - What if collective bargaining agreement?
- Provide Minimum (Essential) Level of Benefits
 - Minimum Employer Contributions
 - Las Vegas Culinary example
- Alternate Funding Strategies
- Help Educate Employees on their Options

Supreme Court Decisions



Individual mandate/Medicaid expansion 2012

NFIB v. Sebelius, 132 S.Ct. 2566

Mandated contraceptive coverage 2014

Burwell v. Hobby Lobby, 134 S.Ct. 2571

Upcoming Supreme Court Decision



Tax subsidies in federal exchanges? Circuit Split

Yes: Fourth Circuit *King v. Burwell* (7/22/14)

No: D.C. Circuit *Halbig v. Burwell* (7/22/14)

THE STATUTE

26 USC 36B(c)(2) Coverage month

For purposes of this subsection-

(A) In general

The term “coverage month” means, with respect to an applicable taxpayer, any month if-

(i) as of the first day of such month the taxpayer, the taxpayer’s spouse, or any dependent of the taxpayer is covered by a qualified health plan **established by the State** under section 1311 of the Patient Protection and Affordable Care Act.

PPACA & WORKERS' COMPENSATION

- Basic concepts

- Worker comp is 2% of US healthcare delivery
- PPACA Congress ignored it
- First 90 days of claim crucial
- PPACA will increase healthcare utilization

- Co-morbidity

- Greater utilization = healthier workforce
- Healthier workforce = quicker recovery/return to work
- Reduction in claim frequency

CAVEAT: What about working poor? Part-timers?

PPACA & WORKERS' COMPENSATION CONTINUED...

- Access to healthcare
 - Doctor deficit in primary care
 - Greater utilization = longer wait times/delay in care
 - Fewer ER visits
- Payment for care
 - Reimbursement and fee schedules - leveraging
 - Medical inflation due to utilization
 - Providers' refusal to deal with worker comp system

PPACA & WORKERS' COMPENSATION CONTINUED...

- Shifting

- The end of No Insurance claims?
- RAND study in Massachusetts
- The effects of convenience and control
- Medicare and AHCCCS expansion

CAVEAT: Working poor and part-time workers

- Experience in other nations with universal coverage

Nine Huge CBA Issues

1. Mandatory subject of bargaining? Reopen contract?
2. Cover low wage employees? What about subsidies?
3. Cover part-timers, seasonal, temporary?
4. Construction industry workforce and look back periods
5. Cost sharing on health & dental plans
6. Grandfathered and Cadillac plans – not too soon for 2018
7. Taxation of unionized plans – disadvantage to CBA?
8. Waiting periods
9. Indemnification



Questions and Answers