

**U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

CASE NO.: 13-80990- DIMITROULEAS/Snow

KAWA ORTHODONTICS, LLP,

Plaintiff,

vs.

JACK LEW, *et al.*,

Defendants.

**PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Plaintiff Kawa Orthodontics, LLP ("Kawa Ortho"), by counsel and pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 201 of the Federal Rules of Evidence, respectfully requests that the Court take judicial notice of the following adjudicative facts and/or public records in support of Kawa Ortho's Motion for Summary Judgment. As grounds therefor, Kawa Ortho states as follows:

1. Judicial notice is a means by which adjudicative facts not seriously open to dispute are established as true without the normal requirement of proof by evidence. *Dippin' Dots, Inc. v. Frosty Bites Distribution, LLC*, 369 F.3d 1197, 1204 (11th Cir. 2004); Fed. R. Evid. 201(a) and (b); *see also* Fed. R. Evid. 201(a). Adjudicative facts are facts that are relevant to a determination of the claims presented in a case. *Id.* One category of adjudicative facts subject to judicial notice includes facts that are "generally known within the territorial jurisdiction of the trial court." *Id.* (quoting Fed. R. Evid. 201(b)(1)). Such judicially-noticed facts have been described as being "of breathtaking variety." *Id.* (collecting cases). Another category includes

facts that can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b)(1) A court also may take judicial notice of public records. *Universal Express, Inc. v. U.S. Securities and Exchange Commission*, 177 Fed. Appx. 52, 53 (11th Cir. 2006). Judicial notice of appropriate adjudicative facts may be taken at any stage in a proceeding, including at the summary judgment stage. *Dippin' Dots, Inc.*, 369 F.3d at 1204; Fed. R. Evid. 201(f). Courts have wide discretion to take judicial notice of facts. *Id.*; Fed. R. Evid. 201(c).

2. Because the following adjudicative facts and/or public records relevant to a determination of the claims presented in this case are generally known within the territorial jurisdiction of this Court and are not subject to reasonable dispute, judicial notice should be taken of them:

- On July 2, 2013, the U.S. Department of Treasury posted an announcement on its website stating that the “employer mandate” was being delayed until 2015 and/or the announcement itself. *See* July 2, 2013 Announcement, available at <http://www.treasury.gov/connect/blog/Pages/Continuing-to-Implement-the-ACA-in-a-Careful-Thoughtful-Manner-.aspx> (visited December 5, 2013), attached hereto as Exhibit 1.

- On July 9, 2013, Defendants formalized their July 2, 2012 announcement by issuing Notice 2013-45, entitled “Transition Relief for 2014 Under §§ 6055 (§ 6055 Information Reporting), 6056 (§ 6056 Information Reporting) and 4980H (Employer Shared Responsibility Provisions)” and/or the notice itself. *See* IRS Notice 2013-45, available at <http://www.irs.gov/pub/irs-drop/n-13-45.pdf> (visited December 5, 2013), attached hereto as Exhibit 2.

- According to a White House publication entitled “The Affordable Care Act Increases Choice and Saving (sic) Money for Small Businesses, at least 200,000 employers in the

United States employ more than 50 employees and/or the publication itself. *See* The White House, “The Affordable Care Act Increases Choice and Saving (sic) Money for Small Businesses,” (available at http://www.whitehouse.gov/files/documents/health_reform_for_small_businesses.pdf) (visited December 5, 2013), attached hereto as Exhibit 3, at pg. 1.

- According to a Medical Expenditure Panel survey issued by the Agency for Health Research and Quality, an entity within the U.S. Department of Health and Human Services, the number of employers in the United States having more than 50 employees is as high as 1.6 million and/or the survey itself. *See* Medical Expenditure Panel Survey, “Table I.A.1 - Number of private-sector establishments by firm size and selected characteristics: United States, 2012,” (available at http://meps.ahrq.gov/mepsweb/data_stats/summ_tables/insr/national/series_1/2012/tia1.htm.) (visited December 5, 2013), attached hereto as Exhibit 4

- According to a July 30, 2013 letter from the Director of the Congressional Budget Office to the Chairman of the Committee on the Budget, U.S. House of Representatives, the delay of the “employer mandate” will result in an estimated loss of \$10 billion in penalty payments by employers and approximately 1 million fewer people are expected to be enrolled in employment-based coverage in 2014 than the number previously projected, primarily because of the one-year delay in penalties on employers and/or the letter itself. *See* Letter from Douglas W. Elmendorf, Director, Congressional Budget Office, to the Hon. Paul Ryan, Chairman, Committee on the Budget, U.S. House of Representatives, Re: Analysis of the Administration’s Announced Delay of Certain Requirements Under the Affordable Care Act, July 30, 2013 (available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/44465-ACA.pdf>) (visited December 5, 2013), attached hereto as Exhibit 5, at 3.

