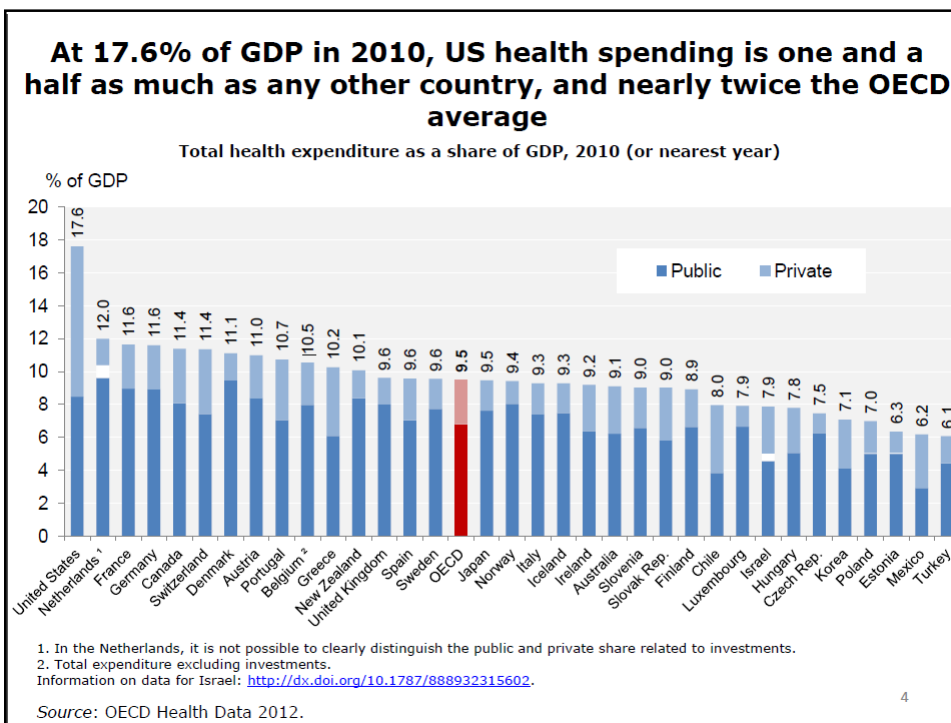
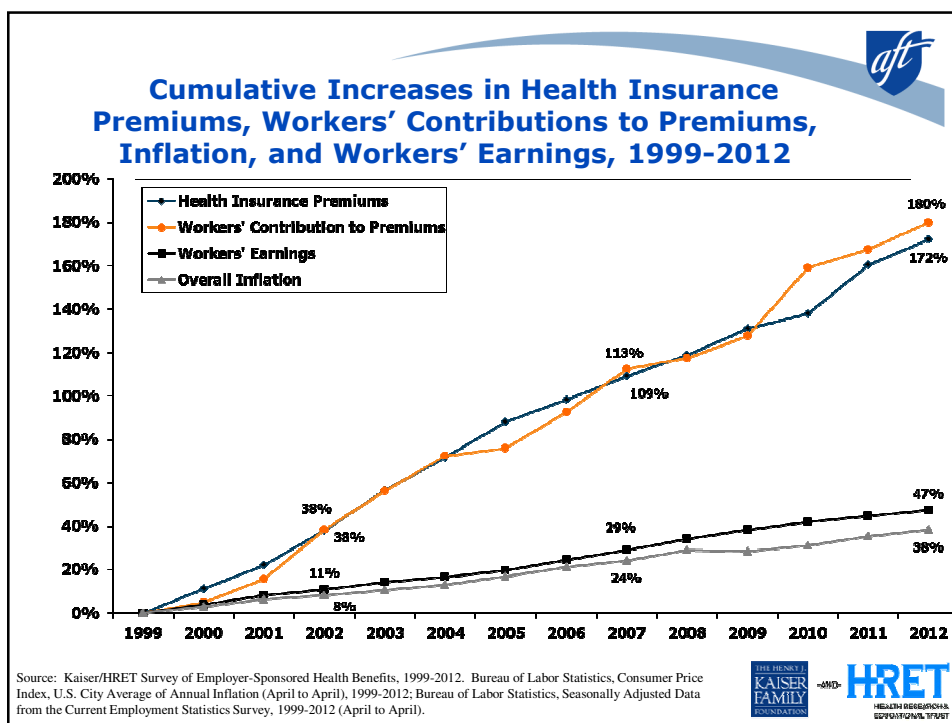




