Taxes and the Healthcare Act

I. Introduction

A. On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act. [P.L. 111-148] The law is most often referred to as Obamacare. The Act was upheld by the Supreme Court on June 28, 2012. [National Federation of Independent Business v. Sebelius, No. 11-393]

B. The Affordable Care Act's goal is to provide affordable health insurance all US citizens and residents and to reduce the growth of health care spending.

C. Medicaid covers more than 60 million people and is the nation’s single biggest insurance program. The Government Accounting Office projects that 17 million will be added to Medicaid rolls and 15 million to state run insurance exchanges from those who currently do not have health insurance.

D. The Affordable Care Act gives 54 million individuals access to preventive health service and makes it illegal to charge women different rates than men.

   1. The Affordable Care Act ensures that there are no out-of-pocket costs on patients receiving mammograms and colonoscopies which are two of the most widely used forms of preventive health care.

E. Other coverage milestones include better preventive care, women's health services, better care for seniors, and expanded coverage of the nations poorest.

F. The Affordable Care Act contains 20 new taxes or tax hikes.

G. The Affordable Care Act is expected to raise about $800 billion in revenue over 10 years, including penalties on individuals and firms for not complying with new mandates. The major sources of tax revenue projected from 2013 through 2022:

   1. $318 billion from a hike in Medicare payroll taxes on households earning more than $250,000, starting in 2013.

   2. $111 billion from a tax on insurers for offering high-cost, or "Cadillac Plans,” starting in 2018.

   3. $106 billion from penalty payments by employers, effective in 2014.

   4. $102 billion from a fee on health insurance providers, starting in 2014.

   5. $45 billion from individual mandate tax penalty, effective in 2014.

   6. $34 billion from a fee on manufacturers and importers to branded drugs, effective in 2010.

   7. $29 billion from a 2.3% tax on manufactures and importers of medical devises, effective 2013.

   8. $24 billion capping pretax deposits in flexible spending accounts for health expenses at $2,500, effective 2013.

   9. $19 billion from raising the floor on tax-deductible medical expenses to those above 10% of income, up from 7.5%, as of 2013.

   10. $5 billion from disallowing pretax purchased of over-the-counter medicines, starting 2011.

H. Every doctor that you see will have access to all of your medical records.

I. Millions of individuals and businesses will be wrestling with refunds, penalties, government subsidies, and new regulations.

II. Additional Taxes Imposed in 2013

A. Five Affordable Care Act Taxes Imposed in 2013.

1. Additional Medicare Tax on Earned Income

2. Net Investment Income Tax

3. Increased Threshold for Medical Expenses

4. Limit on Flexible Spending Accounts

5. Medical Device Tax

B. Additional Medicare Tax on Earned Income

1. 0.9% Additional Medicare Tax applies to wages and net self-employment income for tax years beginning in 2013.

   a. $86.8 billion tax increase.

2. Applies to earned income exceeding $200,000 for single, head-of-household, or surviving spouse; $250,000 for married filing jointly; $125,000 for married filing separately.

   a. Applicable thresholds are not adjusted for inflation.

3. Applies to the employee's share of earned income.

   a. Does not apply to the employer's employment taxes.

4. The Additional Medicare Tax on wages will be calculated on Form 8959, Additional Medicare Tax, and shown as "Other Taxes" on page 2 of Form 1040.

5. Wages are broken into 3 Tiers

   a. Tier 1 -- From $0 to $113,700; 7.65% x employee's wages.

   b. Tier 2 -- From $113,700 to $200,000/$250,000; 1.45% x employee's wages.

   c. Tier 3 -- Above $200,000/$250,000 of earned income; 2.35% x employee's wages.

6. The Additional Medicare Tax on earned income is part of the employer's overall withholding.

   a. The employee reconciles the final total of any Additional Medicare Tax when they file their Form 1040 for the tax year.

7. Employers are required to apply the additional withholding at $200,000 of wages, including taxable fringe benefits, bonuses, tips, commissions, or other supplemental payments, the total amount of taxable Box 5.

    a. Does not matter what filing status is shown on Form W-4.

8. Example 1. One spouse received $210,000 of wages, while the other spouse earns $35,000 of either W-2 wages or net self-employment income.

    The employer of the first spouse is required to withhold an additional 0.9% Additional Medicare Tax on the last $10,000 of taxable wages (i.e., $90) even though the couple will not own the 0.9% Additional Medicare Tax when they file their 2013 Form 1040.

    They will receive a tax credit against any other type of tax that may be owed.

9. If an employer fails to withhold the 0.9% Additional Medicare tax, and the tax is subsequently paid by the employee, the IRS will <u>not</u> collect the tax from the employer.

    a. The employer will remain subject to any applicable <u>penalties</u> of additions to tax for failure to withhold the 0.9% Additional Medicare tax as required. [Sec. 3102(f)(3)]

10. The employee is personally responsible if the employer fails to withhold the 0.9% additional Medicare tax. [Sec. 3102(f)(2)]

    a. Hopefully this means that the employee will be liable only if the employer fails to withhold the tax, not if the employer withholds but does not remit.

11. Example 2. A husband and wife who earned Box W-2 Medicare wages of $175,000 and $125,000, respectively, would not have any additional withholding tax taken out by the employers.

    Nevertheless, they would still owe $450 (($175,000 + $125,000 - $250,000) x 0.9%) in Additional Medicare Tax when they file their Form 1040 for 2013.

12. Maximizing any contributions to a qualified retirement plan such as a 401(k) or a 403(b) would not impact the Additional Medicare Tax calculation even through it does reduce Box 1 "Wages, tips, & other compensation" for Federal income tax withholding purposes.

    a. Box 5 is used for determining the Additional Medicare Tax and withholding.

13. The self-employed individual will coordinate the 0.9% Additional Medicare Tax with their self-employment tax as follows:

    a. Tier 1 -- From $0 to $113,700; 15.3% x net self-employment income.

    b. Tier 2 -- From $113,700 to $200,000/$250,000; 2.9% x net self-employment income.

    c. Tier 3 -- Above $200,000/$250,000; 3.8% x net self-employment income.

14. The self-employed does not receive a income tax deduction for one-half of the 0.9% Additional Medicare Tax on earned income.

15. Example 3. A husband and wife each have "Box 5 Medicare wages" of $150,000 listed on their respective W-2s. The combined $300,000 "earned income" will be shown on the new form/schedule for calculating the 0.9% Additional Medicare Tax. The couple will owe a 0.9% Additional Medicare Tax of $450 (($300,000 - $250,000) x 0.9%) which will be included as "Other Taxes" on page 2 of Form 1040.