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Dated: December 13, 2013

Respectfully submitted,

s/ Christopher B. Lunny

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was electronically served through the Court's CM/ECF system, unless otherwise noted, on all counsel or parties of record on the Service List below, this 13th day of December, 2013.

Caroline Lewis Wolverton
U.S. Department of Justice, Civil Division
Post Office Box 883
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s/ Christopher B. Lunny
CHRISTOPHER B. LUNNY

Continuing to Implement the ACA in a Careful, Thoughtful Manner

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U.S. DEPARTMENT OF THE TREASURY

Treasury Notes

Continuing to Implement the ACA in a Careful, Thoughtful Manner

By: Mark J. Mazur 7/2/2013

Over the past several months, the Administration has been engaging in a dialogue with businesses - many of which already provide health coverage for their workers - about the new employer and insurer reporting requirements under the Affordable Care Act (ACA). We have heard concerns about the complexity of the requirements and the need for more time to implement them effectively. We recognize that the vast majority of businesses that will need to do this reporting already provide health insurance to their workers, and we want to make sure it is easy for others to do so. We have listened to your feedback. And we are taking action.

The Administration is announcing that it will provide an additional year before the ACA mandatory employer and insurer reporting requirements begin. This is designed to meet two goals. First, it will allow us to consider ways to simplify the new reporting requirements consistent with the law. 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. Within the next week, we will publish formal guidance describing this transition. Just like the Administration's effort to turn the initial 21-page application for health insurance into a three-page application, we are working hard to adapt and to be flexible about reporting requirements as we implement the law.

Here is some additional detail. The ACA includes information reporting (under section 6055) by insurers, self-insuring employers, and other parties that provide health coverage. It also requires information reporting (under section 6056) by certain employers with respect to the health coverage offered to their full-time employees. We expect to publish proposed rules implementing these provisions this summer, after a dialogue with stakeholders - including those responsible employers that already provide their full-time work force with coverage far exceeding the minimum employer shared responsibility requirements - in an effort to minimize the reporting, consistent with effective implementation of the law.

Once these rules have been issued, the Administration will work with employers, insurers, and other reporting entities to strongly encourage them to voluntarily implement this information reporting in 2014, in preparation for the full application of the provisions in 2015. Real-world testing of reporting systems in 2014 will contribute to a smoother transition to full implementation in 2015.

We recognize that this transition relief will make it impractical to determine which employers owe shared responsibility payments (under section 4980H) for 2014. Accordingly, we are extending this transition relief to the employer shared responsibility payments. These payments will not apply for 2014. Any employer shared responsibility payments will not apply until 2015.

During this 2014 transition period, we strongly encourage employers to maintain or expand health coverage. Also, our actions today do not affect employees' access to the premium tax credits available under the ACA (nor any other provision of the ACA).

Mark J. Mazur is the Assistant Secretary for Tax Policy at the U.S. Department of the Treasury.

Posted in: Tax Policy

Continuing to Implement the ACA in a Careful, Thoughtful Manner

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Transition Relief for 2014 Under §§ 6055 (§ 6055 Information Reporting), 6056 (§ 6056 Information Reporting) and 4980H (Employer Shared Responsibility Provisions)

NOT-129718-13

Notice 2013-45

I. PURPOSE AND OVERVIEW

This notice provides transition relief for 2014 from (1) the information reporting requirements applicable to insurers, self-insuring employers, and certain other providers of minimum essential coverage under § 6055 of the Internal Revenue Code (Code) (§ 6055 Information Reporting), (2) the information reporting requirements applicable to applicable large employers under § 6056 (§ 6056 Information Reporting), and (3) the employer shared responsibility provisions under § 4980H (Employer Shared Responsibility Provisions). This transition relief will provide additional time for input from employers and other reporting entities in an effort to simplify information reporting consistent with effective implementation of the law. This transition relief also is intended to provide employers, insurers, and other providers of minimum essential coverage time to adapt their health coverage and reporting systems. Both the information reporting and the Employer Shared Responsibility Provisions will be fully effective for 2015. In preparation for that, once the information reporting rules have been issued, employers and other reporting entities are encouraged to voluntarily comply with the information reporting provisions for 2014. This transition relief through 2014 for the information reporting and Employer Shared Responsibility Provisions has no effect on the effective date or application of other Affordable Care Act provisions.