# Affordable Care Act: Implications for Bargaining

Amy Clary  
Associate, AFT Research and Strategic Initiatives





## What does the ACA do?

- Expands coverage. The ACA helps people obtain coverage in two primary ways:
  - Medicaid expansion
  - Exchanges
- Consumer protections
- Delivery system reforms (ACOs, PCMHs)
- Emphasis on prevention, wellness, primary care

## Individual mandate

- Minimum coverage provision:
  - Beginning in 2014, individuals are required to have insurance unless exempt.
  - This is the “individual mandate”
- Penalty for not having coverage the greater of :
  - 2014: 1% of income or \$95
  - 2015: 2% of income or \$325
  - 2016: 2.5% of income or \$695
  - Per person, but capped at 3x that amount for a family
  - Penalty will not exceed the average premium of a bronze plan in the exchange

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## Exchanges: Timeline

Oct. 2013

- Open enrollment begins for individuals and small businesses

Jan. 1, 2014

- Exchange coverage begins
- Premium tax credits available

<http://cciio.cms.gov/resources/factsheets/hie-blueprint-states.html>

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## Exchanges: the basics

- “Marketplaces”
- Four tiers of coverage
  - Platinum pays for 90% of your covered costs
  - Gold: 80%, Silver: 70%, Bronze: 60%
  - States may also offer a catastrophic plan to those under 30, and/or a basic plan for the uninsured with incomes 133-200% of FPL
- Subsidies based on second-lowest-cost silver plan
- The average large employer plan pays for more than 80% of expected costs

<http://www.kff.org/healthreform/upload/8177.pdf>

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## Exchanges

Jan. 1, 2014

- Exchanges open to small employers (up to 100 FTEs)
- States can define “small” as up to 50 FTEs until 2016
- Employer could pick tier or plan

Jan. 1, 2017

- States can choose to open exchanges to large employers
- Subsidies not available to employees if the employer purchases coverage on exchange

<http://www.healthcare.gov/news/factsheets/2011/07/exchanges07112011a.html>

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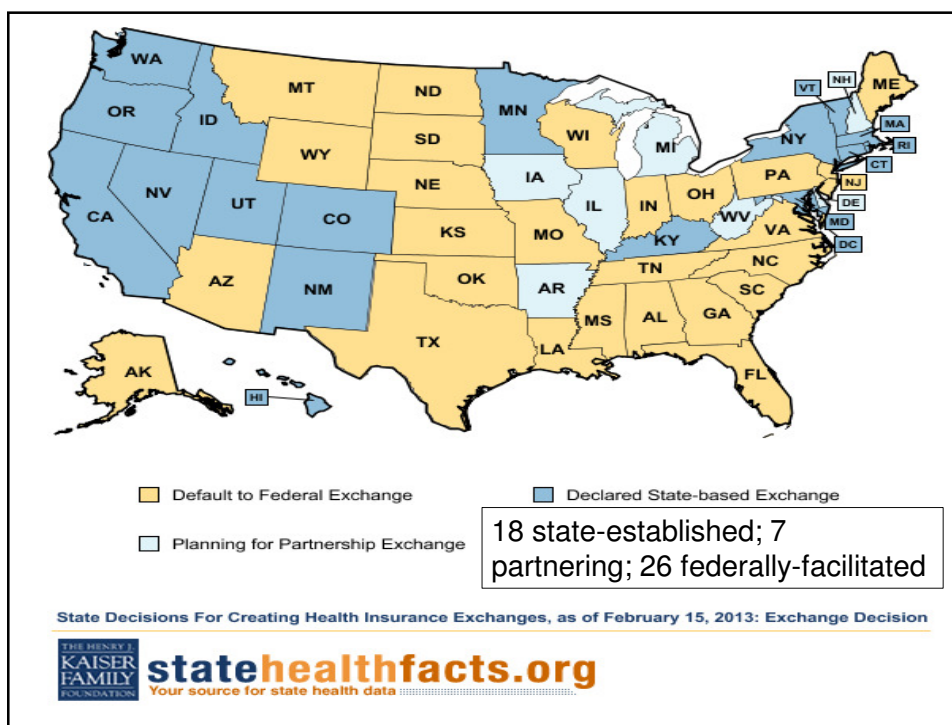
## Notification requirement

