The Affordable Care Act

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Clearwater, Florida

Scott Solkoff
Delray Beach, Florida

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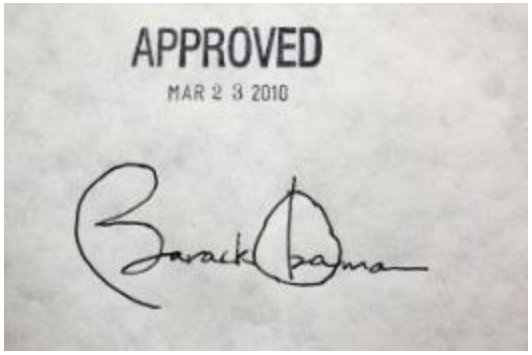
Lots of new law to learn



- 906 pages of new federal law
- 73 pages of new IRS regulations
- 2.8 Million words of new federal regulations
- 1 landmark Supreme Court case

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… but I'm not a Health lawyer

- The ACA changes the elder law and special needs practice in fundamental ways
- Who else but us?

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Change

"Our dilemma is that we hate change and love it at the same time; what we really want is for things to remain the same but get better."

Sidney Harris, columnist (1917-1986)

"Any change, even a change for the better, is always accompanied by drawbacks and discomforts."

Arnold Bennett, British author and journalist (1867-1931)

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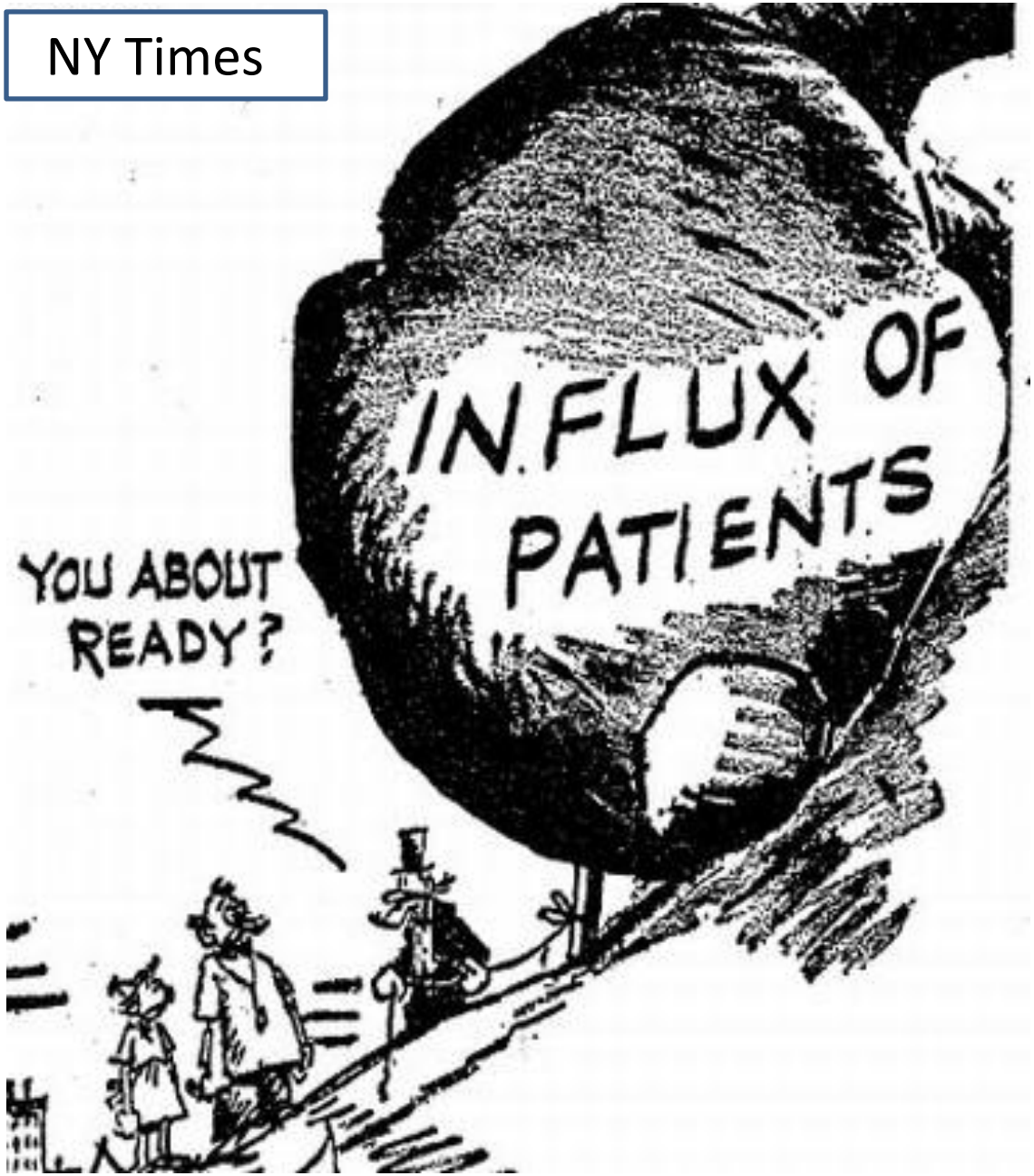
Headlines and Quotes

- “5000 to Be Hired in New ACA Drive”
- “ACA Staffers Having Hard Time Enrolling Those Who Need It the Most”
- “Some won’t answer the door. Others slammed doors in their faces.”
- “U.S. Forest Service to send Forest Rangers out into the woods in search of hermits who could enroll in ACA”

Uncle Sam to Doctors and Hospitals:

NY Times



All previous quotes and the cartoon from 1964-1965.

"Medicare" Changed to "ACA"

Original Headlines and Quotes

- “5000 to Be Hired in New MEDICARE Drive”
- “Medicare Staffers Having Hard Time Enrolling Those Who Need It the Most”
- “Some won’t answer the door. Others slammed doors in their faces to avoid Medicare recruiters”
- “U.S. Forest Service to send Forest Rangers out into the woods in search of hermits who could enroll in Medicare”

David's Current Law Firm Policy

Group Number: A0119
Group Name: LILLESAND & ASSOCIATES PA
Anniversary Date: 06/01/2013