II. BACKGROUND

Sections 6055, 6056, and 4980H were added to the Code by §§ 1502, 1514, and 1513, respectively, of the Patient Protection and Affordable Care Act (ACA), enacted March 23, 2010, Pub. L. No. 111-148.¹ Section 6055 requires annual information reporting by health insurance issuers, self-insuring employers, government agencies, and other providers of health coverage. Section 6056 requires annual information reporting by applicable large employers relating to the health insurance that the

¹ Section 4980H was amended by § 1003 of the Health Care and Education Reconciliation Act of 2010 (HCERA) (enacted March 30, 2010, Pub. L. No. 111-152) and was further amended by § 1858(b)(4) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (enacted April 15, 2011, Pub. L. No. 112-10). Section 6056 was amended by §§ 10106(g) and 10108(j) of the ACA and was further amended by § 1858(b)(5) of the Department of Defense and Full-Year Continuing Appropriations Act, 2011. In this notice, the term Affordable Care Act refers to the ACA and HCERA, collectively.

employer offers (or does not offer) to its full-time employees. Section 4980H(a) imposes an assessable payment on an applicable large employer that fails to offer minimum essential coverage to its full-time employees (and their dependents) under an eligible employer-sponsored plan if at least one full-time employee enrolls in a qualified health plan for which a premium tax credit is allowed or paid. Section 4980H(b) imposes an assessable payment on an applicable large employer that offers minimum essential coverage to its full-time employees (and their dependents) under an eligible employer-sponsored plan but has one or more full-time employees who enroll in a qualified health plan for which a premium tax credit is allowed or paid (for example, if the coverage offered either does not provide minimum value or is not affordable to that full-time employee).

III. TRANSITION RELIEF

Q-1. When will the rules be published regarding § 6055 Information Reporting and § 6056 Information Reporting? How will these provisions apply for 2014?

A-1. The Affordable Care Act requires information reporting under § 6055 by insurers, self-insuring employers, government agencies, and certain other parties that provide health coverage and requires information reporting under § 6056 by applicable large employers with respect to the health coverage offered to their full-time employees. Proposed rules for the information reporting provisions are expected to be published this summer. The proposed rules will reflect the fact that transition relief will be provided for information reporting under §§ 6055 and 6056 for 2014. This transition relief will provide additional time for dialogue with stakeholders in an effort to simplify the reporting requirements consistent with effective implementation of the law. It will also provide employers, insurers, and other reporting entities additional time to develop their systems for assembling and reporting the needed data. Employers, insurers, and other reporting entities are encouraged to voluntarily comply with these information reporting provisions for 2014 (once the information reporting rules have been issued) in preparation for the full application of the provisions for 2015. However, information reporting under §§ 6055 and 6056 will be optional for 2014; accordingly, no penalties will be applied for failure to comply with these information reporting provisions for 2014.

Q-2. What does the 2014 transition relief for § 6056 Information Reporting mean for application of the Employer Shared Responsibility Provisions for 2014?

A-2. Under the Employer Shared Responsibility Provisions, an applicable large employer generally must offer affordable, minimum value health coverage to its full-time employees or a shared responsibility payment may apply if one or more of its full-time employees receive a premium tax credit under § 36B. The § 6056 Information Reporting is integral to the administration of the Employer Shared Responsibility Provisions. In particular, because an employer typically will not know whether a full-time employee received a premium tax credit, the employer will not have all of the

information needed to determine whether it owes a payment under § 4980H. Accordingly, the employer is not required to calculate a payment with respect to § 4980H or file returns submitting such a payment. Instead, after receiving the information returns filed by applicable large employers under § 6056 and the information about employees claiming the premium tax credit for any given calendar year, the Internal Revenue Service (IRS) will determine whether any of the employer's full-time employees received the premium tax credit and, if so, whether an assessable payment under § 4980H may be due. If the IRS concludes that an employer may owe such an assessable payment, it will contact the employer, and the employer will have an opportunity to respond to the information the IRS provides before a payment is assessed.

