



The Tax and Business Effects and Impacts of the 2010 Health Care Legislation

The 2010 Health Care Legislation is the combination of the Health Care and Education Reconciliation Act of 2010 and the Patient Protection and Affordable Care Act of 2010. The 2010 Health Care Legislation includes new taxes on employers and individuals.

This outline will present the impacts on employers, individuals, and businesses (and their owners). An implementation timetable is at the end of the outline.

I. Employers.

A. Health coverage for employees is not mandated, but if employers do not offer the minimum prescribed coverage for employees, the employer will be subject to non-deductible penalties.

B. Small employers that provide health care coverage are eligible for a federal income tax general business credit.

1. Must have 25 or fewer full-time employees for the tax year.

2. The average annual wage must be less than \$25,000 per full-time employee.

3. The employer must pay the premiums under a "qualifying arrangement".

- a. Employer must pay a uniform amount of premiums (not less than 50 percent) for all covered employees.

- b. Only the premium amount paid by the employer is eligible for the credit.

4. The maximum credit (35 percent of the premium payments applicable to the credit) is available only to employers with 10 or less full-time employees with an average annual wage of less than \$25,000. The credit is available on a reducing scale basis to employers with 11 to 25 full-time employees.

5. A maximum 25 percent credit is available to tax-exempt employers. As tax-exempt organizations are exempt from tax, the Internal Revenue Service is instructed to provide guidance and instructions as how tax-exempt entities may benefit.

6. Controlled groups or affiliated service groups are treated as single employers for tax credit purposes.

7. Seasonal workers are disregarded in calculating the number of full-time employees for purposes of the credit.

8. The employer's deduction for premium payments is reduced by the amount of the credit.



C. Cafeteria plan rules are relaxed by means of nondiscrimination safe harbors for small employers to encourage use of cafeteria plans to offer tax-free benefits to employees.

D. Small Business Health Options Programs (SHOP) are to be created by the states to allow small businesses to pool together in health care insurance plans to spread the financial risks, and lower premiums, amongst the participating small businesses.

E. Rules for large employers.

1. Large employers are those with 50 or more full-time employees.

2. Large employers not offering minimum essential coverage should be subject to and liable for penalties.

3. The penalty is applied on a per full-time employee basis starting with the 31st employee. (Penalties are not applied to the first 30 full-time employees.)

4. The penalty is applicable on a month-by-month basis for any month in which less than minimum essential coverage is offered.

5. Employees of large employers who do not offer minimum essential coverage may be eligible for individual premium tax credits if the employee obtains individual coverage.

6. Employers offering minimum essential coverage will be required to file information returns disclosing the employee, the coverage, and the amount of premium.

F. Reduced contribution limits and allowable expenditures of Flexible Spending Accounts.

1. Contribution limit reduced to \$2,500.

2. Over the counter purchases no longer acceptable expenditures.

G. Nonrefundable excise tax on group insurers if annual premium payments exceed prescribed individual and family amounts, as adjusted for inflation.

H. Group coverage must include all eligible employees. Only after inclusion may employees opt out of group coverage.

I. Employers who offer acceptable coverage and who pay any portion of the coverage costs are required to provide free choice vouchers to qualified employees. Qualified employees are those not participating in the employer provided coverage, whose household income does not exceed prescribed threshold amounts, and whose required contribution to the employer provided coverage would fall within a specified range of the employees' household income.

II. Individuals.

A. Individuals not covered by Medicaid, Medicare, or Veterans Administration health care must have health care coverage or be subject to penalties.



B. Medicaid, Medicare, and Veterans Administration health care coverage will qualify as “minimum essential coverage”. Current coverage retained by individuals will be “grandfathered” as “minimum essential coverage”.

C. Individuals with religious or moral concerns adverse to the maintenance of health care coverage will be exempt from the coverage requirement.

D. The penalty assessed individuals is the greater of a specified amount or a percentage of the individual’s modified adjusted gross income. The minimum specified amount is adjusted for inflation. The penalty assessed against the taxpayer and the taxpayer’s dependents can not exceed three times the applicable maximum for the taxpayer.

E. Individuals with income below the threshold for filing income tax returns are exempt from the “minimum essential coverage” penalty.

F. Premium assistance tax credits and reduced cost sharing available to qualified individuals.

1. Not available to employees whose employers offer coverage, unless the cost to the employee exceeds percentage of income thresholds.

2. The tax credits are refundable and advanceable to be used by the taxpayer to pay a portion of the premium costs.

3. The tax credits are determined per a schedule taking both the employee’s modified adjusted gross income and relationship of the modified adjusted gross income to the federal poverty level into account.