BlueOptions Predictable Cost Plan 90/50 - 5461 w/ $10/$30/$50

Cost for Kristine (Secretary) = $632.16/mo or $7,585.92/year

	Male EE	Female EE	Male Ee+Sp	Female Ee+Sp	Male Ee+Ch	Female Ee+Ch	Male Fam	Female Fam
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35-39	$376.78	$647.45	$1024.23	$1024.23	$1018.03	$1288.70	$1665.48	$1665.48
40-44	$532.34	$722.08	$1254.42	$1254.42	$1113.43	$1303.17	$1835.51	$1835.51
45-49	$674.42	$770.64	$1445.06	$1445.06	$1228.14	$1324.36	$1998.78	$1998.78
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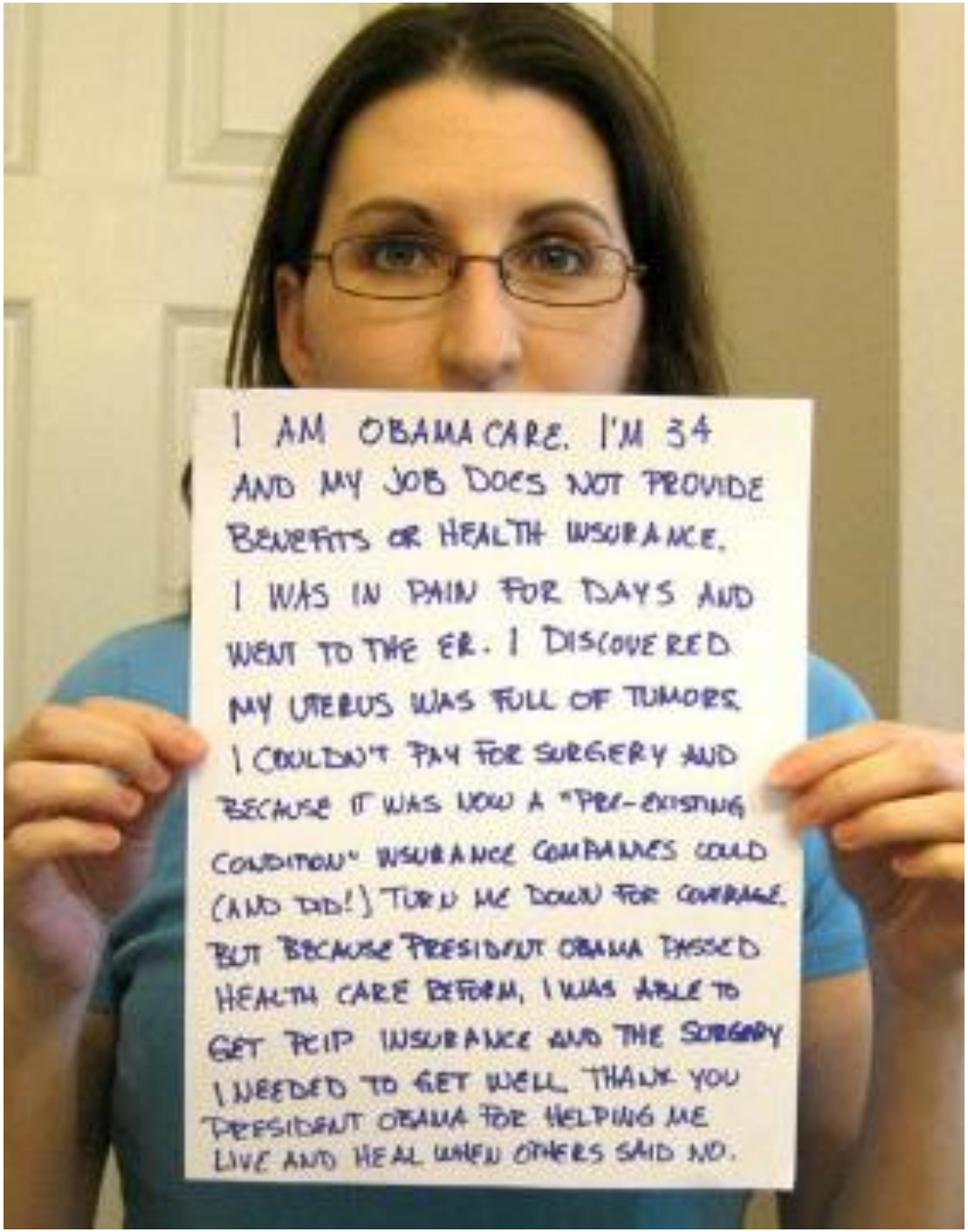
David's Personal Cost for himself and wife = $35,264.28 per year


I AM OBAMACARE. I'M 34
AND MY JOB DOES NOT PROVIDE
BENEFITS OR HEALTH INSURANCE.
I WAS IN PAIN FOR DAYS AND
WENT TO THE ER. I DISCOVERED
MY UTERUS WAS FULL OF TUMORS.
I COULDN'T PAY FOR SURGERY AND
BECAUSE IT WAS NOW A "PRE-EXISTING
CONDITION" INSURANCE COMPANIES COULD
(AND DID!) TURN ME DOWN FOR COVERAGE.
BUT BECAUSE PRESIDENT OBAMA PASSED
HEALTH CARE REFORM, I WAS ABLE TO
GET PCIP INSURANCE AND THE SURGERY
I NEEDED TO GET WELL. THANK YOU
PRESIDENT OBAMA FOR HELPING ME
LIVE AND HEAL WHEN OTHERS SAID NO.

ACA Objectives

- Make health care available to all Americans.
- Reduce health care costs while improving quality of care.
- Have greater accountability and transparency in health care and health insurance.

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ACA Theory – Three legged stool

1. Health Insurance Market Reform
2. The Individual Mandate
3. Financial Assistance in Purchasing Health Insurance

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ACA Presentation Guide

1. Consumer Resources
2. Pre-existing Conditions
3. Appeals v. Health Insurer
4. Cost of Insurance
5. Patient Choice
6. Lifetime & Annual Limits
7. The "Mandate"
8. Young Adult Coverage
9. Well & Preventive Care
10. Medicare
11. Medicaid
12. Ripple Effects – Elder Law, Early Retirement, Tort Law Recovery, Divorce Law.

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Consumer Resources: State and Federal Insurance Exchanges

- An online storefront of insurance options
- Tools to determine availability of other assistance
- Online enrollment tools
- What do they look like?

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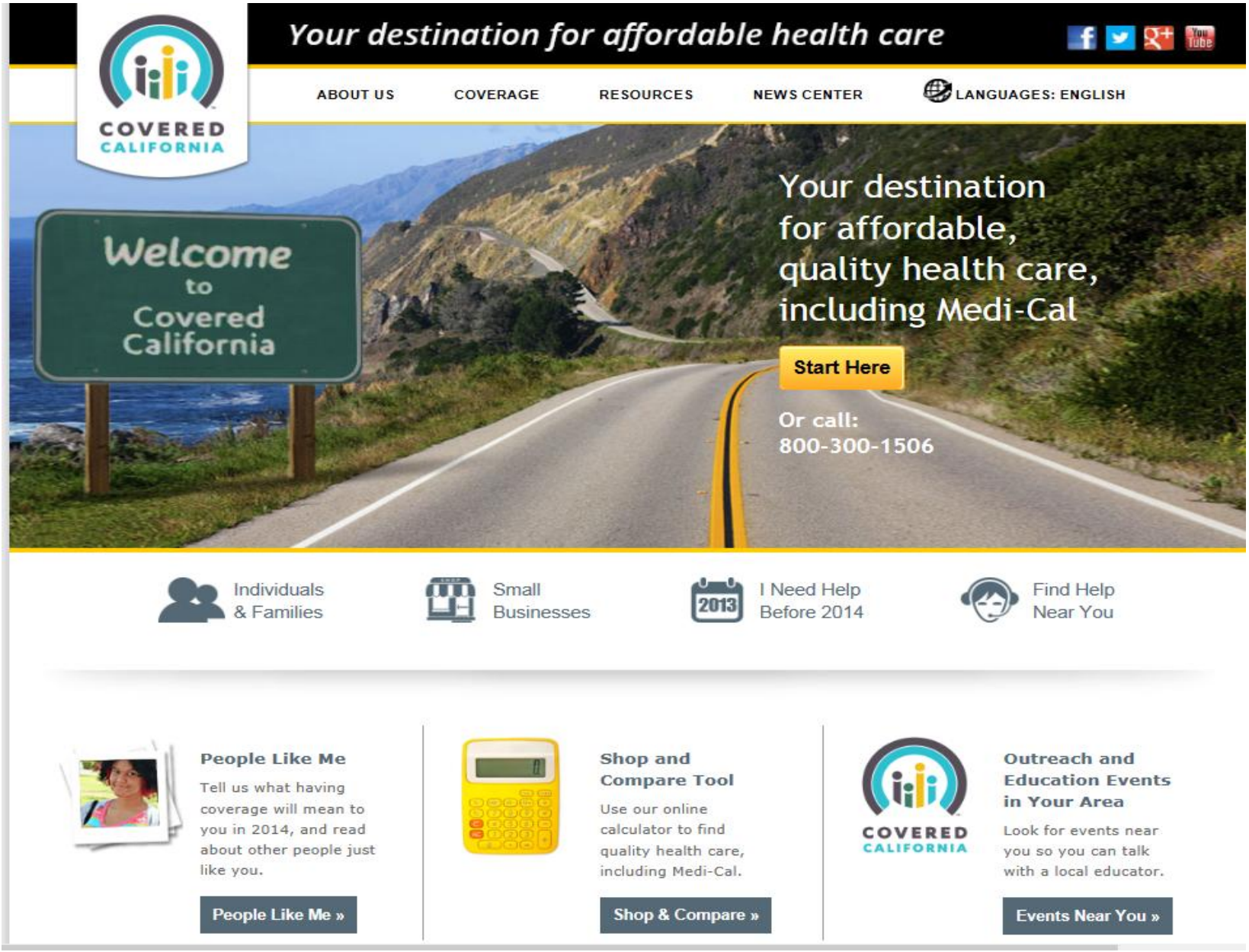

