Patient Protection and Affordable Care Act

Significant Rulemaking and Guidance

Agency Initial Action Date of Action	**Regulation/Guidance**	**Latest Action** Date	**What the Law/Regulation/Guidance Does**	**Consequences for Small Businesses**
Centers for Medicare and Medicaid Services Interim Final Rule with Comment Period Published: 5/5/10	**Changes in Provider and Supplier Enrollment in Medicare and Medicaid Programs**	Final Rule Published: 4/27/12 Effective Date: 6/26/12	The law requires all providers of medical items or services under Medicare and Medicaid to include their National Provider Identifier (NPI) on correspondence submitted in relation to the programs, and requires all physicians permitted to order products and services for Medicare beneficiaries to enroll in Medicare. The regulation clarifies the types of activities that require providers to furnish their NPI, and defines the type of activity requiring physician enrollment in Medicare.	Small providers of medical devices or services will be subject to increased identification requirements, and many small and solo physician practices previously not enrolled in the Medicare program will be forced to do so.
Internal Revenue Service Final Regulations and Removal of Temporary Regulations Published: 6/15/10	**Excise Tax on Indoor Tanning Services**	Final Rule Published: 6/11/2013 Effective Date: 6/11/2013	The law imposes a new10% excise tax, assessed during payment, on indoor tanning services. The final regulations define the offering of indoor tanning services, and clarifies for owners and operators of these entities how the tax is applied during the purchase of both tanning and non-tanning services. The tax does not apply to phototherapy services performed by a licensed medical professional on his or her premises. There is also an exception for certain physical fitness facilities that offer tanning as an incidental service to members without a separately identifiable fee.	Small tanning salons are forced to assess a significant new tax on their customers, which may decrease demand for their services.

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Department of Health and Human Services Proposed Rule Published: 7/15/11	**Establishment of Health Insurance Exchanges and Qualified Health Plans**	Final Rule Published: 3/27/12 Effective Date: 5/29/12	The law requires that by January 1, 2014, each state have operational a health insurance exchange (established by either a state, a group of states, or the federal government) from which individuals and small businesses may purchase insurance. The regulation, among other things, defines the minimum standards that must be met in operating an exchange, outlines the criteria for certifying a plan as a qualified health plan, and defines requirements small businesses and insurers must meet to participate in the Small Business Health Options Program (SHOP).	Small businesses with 100 or fewer full-time employees (or 50 or fewer, at state option, prior to 2016) may purchase insurance to be offered to their employees from the SHOP exchanges. Insurers will be required to provide a minimum level of benefits in order to sell their plans on exchanges, likely increasing costs to insurers and small businesses. Small insurers may be disproportionately impacted by these costs.
Internal Revenue Service Notice of Proposed Rulemaking Published: 8/17/11	**Health Insurance Premium Tax Credit**	Final Rule Published: 5/23/12 Effective Date: 5/23/12	The law establishes an insurance premium tax credit to assist certain individuals and families in buying insurance through the exchanges. The final rule defines a number of parameters for individuals seeking to claim a premium tax credit, including eligibility standards. According to the final rule, an individual is eligible for the credit if their household income equals anywhere from 100% to 400% of the Federal Poverty Level. The rule also states that individuals enrolled in employer-sponsored coverage may still be eligible for the credit if employer-coverage is unaffordable or doesn't offer a minimum level of care.	Small businesses offering insurance to their employees may face increased costs by providing minimum affordable coverage. Employees who are not offered minimum affordable coverage may purchase it on an exchange, claim the premium tax credit and cause the employer to incur a penalty.

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Internal Revenue Service Notice of Proposed Rulemaking Published: 8/17/11	**Health Insurance Premium Tax Credit** (Reserved Final Rule on affordability of employer-sponsored coverage for related individuals)	Final Rule Published: 2/1/13 Effective Date: 2/1/13	Under the law, for taxable years beginning before January 1, 2015, employer-sponsored insurance is affordable if the individual's share of the annual premium for self-only coverage does not exceed 9.5% of his or her household income. The final rule clarifies that this determination is based on the cost of individual (self-only) coverage, not family coverage.	To avoid penalties, small business owners must offer employees minimum coverage that is affordable. If it is not, and an employee receives a federal subsidy, a small business owner will have to pay $3,000 per employee receiving such subsidies, or pay $2,000 per employee in their business (after the first 30), whichever amount is less.
Centers for Medicare and Medicaid Services Interim Rule with Request for Comments Published: 12/7/11	**Medical Loss Ratio (MLR) Rebate Requirements for Non-Governmental Plans**	Final Rule Published: 5/16/12 Effective Date: 6/15/12	The law requires insurers to report to the Department of Health and Human Services (HHS) the percentage of premiums collected that are spent on the reimbursement for clinical services and other activities that improve health of their enrollees, and to provide rebates to enrollees if these reimbursement amounts don't meet a certain standard. The regulation defines the methodology for calculating the reimbursement standards as well as the amount of rebate provided to enrollees.	Small insurers have less flexibility due to the economies of scale to meet the MLR requirements. As a result, they may face increased costs in providing rebates to certain enrollees, which could be passed on to their individual and small business customers.
Internal Revenue Service Notice of Proposed Rulemaking Published: 2/7/12	**Excise Tax on Medical Devices**	Final Rule Published: 12/7/12 Effective Date: 12/7/12	The law imposes a new 2.3% excise tax on the sale of medical devices by manufacturers, producers, or importers. The regulation defines these devices as Federal Drug Administration (FDA)-approved and used in the diagnosis, treatment, or cure of medical diseases. The term "taxable medical device" does not include eyeglasses, contact lenses, and hearing aids; and does not include any device of a type that is commonly purchased by the general public at retail for individual use (the retail exemption).	Certain small manufacturers and importers of durable medical devices have a significant new tax on their sales, harming their ability to grow their business and hire new employees. Small manufacturers of mobile device medical applications may also be subject to the tax.