Employers will have to notify all new and current employees about:

- the existence of the exchange
- the services the exchange offers, and
- how to contact the exchange
- Notices will probably be due in late summer or fall of 2013, to coordinate with exchange open enrollment

<http://www.dol.gov/ebsa/faqs/faq-aca11.html>

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## State decisions: Active purchasing? Conflict of interest?

- Active purchasers?
- Conflict of interest provisions?
- Track your state's progress:
  - National Conference of State Legislatures:  
<http://www.ncsl.org/issues-research/health/state-actions-to-implement-the-health-benefit-exch.aspx>
  - Kaiser State Health Facts  
<http://www.statehealthfacts.org/comparemaptable.jsp?ind=962&cat=17>

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## Federally-Facilitated Exchanges

- At least for first year, federally-facilitated exchanges (FFE) will allow all qualified health plans to be sold in the exchange
- FFEs will determine eligibility for premium tax credits (subsidies), cost-sharing reductions, Medicaid, and CHIP

<http://cciio.cms.gov/resources/files/ffe-guidance-05-16-2012.pdf>

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## Exchanges: Subsidies



Subsidies are not available to employees who have an offer of employer-sponsored coverage that meets certain requirements UNLESS:

- The employee's household income is at or below 400% of the federal poverty line, AND
  - The employee's share of the self-only premium for the employer's lowest-cost plan is more than 9.5% of the employee's household income
- 400% of the 2013 FPL for a family of 4: \$94,200
  - 9.5%\* of \$30,000: \$2,850 (approx. \$238/mo.)
  - 9.5%\* of \$40,000: \$3,800 (approx. \$317/mo.)

\*this percentage will be indexed after 2014.

[http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/121xx/doc12188/05-12-subsidies\\_in\\_exchanges.pdf](http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/121xx/doc12188/05-12-subsidies_in_exchanges.pdf)

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## Employer penalties



- The "fair share" penalties apply to large employers, defined as those with more than 50 FT equivalents.
- Penalties apply if at least one full-time employee (30 or more hrs/week) receives a premium credit in the exchange
- Two kinds of penalties:
  - a. Failure to offer coverage to FT employees
  - b. Failure to meet affordability test. Coverage is offered, but employee qualifies for exchange subsidy

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## Who is Full-Time? “Look Back” method



- Large employers are only penalized for not insuring their full-time employees, defined as working 30 or more hours per week on average.
- Employers can calculate their FT employees monthly, or use a “look-back measurement method” to determine FT status. (Method could be bargained.)
- With the “look back” method, employers can choose a measurement period of 3-12 months.
- If the employee was full-time during that period, he/she is considered FT for a subsequent “stability” period (the greater of 6 mos. or the length of the measurement pd.)

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## Educational employees: Who is full time?



For ongoing employees of educational organizations who have an “employment break period” of at least four weeks (such as during the summer), employers using the “look back” method must either:

- Calculate average hours worked per week excluding the break period, or
- treat the employee as having worked their average weekly hours during the “employment break” period

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## Educational employees: Who is full time?

- This means that employers cannot choose June, July, and August as the measurement period for employees who only work during the school year
- There is also an anti-abuse clause
  - if the employer requires someone to work for the purpose of interrupting what would otherwise be a four-week or longer “employment break,” the employee will be considered as having an employment break
- AFT National has been active on this issue

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## New Regulations

- No employer penalty for failing to offer coverage to the spouses of full-time employees
- Family members’ eligibility for exchange subsidies based on affordability of self-only coverage
- No failure-to-offer penalty for employers who offer coverage to 95% of full-time employees and their dependent children.