16. Example 4. A husband has $150,000 of "Box 5 Medicare wages" listed on his W-2. His wife has a K-1 from her law firm listing Box 14 self-employment income of $150,000. The couple will owe $450 of Additional Medicare Tax on their collective earned income.

    a. Any deduction for a contribution to a qualified retirement plan would come after the calculation of her self-employment tax on Schedule SE, as well as the 0.9% Additional Medicare Tax calculation.

17. Example 5. A husband has $150,000 of "Box 5 Medicare wages" listed on his W-2. His wife has a K-1 from her law firm listing Box 14 self-employment income of $150,000. The wife also has a $50,000 loss from the start-up of a new Schedule C business. Since the self-employment income of the wife would now be only $100,000, when it is added to the $150,000 in W-2 wages of the husband, the couple is not above the "applicable threshold" of $250,000 for married filing jointly. Therefore, no Additional Medicare Tax on their collective earned income would be due.

18. Example 6. A husband and wife each have "Box 5 Medicare wages" of $150,000 listed on their respective W-2s. The wife also has a $50,000 loss from the start-up of a new Schedule C business. The couple would still owe $450 of Additional Medicare Tax.

    a. The self-employment loss is not permitted to offset W-2 wages.

19. Additional withholding or estimated taxes may be needed to avoid an underpayment penalty caused by the Additional Medicare Tax on earned income.

20. Tax Planning Tips:

    a. Use S corporations to avoid wages and self-employment income.

    b. Use of separate returns.

C. Net Investment Income Tax

1. Beginning in 2013, a 3.8% "Net Investment Income Tax" is imposed on individuals and estate and trusts. [Sec. 1411]

    a. $123 billion tax increase.

2. The Net Investment Income Tax will be calculated on Form 8960 and shown as "Other Taxes" on page 2 of Form 1040.

3. For individuals, the tax is imposed on the <u>lesser</u> of:

    a. An individual's "net investment income" for the tax year, or

    b. Any excess of "modified adjusted gross income" (MAGI) for the tax year over a threshold amount. [Sec.1411(a)(1)]

        1) The "threshold amount is $200,000 for single taxpayers and heads-of-households; $250,000 for married filing jointly and surviving spouses; $125,000 for married filing separately. (Sec. 1411(b)]

2) MAGI means an individual's adjusted gross income for the tax year increased by otherwise excludable foreign earned income or foreign housing costs under Sec. 911 as reduced by any deduction, exclusion, or credits properly allocable to or chargeable against such foreign earned income. [Sec, 1411(d)]

4. Example 7. A married couple who file a joint return collectively earn $275,000 in wages and/or net self-employment income and also have $25,000 of "net investment income" in 2013. Assuming a $300,000 MAGI, the couple will have to pay a 3.8% Net Investment Income Tax on the lesser of their (1) $25,000 of net investment income, or (2) $50,000 ($300,000 MAGI - $250,000 threshold). The couple will pay a $950 ($25,000 x 3.8%) Net Investment Income Tax in 2013.

5. Example 8. In 2013, an unmarried taxpayer received no wages or self-employment income, but lives strictly off of her $1 million in "net investment income" from a stock and bond portfolio. Assuming a $1 million MAGI, she will have to pay a 3.8% Net Investment Income Tax on the lesser of her (1) $1 million net investment income or (2) $800,000 ($1 million - $200,000 threshold). As a result, she will pay a $30,400 ($800,000 x 3.8%) Net Investment Income Tax in 2013.

6. The Net Investment Income Tax does not apply to a non-resident alien or to a trust "all the unexpired interests in which are devoted to charitable purposes."

   a. The tax does not apply to a trust that is exempt under Sec. 501 or a charitable remainder trust exempt from tax under Sec. 664.

7. "Net investment income" is defined as: [Sec. 1411(c)(1) and (c)(2)]

   a. Gross income from interest, dividends, annuities, royalties, and rents (unless such rental income is "derived in the ordinary course of any trade or business;"

      1) Substitute interest and dividends are included in the calculation of net investment income.

   b. Other gross income from any passive trade or business; or

   c. Net gain included in computing taxable income that is attributable to the disposition of property other than property held in any trade or business that is not a "passive trade or business."

8. Refinements

   a. "Income derived in the ordinary course of a trade or business" does <u>not</u> include any trade or business that is either a passive activity of the taxpayer, or involves trading in financial instruments and commodities.

      1) The passive activity and trading in financial instruments and commodities are defined as "passive business investment income" for purposes of the 3.8% Medicare tax.

      2) Financial Instruments
         Equity interest such as stock
         Proof of indebtedness
         Options
         Notional principal contracts
         Other derivatives
         Other evidence of an interest in one of the foregoing items

b. A passive investor's share of Form 1065 or Form 1120S from Box 1 on Schedule K-1 would be "other gross income from any passive trade or business.”

c. A Sec. 1231 gain reported on a K-1 from the sale of assets used in a trade or business that the taxpayer "materially participates" would not be treated as "net investment income" subject to the 3.8% Net Investment Income Tax. However, it would be "net investment income" to a passive investor.

d. "Net investment income" includes any income, gain, or loss that is attributable to an investment of working capital. Income or gain from investment in working capital is treated as not derived in the ordinary course of a trade or business. [Sec. 1411(c)(3)]

   1) A business puts some of its excess working capital into an income-producing investment such as a certificate of deposit or interest-bearing account, or stocks that pay dividends or result in capital gains or losses when sold.

   2) The sale of partnership interest or S corporation stock before the entity sold its working capital investment will be treated as a "deemed sale" of all the assets at current FMV immediately before the sale of the owner's interest.

      a) Any deemed adjustment will never exceed the overall gain or loss otherwise realized on the sale. A deemed adjustment will not turn a gain into a loss, or vice versa.

9. Exceptions to "Net Investment Income"

   a. Net investment income does not include: [Sec. 1411(c)(6)]

      1) Any distribution from qualified employee benefit plan or retirement arrangements;

      2) Any distributions from a regular IRA or Roth IRA;

      3) Social security benefits;

      4) Any item taken into account in determining self-employment income for the tax year on which an individual pays hospital insurance tax under Sec. 1401(b).

   b. The funds used to make contributions to the various types of retirement accounts have already been subject to employment and Medicare taxes.

   c. Pension income, social security benefits, and IRA distributions are factored into one's AGI which in turn, impacts the determination of whether the applicable $200,000/$250,000 MAGI threshold has been exceeded.

