# Patient Protection and

# Affordable Care Act:

# The Impact on Employers

**April 2013**

McQuade Consulting

Venable LLP

# Agenda

- Introductions
- Individual Mandate
- Healthcare Exchange Overview
- Impact on Employers
- Essential Health Benefits
- Fees & Tax Changes
- Pay or Play Penalties & Calculator

# PPACA Goals

- Covering uninsured and underinsured populations
- Improving the transparency and ease of purchasing health insurance
- Increasing health plan/insurer accountability
- Creating national standards
- Standardizing benefit packages
- Reducing medical and insurance costs

*But how successful will PPACA be in achieving these goals?*

# Individual Mandate

- Mandate applies to everyone except those who:
  - Have coverage through an employer sponsored plan
  - Are without coverage for less than 3 months
  - Covered by a qualified individual plan
  - Enrolled in a Medicare or a Medicaid plan
  - Covered by a military plan
  - Dependents of active military covered under TriCare
  - Individuals who are incarcerated
  - Members of an Indian tribe
  - Religious objectors

# Individual Penalty

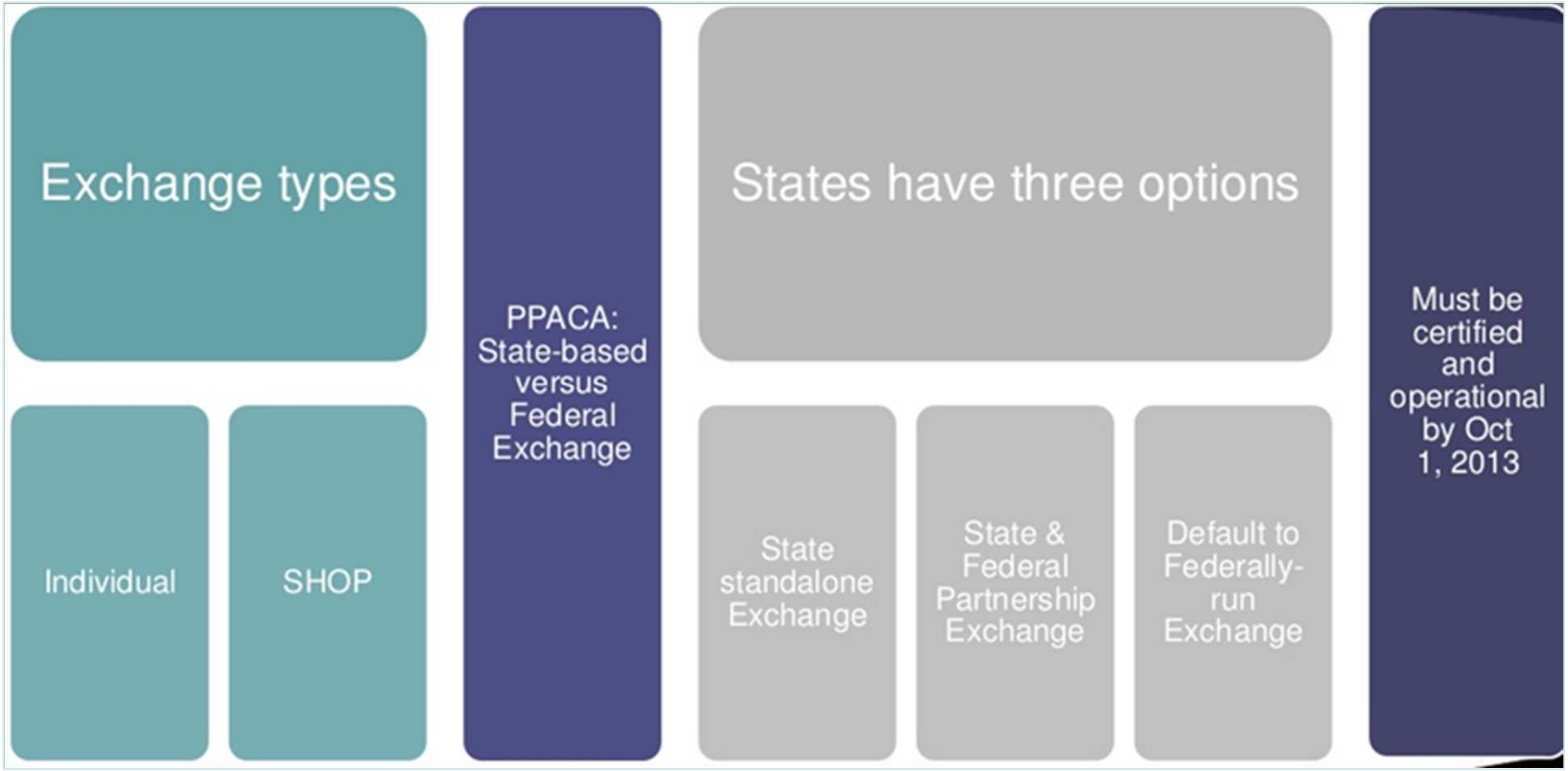
The annual tax (formerly known as a penalty) for not obtaining minimum essential coverage will be the greater of a flat dollar tax amount per individual or a percentage of the individual's taxable income.

