

## Affordable Health Care Act, June 2012

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The U.S. Supreme Court held that the individual mandate was within Congress's power under the Constitution's Taxing Clause. The Court concluded that the individual mandate is not a legal command to buy insurance, but rather a tax on the choice to forgo buying insurance. It does not apply to people who are not required to file income tax returns. The fact that the Patient Protection Act calls it a penalty instead of a tax was not controlling, the Court said.

Several health-care-related elements of 2010's health-care reform legislation (the Patient Protection Act and the Health-care and Education Reconciliation Act of 2010, P.L. 111-152 (the Reconciliation Act)) are already in effect, and the Court's decision allows them to continue. These include:

- a temporary high-risk pool for individuals with preexisting health conditions,
- a prohibition on lifetime dollar limits for essential benefits in insurance policies, and
- a requirement that dependents be allowed to stay on their parents' health coverage until they turn 27.

In addition, insurers are prohibited from excluding pre-existing conditions for children under age 19 and, starting in 2014, will be prohibited from discriminating against any individual based on a preexisting medical condition. Also in 2014, states will be required to establish health insurance exchanges, and the insurance premiums of individuals in households with income up to 400% of the poverty line will be subsidized.

Other key health-related provisions that go hand in hand with the individual health insurance mandate are:

- **Guaranteed issue:** A requirement that health insurers sell coverage to anyone regardless of health status;
- **Community rating:** A requirement that people in the same age group pay the same premium regardless of health status; and

- **Employer responsibility:** A requirement that every company with a workforce of more than 50 full-time-equivalent employees offer affordable health insurance to its employees.

In addition to making sweeping changes to the US health-care system, the health-care reform legislation added a number of new taxes and made various other revenue-increasing changes to the US tax code to help finance health-care reform. They also made several health-care–related changes to the Code to benefit certain taxpayers, including a credit to offset part of the costs of health insurance for low- to middle-income individuals and families and a credit to offset part of the costs to small businesses of providing health insurance for their employees.

Here is a list of tax-related items from the health-care reform legislation—in addition to the Sec. 5000A individual health-care mandate—that were upheld as a result of the Court's decision:

- **Premium-assistance credit (Sec. 36B):** Refundable tax credits that eligible taxpayers can use to help cover the cost of health insurance premiums for individuals and families who purchase health insurance through a state health benefit exchange. (Effective 2014.)
- **Small business tax credit (Sec. 45R):** Small businesses—defined as businesses with 25 or fewer employees and average annual wages of \$50,000 or less—would be eligible for a credit of up to 50% of non-elective contributions the business makes on behalf of their employees for insurance premiums. (Effective 2010.)
- **Information reporting (Sec. 6051(a)(14)):** Requires employers to disclose on each employee's annual Form W-2 the value of the employee's health insurance coverage sponsored by the employer. (Effective 2012.)
- **Tax-exempt health insurers:** Programs administered by the Department of Health and Human Services that will foster the creation of qualified nonprofit health insurance issuers to offer health insurance.
- **Reporting requirements (Sec. 6055):** Requires insurers (including employers who self-insure) that provide minimum essential coverage to any individual during a calendar year to report certain health insurance coverage information to both the covered individual and to the Internal Revenue Service (IRS). (Effective 2014.)
- **Medical care itemized deduction threshold (Sec. 213):** Threshold for the itemized deduction for unreimbursed medical expenses is increased from 7.5% of adjusted gross income (AGI) to 10% of AGI for regular income tax purposes. (Effective 2013 generally, 2017 for certain taxpayers.)
- **Cafeteria plans (Sec. 125):** A qualified health plan offered through a health insurance exchange is a qualified benefit under a cafeteria plan of a qualified employer. (Effective 2014.)
- **Additional hospital insurance tax on high-income taxpayers (Sec. 3101):** Employee portion of the Medicare (a government insurance program primarily for people 65 or older) hospital insurance tax part of the Federal Insurance Contributions Act is increased by 0.9% on wages that exceed a threshold amount. (Effective 2013.) Medicare Hospital Insurance (HI) tax - Since 1993, the HI tax has not been capped and each dollar of wages and self-employment income has been subject to the HI tax. Beginning in 2013, the HI tax imposed upon employees, but not on employers, on wages in

excess of the applicable threshold amount will be increased by 0.9 percent. The additional HI tax does not apply to corporations, estate or trusts. The threshold amount is \$250,000 for taxpayers filing joint returns and for surviving spouses, \$125,000 for a married taxpayer filing a separate return and \$200,000 for a single taxpayer filing an individual return. These threshold amounts are not indexed for inflation.