10. Gross income for purposes of the 3.8% Net Investment Income Tax on "unearned income" does not include items such as interest on tax-exempt bonds, veterans' benefits, and the excluded gain from the sale of a principal residence. These items are otherwise excluded from gross income.

11. Flow-Through to S Corporation Owners Who Materially Participate

    a. The K-1 profits reported in Box 1 of a materially participating shareholder are <u>not</u> considered "unearned income" for purposes of the 3.8% Medicare tax.

    b. The K-1 profits reported in Box 1 are <u>not</u> considered "earned income" for purposes of the 0.9% Medicare tax.

        1) The IRS could reclassify distributions as compensation.

12. Example 9. John is an owner of a business that rents equipment and machinery. He also materially participates in that business. Regardless of the business being operated as an S corporation, LLC/partnership, or a sole proprietorship, any net income or loss therefrom would not be considered for purposes of the 3.8% Net Investment Income Tax calculation.

    a. A Schedule C sole proprietor or the K-1 recipient of "Box 1- Trades or Business Income from an LLC/partnership would still have the potential for the 0.9% Medicare tax on earned income.

13. Example 10. John leases a building to his rental business. This is a self-rental situation and self-rentals are not classified as passive income. Since John would not be materially participating in the rental of the building, any building rental income would be subject to the net investment income tax.

14. Real Estate Professionals Who Materially Participate in Rental Activities

    a. If a taxpayer is a "real estate professional" and they also "materially participate' in their rental activities, then Sec. 469 passive loss rules do not apply.

    b. Any rental income or loss derived from such rental activities will not factor into the taxpayer's calculation of the 3.8% Net Investment Income Tax if they meet the definition of trades or business for Section 162.

15. Example 11. John is a "real estate professional" for purposes of the passive loss rules. He also "materially participates" in the rental activities that he owns. The Net Investment Income Tax would not apply to the rental activities if his "rental activities" are treated as "trades or business" under Sec. 162. The income would not be subject to any self-employment tax under Sec. 1402. However, assume the rental activities are not “trades or business" for Sec. 162. As a result any net rental income or loss would be part of his 3.8% Net Investment Income Tax calculation.

16. The passive loss regs provide that if rents are paid to the taxpayer and come from a business tenant in which they materially participate, such rental income is recharacterized as "nonpassive.” However, if there is a rental loss in any given year, then such loss is treated as passive under these recharacterization rules.

17. Historically, the common strategy for grouping was to maximize passive activity income in order to absorb passive activity losses.

    a. However, the Net Investment Income Tax takes square aim at passive activity income, so taxpayers may want to re-think their groupings.

18. Proposed regulations under Section 469 allow taxpayers to regroup their activities for tax purposes one time during 2013.

19. Net Investment Income

    a. For purposes of the Net Investment Income Tax the definition allows the reduction for any otherwise allowable deductions "properly allocable to such income or gain."

        1) Deductions under Sec. 62 related to gross income

        2) Itemized deductions under Sec. 63

        3) Loss deductions under Sec. 165

        4) Special rules for Controlled Foreign Corporations and PFICs

    b. Reduction Examples

        1) A large capital loss in excess of any capital gain for a particular tax year can only offset up to $3,000 of other "net investment income."

        2) A large advisory fee for managing a stock portfolio can only offset "net investment income" to the extent it exceeds 2% of AGI as a miscellaneous itemized deduction.

        3) Investment interest expense can only be used to offset "net investment income" to the extent otherwise allowed on Form 4952.

    c. Any state or local tax attributable to the sources of net investment income may be deducted in computing net investment income.

20. The proposed regulations put the transferor of a passthrough entity in a similar position as if the partnership or S corporation has disposed of all of its properties and then passed its gain or loss through to its owners.

    a. To achieve parity between the sale of a passthrough interest and the sale of the entity's assets, the proposed reliance regulations apply this exception on a property-by-property basis.

    b. There is a four step process:

        1) First, assume that there is a deemed sale for cash of all the properties of the entity.

        2) Second, determine the gain or loss on each property.

        3) Third, determine the share of the gain or loss that would be allocated to the selling partner or shareholder for regular income tax purposes.

        4) Fourth, determine how much of that gain is attributable to property held in an active trade or business, then subtract that amount from the total gain on the sale of the business interest.

21. Example 12. Todd and Mary are shareholders of TM Corporation, an S corporation. Todd owns 75% of the stock and Mary owns 25%. TM is engaged in a single trade or business. Todd's materially participates in TM, but Mary's involvement is passive.

    a. TM owns three assets held exclusively in TM's trade or business and with a fair market value of $120,000. Todd and Mary sell their stock in TM, with Todd receiving $90,000 and Mary receiving $30,000. Todd's basis in the stock is $75,000 and Mary's basis is $25,000.

    b. Step 1 assumes there is a deemed sale of each of the assets.
    Asset 1 has an adjusted basis of $10,000 and a fair market value of $50,000.
    Asset 2 has an adjusted basis of $70,000 and a fair market value of $30,000.
    Asset 3 has an adjusted basis of $20,000 and a fair market value of $40,000.

       Todd recognizes a gain of $15,000; the $90,000 selling price minus his $75,000 basis.
       Mary recognizes a gain of $5,000; the $30,000 selling price minus her $25,000 basis.

       Todd's gain is subject to the 3.8% net investment income tax, but the gain is subject to an adjustment because he materially participates.

       Since Mary does not materially participate, her gain is subject to the 3.8% net investment income tax, but without any adjustment.

    c. In Step 2, we determine the gain or loss on each asset.
    Asset 1 has a $40,000 gain, $50,000 fair market value with a $10,000 basis.
    Asset 2 has a $40,000 loss, $30,000 fair market value with a $70,000 basis.
    Asset 3 has a $20,000 gain, $40,000 fair market value with a $20,000 basis.

    d. In the third step, we determine the share of the gain or loss that would be allocated to the selling partner or shareholder for regular income tax purposes.

       We need to compute step three for only for Todd because he qualifies for the adjustment.

       Todd's share of each of the three assets are $30,000 gain, $30,000 loss, and $15,000 gain.

    e. In Step 4, since all three assets were held in TM's trade or business, the gain or loss from all three properties are added together: $30,000 gain minus the $30,000 loss and plus the $15,000 gain for a net gain of $15,000.