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Centers for Medicare and Medicaid Services Proposed Rule Published: 5/11/12	**Medicaid Payments for Primary Care**	Final Rule Published: 11/6/12 Effective Date: 1/1/13	The law increases Medicaid payment rates for primary care services furnished by certain physicians to 100% of Medicare rates through CY2014, and the law updates the fees providers may charge for the administration of pediatric vaccines under the Vaccines for Children program. The regulation defines which services and physicians qualify for higher payments and the method for those calculating payments.	Small and solo physician practices specializing in family medicine, general internal medicine or pediatric medicine may receive increased Medicaid reimbursements (equal to 100% of Medicare payments) for 2 years beginning in January 2013.
Centers for Medicare and Medicaid Services Proposed Rule Published: 7/30/12	**Revisions to Medicare Part B**	Final Rule Published: 11/16/12 Effective Dates: 1/1/13 and 7/1/13	The law requires a face-to-face meeting before payment for Medicare transactions involving certain durable medical equipment. The regulation defines conditions requiring a face-to-face meeting, implements changes to the Medicare physician fee schedule, and makes other changes to Medicare Part B payment, as required by the Social Security Act.	Small and solo physician practices may be negatively affected by the time investment to meet the requirement of a face-to-face encounter.
Centers for Medicare and Medicaid Services Proposed Rule Published: 7/30/12	**Medicare Outpatient and Ambulatory Payment Systems**	Final Rule Published: 11/15/12 Effective Date: 1/1/13	The law increases the payment rate for Medicare services through the outpatient prospective payment system by 1.8%, and creates more stringent electronic record-keeping requirements for hospitals and medical providers. The regulation defines the types of outpatient services that will be subject to the increased payment rate, and the medical institutions that must adhere to the additional record-keeping requirements.	Small hospitals and small and solo physician practices may be heavily burdened in attempting to comply with additional electronic record-keeping requirements.

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Jointly issued by Internal Revenue Service; Department of Health and Human Services; and Department of Labor Guidance Released: 9/31/12	**Determining Full-Time Employees for Purpose of Employer Shared Responsibility (Employer Mandate)**	Guidance Issued: 9/31/12 Internal Revenue Service Proposed Rule Published: 1/2/13 Effective now through 2014	Beginning January 1, 2014, IRC § 4980H imposes penalties on certain employers with at least 50 full-time equivalent employees, if at least one of their full-time equivalent employees obtains a premium credit through the newly established exchange and the employer does not offer adequate or affordable coverage. Internal Revenue Service (IRS) Notice 2012-58 provides employers with guidance allowing a 12 month look back period to determine which employers are full-time (including new variable hour and seasonal employees).	Using the guidance, small business owners must calculate the number of full-time or full-time equivalent employees on their payroll to determine if the employer mandate provision applies to them.
Jointly issued by Department of the Treasury; Department of Health and Human Services; and Department of Labor Notice of Proposed Rulemaking Published: 11/26/12	**Incentives for Non-Discriminatory Wellness Programs in Group Health Plans**	Proposed Rule Comment Deadline: 1/25/13	The law increases the maximum reward for employees for participating in their employers' wellness plan from 20% to 30% of the cost of coverage, and gives HHS the authority to increase the reward to 50%. In the proposed rule, HHS indicates that it will allow a 50% reward for those participating in programs designed to prevent or reduce tobacco use. The proposed rule also clarifies parameters that must be met for health plans to be defined as a wellness plan under law.	Small businesses have the option to provide a more affordable wellness plan to employees who choose to participate.
Department of Health and Human Services Proposed Rule Published: 11/26/12	**Standards Relating to Essential Health Benefits**	Final Rule Published: 2/25/13 Effective Date: 4/26/13	The law requires all non-grandfathered health insurance plans in the individual and small group markets to provide "essential health benefits," which must be equal to the scope of benefits under a typical employer health plan. Under the final rule, these benefits must include a variety of categories, including mental health and substance abuse services. The essential benefits must be included in a benefits package that meets one of four actuarial values, to help consumers compare and select plans.	The requirement for a minimum level of benefits may increase the cost of the insurance small businesses in most states must offer to their employees, as well as raise costs for small insurers and their customers.