4. Premium subsidies (to reduce the premium amounts paid by individuals) are available to individuals based upon the individuals’ modified adjusted gross incomes compared to the federal poverty levels.

G. Additional Medicare taxes imposed on individuals.

1. Individuals will be taxed an additional 0.9% on all earned income in excess of \$200,000 for unmarried individuals and \$250,000 for married couples and families.

2. The investment income of unmarried individuals with modified adjusted gross income in excess of \$200,000, of married couples and families with modified adjusted gross income in excess of \$250,000, and of trusts and estates will be subject to a 3.8% Medicare tax.

H. The threshold for itemized medical expense deductions is raised from 7.5% of modified adjusted gross income to 10% of modified adjusted gross income. Taxpayers age 65 and over will be temporarily exempt from this provision.

III. Business provisions.

A. Various annual nondeductible fees will be charged to medical device manufacturers, health insurance providers, pharmaceutical manufacturers, and others.

B. Excise taxes will be imposed on medical device sales.



C. The Internal Revenue Service will share information with Health and Human Services respecting Medicare fraud.

D. Payments to health insurance executives in excess of \$500,000 per year will not be deductible.

E. A 10% tax will be imposed on indoor tanning services.

F. Corporations with assets greater than \$1 billion will pay larger estimated tax payments.

G. The Form 1099 reporting requirements are expanded to include payments to corporations.

H. Tax credits for investments in new health therapies.

IV. Health care insurance provisions.

A. Dependent coverage extended to age 26.

B. Elimination of lifetime dollar limits on coverage.

C. Establish national high-risk pool to provide health coverage to individuals with pre-existing medical conditions.

D. Expand range of individuals eligible for Medicaid.

E. Establish temporary reinsurance program for employers providing health insurance coverage to retirees over age 55 and not eligible for Medicare.

F. Freeze income threshold for income-related Medicare Part B premiums.

G. Out-of-pocket expenditures reduced for lower income insureds.

H. Coverage waiting periods limited to 90 days.

V. Effective timetable.

A. 2010.

1. Insurers to provide dependent coverage up to age 26.

2. Insurers prohibited from lifetime dollar limits on coverage.

3. Small employers eligible for tax credits.

4. Establishment of a temporary reinsurance program for employers providing health insurance coverage to retirees over age 55 and not eligible for Medicare.



5. Establishment of a national high-risk pool to provide health coverage to individuals with pre-existing medical conditions.

6. \$250 Medicare rebate to recipients reaching the Part D coverage gap.

7. Establishment of Medicaid State Plan Amendments to provide Medicaid coverage to childless adults.

8. 10% tax on indoor tanning services.

9. Limit deductibility of insurer executive compensation to \$500,000 per person.

B. 2011.

1. Exclude over-the-counter purchases from health savings accounts as allowable expenditures, excepting with a physician's prescription.

2. Increase the tax on non-qualifying health savings account distributions from 10% to 20%.

3. Impose annual fees on pharmaceutical manufacturers.

4. Establish 50% discounts on brand-name prescriptions filled under the Medicare Part D coverage gap.

5. 10% Medicare bonus payments to primary care physicians practicing in health professional shortage areas.

6. Freeze income threshold for income-related Medicare Part B premiums.

7. Prohibit federal payments to states for Medicaid services related to health care acquired conditions.

C. 2012.

1. Reduce Medicare payments to hospitals for excess (preventable) hospital readmissions.

D. 2013.

1. Implement 3.8% Medicare tax on unearned income for higher-income taxpayers.

2. Implement further 0.9% Medicare tax on higher-income taxpayers.

3. Increase threshold for itemized medical deductions from 7.5% to 10% of modified adjusted gross income.

4. Limit contributions to health savings accounts to \$2,500 per year.

5. Impose 2.3% excise tax on the sale of taxable medical devices.



6. Start phase-in of federal subsidies for brand-name prescriptions filled under the Medicare Part D coverage gap.

E. 2014.

1. Require individuals to have health care coverage, or face penalties.
2. Assess penalties against large employers who do not offer full-time employees “minimum essential coverage”.
3. Provide tax credits and premium subsidies to eligible individuals, married couples, and families
4. Health care policies to reduce out-of-pocket limits for lower income insureds.
5. Limit small employer plan deductibles to \$2,000 for individuals and \$4,000 for married couples and families.
6. Limit waiting periods for coverage to 90 days.
7. Expand Medicaid coverage to persons without dependent children and with higher incomes than before.
8. Increase required corporate estimated tax payments for corporations with assets in excess of \$1 billion.

F. 2018.

1. Impose excise tax on employers who provide coverage with premium costs in excess of prescribed limits.

David Kozak
Scottsdale, AZ
(480) 383-1820
dkozak@buchalter.com

[PDF version](#)