       Todd's gain on the sale of the stock of $15,000 is reduced by the $15,000 adjustment from Step 3, leaving a zero gain for the 3.8% net investment income tax.

       Basically, there is no net investment income tax because all three assets were used in the trade or business.

    f. We could apply the same computations using different selling prices for the stock and or each of the assets along with variations of the assets being used in the business.

       1) Have some of the assets not used in the business or make a shareholder's basis in the stock different from the basis in the assets. This can cause the net investment income tax.

22. Individuals may owe both the Additional Medicare Tax and the Net Investment Income Tax, but not on the same income.

23. Example 13. Lynda, a single individual, works for Allied Mechanics in 2013 and is paid $300,000. In addition, she has $100,000 net investment income. Her modified adjusted gross income is $400,000. Lynda's Additional Medicare Tax on her wages is $900; the $300,000 of wages minus the $200,000 threshold for a single individual times the nine tenths of 1%. In addition, the Net Investment Income Tax is $3,800; the $100,000 net investment income times the 3.8%.

24. Tax Planning Tips:

    a. Materially participate in S corporations.

    b. Use Roth IRA to reduce MAGI below threshold amounts.

    c. Purchase tax-exempt bonds

    d. Transfer interests in passthrough entities to family members

    e. Use of insurance and deferred annuities

    f. Installment sales

    g. Charitable Remainder Trusts

    h. Income smoothing

    i. Separate filing

D. Increased Threshold for Medical Expenses

1. Medical expenses must exceed 10% of adjusted gross income to qualify for a deduction.

    a. Remains at 7.5% for those over age 65 through 2016.

    b. The alternative minimum tax threshold remains at 10%.

2. Will most harm near retirees and those with modest incomes but high medical bills.

E. Limit on Flexible Spending Accounts

1. Maximum of $2,500 allowed as contributions to Health Care Flexible Spending Accounts.

    a. Reduces Box 1 amount on W-2.

    b. Prior to 2013, the accounts were allowed unlimited contributions.

        1) Employer was allowed to impose a contribution limit.

    c. Results in a $13 billion tax increase each year.

2. Used to pay a family's basic medical needs.

3. 30 to 35 million taxpayers make contributions to FSAs.

4. Families with special need children are hit the hardest.

    a. FSA amounts can be used to pay for special needs education.

        1) Tuition rates for schools that teach special needs children can exceed $14,000 per year.

F. Medical Device Tax

1. Section 4191 of the Internal Revenue Code imposes a 2.3% excise tax on the sale of certain medical devices by the manufacturer or importer of the device.

2. The tax applied to sales of taxable medical devices after December 31, 2012.

3. The manufacturer, producer, or importer of the device is subject to the excise tax when the product is sold.

4. Incorrectly Included in Medical Devices

    Sport fishing equipment
    Fishing rods and fishing poles
    Electric outboard motors
    Fishing tackle boxes
    Bows, quivers, broadheads, and points
    Arrow shafts
    Coal
    Taxable tires
    Gas guzzler automobiles
    Vaccines

5. There are specific statutory exemptions for eyeglasses, contact lenses, and hearing aids. There are also exemptions for other devices that are of a type that are generally purchased by the general public.

III. Insurance Mandates

A. Individual Mandate

1. Individuals who cannot afford health insurance will either qualify for Medicare/Medicaid or get assistance in the form of tax credits, tax breaks, or assistance with up-front costs on the Health Insurance Exchanges.

   a. The exchanges are state or federally run online marketplaces where customers can shop for affordable quality health insurance.

   b. Small businesses can also use the exchange to purchase insurance for their employees.

   c. The Health Insurance Exchanges opened October of 2013, coverage begins January 1, 2014.

2. Health Exchanges

   a. Will offer various types of insurance plans called, Bronze, Silver, Gold, and Platinum.

      1) All offer the same essential benefits with differential co-pays and deductible amounts.

      2) Covers 60%, 70%, 80%, and 90%, respectively, of medical costs.

3. Individuals who choose to go without insurance coverage will be required to pay a monthly penalty. [Sec. 5000A]

   a. A taxpayer's monthly penalty is equal to 1/12 of the greater of: [Sec. 5000A(c)(2)]

      1) The flat dollar amount or

      2) The applicable percentage of income.

   b. The flat dollar amount is the sum of the applicable dollar amounts for each of applicable individuals who lack minimum essential coverage, and whom the taxpayer is required to insure.

      1) The taxpayer, the taxpayer's spouse on a joint return, and the taxpayer's dependents.

      2) The flat dollar amount cannot exceed 300% of the applicable dollar amount. [Sec. 5000A(c)(2)(A)]

   c. The applicable dollar amount:

      1) For 2014, the applicable dollar amount is $95 per year. [Sec. 5000A(c)(3)(B)]

      2) For 2015, the applicable dollar amount is $325 per year. [Sec. 5000A(c)(3)(B)]

      3) For 2016, the applicable dollar amount is $695 per year. [Sec. 5000A(c)(3)(A)]

      4) For calendar years beginning after 2016, the $695 applicable dollar amount is increased for inflation, with each adjustment rounded down to the lower multiple of $50. Sec. 5000A(c)(3)(D)]

      5) The applicable dollar amount is halved for any month in which the applicable individual is under the age of 18 at the beginning of the month. [Sec. 5000A(c)(3)(c)]

d. The percentage of income is an amount equal to the following percentage of the excess of the taxpayer's household income over the taxpayer's filing threshold for the tax year [Sec. 5000A(c)(2)(B)]

1) 1.0% for tax years beginning in 2014.

2) 2.0% for tax years beginning in 2015.

3) 2.5% for tax years beginning after 2015.

e. Household income means the modified adjusted gross income of the taxpayer plus the modified adjusted gross income of all members of the taxpayer’s family required to file a tax return. [Sec. 5000A(c)(4)(B)]

f. The penalty is included with the taxpayer's income tax return for the tax year that includes the month for which the penalty is imposed. [Sec. 5000A(b)(1) and (2)]

g. Example 14. The Johnsons are married and file a joint return for 2014. Their household income is $55,000. They and their four dependents are all applicable individuals who are not exempt from the penalty. All six of the Johnsons are uninsured for the entire calendar year. One dependent is an adult, and the other three are under the age of 18 for the entire year. The Johnsons' shared responsibility (tax) is calculated as follows:

- For purposes of the flat dollar penalty, the applicable dollar amount for 2014 is $95. This amount is halved for applicable individuals under the age of 18. Thus, the Johnsons' initial penalty would be $427.50 ($95 for each of the three adults, and $47.50 for each of the three children). However, the flat dollar amount is limited to 300% of the applicable dollar amount, with no adjustment for individuals under 18. Thus, the Johnsons' flat dollar penalty is $285 ($95 x 3).