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Consumer Assistance Programs

- Each state can have its own CAP and its own Exchange with federal grant money or defer to the federal CAP and Exchange
- Federal grants to develop CAPs or to bring existing resources up to ACA standards. A state CAP program must:
  - Provide direct assistance to state residents through neighborhood and clinic "Navigators"
  - Provide enrollment guidance including "Exchange" training
  - Provide a catalog of consumer rights with clear instructions for exercising those rights

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HealthCare.gov

Learn | Get Insurance | Log in | Español

Individuals & Families | Small Businesses | All Topics

Search | SEARCH

Improving HealthCare.gov

The Health Insurance Marketplace online application isn't available from approximately 1 a.m. to 5 a.m. EST daily while we make improvements. Additional down times may be possible as we work to make things better. The rest of the site and the Marketplace call center remain available during these hours.

Find health coverage that works for you

Get quality coverage at a price you can afford.
Open enrollment in the Health Insurance Marketplace continues until March 31, 2014.

APPLY ONLINE | APPLY BY PHONE

4 Ways to Get Marketplace Coverage

SEE PLANS AND PRICES IN YOUR AREA | SEE PLANS NOW

Get covered: A one-page guide | Find out if you qualify for lower costs | See 4 ways you can apply for coverage | Get in-person help in your community | Call 1-800-318-2596 for information

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Consumer Resources: Summary of Benefits Required

Allows a uniform "apples to apples" comparison of health insurance plans.

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cciio.cms.gov/resources/files/sbc-sample.pdf
NASA – ISS Dumbbells Gifts Fastmail Lexus EnForm Tablet Mag Shutterfly NationofChange Care.com HomeCam Improv Jacob's pix WW Audible Boat-ed BoA Camp Coleman Facebook Google HP ePrint Kodak LogMeIn

Insurance Company 1: Plan Option 1

Coverage Period: 01/01/2013 – 12/31/2013

Summary of Benefits and Coverage: What this Plan Covers & What it Costs

Coverage for: Individual + Spouse | **Plan Type:** PPO

This is only a summary. If you want more detail about your coverage and costs, you can get the complete terms in the policy or plan document at www.[insert] or by calling 1-800-[insert].

Important Questions	Answers	Why this Matters:
What is the overall deductible?	**$500** person / **$1,000** family Doesn't apply to preventive care	You must pay all the costs up to the **deductible** amount before this plan begins to pay for covered services you use. Check your policy or plan document to see when the **deductible** starts over (usually, but not always, January 1st). See the chart starting on page 2 for how much you pay for covered services after you meet the **deductible**.
Are there other deductibles for specific services?	Yes. **$300** for prescription drug coverage. There are no other specific **deductibles**.	You must pay all of the costs for these services up to the specific **deductible** amount before this plan begins to pay for these services.
Is there an out–of–pocket limit on my expenses?	Yes. For participating providers **$2,500** person / **$5,000** family For non-participating providers **$4,000** person / **$8,000** family	The **out-of-pocket limit** is the most you could pay during a coverage period (usually one year) for your share of the cost of covered services. This limit helps you plan for health care expenses.
What is not included in the out–of–pocket limit?	Premiums, balance-billed charges, and health care this plan doesn't cover.	Even though you pay these expenses, they don't count toward the **out-of-pocket limit**.
Is there an overall annual limit on what the plan pays?	No.	The chart starting on page 2 describes any limits on what the plan will pay for *specific* covered services, such as office visits.
Does this plan use a network of providers?	Yes. See **www.[insert].com or call 1-800-[insert]** for a list of participating providers.	If you use an in-network doctor or other health care **provider**, this plan will pay some or all of the costs of covered services. Be aware, your in-network doctor or hospital may use an out-of-network **provider** for some services. Plans use the term in-network, **preferred**, or participating for **providers** in their **network**. See the chart starting on page 2 for how this plan pays different kinds of **providers**.

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Appeals of Health Insurer Denials

- Time-Frames shortened – 72 hours for urgent care, 15 days for prior authorization, 30 days for medical services already received
- Internal Appeals Process Reforms – 30 days for services not yet received; 60 days for others
- External Appeals Process of Insurer's Final Decision – $25 limit on insured's cost of appeal

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Pre-Existing Conditions

THE PROBLEM: 50-129 million Americans under 65 have a pre-existing condition that could lead to denial of coverage (that is 19% - 50% of Americans under the age of 65)

Source: U.S. Dept. of Health and Human Resources, November 2011

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Pre-Existing Conditions:

- Eliminated for children under 19 (9/2010)
- Allowed some persons to purchase insurance in the PCIP program (8/2010)
- Pre-existing conditions are no longer a reason to deny coverage to ANYONE. Effective Date: January 1, 2014

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Cost of Insurance - Rebates

- "Medical Loss Ratio" – The ACA limits how much an insurance company can spend on things other than health care. The MLR is a cap on profits.
- The MLR is equal to 80%-85% of premium income
- The insurer must rebate any remainder.

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Cost of Insurance - Rebates

- Texas: In 2012, $167 Million was rebated. Texas was #1 in the country.
- Florida: In 2012, $124 Million was rebated. Florida was #2 in the country.
- New York: In 2012, $87 Million was rebated making New York a distant #3.
- **$2.1 Billion** rebated in 2012 in United States due to ACA

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Cost of Insurance - Individuals

- **The Marketplace Exchange** - How individuals and small businesses purchase private health insurance online - theory
- **Cost** – the online Exchange in practice
- **Subsidies** - Advanced Tax Credits and Cost Sharing Subsidy to pay the costs

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Cost of Insurance

Consumer choice, cost of plans, and amount of coverage:

- Four levels: Bronze, silver, gold and platinum - ranked as less expensive to more expensive, but more out-of-pocket to less out-of-pocket.
- Deductible capped by pegging to the HSA contribution limits (estimated at $ 6,350 for 2014) for co-pays and any other out-of-pocket costs.
- Premium cost choices are on Marketplace
- A fifth plan – catastrophic coverage only - available for those under age 30

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Cost of Insurance

Cap on out-of-pocket costs (copays, coinsurance, and deductibles) = $6,350/yr for individual, $12,700/yr for family for all of us – no more "junk insurance"

Advanced Tax Credits – to pay Insurance Premium Cost for those between 100% and 400% of Federal Poverty Level

Cost sharing subsidies – for persons up to 250% of FPL for out-of-pocket costs (e.g., 13% for the person in the example)

