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AFT Higher Education

The Affordable Care Act and Higher Education

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Outline

- Exchanges
- Subsidies/penalties
  - What might employers do?
- Rules and regs: What you need to know for bargaining
- Contingent faculty: what the law says; what the employer says the law says
- Preparing for bargaining
- Scenarios

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What does the ACA do?

- Expands coverage. By 2014, most people must have health insurance or pay a penalty.
- The ACA helps people obtain coverage in two primary ways:
  - Medicaid expansion
  - Exchanges
- Consumer protections, no pre-existing condition discrimination (2014)
- Delivery system reforms (ACOs, PCMHs)
- Emphasis on prevention, wellness, primary care

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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 <u>greater</u> 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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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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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

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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 and their dependent children up to age 26
b. Failure to meet affordability test. Coverage is offered, but employee qualifies for exchange subsidy

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Employer Penalties

- If the employer does not offer insurance and one or more FT employee gets an exchange subsidy, the penalty is $2000/yr x number of FT employees minus 30
  - If no FT employee receives a subsidy, no penalty will be levied against the employer
- Recent regulations say that the penalty only applies if less than 95% of FT employees are offered coverage

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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 <u>excluding the break period, or</u>
- 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 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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Recent 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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Know what the government does and does not require:

- Remember that the ACA sets a floor, not a ceiling
  - If the institution claims that the law sets a clear threshold for "full time" status for contingent faculty, challenge them.
- "employers always can treat more employees as eligible for coverage, or otherwise offer coverage more widely, than would be require to avoid an assessable payment…" *Federal Register*, Jan. 2, 2013

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Who is full time?

- the ACA requires large employers to offer affordable insurance to FT employees or pay a penalty (30hrs/week on average).
- Employers can calculate FT ees monthly, or use a "look-back measurement method" to determine FT status.
- 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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Are contingent faculty considered full time? (cont.)

- Do colleges and universities have to insure their contingent faculty or pay a penalty?
- A recent federal proposed rule addresses this question for the first time:

Federal Register, Jan. 2, 2013

"Employees Compensated on a Commission Basis, Adjunct Faculty, Transportation Employees and Analogous Employment Positions"

"Until further guidance is issued, employers … must use **a reasonable method** for crediting hours of service…" [emphasis added]

http://www.gpo.gov/fdsys/pkg/FR-2013-01-02/pdf/2012-31269.pdf

Federal Register, Jan. 2, 2013

"it would not be a reasonable method of crediting hours … in the case of an instructor, such as an adjunct faculty member, to take into account only classroom or other instruction time and not other hours that are necessary to perform the employee's duties, such as class preparation time."

http://www.gpo.gov/fdsys/pkg/FR-2013-01-02/pdf/2012-31269.pdf

What does that mean?

- It means that unless more specific regs come out, colleges and universities are allowed to decide for themselves whether any contingent faculty work 30 or more hours per week, as long as the institution claims its standard is "reasonable."
- The section of the Jan. 2, 2013, *Federal Register* excerpted in the previous slides is the <u>only</u> official mention of adjuncts or contingent faculty anywhere in the ACA or federal regulations related to ACA implementation.

Institutions Cutting Courseloads: Possible Strategies

- Know what the law says and doesn't say
- Collect information

Tell Treasury Your Story


AFT.org > News and Publications > News > 2013 >

Print Email ShareThis

Don't let colleges use the ACA to abuse contingent faculty

As the Affordable Care Act reaches implementation, questions remain regarding how contingent faculty will be treated when the act fully takes effect in 2014. The AFT has been in discussions with the U.S. Treasury Department on many aspects of the ACA and its definition of "full time" for the purpose of the employer penalty, but the department wants to hear from individuals, too.

Some colleges have jumped the gun on this unresolved issue, cutting back on the number of hours they are assigning to part-time faculty.

The Treasury Department has requested comments by March 18 this year. It is important that adjuncts, their unions, and faculty and staff colleagues communicate their experiences and concerns.

Here is information about the ACA and how you can contact the IRS.

Defining "full time"

Starting in 2014, the Affordable Care Act levies penalties against large employers (those with at least 50 employees) that do not offer affordable health coverage to their full-time employees. The law defines a full-time employee as one who works at least 30 hours per week on average. On Jan. 2, Treasury issued proposed rules regarding the determination of full-time status for the purpose of the employer penalty for failing to provide full-time employees with health coverage. Even though these are "proposed" rules, employers can rely on them unless final rules are issued. ***Note that the Affordable Care Act does not supersede collectively bargained language, including contract language on benefits eligibility or teaching load.***

The AFT is weighing in

http://www.aft.org/newspubs/news/2013/030113aca.cfm

Institutions Cutting Courseloads: Possible Strategies

- Offer insurance?
  - How much would it cost the institution to offer minimum essential coverage? Is there a low-premium group plan that institutions could offer to contingent faculty?
  - One consultant says that the "$2,000-per-worker penalty…is really closer to $3,500 once the underlying tax breaks for coverage are thrown into the mix"
  - Such a plan could cover those who need it, allow the institution to do the right thing, and resolve the issue of course load limits

http://www.politico.com/politicopulse/1012/politicopulse9362.html

Possible Strategies, cont.