For this reason, the transition relief from § 6056 Information Reporting for 2014 is expected to make it impractical to determine which employers owe shared responsibility payments for 2014 under the Employer Shared Responsibility Provisions. Accordingly, no employer shared responsibility payments will be assessed for 2014. However, in preparation for the application of the Employer Shared Responsibility Provisions beginning in 2015, employers and other affected entities are encouraged to voluntarily comply for 2014 with the information reporting provisions (once the information reporting rules have been issued) and to maintain or expand health coverage in 2014. Real-world testing of reporting systems and plan designs through voluntary compliance for 2014 will contribute to a smoother transition to full implementation for 2015.

Q-3. Does this affect employees' access to the premium tax credit?

A-3. No. Individuals will continue to be eligible for the premium tax credit by enrolling in a qualified health plan through the Affordable Insurance Exchanges (also called Health Insurance Marketplaces) if their household income is within a specified range and they are not eligible for other minimum essential coverage, including an eligible employer-sponsored plan that is affordable and provides minimum value.

Q-4. What does this mean for other provisions in the Affordable Care Act?

A-4. This transition relief through 2014 for § 6055 Information Reporting, § 6056 Information Reporting, and the Employer Shared Responsibility Provisions has no effect on the effective date or application of other Affordable Care Act provisions, such as the premium tax credit under § 36B and the individual shared responsibility provisions under § 5000A.

IV. DRAFTING INFORMATION

The principal author of this notice is Kathryn Johnson of the Office of Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice contact Kathryn Johnson at (202) 927-9639 (not a toll-free call).



HEALTH REFORM FOR SMALL BUSINESSES

The Affordable Care Act Increases Choice and Saving Money for Small Businesses

WHITEHOUSE.GOV/HEALTHREFORM

HEALTH REFORM FOR SMALL BUSINESSES

The Affordable Care Act Increases Choice and Saving Money for Small Businesses.

Small businesses are the backbone of our economy, but high health care costs and declining coverage have hindered small business owners and their employees. Over the past decade, average annual family premiums for workers at small firms increased by 123 percent, from \$5,700 in 1999 to \$12,700 in 2009, while the percentage of small firms offering coverage fell from 65 to 59 percent. The Affordable Care Act will provide enormous benefits to the millions of small business owners and the tens of millions of small business employees by expanding coverage options, increasing purchasing power, lowering costs and giving consumers, not insurance companies, control over their own health care.

No Employer Mandate, Exempts Small Firms from Employer Responsibility Requirement

The Affordable Care Act does not include an employer mandate. In 2014, as a matter of fairness, the Affordable Care Act requires large employers to pay a shared responsibility fee only if they don't provide affordable coverage and taxpayers are supporting the cost of health insurance for their workers through premium tax credits for middle to low income families.

- The law specifically exempts all firms that have fewer than 50 employees – 96 percent of all firms in the United States or 5.8 million out of 6 million total firms – from any employer responsibility requirements. These 5.8 million firms employ nearly 34 million workers. More than 96 percent of firms with 50 or more employees already offer health insurance to their workers. Less than 0.2 percent of all firms (about 10,000 out of 6 million) may face employer responsibility requirements. Many firms that do not currently offer coverage will be more likely to do so because of lower premiums and wider choices in the Exchange.

> For more information, please visit:
www.healthreform.gov/about/answers.html.

Small Business Health Care Affordability Tax Credits

Under the Affordable Care Act, an estimated 4 million small businesses nationwide could qualify for a small

business tax credit this year, which will provide a total of \$40 billion in relief for small firms over the next 10 years.

- Small employers with fewer than 25 full-time equivalent employees and average annual wages of less than \$50,000 that purchase health insurance for employees are eligible for the tax credit. The maximum credit will be available to employers with 10 or fewer full-time equivalent employees and average annual wages of less than \$25,000. To be eligible for a tax credit, the employer must contribute at least 50 percent of the total premium cost.
- Businesses that receive state health care tax credits may also qualify for the federal tax credit. Dental and vision care qualify for the credit as well.
- For 2010 through 2013, eligible employers will receive a small business credit for up to 35 percent of their contribution toward the employee's health insurance premium. Tax-exempt small businesses meeting the above requirements are eligible for tax credits of up to 25 percent of their contribution.
- For 2014 and beyond, small employers who purchase coverage through the new Health Insurance Exchanges can receive a tax credit for two years of up to 50 percent of their contribution. Tax-exempt small businesses meeting the above requirements are eligible for tax credits of up to 35 percent of their contribution.