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Program Eligibility by Percent of Federal Poverty Level									
Household Size	Medicaid Expansion* For the Working Poor			Eligible for "Advanced Tax Credits" to Pay Monthly Premiums					
				For Silver Level+ Plans "Cost Sharing Subsidies"					
	100%	133%	138%	139%	150%	200%	250%	300%	400%
1	$11,490	$15,282	$15,856	$15,971	$17,235	$22,980	$28,725	$34,470	$45,960
2	$15,510	$20,628	$21,404	$21,559	$23,265	$31,020	$38,775	$46,530	$62,040
3	$19,530	$25,975	$26,951	$27,147	$29,295	$39,060	$48,825	$58,590	$78,120
4	$23,550	$31,322	$32,499	$32,735	$35,325	$47,100	$58,875	$70,650	$94,200
5	$27,570	$36,668	$38,047	$38,322	$41,355	$55,140	$68,925	$82,710	$110,280
6	$31,590	$42,015	$43,594	$43,910	$47,385	$63,180	$78,975	$94,770	$126,360
7	$35,610	$47,361	$49,142	$49,498	$53,415	$71,220	$89,025	$106,830	$142,440
8	$39,630	$52,708	$54,689	$55,086	$59,445	$79,260	$99,075	$118,890	$158,520
For each additional person, add	$4,020	$5,347	$5,588	$5,588	$6,030	$8,040	$10,050	$12,060	$16,080

Medicaid Expansion, "Advanced Tax Credits" to Pay Monthly Premiums, and "Cost Sharing Subsidies"
*** Available in 22 states; not yet available in 25 states; No Asset Test – only an income test**

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Cost of Insurance - Goals

EXHIBIT 1

Individual Responsibility for Premium Costs in Premium Tax Credit Calculation

Income level as percentage of federal poverty level	Premium costs as a percentage of income, 2014
Less than 133%	2
At least 133% but less than 150%	3–4
At least 150% but less than 200%	4–6.3
At least 200% but less than 250%	6.3–8.05
At least 250% but less than 300%	8.05–9.5
At least 300% but less than 400%	9.5

SOURCE Federal Register, "Internal Revenue Service; Health Insurance Premium Tax Credit; Final Regulations," May 23, 2012.

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How is the premium tax credit calculated?

- Step One
  - Determine annual income as percent of Federal Poverty Level
- Step Two
  - Apply the percent against the cost of the "benchmark plan" which is the second lowest Silver Plan offered on the online exchange
- Step Three
  - The dollar amount yielded by Step Two is what the person has to apply to the cost of the plan they choose – they can choose whichever "metal" plan they want: bronze, silver, gold or platinum

Household Information

Number of people in the household * 1

Household income * $ 10.00 Hourly

Hours per week 40.00

Estimated annual income $20,800.00

ZIP Code * 94595

94595: Contra Costa County (Region 5)

The Math is simplified on the online exchange – all calculations done for you

Enrollee Information

Only enter members of your household who would enroll in Exchange coverage.

Enter the **AGE** of each adult

Adult 1 (over 18) 22

+ Add adult − Remove adult

Number of dependents age 18 or under

0 | 1 | 2 | 3 or more

Total people covered: 1

$ Breaking Down the Monthly Cost

Good news! You may qualify for help with paying for health insurance through Covered California. Now, let's take a look at the health insurance plans that may be available in your area!

Enhanced Silver 87

Enhanced Silver Coverage: ≈87%

Blue Shield Enhanced Silver 87 PPO

Total Monthly Premiums: $259

Monthly Premium Assistance (Tax Credit): $180

Your Total Monthly Payment: $79

VIEW DETAILS

Kaiser Permanente Enhanced Silver 87 HMO

Total Monthly Premiums: $274

Monthly Premium Assistance (Tax Credit): $180

Your Total Monthly Payment: $94

VIEW DETAILS

Contra Costa Health Plan Enhanced Silver 87 HMO

Total Monthly Premiums: $278

Monthly Premium Assistance (Tax Credit): $180

Your Total Monthly Payment: $98

VIEW DETAILS

Anthem Multi State Plan Enhanced Silver 87 PPO

Total Monthly Premiums: $289

Monthly Premium Assistance (Tax Credit): $180

Your Total Monthly Payment: $109

VIEW DETAILS

No matter which plan she buys, the amount the premium assistance stays the same

Plan is based in that county

A multi-state plan

Enhanced Silver 87

Enhanced Silver Coverage: ≈87%

Blue Shield Enhanced Silver 87 PPO	Kaiser Permanente Enhanced Silver 87 HMO	Contra Costa Health Plan Enhanced Silver 87 HMO	Anthem Multi State Plan Enhanced Silver 87 PPO
Total Monthly Premiums: $259	Total Monthly Premiums: $274	Total Monthly Premiums: $278	Total Monthly Premiums: $289
Monthly Premium Assistance (Tax Credit): $180	Monthly Premium Assistance (Tax Credit): $180	Monthly Premium Assistance (Tax Credit): $180	Monthly Premium Assistance (Tax Credit): $180
Your Total Monthly Payment: $79	Your Total Monthly Payment: $94	Your Total Monthly Payment: $98	Your Total Monthly Payment: $109
VIEW DETAILS	VIEW DETAILS	VIEW DETAILS	VIEW DETAILS

Some plans are HMOs, others PPOs

Example: Jane decides to take the tax credit now or to take it later

"If I take the tax credit now, I lower my monthly premium costs to $60"

$300	Monthly Premium
-$240	Monthly Tax Credit
$60	New Monthly Cost

"If I take the same tax credit later, I pay the full $300 premium now but get a bigger tax refund next April"

$900	Tax due from wages
-$2,880	Yearly Tax Credit
$1,980	IRS Tax Refund

But what if Jane's economic situation changes during the year?

A reconciliation occurs on April 15th

Three Groups of Cost-Sharing Reductions (CSR) for OOPS

	CSR Plan for up to 150% FPL (up to $17,235)	CSR Plan for 151%-200% FPL ($17,236-$22.980)	CSR Plan for 201-250% FPL ($22,981-28,725)
Actuarial Value	94%	87%	73%
Deductible (Individual)	$0	$250	$1,750
Maximum OOP	$1,000	$2,000	$4,000
Inpatient Hospital	$100/ admission	$250/ admission	$1,500/ admission
Office Visit	$10	$15	$30

Law Firm Employment Benefits

OLD SCHOOL

NEW SCHOOL

Defined Benefit Plans

- **Pension**
  - Employer-controlled, assumes the risk
  - Employer pays 100%
- **Group Health Insurance**
  - Employer picks one plan for everyone
  - Employer pays 100% for the employee
  - One size fits all – not!

Defined Contribution Plans

- **401k**
  - Employee-controlled, assumes the risk
  - Employer provides a set contribution
- **Employer-set dollar benefit, e.g., $200 per month**
  - employee purchases insurance on the **Public or Private Exchange**
  - Employee decides what level of insurance to purchase depending on personal circumstance

David's ACA ~~Current~~ Law Firm Plan

Group Number: A0119
Group Name: LILLESAND & ASSOCIATES PA
Anniversary Date: 06/01/2013

BlueOptions Predictable Cost Plan 90/50 - 5461 w/ $10/$30/$50

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New ACA Cost: $93.66/mo $1,123.92/yr

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David's Personal Cost for himself and wife = $35,264.28 per year

$18,790.20 per year

TOTAL SAVINGS = $23,790

Patient Choice: Emergency Room

- ER Restrictions Abolished: The ACA allows patients to select an ER outside of the plan's network without prior approval and without higher co-pays.
- Effective Date: September 23, 2010

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Patient Choice: Primary Care

- ACA protects the right of the patient to select the primary care physician.
- Some plans are HMO-like and others PPO-like
- However, the plan itself is not allowed to assign the doctor.
- Also, women can go directly to OG-GYN without first going to primary care physician

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Lifetime & Annual Limits

- The ACA ends lifetime and annual limits on number of claims or cost per year or per life
- Effective Date: January 1, 2014
- Industry Loophole: The ACA alludes to an exception for annual limits if the insurer demonstrates that it cannot work.