- Communications
  - The ACA requires people to have insurance, and requires large employers to offer coverage to their full-time workers.
  - Can a communications strategy be developed around this point?

What about rehired employees?

For employers using the look-back method, an employee can be considered new (i.e., terminated and rehired) for purposes of the measurement period and waiting period IF:

- the break in service is at least 26 consecutive weeks long,
- OR the break in service was at least 4 weeks long (but less than 26 weeks) AND is longer than the previous period of employment
- The employer chooses which method to use

Federal Register, Jan. 2, 2013

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90-day waiting period

- Employers do not have to offer coverage during a new employee's first three months of service

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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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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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Who has coverage through the employer?

- Are members offered any coverage under the employer's health plan?
  - The answer is "yes" if an employee has the opportunity to purchase coverage in the employer's group plan, even if the employer does not contribute anything towards the premium.
- If yes, how many members are enrolled in health insurance coverage through the employer?
  - How many have single coverage?
  - How many have 1+1 or family coverage?

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Members who ARE offered coverage under the employer's health plan

- How much of the premium do members pay for self-only (individual) coverage in the employer's lowest-cost plan?
- Is this amount greater than 9.5% of any member's household income?
- If so, that employee may be eligible for a subsidy in the exchange, if his or her household income is at or below 400%fpl

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Who has coverage, but not through the employer?

- Employees are generally not eligible for exchange subsidies if they have insurance coverage through a spouse or partner, or through a retiree healthcare plan or a program such as Medicare or Medicaid.

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Who is NOT offered coverage under the employer's health plan?

- Employees who do not have health coverage available to them through their employer may be eligible for subsidized coverage through the health insurance state exchanges.
- Even if they are not eligible for subsidies because their household income is too high, the exchanges may be a welcome option for them.

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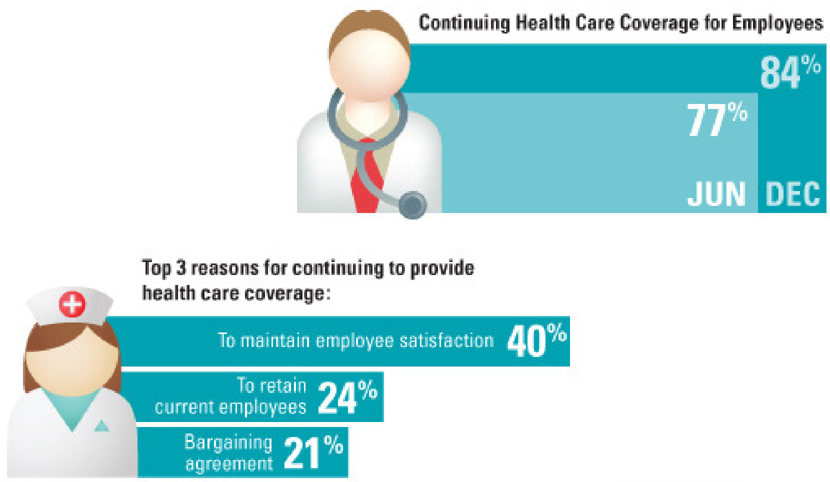
Poll: 84% of employers are “very likely” to or “definitely will” continue to provide employer-sponsored health coverage



http://www.ifebp.org/AboutUs/PressRoom/Releases/pr_120612.htm

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Bargaining considerations

Excise (“Cadillac”) Tax (2018)

- Threshold: plan cost exceeds $10,200/$27,500 (single/family)
- 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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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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Additional ACA provisions

- CO-OP plans
- 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://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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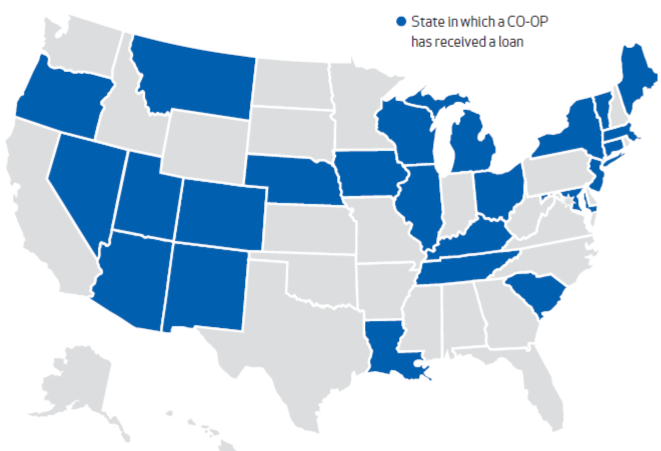
EXHIBIT 1