> For more information on tax credits, please visit:
www.irs.gov/newsroom/article/0,,id=223666,00.html.

HEALTH REFORM FOR SMALL BUSINESSES

The Affordable Care Act Increases Choice and Saving Money for Small Businesses.

Better Information on Affordable Health Care Options

In July 2010, the Department of Health and Human Services will establish a new consumer website with easy to understand information about affordable and comprehensive coverage choices. The website will also provide information to small businesses about available health coverage options, including information on reinsurance for early retirees, small business tax credits, and how to shop for insurance in the Exchanges that will increase the purchasing power of small businesses.

Administrative Simplification

The Affordable Care Act accelerates adoption of standard "operating rules" for health insurance plan administration. Operating rules are the business rules and guidelines for electronic transactions with health insurance plans, and the current non-standard environment is a source of waste, unnecessary cost, and frustration for small business owners and others. Under administrative simplification, there will be one format and one set of codes for claims, remittance advice, service authorization, eligibility verification, and claims status inquiry.

By establishing uniform operating rules, the Affordable Care Act ensures that small businesses, health plans, physicians, hospitals, and patients are all speaking the same language. Benefits include:

- Improved coordination of care for the patient
- Increased payment accuracy and timeliness
- Reduced administrative cost and hassle factor for small businesses
- Payment transparency

The Affordable Care Act requires standard operating rules for eligibility and claims status to be adopted by July 1, 2011 and fully implemented by January 1, 2013.

Increases Quality, Affordable Options for Small Businesses

Currently, small businesses face not only premiums that are 18 percent higher than large businesses pay, but also face higher administrative costs to set up and maintain a health plan. The premiums they pay have up to three times as much administrative cost built into them as plans in the large group market. They are also at a disadvantage in negotiating with insurance companies because they lack bargaining power. The Affordable Care Act will change this dynamic. Starting in 2014, small businesses with up to 100 employees will have access to state-based Small Business Health Options Program (SHOP) Exchanges, which will expand their purchasing power. The Congressional Budget Office (CBO) stated that the Exchanges will reduce costs and increase competitive pressure on insurers, driving down premiums by up to 4 percent for small businesses.

- These Exchanges would include web portals that provide standardized, easy-to-understand information that make comparing and purchasing health care coverage easier for small business employees, and reduce the administrative hassle that small businesses currently face in offering plans.
- Starting in 2017, the Affordable Care Act also provides states flexibility to allow businesses with more than 100 employees to purchase coverage in the SHOP Exchange.
- If businesses don't offer coverage, workers at small firms and their families would be eligible for their own tax credits to purchase coverage through the Exchange.
- The Affordable Care Act streamlines health plans to keep premiums lower by instituting a premium rate review process and setting standards for how much insurance companies can spend on administrative costs, also known as the medical loss ratio.

> To learn more, visit:
www.healthreform.gov/newsroom/naicletter.html.

HEALTH REFORM FOR SMALL BUSINESSES

The Affordable Care Act Increases Choice and Saving Money for Small Businesses.

Security and Stability that Promotes Entrepreneurship

In 2014, the Affordable Care Act ends the discriminatory insurance industry practices of jacking up premiums by up to 200 percent because an employee got sick or older, or because the business hired a woman. In many cases, women can be charged higher premiums than men, simply because of their gender. It will also reduce "job lock" – the fear of switching jobs or starting a small business due to concerns over losing health coverage – by guaranteeing access to coverage for all Americans. This will encourage more people to launch their own small businesses, or join existing small employers.

Reviews the Impact of Reform on Small Businesses

The Affordable Care Act requires the Government Accountability Office (GAO) to specifically review the impact of Exchanges on increasing access to affordable health care for small businesses to ensure that Exchanges are indeed making a difference for small business owners.

