

**HEALTH CARE REFORM
"OBAMA-CARE"**

OVERVIEW. President Obama signed comprehensive health reform, The Patient Protection and Affordable Care Act (ACA) (P.L. 111-148), into law on March 23, 2010. The law added Section 5000A to the Internal Revenue Code. The law requires most U.S. citizens and legal residents to have health insurance or pay a penalty for noncompliance. Most large employers are required to offer health insurance or possibly pay penalties for non-covered employees.

INTERNET SITES.

http://www.irs.gov/affordable-care-act/affordable-care-act-tax-provisions	ACA home
http://taxmap.ntis.gov/taxmap/acaindex.htm	IRS topical index for ACA
http://www.coveredca.com	California's Health Insurance Exchange
http://www.healthcare.gov	Federal Health Insurance Exchange
http://aspe.hhs.gov/poverty-research	Federal Poverty Level Guidelines
http://kff.org/health-reform/?reqp=1&reqr=	Kaiser Family Foundation Health Reform
http://calc.taxpolicycenter.org/acacalculator/	Individual Mandate Penalty Calculator
http://www.healthcare.gov/fees-exemptions/hardship-exemptions	Health Coverage Exemptions

BASIC INCOME TAX REFERENCES TO "2010 Patient Protection and Affordable Care Act (P.L. 111-148)", ACA and IRC Section 5000A (including Final Regs Section 1.5000A-0 through 5) are also very useful.

ISN'T THIS LAW GONE? No! The law is still applicable for preparing 2017 tax returns.

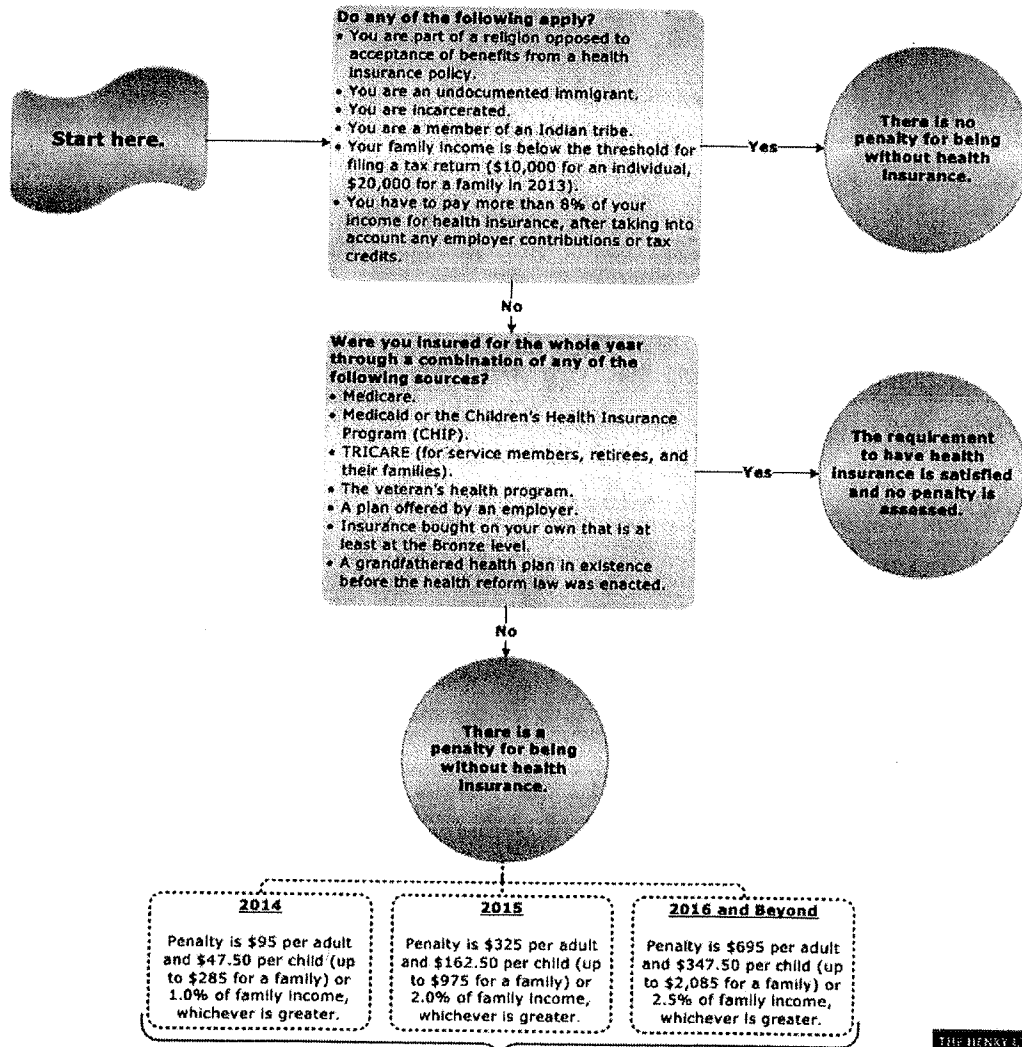
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INDIVIDUAL MANDATE