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Mandatory Participation

- Without a broad pool, the system fails.
- All states (but one) failed on inclusive health care plans because mostly sick people enrolled.
- PCIP shut down early for the same reason.
- Massachusetts succeeded by including a mandate.

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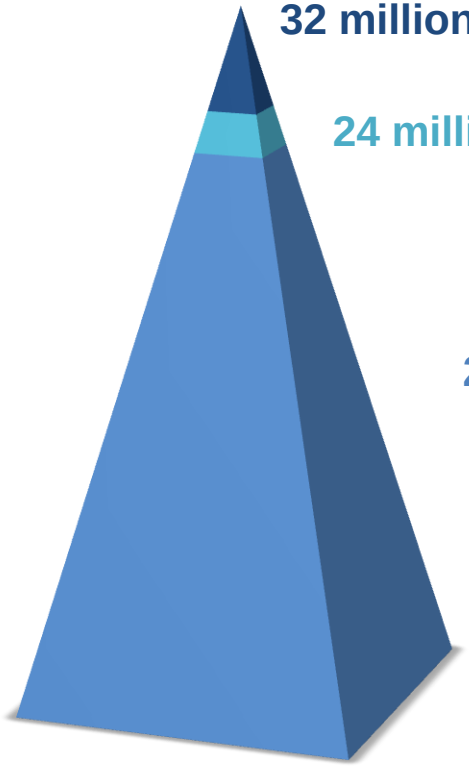
How Many Persons are Affected Per Year by the Individual Mandate?



32 million **previously uninsured affected by the mandate**

24 million **qualify for exemptions from the mandate**

219 million **insured by employer coverage, Medicaid, Medicare's disability coverage, or individual insurance and not affected by the mandate**

Projected Non-Elderly in 2016= 275 million

SOURCE: Kaiser Family Foundation analysis; Congressional Budget Office; Jonathan Gruber

The 24 million exempt persons?

1. Hardship (e.g., homelessness) or anyone under the 138% of FPL in non-Medicaid Expansion state
2. Income below the minimum tax filing threshold
3. Affordable coverage not available (e.g., employer plan costs more than 8% of income)
4. Short term gap in coverage – less than 3 months
5. Undocumented immigrant
6. Declines to participate in Medicare or Medicaid due to religious objection
7. Member of health care sharing ministry
8. Member of Indian tribe
9. Incarcerated

One Chart -

- Individual Exemptions
- Mandate Requirements
- Tax Penalties

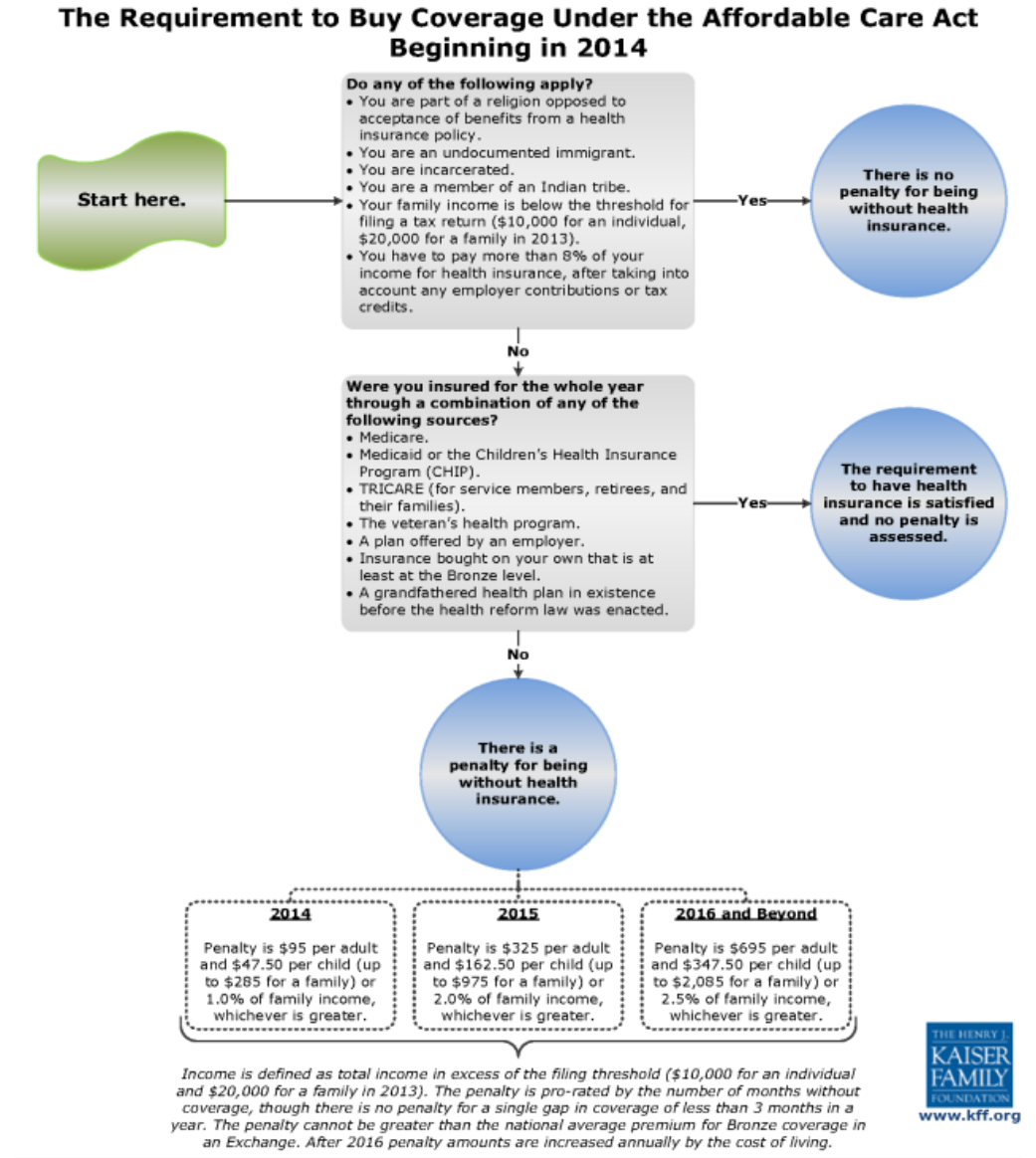
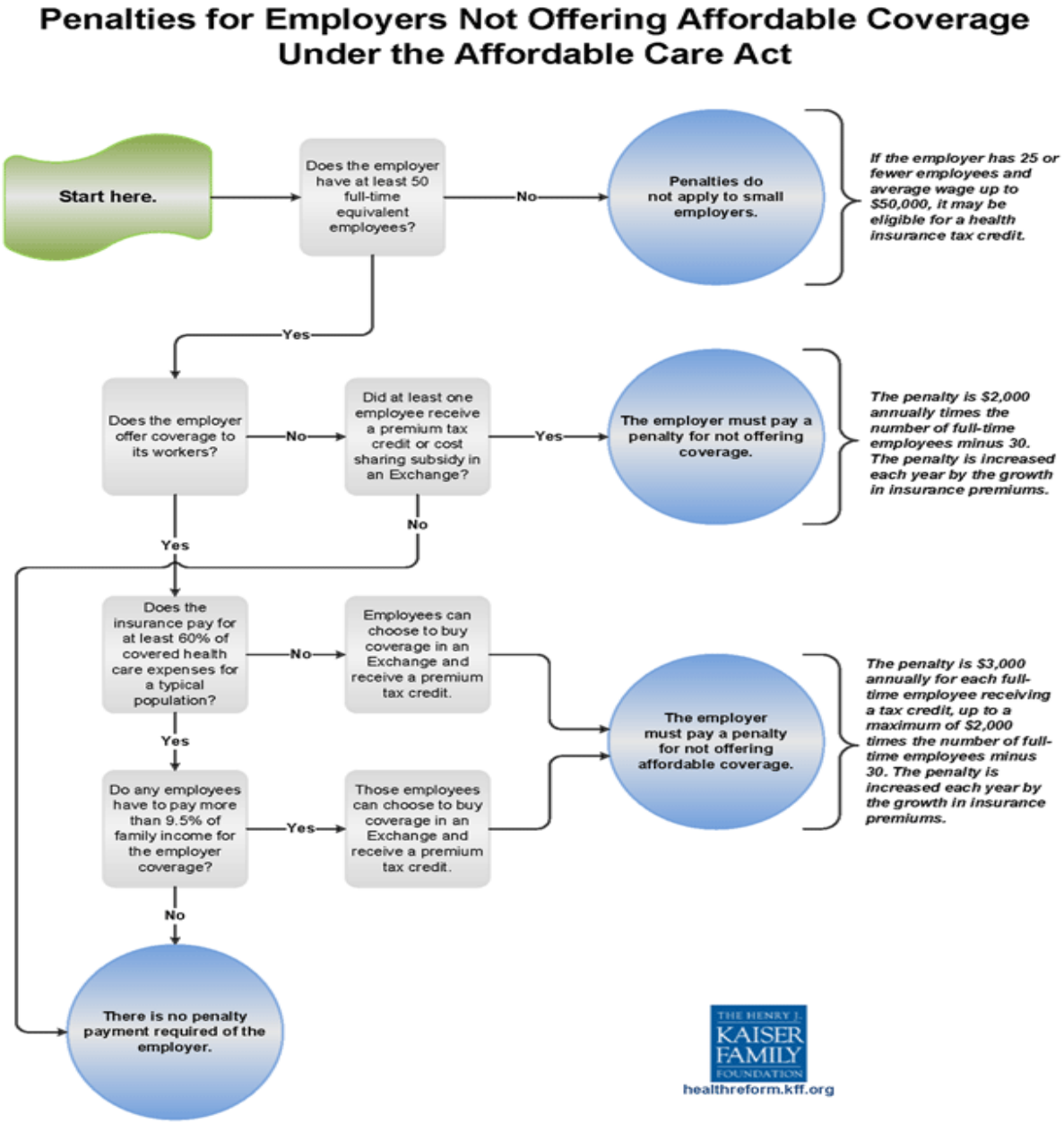