Table I.A.1: Number of private-sector establishments by firm size and selected characteristics: United States, 2012

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Table I.A.1(2012) Number of private-sector establishments by firm size and selected characteristics: United States, 2012

Characteristics	Total	Less than 10 employees	10-24 employees	25-99 employees	100-999 employees	1000 or more employees	Less than 50 employees	50 or more employees
United States	6,789,881	4,049,313	775,327	515,248	450,402	999,592	5,121,268	1,668,613
Industry group **								
Agric., fish., forest.	153,367	124,919	13,968	9,182	3,280	2,019	145,517	7,851
Mining and manufacturing	264,455	129,829	43,522	40,497	23,973	26,633	196,703	67,752
Construction	587,101	466,076	72,827	32,684	9,629	5,885	559,362	27,739
Utilities and transp.	171,159	94,673	14,283	15,842	12,894	33,467	118,159	53,000
Wholesale trade	342,658	183,188	48,358	34,956	31,552	44,603	250,737	91,921
Fin. svcs. and real estate	750,114	373,279	39,332	47,244	81,406	208,853	433,976	316,138
Retail trade	1,065,963	528,184	96,817	63,262	66,586	311,114	660,923	405,040
Professional services	1,657,919	1,059,770	191,362	117,723	119,224	169,839	1,316,256	341,662
Other services	1,797,145	1,089,395	254,857	153,857	101,857	197,179	1,439,635	357,510
Ownership								
For profit, incorporated	4,599,091	2,535,663	558,764	353,854	297,811	852,999	3,302,723	1,296,368
For profit, unincorporated	1,655,393	1,238,042	150,275	93,349	66,309	107,419	1,439,588	215,805
Nonprofit	535,397	275,609	66,288	68,044	86,282	39,174	378,956	156,441
Age of firm								
Less than 5 years	1,204,127	1,000,455	128,127	56,943	15,681	2,922	1,167,524	36,604
5-9 years	1,164,942	922,983	136,983	70,163	30,466	4,346	1,100,920	64,021
10-19 years	1,473,670	1,045,186	210,715	117,605	62,938	37,225	1,328,323	145,346
20 or more years	2,947,143	1,080,689	299,502	270,537	341,317	955,099	1,524,501	1,422,642
Multi/single status								
2 or more locations	1,671,718	27,437	74,640	179,032	392,610	997,999	176,809	1,494,909
1 location only	5,118,164	4,021,876	700,687	336,216	57,792	1,593	4,944,459	173,705
Percent full-time employees								
Less than 25%	1,077,505	780,951	112,291	58,287	38,739	87,236	929,582	147,923
25-49 %	533,546	246,417	76,817	51,248	43,001	116,063	355,721	177,825

Table I.A.1: Number of private-sector establishments by firm size and selected characteristics: United States, 2012

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Characteristics	Total	Less than 10 employees	10-24 employees	25-99 employees	100-999 employees	1000 or more employees	Less than 50 employees	50 or more employees
50-74 %	1,103,826	671,404	124,246	73,274	56,879	178,024	837,941	265,885
75% or more	4,075,004	2,350,541	461,973	332,439	311,783	618,269	2,998,024	1,076,980
Union presence								
No union employees	6,075,775	3,901,080	738,421	488,570	406,370	541,333	4,922,225	1,153,550
Has union employees	357,122	69,151	24,171	18,791	25,799	219,211	102,686	254,436
Unknown	356,984	79,082	12,735	7,887	18,232	239,048	96,356	260,628

Percent low-wage employees

50% or more low wage	2,560,388	1,519,258	282,299	174,717	166,748	417,366	1,903,514	656,874
Less than 50% low wage	4,229,493	2,530,055	493,028	340,531	283,654	582,226	3,217,754	1,011,739

Source: Agency for Healthcare Research and Quality, Center for Financing, Access and Cost Trends. 2012 Medical Expenditure Panel Survey-Insurance Component.

Note: Definitions and descriptions of the methods used for this survey can be found in the Technical Appendix.

** Definitions of industry groups and low-wage employees changed in 2000. These data are not comparable to IC data prior to 2000. See Technical Appendix.

Totals may not sum exactly because of rounding.