States with Organizations That Have Received Federal Loans to Establish a CO-OP



SOURCE Department of Health and Human Services, "New Loan Program Helps Create Customer-Driven Non-Profit Health Insurers," Updated December 21, 2012. **NOTE** One CO-OP has applied to operate in Iowa and Nebraska, while two CO-OPs have applied to operate in Oregon.
http://healthaffairs.org/healthpolicybriefs/brief_pdfs/healthpolicybrief_87.pdf

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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://cciio.cms.gov/programs/consumer/summaryandglossary/index.html

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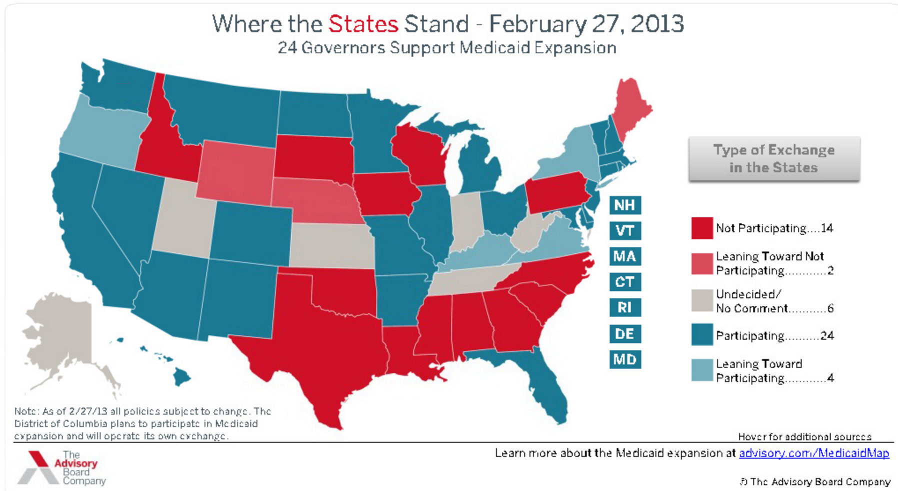
Medicaid Expansion



Tools

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

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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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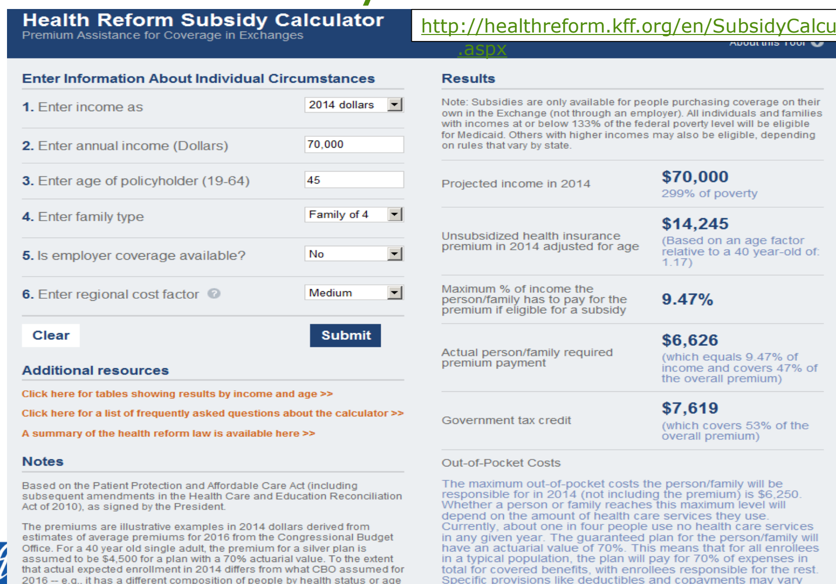
Kaiser Subsidy Calculator

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



Kaiser Family Foundation: kff.org

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Sources and additional information

- Full text of the proposed rule: http://www.gpo.gov/fdsys/pkg/FR-2013-01-02/pdf/2012-31269.pdf
- IRS Frequently Asked Questions: http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act
- Timothy Jost, *Health Affairs* blog, summary of the proposed rule: http://healthaffairs.org/blog/2012/12/29/implementing-health-reform-the-employer-mandate/