INDIVIDUAL MANDATE. Individuals are required to obtain minimum essential health insurance coverage (MEC) for at least one day in a month, qualify for an exemption, or pay a penalty (“individual shared responsibility payment”) on their income tax return. The chart below (from the Kaiser Family Foundation website) gives you an overview of this provision.

The Requirement to Buy Coverage Under the Affordable Care Act Beginning in 2014



Income is defined as total income in excess of the filing threshold (\$10,000 for an individual and \$20,000 for a family in 2013). The penalty is pro-rated by the number of months without coverage, though there is no penalty for a single gap in coverage of less than 3 months in a year. The penalty cannot be greater than the national average premium for Bronze coverage in an Exchange. After 2016 penalty amounts are increased annually by the cost of living.



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WHAT MUST I DO FOR EVERY CLIENT? We must ask each client whether they have adequate health insurance. This is referred to as “minimum essential coverage” (MEC). If they do have MEC, then we have one set of questions to ask and items to do. If they do not, then we have another set of questions and items to pursue. This must be done on a month-by-month basis. Form 1095-A, B or C tells us about the client’s insurance coverage on a month-by-month basis during the calendar year 2017.

In 2014, an IRS spokesperson said practitioners will not have to get specific documentation to show that their clients have the MEC for each tax year. “There’s no formal due diligence required or documents that you are required to obtain. However, I think you have to apply a reasonable level of common sense in terms of determining whether taxpayer does have MEC”. Practitioners still need to do the best they can to make sure taxpayers are representing in good faith that they have a level of health coverage that will ensure they don’t have to make individual shared responsibility payments under the ACA. Taxpayers could provide a variety of information showing they have coverage through an employer or private insurance company, for example.”

MINIMUM ESSENTIAL COVERAGE (MEC) means health care coverage under any of the programs listed below.

Employer-Sponsored - Group health insurance offered to employees, a self-insured health plan for employees, COBRA and retiree coverage.

Individual Health Coverage - Purchased from a health insurance company or through the marketplace and any student health plan.

Government-Sponsored Program Coverage - Medicare Part A/Advantage, most Medicaid coverage, CHIP, TRICARE, VA health plans, Peace Corps plans, Dept of Defense plan, Refugee Medical Assistance and coverage through BHP.

Other Coverage – Certain foreign coverage, certain coverage for business owners and minimum essential coverage recognized by HHS.

RECENT 2017 IRS STATEMENT. On 10-19-2017, IRS stated that it will not accept electronically filed 2017 returns that fail to address the ACA health care requirements. In addition, paper returns that don’t indicate health coverage may be suspended pending the receipt of additional information, and refunds will be delayed. As such, taxpayers must indicate whether they and everyone on their return had minimum essential coverage, qualified for an exemption, or are making an individual shared responsibility payment for 2017. IRS and the National Taxpayer Advocate have determined that rejecting returns that are silent on the ACA requirements at the time of filing is the least burdensome approach for the taxpayer. This IRS statement can be found at: www.irs.gov/tax-professionals/aca-information-center-for-tax-professionals.

(A) IF CLIENT HAS ADEQUATE INSURANCE.