Chart for Employers not offering "Affordable Coverage"

- Penalty?
  or
- No Penalty?



ER Death: The "Johns Hopkins Problem" for the 24 million persons exempt from the mandate

"Drawing on the National Trauma Data Bank, which collects information from approximately 700 U.S. trauma centers and hospital emergency departments, Haider and his colleagues analyzed 429,751 moderate to severe cases of traumatic injury (from auto accidents, gunshots and other causes) treated between 2001 and 2005. Controlling for age, gender, type and severity of injury, they found that, overall, uninsured patients were 50 percent more likely to die from their injuries than insured patients. Among white patients, the mortality rate for those with insurance was 4.2 percent, compared with 7.9 percent for the uninsured. The numbers for minorities were worse. Uninsured African-Americans died at more than double the rate of the insured, 11.4 percent to 4.9 percent. And while 6.3 percent of insured Hispanic patients died after traumatic injury, the rate for uninsured Hispanics was 11.3 percent."

Adil H. Haider, M.D., Trauma Surgeon and Researcher, Johns Hopkins University School of Medicine

Death rates at the 700 U.S. Trauma Centers (429,751 patients) – ER treatment is NOT equal:

White, non-Hispanic patients

- with insurance = 4%
- without insurance = 8%

Black, non-Hispanic patients

- with insurance = 5%
- without insurance = 11%

Hispanic patients

- with insurance = 6%
- without insurance = 11%

Young Adults

- Young adults may remain insured on their parents' policies until age 26.
- Status no longer trumps age. It no longer matters that the child:
  - Has married
  - Is or is not enrolled in school
  - Lives at home or has moved away

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Well Care & Preventive Care

- Theory: Preventive care improves quality of life
- Theory: Preventive care saves lives
- Theory: Preventive care saves us money
- Practice: ACA requires preventative care, without co-pays and before deductibles

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Adult (Men and Women) Free Preventive Services

1. **Abdominal Aortic Aneurysm one-time screening** for men of specified ages who have ever smoked
2. **Alcohol Misuse screening and counseling**
3. **Aspirin use** to prevent cardiovascular disease for men and women of certain ages
4. **Blood Pressure screening** for all adults
5. **Cholesterol screening** for adults of certain ages or at higher risk
6. **Colorectal Cancer screening** for adults over 50
7. **Depression screening** for adults
8. **Diabetes (Type 2) screening** for adults with high blood pressure
9. **Diet counseling** for adults at higher risk for chronic disease
10. **HIV screening** for everyone ages 15 to 65, and other ages at increased risk
11. **Immunization vaccines** for adults--doses, recommended ages, and recommended populations vary:
    1. Hepatitis A
    2. Hepatitis B
    3. Herpes Zoster
    4. Human Papillomavirus
    5. Influenza (Flu Shot)
    6. Measles, Mumps, Rubella
    7. Meningococcal
    8. Pneumococcal
    9. Tetanus, Diphtheria, Pertussis
    10. Varicella
12. **Obesity screening and counseling** for all adults
13. **Sexually Transmitted Infection (STI) prevention counseling** for adults at higher risk
14. **Syphilis screening** for all adults at higher risk
15. **Tobacco Use screening** for all adults and cessation interventions for tobacco users

Free Preventive Services for Women

1. **Anemia screening** on a routine basis for pregnant women
2. **Breast Cancer Genetic Test Counseling (BRCA)** for women at higher risk for breast cancer
3. **Breast Cancer Mammography screenings** every 1 to 2 years for women over 40
4. **Breast Cancer Chemoprevention counseling** for women at higher risk
5. **Breastfeeding comprehensive support and counseling** from trained providers, and access to breastfeeding supplies, for pregnant and nursing women
6. **Cervical Cancer screening** for sexually active women
7. **Chlamydia Infection screening** for younger women and other women at higher risk
8. Contraception: Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling, as prescribed by a health care provider for women with reproductive capacity (not including abortifacient drugs). This does not apply to health plans sponsored by certain exempt "religious employers."
9. **Domestic and interpersonal violence screening and counseling** for all women
10. **Folic Acid** supplements for women who may become pregnant
11. **Gestational diabetes screening** for women 24 to 28 weeks pregnant and those at high risk of developing gestational diabetes
12. **Gonorrhea screening** for all women at higher risk
13. **Hepatitis B screening** for pregnant women at their first prenatal visit
14. **HIV screening and counseling** for sexually active women
15. **Human Papillomavirus (HPV) DNA Test** every 3 years for women with normal cytology results who are 30 or older
16. **Osteoporosis screening** for women over age 60 depending on risk factors
17. **Rh Incompatibility screening** for all pregnant women and follow-up testing for women at higher risk
18. **Sexually Transmitted Infections counseling** for sexually active women
19. **Syphilis screening** for all pregnant women or other women at increased risk
20. **Tobacco Use screening and interventions** for all women, and expanded counseling for pregnant tobacco users
21. **Urinary tract or other infection screening** for pregnant women
22. **Well-woman visits** to get recommended services for women under 65