- The Johnsons’ filing threshold is for 2014 $20,300. Their $55,000 household income exceeds this threshold by $34,700 ($55,000 - $20,300). Thus, their percentage of income penalty is $347 (1.0% x $34,700).

- The Johnsons' actual penalty is the lesser of (1) the greater of the sums of their monthly penalty amounts which is $285 (the greater of $285, the flat dollar amount, or $347, the applicable percentage of income); or (2) the average national annual premium for qualified health plans that offer bronze-level of coverage for a family of six through an Exchange. They must pay the penalty with their 2014 income tax return.

4. The IRS has very limited enforcement authority with respect to the individual mandate, with no criminal prosecution, penalty for failure to pay, or lien authority.

a. There appears to be some room for civil penalties or refund offsets.

b. Assume a taxpayer has taxable income of $50,000; a tax of $5,000; with withholding of $4,500; and a penalty for lack of insurance. Will the IRS apply the penalty against the $4,500 withholding first?

5. In regulations, the IRS assumes that under the Affordable Care Act the cheapest health insurance plan available in 2016 for a family will cost $20,000 for the year.

6. Premiums will be subsidized for households that make less than four times the federal poverty line – $94,200 for a family of four in 2014.

    a. Their cost of insurance will be capped at 9.5% of income, with this percentage decreasing as their income increases.

7. Dependents are exempt from paying the penalty, because it is imposed instead on the taxpayer who claims the dependency exemption. [Sec. 5000A(b)(3)(A)]

8. For 2014 tax returns, taxpayers will have to attach proof to the tax return that they are enrolled in a "qualified plan."

9. In 2018, a 40% penalty will be imposed on "Cadillac Plans."

    a. Beginning in 2018, if an employer-provided benefit-rich insurance plan has an annual value of more than $10,200 for an individual and $27,500 for a family, then the insurance plan is subject to a 40% excise tax.

        1) Amounts are adjusted for inflation and certain other factors.

    b. The annual amounts include medical, prescription drugs, administrative fees, and also include employee and employer contributions to flexible spending, health reimbursement, or health savings accounts.

    c. Stand-alone vision and dental plans are not included in the calculation.

    d. The 40% excise tax is imposed on the excess of the value over the annual amounts.

    e. The tax is paid by the plan sponsor and is paid for each participant.

B. Employer Mandate

1. Applicable large employers will be required to pay penalties if they do not provide adequate coverage for their employees.

    a. An applicable large employer, with respect to a calendar year, is an employer who employed an average of at least 50 full-time equivalent (FTE) employees on business days during the preceding calendar year. [Sec. 4980H(c)(2)(A)]

        1) Companies that have a common owner, or are otherwise related, will use the combined number of employees to determine whether each separate company is subject to this provision.

    b. The Obama administration on July 2, 2013, announced a one-year delay, until 2015, in the health care mandate that large employers provide coverage for their workers or pay penalties.

        1) This delay is designed to meet two goals:

            a) First, it will allow the government to consider ways to simplify the new reporting requirements consistent with the law.

            b) Second, it will provide time to adapt health coverage and reporting systems while employers are moving toward making health coverage affordable and accessible for their employees.

c. A full-time employee with respect to any month is an employee who is employed on average at least 30 hours of service per week. [Sec. 4980H(c)4)(A)]

1) A combination of employees working 120 hours per month count as one full-time equivalent (FTE) employee.

d. Proposed regulations provide that an employer's status as a large employer for a calendar year is determined by taking the sum of total number of full-time employees for each calendar month in the preceding calendar year and the total number of full-time equivalent employees for each calendar month in the preceding calendar year, and dividing by 12. Seasonal workers are included in the computation. The result, if not a whole number, is then rounded to the next lowest whole number. [Proposed Reg. 54.4980H-2(b)(1)]

e. An employer will not be considered to employ 50 or more full-time employees if: [Sec. 4980H(c)(2)(B)]

1) The employer's workforce exceeds 50 full-time employees for 120 days or fewer during the calendar year, and

2) The employees in excess of 50 employed during such 120-day period were seasonal workers.

2. An employer owes a penalty only if it meets two requirements: [Sec. 4980H(a)]

a. If it has 50 or more full-time employees or full-time equivalents and

b. If one or more of its full-time employees receive premium credits (governments subsidies) to help purchase health insurance in the exchange.

3. An individual may be eligible for a premium credit either because the employer does not offer coverage or the employer offers coverage that is either not "affordable" or does not provide "minimum value."

a. Not affordable means that the employer’s plan premium for self-only coverage exceeds 9.5% of their household income. [Sec. 36B(c)(2)(C)(i)(II)]

b. Does not provide minimum value means that the employer plan pays for less than 60%, on average, of covered health care expenses. [Sec. 36B(c)(2)(C)(ii)]

c. According to the Congressional Budget Office, about 1 million individuals per year will enroll in an exchange plan and receive a credit because their employer's plan was unaffordable.

4. An employee receives a premium subsidy only if they meet two requirements:

a. The employee's household income must be less than 400% of the Federal Poverty Line (FPL), which varies with family size.

1) For a family of four, 400% FPL = $92,200 for 2012.

2) Household income includes the income of the employee's spouse and of other dependent members of the household.

b. The employee's portion of the insurance premium on the employer's plan must exceed 9.5% of the employee's household income.

1) The employer can use the employee’s W-2 income for this 9.5% calculation. [Notice 2011-73]

c. Example 15. In 2015, John Black has household income of $47,000. Mr. Black is an employee of Apex Corporation, which offers its employees a health insurance plan that requires Mr. Black to contribute $3,450 for self-only coverage for 2014; this represents 7.3% of Mr. Black’s’ household income. Because Mr. Black’s required contribution for self-only coverage does not exceed 9.5% of household income, Apex’s plan is affordable for Mr. Black, and Mr. Black is eligible for minimum essential coverage for all months in 2015.

d. An employer that offers qualified coverage to a particular employee will not be subject to the penalty for that particular employee for 2015, even if that employee receives a premium tax credit or cost-sharing reduction subsidy.

e. Employees who qualify for Medicaid, the Children’s Health Insurance Program, or any other applicable state or local public program will be enrolled in those programs, rather than given a premium assistance credit. The employer will not be responsible for the shared responsibility penalty for employees who are enrolled in one of those programs.

