Implementing the ACA: Employer Mandate

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Under the ACA, Large Employers Must Offer Health Insurance to Employees

Passed in 2010, this provision of the Affordable Care Act requires certain employers to offer health insurance to employees.

Employers with 50 or more full-time employees, or their equivalent, are affected by the mandate; the calculation of how many part-time employees equal a full-time employee is based on a formula described in the law.

Full-time employees are defined as those who work an average of at least 30 hours a week; each 120 hours of part-time work per month counts as a full-time employee, as detailed in the legislation.

Enforcement will begin in Jan. 2015; employers who offer no or inadequate insurance will be fined.

Source: Kaiser Family Foundation, April 2013; UC Berkeley Labor Center, April 2013; NFIB Employer Mandate Penalties Calculations; National Journal Research.
Employers Can Select Employer-Sponsored Insurance Plan

Definitions of Employer-Sponsored Insurance Plans

- **Grandfathered Plan**: Plans in existence as of March 23, 2010; exempt from meeting many of the standards laid out in the ACA, but changes or updates to those plans, including elimination of benefits or cost increases, may cause them to lose their “grandfathered” status.

- **New Employer-Sponsored Plan**: A new health insurance plan purchased by the employer after the adoption of the ACA.

- **Small Group Plan**: Health insurance plan unavailable to large employers but available to small employers (a definition that varies depending on state).

- **Self-Insured Plan**: Plan in which the employer assumes the risk for providing healthcare coverage to its employees, paying out of pocket for each claim as those costs are incurred.

Source: UC Berkeley Labor Center, April 2013; National Journal Research.
## Employer Insurance Plans Must Meet Certain Requirements

### Standards for Employer-Sponsored Plans, by Plan Type

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Grandfathered Plan</th>
<th>New Employer-Sponsored Plan</th>
<th>Self-Insured Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plan may not limit the lifetime dollar value of benefits; some plans have been granted waivers to the annual limit requirements through 2013</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Plan must allow children under age 26 to enroll in a parent’s plan</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Plan must provide rebates if percentage of premiums spent on medical services falls below 85% for large group plans and 80% for small group/individual plans</td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Certain preventive services must not require a co-payment or deductible</td>
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<td>✓</td>
<td>✓</td>
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<tr>
<td>Plan cannot require a referral to see an OB-GYN or prior authorization/cost-sharing for out-of-network emergency services</td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Plan must limit out-of-pocket costs to $6,400 for single coverage and $12,800 for family coverage</td>
<td></td>
<td>✓</td>
<td>✓</td>
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<tr>
<td>Pre-screening based on previous health history is prohibited, with rate variation only allowed based on age, tobacco use, family composition and geography</td>
<td></td>
<td>Small Group Plan</td>
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</tr>
<tr>
<td>Deductibles limited to $2,000 for single coverage and $4,000 for family coverage, with exceptions outlined in the legislation</td>
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<td>Small Group Plan</td>
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<tr>
<td>Plan must cover significant, specific areas of care detailed in the law</td>
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<td>Small Group Plan</td>
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* Small group plans are available to small employers (definition varies by state) and generally unavailable to large employers

Source: UC Berkeley Labor Center, April 2013.
Large Employers Not Offering “Affordable” Health Insurance Will Be Subject to Penalties

Flowchart for Determining Whether ACA Penalties Apply to Employers

- Does the firm have 50 or more full-time employees?
  - Yes
    - Does the firm offer coverage to employees?
      - No
        - Did at least one worker get a premium tax credit or cost-sharing subsidy in the exchange?
          - Yes
            - The employer must pay a penalty
          - No
            - Does the insurance pay for at least 60% of covered expenses?
              - No
                - Do any employees have to pay more than 9.5% of their family income for the coverage?
                  - No
                    - The employer does not have to pay a penalty
                  - Yes
                    - The employer must pay a penalty
              - Yes
                - No
                  - The employer does not have to pay a penalty

Analysis
- An employer will not be subject to penalties if company insurance pays at least 60% of covered expenses and employees do not spend more than 9.5% of their income on coverage.
- Penalties increase annually by the growth in insurance premiums and differ based on whether or not an employer offers insurance.

Penalties Depend on Whether Employer Offers Insurance

**Flowchart for Determining What ACA Penalties Apply to Employers**

- **Employer Does Not Offer Coverage**
  - Penalty = $2,000 x (number of full-time employees - 30)

- **Employer Offers “Unaffordable” Coverage**
  - Penalty = $2,000 x (number of full-time employees - 30)
  - Penalty = $3,000 x (number of full-time employees receiving premium subsidies)

**Analysis**
- If an employee pays more than 9.5% of their income for premiums, or if the insurance pays for less than 60% of a typical employee’s expenses, the insurance is “unaffordable” and employers will be fined.
- Employers not offering coverage will be fined if at least one worker receives a premium tax credit or cost-sharing subsidy in the exchange.