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## What Might Employers Do To Avoid Penalties?



- Cut hours below 30 hours per week
- Make sure the employee share of single coverage is slightly less than 9.5% of the lowest-paid employee's pay
- Institute a new low-cost, high-deductible plan
- Shift costs to family coverage (single costs the employee little or nothing; family costs a lot)

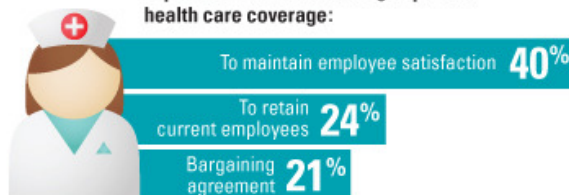
**NOTE: The ACA does not supersede collectively-bargained language, including language on hours of work, benefits, or benefits eligibility**

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**Poll: 84% of employers are “very likely” to or “definitely will” continue to provide employer-sponsored health coverage**



**Top 3 reasons for continuing to provide health care coverage:**



[http://www.ifebp.org/AboutUs/PressRoom/Releases/pr\\_120612.htm](http://www.ifebp.org/AboutUs/PressRoom/Releases/pr_120612.htm)

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## Scenario 1: Employer stops offering health coverage



Upside	Downside
Healthcare costs will take up less of the employer's money at the bargaining table, potentially leaving more for wages	Exchange coverage will not be as comprehensive as employer-sponsored coverage and will have greater out-of-pocket costs.
The union can try to bargain for more money to compensate for the loss of the coverage	Employees will not be able to bargain with employers over plan design, plan quality, and cost sharing
	Employers may not give members significantly more in wages to compensate for the loss of this benefit
	Members may ask what the union's purpose is if not bargaining benefits
	The employer will have to pay penalties to the federal government

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## Scenario 2: Employer continues to offer coverage



Upside	Downside
Employees can continue to bargain over plan design, plan quality, and cost sharing	Healthcare costs will continue to rise, crowding out wage increases. Employers will keep shifting costs to employees.
Members will continue to credit the union with bargaining good benefits for them	If exchanges work well and employer-sponsored coverage becomes increasingly unaffordable, members may wonder why the union encourages them to stay in the employer's plan.
Members will, in general, have coverage that is much more comprehensive than that sold on the exchanges	

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## Preparing for 2014: Collect info



### Member census

- who is not offered coverage?
- who pays more than 9.5% of household income for lowest-cost single coverage?
- who works less than 30 hours per week? Who works exactly 30 hrs/wk?
- household income at or below 400% FPL?
- who needs coverage for spouse and/or children?
- would any members be better off in the exchange?

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## Preparing for 2014: Collect info



### Employer's strategy

- keeping employees out of exchanges?
- avoiding penalties?
- avoiding adverse selection?
- reducing hours?
- grandfathered status?
- dropping coverage altogether?

### Members' priorities

- keeping union-negotiated coverage?
- lowest premium possible?
- lowest out-of-pocket costs possible?
- most comprehensive plan possible?

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## Bargaining considerations

- Excise (“Cadillac”) Tax (2018)**
  - Threshold: plan cost exceeds \$10,200/\$27,500 (single/family; indexed)
  - Includes FSAs, HSAs (employer & employee payroll deduction), HRAs
  - Vision and dental excluded
  - Tax is 40% of the amount that exceeds the threshold
- Wellness programs**
  - Carrots or sticks?
  - Based on participation or results?
  - On-site clinics?
- Healthcare committee**
  - With authority?
  - With release time?
  - Transparency and data sharing

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## ACA Bargaining considerations

- Plan offerings and design**
  - Beware of new low-cost plan (to disqualify members from exchange subsidies)
  - Exchange supplement possibilities?
  - Avoiding excise tax (“Cadillac tax”)
  - Can members drop out of employer’s plan?
  - Strategic cost-sharing; emphasis on quality
  - Defined contribution
- Calculation of hours for FT status**
  - Use and length of look-back measurement period
- MLR rebates (fully-insured only)**
  - How are they distributed?