Table I.A.1(2012) Standard error for number of private-sector establishments by firm size and selected characteristics: United States, 2012

Characteristics	Total	Less than 10 employees	10-24 employees	25-99 employees	100-999 employees	1000 or more employees	Less than 50 employees	50 or more employees
United States	29,797	28,523	14,031	10,390	6,920	18,086	30,099	15,079
Industry group **								
Agric., fish., forest.	7,826	6,041	2,409	1,595	701	534	7,387	1,118
Mining and manufacturing	6,969	4,944	2,377	1,180	1,338	1,452	6,442	2,608
Construction	11,006	11,599	4,944	1,626	1,068	703	12,226	2,180
Utilities and transp.	6,627	4,345	1,719	2,214	1,935	2,151	4,851	3,834
Wholesale trade	6,737	6,266	3,599	2,219	1,468	1,772	6,197	2,653
Fin. svcs. and real estate	10,604	7,280	3,726	4,668	3,480	9,693	8,002	7,937
Retail trade	10,915	6,349	5,836	2,748	3,635	9,307	11,295	8,771

Table I.A.1: Number of private-sector establishments by firm size and selected characteristics: United States, 2012

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Characteristics	Total	Less than 10 employees	10-24 employees	25-99 employees	100-999 employees	1000 or more employees	Less than 50 employees	50 or more employees
Professional services	17,406	11,809	6,528	3,429	3,762	8,528	13,223	11,565
Other services	14,962	10,925	5,225	5,760	4,939	11,190	12,429	9,774
Ownership								
For profit, incorporated	25,544	28,468	9,463	9,274	7,519	16,642	22,602	14,383
For profit, unincorporated	21,238	10,470	7,916	2,845	3,759	5,667	16,351	6,653
Nonprofit	5,571	6,886	4,998	2,504	4,695	2,108	6,629	4,243
Age of firm								
Less than 5 years	24,592	19,514	4,956	4,306	1,824	652	24,078	2,984
5-9 years	19,466	16,575	7,349	4,042	3,199	865	22,035	4,466
10-19 years	23,144	25,415	4,619	3,778	4,687	2,969	22,622	7,278
20 or more years	26,800	21,984	9,885	5,896	4,722	17,367	25,746	14,857
Multi/single status								
2 or more locations	19,900	3,780	4,693	7,000	6,604	18,043	7,724	17,154
1 location only	28,719	28,989	10,796	5,261	1,635	110	28,326	3,466
Percent full-time employees								
Less than 25%	15,758	18,266	7,365	3,082	3,165	3,275	13,971	5,339
25-49 %	11,812	7,420	5,327	3,556	2,830	8,856	9,135	9,337
50-74 %	17,091	13,757	7,276	3,594	3,838	10,149	11,328	11,211
75% or more	37,899	30,308	15,958	7,773	5,931	14,126	35,833	11,992
Union presence								
No union employees	34,900	31,977	14,601	10,257	7,392	9,154	32,811	7,534
Has union employees	9,285	6,461	2,203	2,686	2,219	9,315	6,723	9,367
Unknown	5,044	4,129	2,518	1,307	1,770	5,365	4,319	4,909
Percent low-wage employees								
50% or more low wage	21,659	20,627	7,099	4,724	7,484	14,502	19,432	16,055
Less than 50% low wage	33,673	29,791	12,028	8,348	7,647	8,561	31,341	9,960

Table I.A.1: Number of private-sector establishments by firm size and selected characteristics: United States, 2012 Page 4 of 4

Source: Agency for Healthcare Research and Quality, Center for Financing, Access and Cost Trends. 2012 Medical Expenditure Panel Survey-Insurance Component.

Note: Definitions and descriptions of the methods used for this survey can be found in the Technical Appendix.

** Definitions of industry groups and low-wage employees changed in 2000. These data are not comparable to IC data prior to 2000. See Technical Appendix.

Totals may not sum exactly because of rounding.



CONGRESSIONAL BUDGET OFFICE
U.S. Congress
Washington, DC 20515

Douglas W. Elmendorf, Director

July 30, 2013

Honorable Paul Ryan
Chairman
Committee on the Budget
U.S. House of Representatives
Washington, DC 20515

Re: Analysis of the Administration's Announced Delay of Certain Requirements Under the Affordable Care Act

Dear Mr. Chairman:

This letter responds to your request that the Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT) assess the effect of the recently announced one-year delay in the imposition of penalties for certain large employers and the corresponding delay in the implementation of two reporting requirements for certain large employers and health insurance coverage providers under the Affordable Care Act (ACA).¹ On July 2, 2013, the Department of the Treasury announced that those penalties and reporting requirements would be delayed until 2015.²

How CBO Accounts for New Information in Its Estimates

CBO typically updates its baseline budget projections at specific times each year to reflect legislative action, economic changes, and other developments. Generally, the budgetary impact of legislation being considered in the House or Senate is measured relative to the most recent spring baseline. Accordingly, the projections that CBO published in May of this year have been adopted by the budget committees as the official scorekeeping baseline for this Congressional session.