Source: Kaiser Health Foundation, 2013; Employer Mandate Penalties: Calculations, NFIB.
In July 2013, Administration Announced Delayed Enforcement of Employer Mandate

### Implementation Timeline for Major ACA Provisions

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<tr>
<td>• Establishment of pilot Medicare bundled payment program</td>
<td>• Guarantee of insurance availability regardless of health status</td>
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<td>• Phase-out of Medicare drug coverage gap</td>
<td>• Prohibition of annual limits on coverage</td>
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<tr>
<td>• Increase in Medicare Part A (hospital insurance) tax rate</td>
<td>• Implementation of health insurance exchanges</td>
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<tr>
<td>• Increase in Medicaid coverage of preventive services</td>
<td>• Provision of health insurance premium and cost sharing subsidies</td>
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<td>• Increase in Medicaid payments for primary care</td>
<td>• Imposition of fees on health insurance sector</td>
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<td>• Elimination of tax-deduction for employer retiree coverage subsidy</td>
<td>• Creation of essential health benefits package</td>
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<td>• Creation of 2.3% excise tax on medical devices</td>
<td>• Requirement of health insurance (individual mandate)</td>
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<td>• Cap on flexible spending accounts</td>
<td>• Requirement of minimum 85% medical loss ratio for Medicare Advantage plans</td>
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<tr>
<td>• Requirement to disclose financial relationships between health entities and manufacturers/ distributors</td>
<td>• Expansion of Medicaid coverage</td>
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<thead>
<tr>
<th>April 2013</th>
<th>July 2014</th>
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<tr>
<td>• Requirement to disclose financial relationships between health entities and manufacturers/ distributors</td>
<td>• Establishment of wellness programs participation incentives</td>
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<tr>
<th>July 2013</th>
<th>Oct. 2014</th>
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<tr>
<td>• Creation of Consumer Operated and Oriented Plan (CO-OP) for member-run health insurance companies</td>
<td>• Reduction in Medicare payments to hospitals for hospital-acquired conditions by 1%</td>
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<td>• Reduction in Medicare and Medicaid Disproportionate Share Hospital (DSH) allotments</td>
<td>• Enforcement of employer insurance requirements</td>
</tr>
</tbody>
</table>

Source: Kaiser Family Foundation; HealthCare.gov; Deloitte.
House Leveraged Employer Mandate Delay to Push for Individual Mandate Delay

Events Following Delay of Employer Mandate Implementation

Delay Announced
Administration announces one-year employer mandate delay to the surprise of both parties, citing time needed to fix reporting requirements and prepare employers for implementation.

House Republicans Form Offense
Republicans suggest the administration is prioritizing businesses by delaying the employer mandate; House Republicans call for delay of the individual mandate.

Critics Respond
Critics say repealing the individual mandate while opening insurance exchanges will ultimately increase premiums for everyone and could doom the ACA, whereas delaying the employer mandate will have little impact on the ACA’s effectiveness.

Bills Pass
House passes bills delaying the employer and individual mandates by one year, but the Senate is unlikely to consider the legislation.

Analysis
- The administration’s delay of the employer mandate did not delay other elements of the law; healthcare insurance exchanges will open as planned on October 1, 2013.
- Republicans seeking to delay the individual mandate have been accused of “dooming” the ACA or at least subjecting Americans to higher premium costs, because the law requires healthy as well as sick and elderly people to buy insurance in order to keep costs down for everyone.

Most Large Employers Unaffected by Employer Mandate Delay

Percentage of Large Employers Already Offering Health Insurance, by State

- Nationwide, 95.7% of large employers already offer health insurance
- Texas has the greatest percentage of large employers not currently offering health insurance and will be most affected by the new requirement; Hawaii has the smallest percentage of large employers not offering health insurance

Source: Kaiser Family Foundation, 2011.
Delaying Individual Mandate Could Set Off ‘Death Spiral’

Projected Consequences of Delaying Individual Mandate

- Sicker People Sign Up for Insurance Exchanges
- Fewer Healthy People Pay In
- Costs Increase Dramatically

Because the ACA removes restrictions on who can buy insurance, people needing treatment the most will also be the most likely to sign up for the exchanges.

Younger, healthier individuals without pre-existing conditions are less likely to sign up for insurance, and without the individual mandate, are not required to do so.

As a result, those purchasing insurance in exchanges are predominantly the sick and elderly; their health claims would increase premium prices, driving away more healthy people seeking affordable insurance and raising prices even further.

Analysis
The individual mandate gives younger, healthier individuals an incentive to sign up for exchanges, because failure to do so will result in a fine.

Higher Percentage of Uninsured Affected by Individual than Employer Mandate

Projected Percentage of Non-Elderly Uninsured With and Without Reform

- Without the employer mandate, the ACA would insure nearly the same percentage of non-elderly people.
- Without the individual mandate, the ACA would insure far fewer non-elderly people.
- In 2010, the CBO estimated that implementing the ACA without the individual mandate would increase the projected number of uninsured in 2019 from 23 million to 39 million, raising premium costs 15-20%