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## Additional ACA provisions

- CO-OP plans
- Preventive care
- Transparency provisions:
  - W-2 reporting
  - disclosure of financial relationships between doctors and drug companies and device manufacturers
  - rate review
  - Summary of benefits and coverage
- Medicaid expansion

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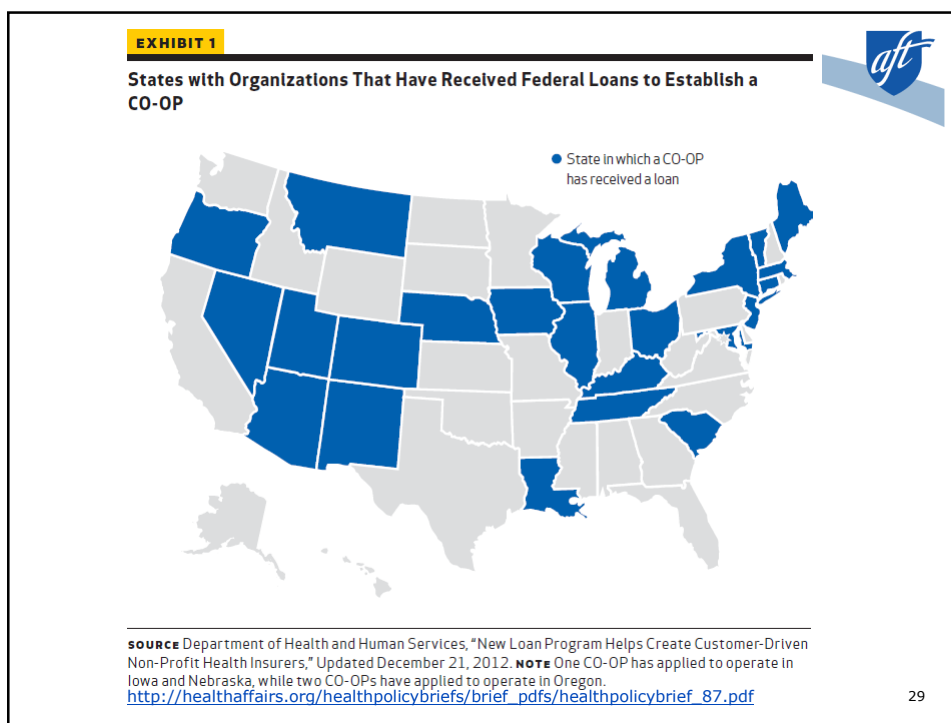


## Consumer Oriented and Operated Plans (CO-OP)

- Nonprofit, member-run plans
- Governed by consumers
- Will be offered on exchanges
- Federal loans given to get them started
- Feds encouraged at least one in every state

- [http://healthaffairs.org/healthpolicybriefs/brief\\_pdfs/healthpolicybrief\\_87.pdf](http://healthaffairs.org/healthpolicybriefs/brief_pdfs/healthpolicybrief_87.pdf)
- [http://www.commonwealthfund.org/~media/Files/Publications/Issue%20Brief/2012/Apr/1591\\_Gardiner\\_innovative\\_strategies\\_help\\_coops.pdf](http://www.commonwealthfund.org/~media/Files/Publications/Issue%20Brief/2012/Apr/1591_Gardiner_innovative_strategies_help_coops.pdf)
- <http://www.healthcare.gov/news/factsheets/2012/02/coops02212012a.html>
- <http://www.statehealthfacts.org/profileind.jsp?cat=17&sub=191&rgn=37>

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## Preventive Care

- Preventive services with no cost-sharing for those in non-grandfathered plans
  - Includes many vaccinations; flu shots; cancer screenings; tests for cholesterol, diabetes, and high blood pressure
  - Additional women's services including contraception covered for plan years starting on or after August 1, 2012
  - Full list of covered services:  
<http://www.healthcare.gov/news/factsheets/2010/07/preventive-services-list.html#CoveredPreventiveServicesforAdults>