1) INSURANCE OBTAINED THROUGH EXCHANGE. Client has Form 1095-A and may have qualified for an advanced premium assistance via a tax credit through the exchange. If taxpayer actually received this tax credit in advance, it lowered the amount paid initially for health insurance premiums in 2017. You will need to fill out Form 8962 (discussed later).

A) DID NOT RECEIVE ANY PREMIUM ASSISTANCE THROUGH EXCHANGE. Form 1095-A will show the insurance coverage and amount of the advanced premium credit received which should be ZERO. This information is used on Form 8962 to determine the correct amount of any premium tax credit that should be received as determined by client's 2017 MAGI. Any amount due taxpayer is shown on Form 1040, Line 69 as an additional advance payment of tax.

B) RECEIVED SOME PREMIUM ASSISTANCE THROUGH EXCHANGE. Form 1095-A will show the insurance coverage and amount of the advanced premium credit received. This information is used on Form 8962 to reconcile the advanced amount received by the client to the correct amount that should have been received as determined by his 2017 MAGI. Any excess received is shown on Form 1040, Line 46 as an additional tax due. Any additional amount due taxpayer is shown on Form 1040, Line 69 as an additional advance payment of tax.

2) INSURANCE NOT OBTAINED THROUGH EXCHANGE. Client did NOT receive any advanced premium tax credit assistance since insurance was not obtained through an insurance exchange. Form 1095-B or C will show the coverage for each month so client can prove he has adequate insurance. No Form 8962 is necessary.

(B) IF CLIENT HAS NO INSURANCE OR INADEQUATE INSURANCE.

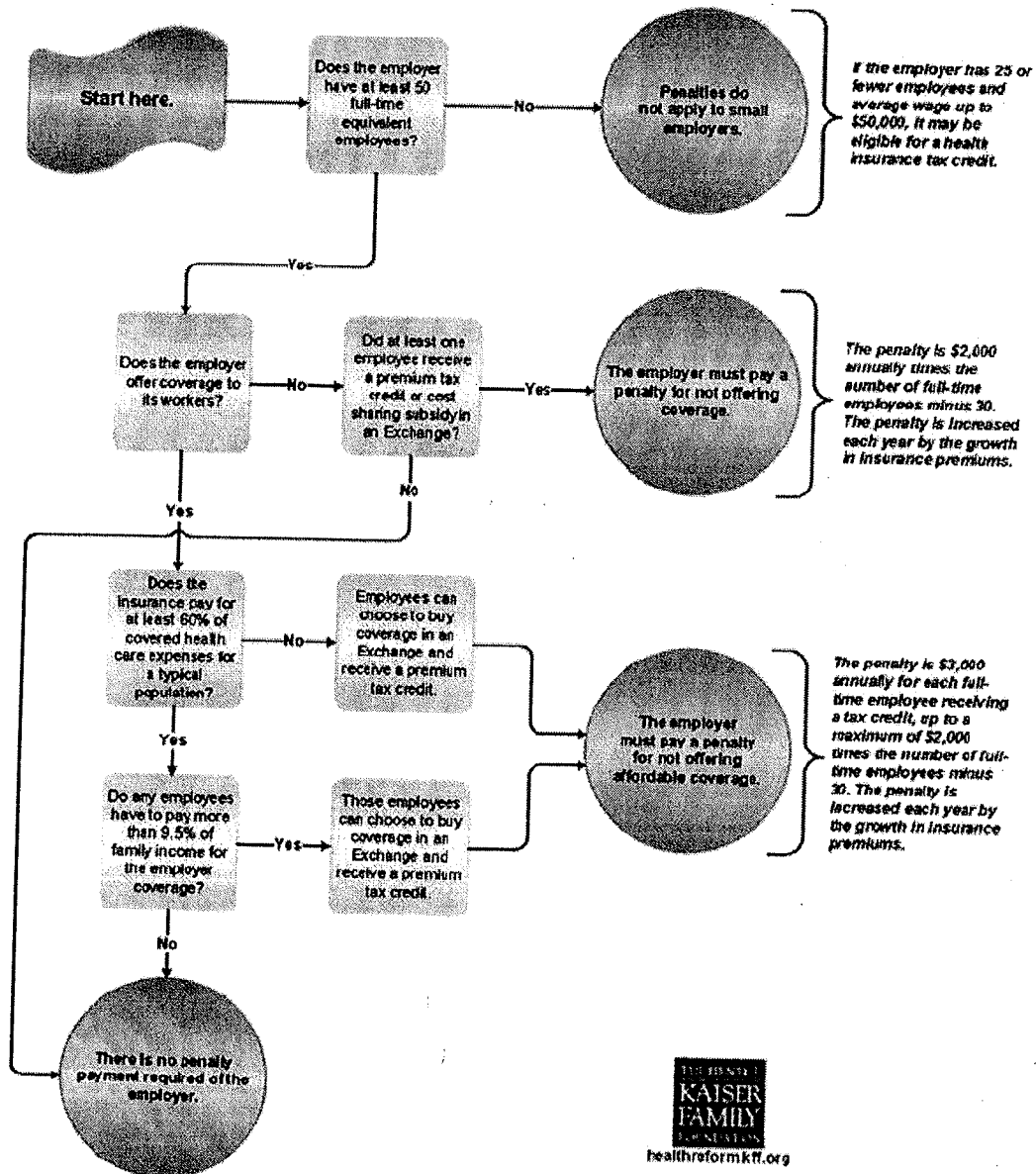
1) QUALIFIES FOR HEALTH COVERAGE EXEMPTION. Form 8965 enables taxpayers to obtain an exemption on the tax return or to prove their marketplace granted exemption. Available exemptions are discussed under Form 8965.