Free Preventive Services for Children, page 1

1. **Autism screening** for children at 18 and 24 months
2. **Behavioral assessments** for children up to 17 years old
3. **Blood Pressure screening** for children up to 17 years old
4. **Cervical Dysplasia screening** for sexually active females
5. **Depression screening** for adolescents
6. **Developmental screening** for children under age 3
7. **Dyslipidemia screening** for children from 1 to 17 years old at higher risk of lipid disorders
8. **Fluoride Chemoprevention supplements** for children without fluoride in their water source
9. **Gonorrhea preventive medication** for the eyes of all newborns
10. **Hearing screening** for all newborns
11. **Height, Weight and Body Mass Index measurements** for children up to 17 years old
12. **Hematocrit or Hemoglobin screening** for children
13. **Hemoglobinopathies or sickle cell screening** for newborns
14. **HIV screening** for adolescents at higher risk
15. **Hypothyroidism screening** for newborns

Free Preventive Services for Children, page 2

16. **Immunization vaccines** for children from birth to age 18 —doses, recommended ages, and recommended populations vary:
    1. Diphtheria, Tetanus, Pertussis
    2. Haemophilus influenzae type b
    3. Hepatitis A
    4. Hepatitis B
    5. Human Papillomavirus
    6. Inactivated Poliovirus
    7. Influenza (Flu Shot)
    8. Measles, Mumps, Rubella
    9. Meningococcal
    10. Pneumococcal
    11. Rotavirus
    12. Varicella
17. **Iron supplements** for children ages 6 to 12 months at risk for anemia
18. **Lead screening** for children at risk of exposure
19. **Medical History** for all children up to 17 years old throughout development
20. **Obesity screening and counseling**
21. **Oral Health risk assessment** for young children up to 10 years old
22. **Phenylketonuria (PKU) screening** for this genetic disorder in newborns
23. **Sexually Transmitted Infection (STI) prevention counseling and screening** for adolescents at higher risk
24. **Tuberculin testing** for children up to 17 years old at higher risk of tuberculosis
25. **Vision screening** for all children.

Preventive Care

- How's it working?
- Through June 2012, 54 Million Americans gained preventive care coverage with no cost sharing.

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The Ten Essential Benefits

1. Emergency services
2. Hospitalizations
3. Laboratory services
4. Maternity Care
5. Mental health and substance abuse treatment

The Ten Essential Benefits

6. Outpatient, ambulatory care
7. Pediatric care
8. Prescription drugs
9. Preventive care
10. Rehabilitative and habilitative (helping maintain daily functioning) services

The Ten Essential Benefits

11. Vision and dental care for children

Medicare

- Medicare's single-payor system remains intact.
- More wellness and preventive care
- More assistance for prescription drugs
- The Development of Accountable Care Organizations (ACOs)

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Medicare: Preventive Care

- Most of the preventive care required under new ACA plans apply to Medicare, plus some age-specific care and screenings.
- Part C providers not required to provide all preventive care and screenings (they're stuck with the results of not doing screenings)

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DONUT HOLE
"IT'S THE QUALITY"
EXIT
ONLY

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"IT'S THE QUALITY"
ENTRANCE
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"IT'S THE QUALIT
ENTRANCE
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Medicare: Prescription Drugs

- The coverage gap existing under Medicare Part D is gradually eliminated by 2020.

Year	Co-Pay
2013	47.5%
2014	47.5%
2015	45%
2016	45%
2017	40%
2018	35%
2019	30%
2020	25%

- Patient pays first $325
- Patient then pays 25%
- Coverage Gap at $2970 (2013)
- $4700 (2013) catastrophic coverage

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Medicare: ACOs

- Medicare ACOs are a new option for traditional Medicare enrollees (not Part C).
- ACOs are groups of health care providers who join together to coordinate care and payments.

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Medicare: ACOs

"Shared Savings Program"

ACOs share 50/50 savings with Medicare based on health care outcomes and cost.

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Medicaid Expansion

- Part of the original Act, but made optional by the U.S. Supreme Court
- Covers working poor up to 138% of FPL – **no categorical eligibility** (child, disabled, elderly, pregnant mom)
- Federal share is 100% for 3 years, and next 3 years gradually drops to 90%, then permanently a 90/10 split federal/state

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The Key Issue for Medicaid Expansion – MAGI - not assets:

PPACA Sec. 2002(a) amends 42 USC 1396a(e) at 14(C):

"NO ASSETS TEST. A state shall not apply any assets or resources test for purposes of determining eligibility for medical assistance under the State plan or under a waiver of the plan."

Medicaid Expansion

Medicaid expansion is a now a state option that expands the eligibility pool for those who cannot afford health insurance.

Makes Medicaid available to most people below 138% of FPL income without regard to assets.

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Medicaid Expansion

Medicaid expansion:

- Does not affect institutional care
- or long-term care waiver programs
- Applies only to Medicaid health insurance
- Does not affect anyone on Medicare

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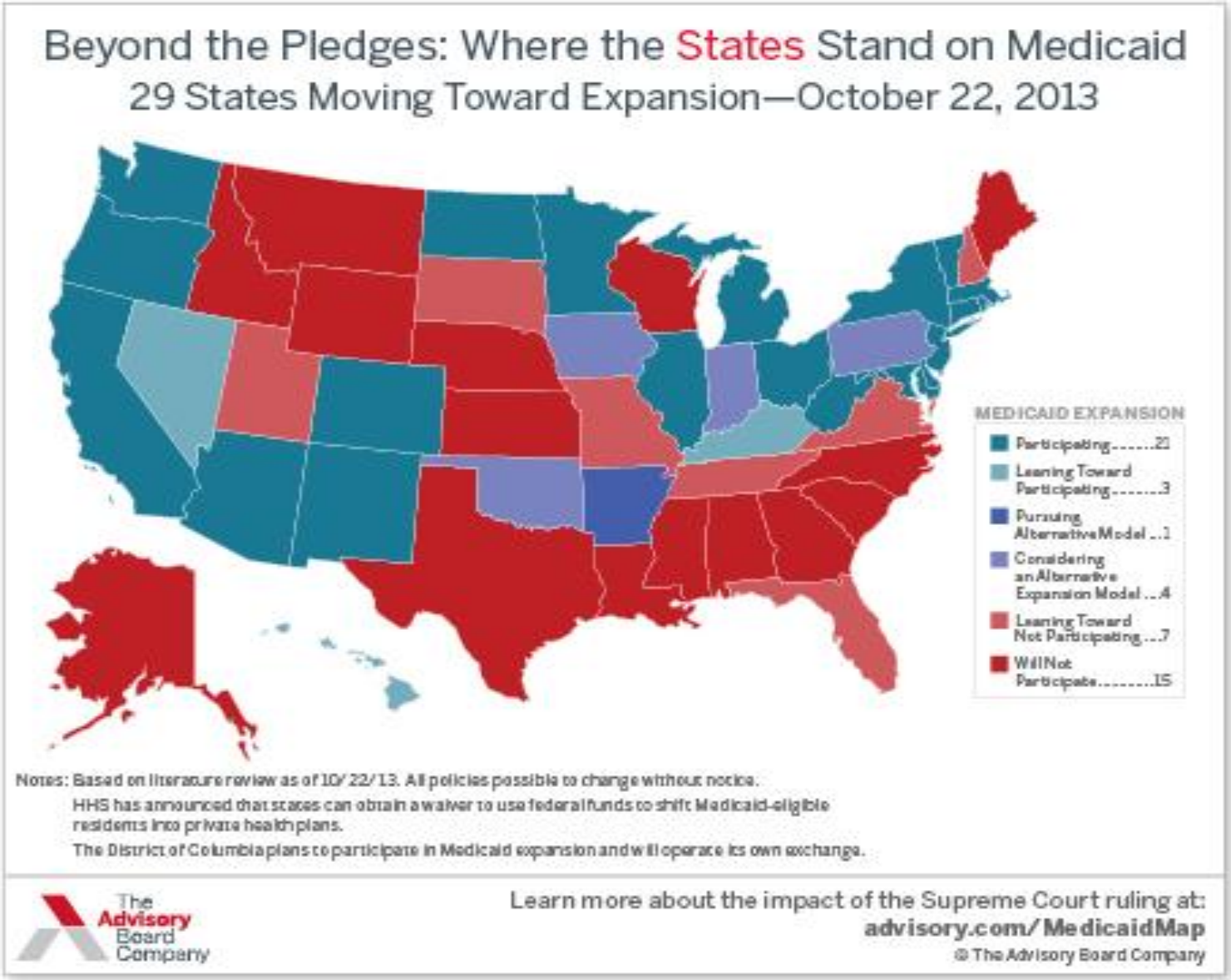
Medicaid Expansion