The applicable flat dollar amount for 2014 for a tax filer with no dependents will be $95 and the amount for 2015 will increase to $325. This amount will increase over the years, rising to $695 in 2016, and will be further revised in 2017 according to the changes in cost-of-living.

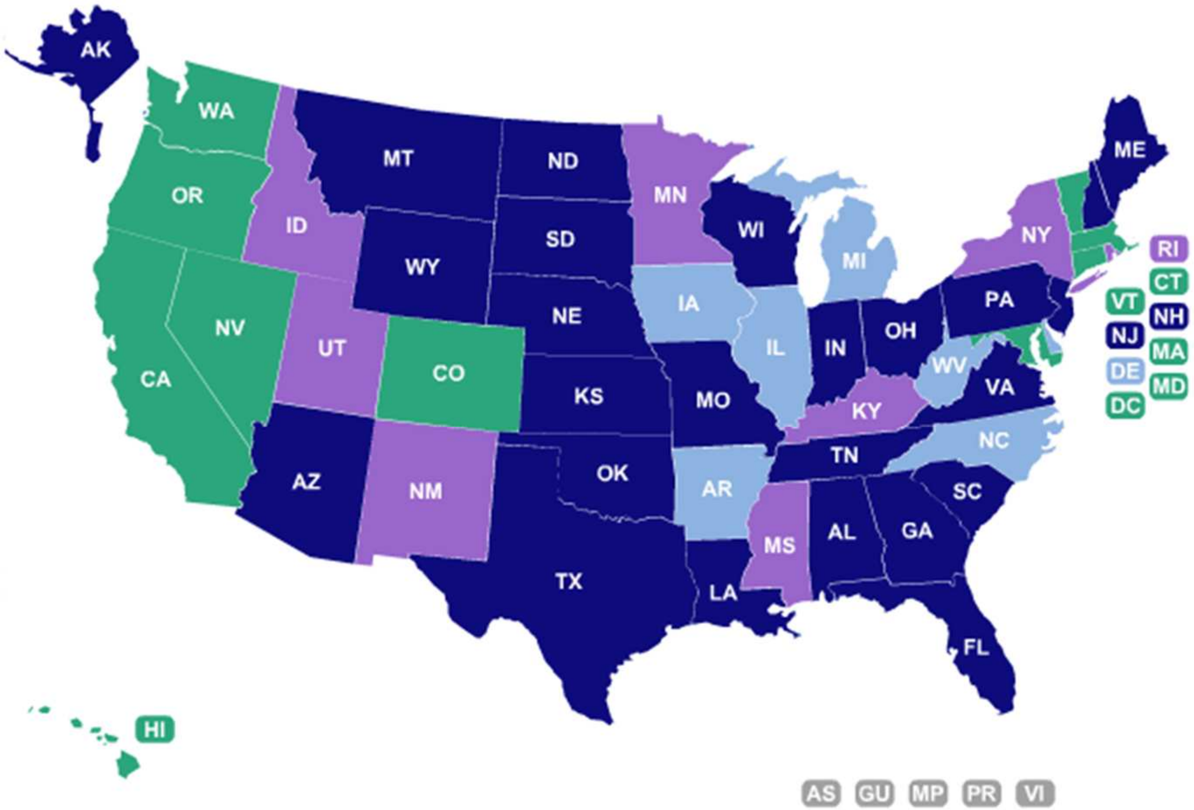
Each adult will pay the rate of an individual, and then you need to add the dependent at the 50% rate. For example, in 2016 a couple with one child under 18 would be assessed a flat dollar penalty of $1,737.50 (two adults x $695 plus one child at $347.50 -- one half of adult penalty).

A family of four (one couple with two children over 18) would only be required to pay the 300% cap in 2016. Three hundred percent of the $695 flat amount for 2016 is equal to $2,085. This amount is less than the flat amount that could be charged if the cap were not in place (two adults + two children over 18 = $695 x 4 = $2,780).

# Healthcare Exchanges



# State Exchange Decisions




- Pursuing State-Run Exchange – Enacted Legislation
- State Plans to Partner with Federal Government
- Pursuing State-Run Exchange – Executive Branch
- State Not Establishing a State-Run Exchange-May Have Federal Exchange as Default*

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*Strategic Solutions for Employee Benefits*

# What Have the States Decided?

- Generally, you can put the States into 3 categories
  - Category #1 – Federal Exchange
    - AK, AL, AZ, FL, GA, IN, KS, LA, ME, MO, MS, MT, NE, ND, NH, NJ, OH, OK, PA, SC, SD, TN, TX, VA, WI, WY (26)
  - Category #2 – Federal-State Partnership
    - AR, DE, IA, IL, MI, NC, WV (7)
  - Category #3 – State-based Exchange
    - CA, CO, CT, DC, HI, ID, MD, MA, MN, NV, NM, MN, NY, OR, RI, UT, VT, WA (18)

# Impact to Employers

- Healthcare Exchange Notices (Fall 2013)
- Essential Health Benefits
- Summary of Benefit and Coverage
- Medical Loss Ratio impact
- W-2 Reporting
- Non-discrimination testing
- Tax Implications and Penalties