5. Employers with more than 200 full-time employees who offer enrollment in one or more health benefit plans will be required to automatically enroll new employees in one of the plans offered. [FLSA Sec. 18A]

6. Penalty Amounts

a. If a business does not offer health insurance, the penalty is $2,000 ($166.67 per month) per full-time employee after excluding the first 30 full-time employees. [Sec. 4980H(c)(2)(D)(i)(1)]

b. If a business does offer insurance, the penalty is the lesser of $2,000 for every full-time employee (after excluding the first 30 full-time employees), or $3,000 for every employee receiving a subsidy.

c. For calendar years after 2014, the $2,000 amount used in determining the applicable payment amount and the $3,000 amount used in determining the assessable payment imposed on applicable large employers offering coverage will be increased for inflation. [Sec. 4980H(c)(5)].

7. Workers that are offered qualified coverage by an employer are ineligible for the new insurance subsidies provided in the exchanges.

8. Proposed regulations provide that an applicable large employer member will not be treated as failing to offer to a full-time employee (and his or her dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan for an employee whose coverage under the plan is terminated during the coverage period solely due to the employee failing to make a timely payment of the employee portion of the premium. [Proposed Reg. 54.4980H-3(f)]

9. Part-time workers do not have to be offered insurance under the law.

a. Part-time is defined as below 30 hours per week.

10. The requirement is that the employer offer minimum essential coverage to substantially all full-time employees and their dependents in order to avoid the $2,000 times all full-time employee penalty.

    a. The penalty will require an offer of such coverage to at least 95% of all full-time employees and their dependents.

    b. Just for plan years beginning in 2015, transitional relief will allow an employer to limit the coverage offered to employee only coverage as long as it is taking steps during that plan year to expand the offer to coverage to dependents for future plan years.

    c. The regulations define "dependent" as the employee's children up to age 26, and not the spouse.

11. IRS guidance addresses how an employer can determine if a newly hired employee is a full-time employee. The guidance provides that, at least for the first three months following an employee' date of hire, an employer that sponsors a group health plan will not be subject to the employer shared responsibility payment because it failed to offer coverage to the employee under its plan during that three-month period. [Notice 2012-58]

12. The guidance also provides that, in certain circumstances, employers will have 12 months to determine whether a newly hired employee is a full-time employee for the number of full-time equivalent computation. Such circumstances would apply when it cannot be reasonably determined that a newly hired employee is expected to work full time and the employee works full time during the first three months of employment, but the employee's hours during that period are not representative of the average hours the employee is expected to work on an annual basis.

13. Just for plan years beginning in 2015, transitional relief will allow an employer to limit the coverage offered to <u>employee only</u> coverage as long as the employer is taking steps during that plan year to expand the offer to coverage to dependents for future plan years.

    a. The regulations define "dependent" as the employee's children up to age 26, and not the spouse.

14. The IRS will contact employers to inform them of their potential liability and provide them an opportunity to respond before any liability is assessed or notice and demand for payment is made. [Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, December 28, 2012, Q/A-16]

    a. Employers will not be required to include the employer shared responsibility payment on any tax return that they file. [Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act, December 28, 2012, Q/A-17]

    b. An employer may not deduct the assessable payment imposed under the shared responsibility rules. [Sec. 4980H-(c)(7)]

15. Unaffordable coverage, for purposes of the premium assistance credit, is self-only coverage with an employee-paid premium amount that is more than 9.5% of the employee's household income. [Reg. 1.36B-2(c)(3)(v)] Health and Human Services must be provided information regarding an employee's household income and the lowest-cost employer-sponsored health plan option. Health and Human Services will verify the information provided and determine if the employer-sponsored insurance is considered unaffordable coverage. If the insurance is determined to be unaffordable, Health and Human Services informs the state insurance exchange that the individual is eligible for the premium assistance credit and issues an affordability waiver to the employee. Generally, the employer, after being notified, is responsible for the penalty for providing unaffordable coverage to any employee who receives an affordability waiver.

16. Implications of the Employer Mandate

    a. In a study conducted by McKinsey & Company, roughly one-third of employers said they would choose to pay the penalty and drop health insurance coverage entirely.

    b. "The mandate makes it extremely expensive to cross the 50-employee threshold," warned the National Federation of Independent Business. "For example, a mid-sized restaurant that goes from 49 to 50 employees will face a $40,000 per year penalty."

        1) Many businesses, including Papa John's Pizza, Wendy's, Taco Bell, and Wal-Mart have already reduced employee hours to avoid triggering penalties.

        2) Some employers will reduce full-time staffers to part-time, trim payrolls to fewer than 50 workers, or simply stop hiring.

    c. The employer mandate will discourage business development and growth.

    d. Small firms with 50 or fewer workers will have very strong disincentives to expand.

    e. These businesses can avoid the new penalties by staying small; growth will simply add new costs and burdens.

    f. Once companies reach 50 employees, they are likely to turn to contractors and outsource work to evade the new mandate, even if such arrangements are less efficient than directly hiring new workers.

    g. The law provides strong incentives for firms to avoid hiring workers from low-income households.

        1) Eligibility for subsidized insurance in the exchange is based on household income, and firms can be penalized if one of their workers gets subsidized coverage in an exchange.

        2) Thus, firms have a strong incentive to find workers who will not qualify for subsidized coverage, which may also lead to invasions of privacy.

        3) For instance, a restaurant might find it better to hire young waiters from upper-income neighborhoods, as opposed to low-income areas, because they would be less likely to qualify for subsidized insurance in the exchanges.

Nine Scenarios	#1	#2	#3	#4	#5	#6	#7	#8	#9
Total FTE employees	49	50	50	50	51	52	52	51	51
Total full-time employees	49	28	50	40	51	51	52	51	31
# of Unsubsidized employees	48	50	49	38	50	26	10	25	6
# of Subsidized employees	1	0	1	2	1	25	42	26	25
Penalty with insurance	$0	$0	$3,000	$6,000	$3,000	$42,000	$30,000	$42,000	$2,000
Penalty without insurance	$0	$0	$40,000	$20,000	$42,000	$42,000	$44,000	$42,000	$2,000

#1 - Unless the business has 50 or more full-time employees or FTEs, there is no penalty.