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Department of Health and Human Services Proposed Rule Published: 11/26/12	**Health Insurance Market Rules**	Proposed Rule Comment Deadline: 12/26/12	The law prohibits insurers from varying premiums in non-grandfathered plans offered in the individual and small group markets based on an individual's health and gender, requires insurers to accept and renew coverage of all applicants for non-grandfathered insurance, and requires all group plans and non-grandfathered individual health policies to provide coverage for pre-existing health conditions. The law also requires insurers planning premium increases, defined by the proposed rule as being 10% or more of the premium total, to submit these plans for review.	Without the ability to adjust premiums based on an individual's health condition prior to the passage of the law, small insurers may incur higher costs that could be passed on to their customers. Requiring rate increases to be reviewed restricts the flexibility of small insurers.
Internal Revenue Service Notice of Proposed Rulemaking Published: 12/5/12	**Net Investment Income Tax (Medicare Tax)**	Proposed Rule Comment Deadline: 3/5/13	The law imposes a new 3.8% tax on the lesser of certain "unearned" income or income in excess of modified adjusted gross income over $200,000 (individual) and $250,000 (joint filers). The proposed rule defines "unearned" income as interest, dividends, capital gains, rental and royalty income, non-qualified annuities, income from businesses involved in trading of financial instruments or commodities, and undistributed net and investment income from an estate or trust.	Certain small businesses with investment income that includes interest, dividends, royalties or rents may be faced with an additional 3.8% tax.
Office of Personnel Management Proposed Rule Published: 12/5/12	**Establishment of Multi-State Plan Program (MSPP) for Affordable Insurance Exchanges**	Final Rule Published: 3/11/13 Effective Date: 5/10/13	The law requires the Office of Personnel Management (OPM) to contract with health insurers to eventually offer at least two multi-state plans on each exchange. The rule defines the process that OPM will use in contracting with insurers. Insurers that contract with OPM to offer MSPs must offer plans in both the individual and small group markets. In the proposed rule, OPM indicates that it will allow MSP issuers to phase-in their small group market plans over time.	Small health insurers that choose to contract with OPM may face new costs from the requirement that they establish and implement two plans on every state exchange in four years. This burden is likely to be passed on to small business customers and their employees in the form of increased premiums.

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Internal Revenue Service Notice of Proposed Rulemaking Published: 12/5/12	**Rules Relating to Additional Medicare Tax (Medicare Surtax)**	Proposed Rule Comment Deadline: 3/5/12	Beginning in 2013, the law requires an additional Medicare surtax of 0.9% for incomes over $200,000 (individual) and $250,000 (joint filers). The proposed rule provides guidance for employers on the withholding, computation, reporting and payment of the additional tax.	Small business owners must implement the provision for any employees who are higher earners and are subject to it if they are higher earners, affecting their ability to return the capital to their business.
Centers for Medicare and Medicaid Services Proposed Rule Published: 12/7/12	**Notice of Benefit and Payment Parameters for 2014**	Final Rule Published: 3/1/13 Effective Date: 5/1/13	The law allows for federally-facilitated exchanges, if a state opts out of or makes insufficient progress towards establishing one. The law requires exchanges to be self-sustaining by 2015, and allows them to charge user fees or assessments. The rule includes a fee on each participating insurer, equal to 3.5% of the premiums for plans offered in federally-facilitated exchanges. The proposed rule clarifies the health plans that are responsible for paying these user fees, and expands on the standards relating to the administration of SHOP exchanges.	Due to the higher fees on insurance companies participating in a federally-facilitated exchange, small businesses located in states that haven't established a state-run exchange may be forced to incur higher costs.
Internal Revenue Service Notice of Proposed Rulemaking Published: 2/1/13	**Shared Responsibility Payment for Not Maintaining Minimum Essential Health Coverage (Individual Mandate)**	Proposed Rule Comment Deadline: 5/2/13	The law requires that beginning in 2014, non-exempt individuals and non-exempt dependents maintain minimum essential health insurance coverage or pay a penalty. Exceptions exist for those with religious objections to traditional medical care, those with insufficient earnings to file income taxes, undocumented immigrants, and others. The proposed rule clarifies that affordable coverage for an individual is a plan that costs less than 9.5% of a household's income. The uninsured children and spouse of an employee are exempt from penalties if the cost of family coverage under an employer's plan is more than 8% of household income.	Self-employed small business owners must maintain minimum essential health coverage or pay a penalty. For 2014, the penalty is the greater of $95 or 1% of income; for 2015, the greater of $325 or 2% of income; for 2016, the greater of $695 or 2.5% of income; after 2016, the amount of $695 is indexed for inflation. The penalty for children is half that of adults, with family penalties capped at three times the adult penalty.