2) DOES NOT QUALIFY FOR HEALTH COVERAGE EXEMPTION. If the taxpayer does not qualify for a health coverage exemption, then he is subject to a "Shared Responsibility Payment. This payment is calculated on a "Shared Responsibility Payment Worksheet" (from the Form 8965 instructions) and the result will appear on Form 1040, Line 61 as another "Other Tax" due.

EMPLOYER MANDATE

EMPLOYER MANDATE. Most large employers are required to offer health insurance or pay penalties for non-covered employees that receive health insurance tax credits through an exchange. The chart below (from the Kaiser Family Foundation website) gives you an overview of this provision.

Penalties for Employers Not Offering Affordable Coverage Under the Affordable Care Act



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OVERVIEW OF EMPLOYER MANDATE. For 2016 and on, employers who employ 50 full-time employees or a combination of full-time/part-time employees that are equivalent to 50 full-time employees will be subject to IRC Section 4980H “employer shared responsibility” penalty provisions. Full-time employees are reduced by (1) new full-time employees during their first 3 months of employment, (2) new variable hour/new seasonal employees during employee’s initial measurement period or (3) employees who were offered opportunity to enroll in an adequate, affordable employer-sponsored plan.

“ALE” DEFINITION. An employer who meets the 50 full-time employee threshold is referred to as an “applicable large employer” (ALE). Treasury estimates that only 2% of all employers employ 100 or more employees and that only another 2% employ 50 to 99 employees. They believe that 96% of employers are small businesses with fewer than 50 employees and therefore are exempt from this employer mandate.

FULL-TIME EQUIVALENT (FTE) EMPLOYEES DEFINITION. An employer’s number of FTE employees matters for classification as a “large” employer and for calculation of any applicable penalty. FTE employees are the sum of actual full-time employees and the FTE of any part-time employees.

EMPLOYER MANDATE PENALTY. To ensure that “large” employers continue to provide some insurance coverage, the ACA includes a “shared responsibility” provision. The provision does not explicitly mandate that an employer offer employee health insurance. However, if the employer offers no health insurance coverage or does not offer affordable health coverage that provides a minimum level of coverage to their full-time employees (and dependents), the employer will be subject to an employer mandate penalty payment if at least one of its full-time employees receives a premium tax credit for purchasing individual coverage from the federal/state health insurance exchange. Penalty provisions were to be effective in 2014, but were delayed until 2015 per IRS Notice 2013-45.

(A) IF EMPLOYER DOES NOT OFFER HEALTH COVERAGE. This penalty calculation is for employers who do not offer any health coverage or who offer coverage to fewer than 95% (was 70% in 2015) of its full-time employees and at least 1 full-time employee obtains a premium tax credit through the exchange. The calculation is made on a month-by-month basis.