#2 - If there are no subsidized employees, there are no penalties. Even if there were subsidized employees there would be no penalty because there are less than 30 full-time employees.

#3 - For the providing firm there is a $3,000 per person penalty for subsidized employees. The nonproviding firm has a $2,000 per person penalty for each employee over 30. $40,000 = ((50 - 30) x $2,000).

#4 - For the providing firm there is a $3,000 per person penalty for subsidized employees. The nonproviding firm has a $2,000 per person penalty for each employee over 30. $20,000 = ((40 - 30) x $2,000)

#5 - For the providing firm there is a $3,000 per person penalty for subsidized employees. The nonproviding firm has a $2,000 per person penalty for each employee over 30. $42,000 = ((51 - 30) x $2000)

#6 - Both the providing firm and the nonproviding firm pay a $2,000 per person penalty for each subsidized employee.

#7 - The providing firm pays a $3,000 per person penalty for each subsidized employee. The nonproviding firm pay $2,000 for each employee over 30.

#8 - Both the providing firm and the nonproviding firm pay a $2,000 per person penalty for each subsidized employee.

#9 - By replacing full-time employees with part-timers, both the providing and nonproviding firm pays a $2,000 per person penalty for full-time employees in excess of 30. $2,000 = ((31 -30) x $2,000)

C. Hospital Mandate

1. In an attempt to improve initial care for Medicare patients, hospitals face fines if too many are readmitted within 30 days of discharge.

   a. This is expected to cost each facility that serves Medicare patients an estimated $125,000 per year.

D. Insurance Company Mandate

1. No Pre-Existing Condition Rejections

   a. Insurance companies will no longer be able to deny individuals for pre-existing conditions or drop them from coverage when they get sick.

2. Children Insured on Parents' Plans to Age 26

   a. Children up to the age of 26 who are not married are allowed to be covered by their parents' insurance plan.

   b. Children up to age 26 may be denied coverage under their parents' plan if they are able to obtain health insurance through their employer.

   c. Retirees under the age of 65 will not be able to use their insurance to cover adult children as dependents.

3. No Caps on Annual or Lifetime Benefits

   a. When a catastrophic health condition occurs in a policyholder's life an insurance company will have to cover the beneficiaries' expenses on an unlimited basis.

   b. Taxpayers will no longer be able to purchase bargain-basement insurance plans, which are offered at low prices in part because they include strict limits on the amount of money that can be paid out in benefits.

      1) These are referred to as "Mini-Med" plans.

4. No Rescissions

   a. Prevents insurance companies from canceling insurance policies for frivolous reasons.

   b. Often, insurers justify the action by citing a policyholder's misstatements in their insurance contract, even if these are minor, unintentional errors that have nothing to do with the health condition of the policyholder.

5. "Essential Health Benefits" Must be Covered

   a. The list of essential health benefits has not yet been decided by the Department of Health and Human Services.

   b. Each plan must at the very least cover 60% of the medical costs, on average, of its enrollees.

c. Insurers must provide benefits in 10 broad categories:
   1) Ambulatory patient services
   2) Emergency services
   3) Hospitalization
   4) Maternity and newborn care
   5) Mental health and substance use disorder services
   6) Prescription drugs
   7) Rehabilitative and rehabilitative services and devices
   8) Laboratory services
   9) Preventive and wellness services and chronic disease
   10) Pediatric services, including oral and vision care

6. Restrictions on Premium Discrimination

   a. Insurers will no longer be able to charge people higher premiums if they have a pre-existing condition.

   b. Premiums within a health insurance plan can only be different person-to-person based on an individual's:

      1) Age - premiums for older people cannot be more than three times as much than for younger people.

      2) Tobacco usage - smokers can be charged higher premiums.

      3) Geographic location - policy holders that live a part of the state or region with a high cost of living can be charged more.

7. Medical Loss Ratio

   a. Insurers offering group or individual health insurance must report annually, to the Department of Health and Human Service, on the percentage of health premiums used for claims reimbursement, and they must maintain certain minimum medical loss ratios (MLR). If the minimums are not maintained, rebates must be provided to health plan participants. [PHSA 2718]

   b. Self-funded plans are not subject to the MLR reporting and rebate requirements.

      1) A self-funded plan is not a health insurance issuer and thus is not subject to the MLR requirements.

   c. Under PHSA 2718, minimum loss ratios are established for large group plans, small group plans, and individual plans.

      1) The minimum loss ratio for large group plans (plans with 101 or more employees) is 85%, or a higher percentage if a state requires it.

      2) The minimum loss ratio for individuals and small group plans (plans with 100 or fewer employees) is 80%, or a higher percentage if a state requires it.

   d. This means that issuers must spend at least 85 or 80%, respectively, of each premium dollar, as adjusted for taxes and regulatory and licensing fees, on reimbursement for clinical services provided to enrollees and activities that improve health care quality.

e. Beginning January 1, 2011, health insurers providing coverage that does not meet the minimum loss ratios must provide an annual rebate to each enrollee under such coverage, on a pro rata basis. [PHSA 2718(b)(1)(A)]

1) An insurer may choose to provide current enrollees with a rebate in the form of a premium credit, lump-sum check, or, if an enrollee paid by credit card or debit card, by lump-sum reimbursement to the same account that the enrollee used to pay the premium. [HHS Reg. 158.241(a)(2)]

2) Rebates to former enrollees must be made in a lump-sum. [HHS Reg. 158.241(b)]

IV. Other Issues

A. Small Employer Health Insurance Credit

1. Effective for tax years beginning after December 31, 2009, and before 2014, the small employer health insurance tax credit provides a 35% credit for the cost of premiums paid toward health insurance coverage.

2. The small employer must contribute at least 50% of the premium cost.

a. Any premium paid under a salary reduction arrangement is not treated as paid by the employer for purposes of the credit.