# Essential Health Benefit Requirements

PPACA Sec. 1302(b)(1) services covered include:

- (A) Ambulatory patient services.
- (B) Emergency services.
- (C) Hospitalization.
- (D) Maternity and newborn care.
- (E) Mental health and substance use disorder services, including behavioral health treatment.
- (F) Prescription drugs.
- (G) Rehabilitative and Rehabilitative services and devices.
- (H) Laboratory services.
- (I) Preventive and Wellness services and Chronic Disease Management.
- (J) Pediatric services, including oral and vision care

# Fees and Tax Changes

- Additional .9% FICA tax  for high earners
- Additional 3.8% Medicare tax on investment income over $50,000
- Comparative Effectiveness Research Fee (Carriers - $2 in 2012 through 2019)
- Transitional Reinsurance Fee (Carriers - $5.25 in 2014 reducing through 2015 and 2016 and eliminated by 2017)
- Medical Device Excise Tax (Medical device manufacturers – 2.3% of sales price
- Modification of itemized deduction for medical expenses (Tax payers – threshold increased from 7% of AGI to 10% of AGI)
- Employers deduction for retiree RX benefits eliminated (Employers)
- Insurer Fee (Insurers – 2.3% of net premium revenues for fully insured groups)

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# Preparing for the Employer Mandate

## DETERMINING IF THE MANDATE APPLIES

- The employer mandate applies to “applicable large employers”
  - Defined as “an employer that employed an average of at least 50 full-time employees (including full-time equivalent employees) on business days during the preceding calendar year.”
  - Common law test used for identifying employees
  - Controlled group rules apply

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# Preparing for the Employer Mandate

## DECIDING TO PLAY OR PAY – AND AVOIDING DOING BOTH

- Penalty for Failure to Provide Coverage
  - Effective January 1, 2014 for calendar year plans, large employers must offer health coverage to all "full-time" employees (and their children)
  - If greater than 5% of "full-time" employees (or 5, if greater) are not offered coverage and even ONE "full-time" employees obtains a subsidy through an Exchange → the "no coverage" penalty is triggered
  - Penalty applies on an employer-by-employer basis

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# Preparing for the Employer Mandate

## DECIDING TO PLAY OR PAY – AND AVOIDING DOING BOTH

- Penalty for Failure to Provide Coverage
  - Penalty = $2,000/year * TOTAL number of "full-time" employees
    - Assessed on a monthly basis ($166.67/employee/month)
    - First 30 "full-time" employees are disregarded

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# Preparing for the Employer Mandate

## IDENTIFYING FULL-TIME EMPLOYEES

- Safe harbor for determining if an employee = "full-time"
  - If an employee averages 30 or more hours of work per week during a measuring period → he or she should be treated as "full-time" (i.e., offered coverage) during the subsequent stability period

# Preparing for the Employer Mandate

## IDENTIFYING FULL-TIME EMPLOYEES

- Standard measuring period = 3-12 months
- Stability period = 6-12 months period immediately following the standard measuring period (and any applicable administrative period)
- Administrative period = up to 90 day period between a standard measuring period and a corresponding stability period

# Preparing for the Employer Mandate

## IDENTIFYING FULL-TIME EMPLOYEES

- At date of hire
  - Any individual reasonably expected to work at least 30 hours per week is automatically considered a "full-time" employee
  - All other employees = variable hour employees
  - "Seasonal employees" also = variable hour employees (even if they are initially expected to work 30 or more hours per week)

# Preparing for the Employer Mandate

## AFFORDABLE COVERAGE AND MINIMUM VALUE

- Penalty for Providing "Unaffordable" Coverage
  - Applies if:
    - Employee's share of the premium for lowest-cost employee-only coverage would exceed 9.5% of the employee's income, <u>or</u> an "affordable" plan does not provide "minimum value"—pay at least 60% of the allowed costs under the plan, <u>AND</u>
    - The employee receives a subsidy from an Exchange

# Preparing for the Employer Mandate

## AFFORDABLE COVERAGE AND MINIMUM VALUE

- Penalty for Providing "Unaffordable" Coverage
  - Penalty = $3,000/year/employee
  - Only applies to employees who actually receive subsidized coverage through an Exchange
  - Assessed on a monthly basis ($250/employee/month)

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# Preparing for the Employer Mandate

## AFFORDABLE COVERAGE AND MINIMUM VALUE

- Safe harbors for determining if the cost of coverage exceeds 9.5% of employee's income
  - Form W-2 Compensation
  - Rate of Pay
  - Federal Poverty Limit

# The Calculator….

Data Needed to Start the Analysis:

a) Employee census including annual pay, hourly wage, and hours worked per week.
b) Insurance coverage by employee (Individual, Husband/Wife, Parent /Child or Family)
c) Premium and payroll deductions by coverage level for all plans

# Going Forward

- Need to start educating employees now
- Start thinking about coverage differently; what works today may not be in the best interest of the employer or employee tomorrow
- Shift in dynamic from defined benefit to defined contribution
- Safe Harbor plans  - pros and cons

# Questions

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