## Transparency Provisions

- W-2 Reporting of Value of Health Benefits
  - Now on W-2s. This does not mean that the value of your health benefits is being taxed.
- Rate review for individual and small-group plans. Rate review data available at <http://companyprofiles.healthcare.gov/>

Sources:

<http://webapps.dol.gov/FederalRegister/HtmlDisplay.aspx?DocId=25818&AgencyId=8&DocumentType=2>; <http://www.kff.org/pullingittogether/Most-Popular-Provision-ACA.cfm>

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## Transparency Provisions, cont.

- Disclosure of financial relationships between doctors and drug companies and medical device manufacturers
  - On public website by Sept. 30, 2014
- Summary of Benefits and Coverage
  - Requirement starts the first day of the first open enrollment period starting on or after September 23, 2012.
  - 4 pg., double-spaced; comes with a glossary of insurance terms

<http://www.cms.gov/apps/media/press/release.asp?Counter=4520&intNumPerPage=10&checkDate=&checkKey=&srcHType=1&numDays=3500&sr>; <http://ccio.cms.gov/programs/consumer/summaryandglossary/index.html>

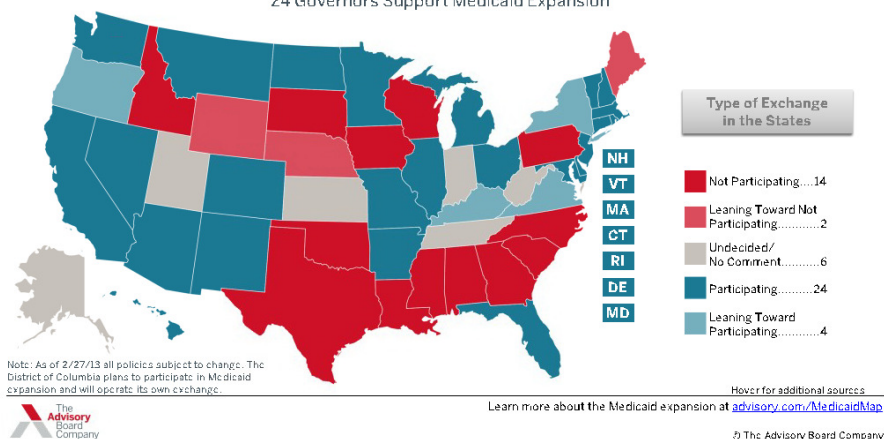
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## Medicaid Expansion



Where the **States** Stand - February 27, 2013  
24 Governors Support Medicaid Expansion



## Tools



- Federal poverty level by family size
- Exchange maximum premium by family size
- Kaiser subsidy calculator
- Kaiser Family Foundation
- Healthcare.gov

## 2013 Federal Poverty Level by Family Size

Family size	100% FPL	133%	150%	200%	250%	300%	350%	400%
1	\$11,490	\$15,282	\$17,235	\$22,980	\$28,725	\$34,470	\$40,215	\$45,960
2	\$15,510	\$20,628	\$23,265	\$31,020	\$38,775	\$46,530	\$54,285	\$62,040
3	\$19,530	\$25,975	\$29,295	\$39,060	\$48,825	\$58,590	\$68,355	\$78,120
4	\$23,550	\$31,322	\$35,325	\$47,100	\$58,875	\$70,650	\$82,425	\$94,200
5	\$27,570	\$36,668	\$41,355	\$55,140	\$68,925	\$82,710	\$96,495	\$110,280

Source: AFT calculation based on HHS poverty figures:  
<http://aspe.hhs.gov/poverty/13poverty.cfm>


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## Maximum Annual Premium by Family Size Under the ACA (If Currently Implemented)