3. The full credit is available to small employers with 10 or fewer employees and average annual wages of less than $25,000.

a. The credit is reduced by 6.667% for each full-time employee in excess of 10 and by 4% of each $1,000 that average annual compensation exceeds $25,000.

b. A sole proprietor, a partner, a shareholder owning more than 2% of an S corporation, and any owner of more than 5% of other businesses are not employees for purposes of the credit. Family members of any business are generally excluded. Seasonal employees who work for 120 days or fewer for the business in a year are excluded.

c. The definition of a related party includes:
- a child or a descendant of a child,
- a sibling or step-sibling,
- a parent or ancestor of a parent,
- a niece or nephew,
- an aunt or uncle,
- or a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law

d. The number of full-time equivalent employees is basically the total number of hours worked by all employees, divided by 2,080. The result, if not a whole number, is then rounded to the next lowest whole number. [IR-2010-48]

1) The total hours for any single employee will not exceed 2,080.

4. The maximum credit for a tax-exempt employer is 25% for tax years beginning in 2010 through 2013.

    a. Taken on Form 990-T.

    b. The amount of the credit cannot exceed the total amount of income and Medicare tax withheld (i.e., hospital insurance). This is the amount the employer is required to withhold from employees' wages for the year and the employer's share of Medicare tax on employees' wages for the year.

5. For 2014 and 2015, the maximum credit increases to 50% (35% for tax-exempt employers) if the employer participates in a state insurance exchange and satisfies additional criteria.

6. The credit is a component of the general business credit (Form 8941).

    a. An unused credit amount for 2010 cannot be carried back one year because it is first available for years after December 31, 2009.

7. The credit reduces the deduction for health insurance premiums.

8. It appears likely that the credit was primarily utilized by small employers already offering health insurance rather than encouraging employers to start offering coverage.

B. Over-the-Counter Drugs

1. 2011 brought the exclusion of over-the-counter drugs not prescribed by a doctor from being reimbursed through a flexible spending account or health reimbursement account.

2. It appears that many doctors have been willing to provide such prescriptions, limiting the potential impact of this change.

C. There are 600,000 physicians in America who care for the 48 million seniors on Medicare. Of the $716 billion that the Affordable Care Act cuts from the program over the next ten years, the largest chunk – $415 billion – comes from slashing Medicare's reimbursement rates to hospitals, nursing homes, and doctors.

1. This significant reduction in fees is driving many doctors to stop accepting new Medicare patients, making it harder for seniors to gain access to needed care.

2. A memorandum sent by the lead investigator to acting Medicare chief Marilyn Tavenner concluded: "Based on the limited data that we received, the number of opted-out physicians appears to have increased each year from 2006 to 2010. More physicians may opt out in the near future."

3. According to Medicare actuaries, 15%, and eventually 40%, of Medicare providers will either go bankrupt or stop seeing Medicare patients altogether.

4. At least 20 million people are likely to lose their job-based health insurance, according to the Congressional Budget Office, and as many as 80 million people could be forced to switch plans to comply with the Affordable Care Act, according to McKinsey.

5. During the past four years, the average family has spent a total of $12,230 more on private health insurance, which the average individual has spent $4,163 more, according to Republican's Joint Economic Committee.

D. Disincentive to Marriage

1. According to Diana Furchtgott-Roth of the Manhattan Institute, in testimony to a congressional hearing: “Health insurance premium credits in the new law are linked not directly to income, but to the poverty line, resulting in a particularly steep marriage penalty for low-income Americans. With $10,890 as the poverty line for one person and an additional $3,820 for a spouse, marriage means less government help with health insurance.”

2. David Gamage, a former Obama Treasury Department official, in The Wall Street Journal explained: “Consider a couple with children in which one of the parents earns most of the family’s income. If the couple marries, the family would lose thousands of dollars of subsidies that could otherwise be used to pay for health insurance for the children and the lower-income spouse. If the couple is already married, divorce may be their only option for obtaining affordable insurance for their children and the lower-income parent.”

E. Patient-Centered Outcomes Research Institute

1. The Patient-Centered Outcomes Research Institute’s (research institute) purpose is to carry out "comparative clinical effectiveness research."

   a. Defined in the law as evaluating and comparing "health outcomes" and "clinical effectiveness, risks and benefits" of two or more medical treatments or services.

   b. The purpose of the research is purportedly for the government to determine which treatments work best so that money is not spent on less effective treatments.

   c. The institute is to be governed by a "board" to assist in identifying research priorities and establishing the research project agenda.

2. A section of the law makes clear the Secretary of Health and Human Services may not use research data from the new institute in a manner that treats the life of an elderly, disabled, or terminally ill individual as lower in value than that of an individual who is younger, not disabled, or not terminally ill.

   a. However, the law allows the Health Secretary to limit any "alternative treatments" of the elderly, disabled, or terminally ill if such treatments are not recommended by the new research institute.

3. Another section of the law calls for the new institute to study the effectiveness of treatment in "subpopulations," including "racial and ethnic minorities, women, age and groups of individuals with different comorbidities, genetic and molecular sub-types, or quality of life preferences."

   a. Sally Pipes, president of the Pacific Research Institute, slammed effectiveness research under the Affordable Care Act as a "recipe for cook-book medicine, where the government can pressure doctors into prescribing treatments according to average results rather than an individual patient's needs and preferences."

F. Smokers

1. The Affordable Care Act allows health insurers to charge smokers buying individual policies up to 50% higher premiums starting January 1, 2014.

    a. For a 55-year-old smoker, the penalty could reach nearly $4,250 a year. A 60-year-old could wind up paying nearly $5,100 on top of premiums.

    b. Younger smokers could be charged lower penalties under rules proposed by the Obama administration.

2. Workers covered on the job would be able to avoid tobacco penalties by joining smoking-cessation programs, because employer plans operate under different rules.

3. Nearly one of every five U.S. adults smokes.

    a. That share is higher among lower-income people, who also are more likely to work in jobs that do not come with health insurance and would therefore depend of the new federal health-care law.

        1) "If you don't charge the 50%, your competitor is going to do it, and you are going to get a disproportionate share of the less-healthy older smokers."

    b. Insurers will not be allowed to charge more for people who are overweight, or have a health condition like a bad back or a heart that skips beats.

4. The federal law allows states to limit or change the smoking penalty.

5. The law allows insurers to change older adults up to three times as much as their youngest customers.

G. Adjuncts within Universities

1. Many colleges are cutting back on the number of hours worked by adjunct professors, in order to avoid new requirements that they provide healthcare to anyone working over 30 hours per week.

    a. 70% of professors work as adjuncts.

    b. In Ohio, instructor Robert Balla faces a new cap on the number of hours he can teach at Stark State College. In a letter the school told him that "in order to avoid penalties under the Affordable Care Act ... employees with part-time or adjunct status will not be assigned more than an average of 29 hours per week."