- **Employer responsibility (Sec. 4980H):** An "applicable large employer" that does not offer coverage for all its full-time employees, offers minimum essential coverage that is unaffordable, or offers minimum essential coverage that consists of a plan under which the plan's share of the total allowed cost of benefits is less than 60%, is required to pay a penalty if any full-time employee is certified to the employer as having purchased health insurance through a state exchange with respect to which a tax credit or cost-sharing reduction is allowed or paid to the employee. (Effective 2014.)
- **Fees on health plans (Sec. 4375):** Fee is imposed on each specified health insurance policy. (Effective Oct. 2012.)
- **Excise tax on high-cost employer plans (Sec. 4980I):** Excise tax on coverage providers if the aggregate value of employer-sponsored health insurance coverage for an employee (including, for purposes of the provision, any former employee, surviving spouse, and any other primary insured individual) exceeds a threshold amount. (Effective 2018.) For tax years after 2017, a 40% nondeductible excise tax will be levied on insurance companies and plan administrators for any health coverage plan to the extent that the annual premium exceeds \$10,200 for single coverage and \$27,500 for family coverage.
- **Tax on health savings account (HSA) distributions (Sec. 223):** Additional tax on distributions from an HSA or an Archer medical savings account (MSA) that are not used for qualified medical expenses is increased to 20% of the disbursed amount. (Effective 2011.)
- **Tax on indoor tanning services (Sec. 5000B):** 10% tax on amounts paid for indoor tanning services. (Effective 2010.)
- **Health flexible spending arrangements (FSAs) (Sec. 125(i)):** Maximum amount available for reimbursement of incurred medical expenses under a health FSA for a plan year (or other 12-month coverage period) must not exceed \$2,500. (Effective 2013.)
- **SIMPLE cafeteria plans for small business (Sec. 125):** A SIMPLE cafeteria plan is a method for offering employee benefits. An eligible small employer is provided with a safe harbor from the nondiscrimination requirements for cafeteria plans as well as from the nondiscrimination requirements for specified qualified benefits offered under a cafeteria plan. (Effective 2011.)
- **Expansion of adoption credit, adoption-assistance programs:** Maximum adoption credit was increased and, for adoption-assistance programs, the maximum exclusion was increased. (Effective 2010; scheduled to expire at end of 2012.)
- **Charitable hospitals (Secs. 501(r) and 6033(b)(15)):** New requirements applicable to Sec. 501(c)(3) hospitals, regarding conducting a community health needs assessment, adopting a written financial-assistance policy, limitations on charges, and collection activities. (Effective March 2010; community health needs assessment effective March 2012.)

- **Return information disclosure (Sec. 6103):** Allows the IRS, upon written request of the secretary of Health and Human Services, to disclose certain taxpayer return information if the taxpayer's income is relevant in determining the amount of the tax credit or cost-sharing reduction, or eligibility for participation in the specified state health subsidy programs. (Effective March 2010.)
- **Medicare tax on investment income (Sec. 1411):** Imposes a tax on individuals equal to 3.8% of the lesser of the individual's net investment income for the year or the amount the individual's modified AGI exceeds a threshold amount. (Effective 2013.)
- **Annual fee on pharmaceutical manufacturers and importers:** Fee on each covered entity engaged in the business of manufacturing or importing branded prescription drugs for sale to any specified government program or pursuant to coverage under any such program. (Effective 2011.)
- **Excise tax on medical device manufacturers (Sec. 4191):** Tax equal to 2.3% of the sale price is imposed on the sale of any taxable medical device by the manufacturer, producer, or importer of the device. (Effective 2013.)
- **Codification of the economic-substance doctrine (Sec. 7701(o)):** Codifies the judicially created economic-substance doctrine and makes underpayments due to transactions that do not have economic substance subject to the Sec. 6662 accuracy-related penalty. (Effective 2010.)
- **Change to cellulosic biofuel producer credit (Sec. 40):** Excludes from the definition of cellulosic biofuel any fuels that (1) are more than 4% (determined by weight) water and sediment in any combination or (2) have an ash content of more than 1% (determined by weight) (so-called black liquor). (Effective 2010.)
- **Deductions for federal subsidies for retiree prescription plans (Sec. 139A):** Eliminates the rule that the exclusion for subsidy payments is not taken into account for purposes of determining whether a deduction is allowable for retiree prescription drug expenses. (Effective 2013.)
- **Adult dependent insurance coverage:** Changes the definition of "dependent" for purposes of Sec. 105(b) (excluding from income amounts received under a health insurance plan) to include amounts expended for the medical care of any child of the taxpayer who has not yet reached age 27. The same change is made in Sec. 162(l)(1) for purposes of the self-employed health insurance deduction, in Sec. 501(c)(9) for purposes of benefits provided to members of a voluntary employee beneficiary association, and in Sec. 401(h) for benefits for retirees. (Effective 2010.)
- **Restrictions on use of HSA and FSA Funds (Sec. 223):** Amounts paid for over-the-counter medications will no longer be reimbursable from HSAs, Archer MSAs, health FSAs, or health reimbursement arrangements. (Effective 2011.)
- **Time for payment of corporate estimated taxes for 2014:** For corporations with assets of at least \$1 billion (determined as of the end of the preceding tax year), estimated tax payments due in July, August, or September 2014 were increased.