Poverty Line (FPL, 2013)	Maximum Premium as a % of Income (2014)	Maximum Annual Premium (current) by Family Size			
		1	2	3	4
100%	2.00%	\$230	\$310	\$391	\$471
133.01%*	3.00%	\$458	\$619	\$779	\$940
150%	4.00%	\$689	\$931	\$1,172	\$1,413
200%	6.30%	\$1,448	\$1,954	\$2,461	\$2,967
250%	8.05%	\$2,312	\$3,121	\$3,930	\$4,739
300%	9.50%	\$3,275	\$3,275	\$5,566	\$6,712
350%	9.50%	\$3,820	\$3,820	\$6,494	\$7,830
up to 400%	9.50%	\$4,366	\$4,366	\$7,421	\$8,949

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# Kaiser Subsidy Calculator



**Health Reform Subsidy Calculator**  
Premium Assistance for Coverage in Exchanges

<http://healthreform.kff.org/en/SubsidyCalculator.aspx>

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### Enter Information About Individual Circumstances

1. Enter income as:
2. Enter annual income (Dollars):
3. Enter age of policyholder (19-64):
4. Enter family type:
5. Is employer coverage available?:
6. Enter regional cost factor:

### Additional resources

[Click here for tables showing results by income and age >>](#)  
[Click here for a list of frequently asked questions about the calculator >>](#)  
[A summary of the health reform law is available here >>](#)

### Notes


Based on the Patient Protection and Affordable Care Act (including subsequent amendments in the Health Care and Education Reconciliation Act of 2010), as signed by the President.

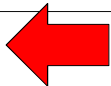
The premiums are illustrative examples in 2014 dollars derived from estimates of average premiums for 2016 from the Congressional Budget Office. For a 40 year old single adult, the premium for a silver plan is assumed to be \$4,500 for a plan with a 70% actuarial value. To the extent that actual expected enrollment in 2014 differs from what CBO assumed for 2016 — e.g., it has a different composition of people by health status or age

### Results

Note: Subsidies are only available for people purchasing coverage on their own in the Exchange (not through an employer). All individuals and families with incomes at or below 133% of the federal poverty level will be eligible for Medicaid. Others with higher incomes may also be eligible, depending on rules that vary by state.


Projected income in 2014	<b>\$70,000</b> <small>299% of poverty</small>
Unsubsidized health insurance premium in 2014 adjusted for age	<b>\$14,245</b> <small>(Based on an age factor relative to a 40 year-old of 1.17)</small>
Maximum % of income the person/family has to pay for the premium if eligible for a subsidy	<b>9.47%</b>
Actual person/family required premium payment	<b>\$6,626</b> <small>(which equals 9.47% of income and covers 47% of the overall premium)</small>
Government tax credit	<b>\$7,619</b> <small>(which covers 53% of the overall premium)</small>
Out-of-Pocket Costs	<p>The maximum out-of-pocket costs the person/family will be responsible for in 2014 (not including the premium) is \$6,250. Whether a person or family reaches this maximum level will depend on the amount of health care services they use. Currently, about one in four people use no health care services in any given year. The guaranteed plan for the person/family will have an actuarial value of 70%. This means that for all enrollees in a typical population, the plan will pay for 70% of expenses in total for covered benefits, with enrollees responsible for the rest. Specific provisions like deductibles and copayments may vary</p>





Kaiser Family Foundation:

kff.org



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The screenshot shows the HealthCare.gov website interface. At the top, a browser address bar displays the URL <http://www.healthcare.gov/law/timeline/index.html>. A red arrow points to the 'HealthCare.gov' logo in the browser's title bar. The website header includes the 'HealthCare.gov' logo, the tagline 'Take health care into your own hands', and a search bar. Navigation buttons include 'Find Insurance Options', 'Get Help Using Insurance', 'The Health Care Law & You', 'Comparing Care Providers', and 'Prevention & Wellness'. The main content area is titled 'What's Changing and When' and features a timeline from 2010 to 2015. A specific section is highlighted for 'Improving Preventive Health Coverage', effective January 1, 2013. This section includes a photograph of a child being examined by a healthcare professional. The page number '9' is visible in the bottom right corner.