PENALTY AMOUNT. \$2,000 annually for each full-time employee in excess of 30 (80 in 2015) employees (Section 4980H(a)).

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1040/540 TUNEUP 2017

(B) EMPLOYER DOES OFFER HEALTH COVERAGE BUT IT IS NOT AFFORDABLE OR ADEQUATE. This penalty calculation is for employers who do offer health coverage to no fewer than 95% (70% in 2015) of its full-time employees and at least 1 full-time employee obtains a premium tax credit through the exchange. The calculation is made on a month-by-month basis.

PENALTY AMOUNT. \$3,000 annually for each full-time employee who obtained a premium tax credit through the exchange (Section 4980H(b)).

LIMIT ON PENALTY AMOUNT. However, this penalty (Section 4980H(b)) can never be larger than the Section 4980(a) penalty of \$2,000 for each full-time employee in excess of 30 (80 in 2015) employees.

HOW TO PAY THE PENALTY. There is no tax form on which to calculate this penalty. When one or more employees have received a premium tax credit, the IRS will send the employer a Section 1411 Certificate which alerts the employer of the potential penalty and provides the employer an opportunity to respond before any liability is assessed or notice and demand for payment is made. If it is determined that an employer is liable for the penalty, IRS will send a notice and demand for payment. The notice will instruct the employer on how to make the payment. Employers will not be required to include the penalty on any tax return they file.

IRS will not contact employers for a given calendar year until after the due date for employees to file their individual returns and after the due date for large employers to file information returns indentifying their employees and describing the insurance coverage that was offered (if any was offered).



NEW TOOL TO EST. EMPLOYER SHARED RESPONSIBILITY

The IRS has launched a new tool to help a business determine its maximum amount of potential liability for the employer shared responsibility payment that could apply if the employer fails to offer coverage to the required number of full-time employees and their dependents. Tax professionals can use the tool to help educate business clients about potential employer shared responsibility requirements. The ESRP Estimator is available at www.taxpayeradvocate.irs.gov/estimator/esrp.

**Qualif Small Employer
Health Reimb Account**

A POTENTIAL PROBLEM FOR EMPLOYERS. Notice 2013-54 had warned employers that firms with arrangements to reimburse employees for premiums paid for individual policies and/or Medicare could be subject to a \$100 per day per employee excise tax.

21ST CENTURY CURES ACT ESTABLISHES SMALL EMPLOYER HRAS.

Beginning 01/01/2017, qualified small employers are allowed to provide a Health Reimbursement Arrangement (QSEHRA) to their employees without facing penalties. Pursuant to IRC Section 9831(d)(1), these plans are not a group health plan. Therefore they are not subject to the group health plan requirements under the Code and ERISA. Relief previously granted under Notice 2015-7 is extended to apply to plan years beginning on or before December 31, 2016. Benefits received under these plans, will normally be tax-free to employees.

WHAT IS ALLOWED? A qualified small employer HRA (QSEHRA) satisfies the following requirements: (1) It is maintained by an employer that is not an ALE (employs fewer than 50 employees) and who does not offer a group health plan to any of its employees; (2) It is provided on the same terms to all eligible employees; (3) It is funded by the eligible employer and no salary reduction contributions are allowed; (4) It provides for payment or reimbursement for medical expenses for the employee and employee's family; and (5) Amount of payments/reimbursements do not exceed the indexed amounts shown in the table below. Amounts are prorated for a partial year arrangement. Permitted benefit amounts will appear on Form W-2, Box 12, with a new Code "FF".

NEW IRS GUIDANCE. Notice 2017-67 gives guidance on the requirements for providing a QSEHRA and written notice of the arrangement to eligible employees along with tax consequences of the arrangement. The notice addresses Executive Order 13813, which directs federal agencies to consider revising guidance on the usability of HRAs. The notice which includes 79 Questions & Answers, applies to plan years beginning on or after 11/20/2017. However, QSEHRAs established before that date may rely on the notice.

Payms/Reimb To:	2016	2017	2018
Employee Only	Law Began 01-01-2017	\$4,950	\$5,050
Employee + Family	Law Began 01-01-2017	\$10,000	\$10,250