Why states do Medicaid Expansion?

1. EMTALA
2. Favorable Cost Share for State – 90/10
3. Disproportionate Share Hospital (DSH) Grants are going away (- $11.1 Billion)…
4. To be replaced with insured Medicaid Expansion patients, and if not…?

ACA's Ripple Effect – Policy Implications

- Early Retirement
- Income Tax Calculations – MAGI – making income count to trigger Tax Credits and Subsidies
- Special Needs Trusts
  - Now, before Medicaid Expansion (substantial impact)
  - After Medicaid Expansion (i.e., even greater impact)
- Personal Injury/Medical Malpractice Awards
- Family Law – re-calculating child IRS dependency rules vs. only the IRS tax implications
- Social Security/SSI claims – substantial reduction

Effect on Special Needs Planning: Overview

- Smaller settlements in 1st party cases
- Fewer special needs trusts
- Fewer SSA disability applications and appeals
- Affects other areas of law practice
- New opportunities

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Effect on Special Needs Planning: Smaller 1st party SNT PI settlement amounts

- Settlements and awards greatly reduced
  - "Future medicals" will have a different calculus based on cost of premiums and OOP
  - More injured parties will have insurance and can retain it when they become too disabled to work
  - Defendant insurance companies and their attorneys are already filing motions

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Effect on Special Needs Planning: Fewer special needs cases

- #1 reason to create a SNT has been removed
- Few who have enough $ to have formerly required a SNT will choose Medicaid over better private insurance with **no payback**
- Competent individuals maintain control of their own money
- Elimination of attorney fees, and monthly trustee fees which are often greater than the SSI monthly checks

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Effect on Special Needs Planning: Fewer special needs cases

Some reasons why SNTs are <u>still needed</u>:

- Access to need-based **long-term care** programs
- Access to other traditional non-health care services
  - **home care services**
  - **educational support services**
- Access to **group home supportive services**
- Access to **other Medicaid waiver** programs
- **Persons incapable of money-management**

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Effect on Special Needs Planning: Fewer SSI/SSDI applications and appeals

- Reduced demand for Medicaid and Medicare for those who have disabilities and are under age 65.
- Some will still want and need the payment but many were motivated more by the only insurance they could get.
- SSI applications especially reduced. SSDI not as much. It's math.
- People giving up SSI/SSDI to avoid Medicaid and be eligible for private health insurance

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Effect on Special Needs Planning: Changes to Practice

- For structured settlement professionals, products will look to pay premium amounts more than future meds.
- For attorneys, SNT language should be revisited.

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Effect on Special Needs Planning: Changes to Practice

SNT Practice Pointers

- Review existing trust cases. They likely all need a letter and some counseling.
  - Should Medicaid be retained?
    - In most cases, continuing to accrue lien is unnecessary
    - In most cases, beneficiary better off with private plan
    - In cases with competent, capable beneficiary, the beneficiary would like to take control of her own $

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Effect on Special Needs Planning: Changes to Practice

SNT Practice Pointers

- Review SNT language
  - Make clear the Trustee's right to pay premiums on private health insurance if available (suggested "Lillesand" language in Solkoff materials)
  - Balance flexibility with the need for options as drafting practice varies regionally

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Effect on Special Needs Planning: Changes to Practice

Understand and Use new Medicaid eligibility tests

- How this applies to your practice depends on Medicaid expansion in your state – but DO NOT ASSUME that clients will never move

- Before ACA: Medicaid income threshold tied to 1996 AFDC law
  - Most states covered most people at 100% of FPL
  - Parental eligibility often limited (in 34 states) to 50% of FPL

- After ACA (come 1/1/14): Medicaid income threshold increased to 138% FPL after a 5% disregard of income (replaces prior Medicaid income disregards)

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Effect on Special Needs Planning: Changes to Practice

Modified Adjusted Gross Income (MAGI)

MAGI is defined as gross income (as calculated for federal income tax purposes) with adjustments that add back in tax exempt interest and other sources of funds not taxed.

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Effect on Special Needs Planning: Changes to Practice

Understand and Use new Medicaid eligibility tests

- Remember: No Asset Test
- Modified Adjusted Gross Income (MAGI) will be the income standard of eligibility
- These new eligibility standards apply to Medicaid, CHIP and eligibility for subsidies in the Affordable Insurance Exchanges
- Get 'THE ADVOCATE'S GUIDE TO MAGI' from the National Employment Law Program – download at http://healthlaw.org/

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Effect on Special Needs Planning: Changes to Practice

SNT Practice Pointers: New Intake Procedures

- As part of intake, discuss MAGI and FPL rules and how they affect eligibility now and in the future
- If you were not already doing so, gather all relevant income information
- Evaluate premium subsidies and available tax credits

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Effect on Special Needs Planning: Changes to Practice

SNT Practice Pointers: **Malpractice Alert**

- There will be some who still need SNTs and some will miss this need over "ACA-confusion"
- Some will be needlessly accruing a Medicaid lien when they could be on private insurance with no payback – and the heirs will sue
- Some will be denied care or receive inferior care because they do not make the switch.

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Effect on Special Needs Planning: Changes to Practice

Change = Opportunity

- There *will* be loss
- There *can* be gain

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Effect on Special Needs Planning: Changes to Practice

Change = Opportunity

- People will be confused about exchange options
- People will be afraid to give up their Medicaid
- Consumers will lack all of the criteria to make good decisions
- Trial lawyers will need guidance on cost and viability
- Existing cases need education if not updating

Who else but the Special Needs Planner?

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Change

"Things alter for the worse spontaneously, if they be not altered for the better designedly." ~Francis Bacon

"Change is inevitable - except from a vending machine." ~Robert C. Gallagher

"I put a dollar in one of those change machines. Nothing changed." ~George Carlin

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Change

"In times of change learners inherit the earth: while the learned find themselves beautifully equipped to deal with a world that no longer exists."

Eric Hoffer (1917-1986), writer, American anti-communist, moral and social philosopher, awarded the Presidential Medal of Freedom by President Ronald Reagan. Author of The True Believer and The Ordeal of Change.

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Thanks for listening!

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