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Department of Health and Human Services Proposed Rule Published: 2/1/13	**Exchange Functions: Eligibility for Exemptions from Individual Mandate**	Proposed Rule Comment Deadline: 3/18/13	The law specifies certain individuals who are exempt from the individual mandate penalty for not maintaining minimum essential health insurance. The proposed rule determines eligibility for, and the granting of certificates of, exemption by the exchange from maintaining that coverage. Additionally, the rule outlines the requirements that other types of individual coverage must meet to be certified by the exchange as minimum essential coverage under the Internal Revenue Code.	Self-employed small business owners who believe they may be exempt from the individual mandate should follow the requirements set forth in this proposed rule to apply for an exemption from the exchange. In addition, individuals who maintain coverage not designated by the statute or proposed rule as minimum essential coverage may need to apply for certification from the exchange.
Centers for Medicare and Medicaid Services Final Rule Published: 6/4/13	**Delay in Implementation of Small Business Health Options Program (SHOP) Exchanges**	Final Rule Published: 6/4/13 Effective Date: 7/1/13	The law requires that by January 1, 2014, each state should have established, or allowed the federal government to establish, a Small Business Health Options Program (SHOP) exchange that offers to its participants every type of Qualified Health Plan (QHP) at the level of coverage selected by the employer. The proposed rule delayed this requirement by a year and the final rule adopts that delay, giving state-operated SHOP exchanges the option to begin offering every type of QHP to their participants in 2014, or wait until the new deadline of January 1, 2015. The final rule also allows federally-operated SHOP exchanges to assist small employers in selecting only one QHP to offer to employees in 2014, and waiting until January 1, 2015 to begin offering all QHPs.	Small businesses and their employees participating in a SHOP exchange may not have as many insurance options in 2014 as originally expected.

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Centers for Medicare and Medicaid Services Proposed Rule Published: 6/19/13	**Small Business Health Options Program (SHOP) Exchange Oversight and Technical Standards**	Proposed Rule Comment Deadline: 7/19/13	The proposed rule sets forth the technical standards that Qualified Health Plans (QHPs) offered to small businesses on the SHOP exchanges must meet. These include financial integrity provisions, standards for insurance agents and brokers, protections against fraud and abuse, and requirements states must meet to run their own SHOP exchanges.	Most standards outlined in the proposed rule seem to be based on existing standards already in effect in the private market.
Department of the Treasury Blog Post Posted: 7/2/13	**Employer Shared Responsibility Payment Delay (Employer Mandate Penalty Delay)**	Blog Post Effective Date: 7/2/13	Beginning January 1, 2014, IRC § 4980H imposes penalties on certain employers with at least 50 full-time equivalent employees if the employer does not offer adequate or affordable health insurance. The Treasury Department announced in a blog post that employer mandate penalties will not apply for 2014, and will be delayed until 2015.	Small businesses with 50 or more employees who would otherwise be penalized for not providing coverage under the employer mandate will not incur those penalties until 2015.
Department of Health and Human Services Final Rule Published: 7/5/13	**Verification of Individual Eligibility for Health Insurance Subsidies**	Final Rule Published: 7/5/13 Effective Date: 7/5/13	The law permits individuals to receive subsidies to help them purchase health insurance only if their employer does not offer adequate or affordable health insurance. The final rule states that HHS will not attempt to verify individual eligibility for insurance subsidies in the exchanges, and will instead rely on attestation (self-reporting) regarding an employee's enrollment in an employer-sponsored insurance plan without other verification. HHS may engage in random checks of employee eligibility in 2014. The rule also permits health exchanges temporary expanded discretion to rely on an individual's attestation of projected annual household income.	Self-reporting may mean that some employees who do not legally qualify to receive health insurance subsidies may be able to do so.

Prepared by Small Business Committee Republican Staff. Sources: regulations.gov; The Henry J. Kaiser Family Foundation, Health Reform Source, Implementation Timeline, 2012; National Federation of Independent Businesses, Healthcare Reform Law: Timeline for Small Business, 2010; IRS, Questions

and Answers on Employer Shared Responsibility Provisions under the Affordable Care Act, December 28, 2012; U.S. Chamber of Commerce, Healthcare Implementation Timeline, 2010.