During the course of a year, however, events sometimes occur that are different from those anticipated in developing the baseline projections. In such cases, CBO follows long-standing procedures governing when and how to take into account such developments, which sometimes include the enactment of legislation, actions by the courts, or decisions by executive branch agencies.

1. The Affordable Care Act comprises the Patient Protection and Affordable Care Act and the health care provisions of the Health Care and Education Reconciliation Act of 2010 and, in the case of this document, the effects of subsequent related judicial decisions, statutory changes, and administrative actions.
2. Mark J. Mazur, "Continuing to Implement the ACA in a Careful, Thoughtful Manner," *Treasury Notes* (July 2, 2013), <http://go.usa.gov/jKeH>.

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If new information indicates that an action or event that would affect CBO's baseline has happened or definitely will happen (such as a Supreme Court decision, for example, or an agency issuing a final rule or making an official announcement that clearly indicates an intended action by the Administration), CBO incorporates that information in its next regular baseline update. In addition, CBO immediately takes that information into account in assessing what will happen under current law when it analyzes the effects of legislation being considered by the Congress, even if the agency has not published new baseline projections.

New Information Affecting the Estimated Budgetary Impact of the ACA's Coverage Provisions

The Administration recently made an announcement and issued final regulations regarding implementation of the ACA that will affect the budgetary impact of that law. Those actions dealt with certain penalties, reporting requirements, and verification procedures.

Under the ACA, certain large employers that do not offer health insurance coverage that meets the affordability standard defined in that law will be subject to penalties. In addition, insurers and certain other health coverage providers (primarily employers that self-insure) will be required to report the names of those receiving coverage, and certain large employers will be required to report on the health insurance coverage offered to their full-time employees. On July 2, 2013, the Administration announced its decision to delay for one year the penalties for certain large employers that do not provide affordable coverage, as well as to delay reporting requirements for insurers and employers.

In addition, the Administration recently released final regulations specifying the procedures to be used to ascertain and verify whether people applying for tax credits for premiums on insurance provided through the exchanges have an affordable offer of coverage from their employer and what their income is.³ Under the ACA, applicants for premium tax credits will be required to provide information in their application about any coverage by their employer for which they are eligible. The exchanges will check available databases to verify that information, but, for many applicants, no supporting information will be available. In those cases, exchanges will be required to contact employers to verify the information for a statistically valid sample of applicants; some of the exchanges operated by states had planned to rely on the Department of Health and Human Services (HHS) to perform that follow-up verification. However, the final regulations indicate that HHS will not conduct follow-up verification on behalf of state-based exchanges until January 1, 2015, one year later than expected. As a result, in 2014 only, if an applicant's attestation cannot be verified through available databases, state-based exchanges will have the option to accept the attestation as final without conducting further verification. However, that option applies to state-based exchanges only; HHS indicated in the final rule that federally facilitated exchanges will pursue follow-up verification for a statistically valid sample of applicants in 2014, as expected.

3. Medicaid and Children's Health Insurance Programs: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment, 78 Fed. Reg. 42160 (July 15, 2013), <http://go.usa.gov/jKe5>.

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Also, under the ACA, applicants for premium tax credits will be required to provide information about their household's income, to be verified through electronic sources of information about people's income, such as tax returns and Social Security Administration records. If the income reported by an applicant is significantly less than the amount of his or her income indicated by other available data or if data to verify a household's income are not available, then the exchange will request supporting documentation from the applicant. For 2014 only, the final rule allows exchanges to request additional documentation either from such applicants or from a statistically valid sample of those applicants. For an applicant that is not contacted by exchanges to provide further documentation, advance payments of premium tax credits will be based on the applicant's attestation. However, the law also provides that if an individual's advance payments exceed the amount of the premium tax credits to which he or she is entitled on the basis of his or her actual year-end tax return, that person may be required to repay some or all of the credits, subject to certain limits based on income.

Updated Estimates of the Budgetary Effects of the ACA Reflecting Recent Actions by the Administration

Following its usual procedures for incorporating new information in its estimates, CBO now assumes that penalties on employers and certain reporting requirements will not be enforced in 2014. In its May 2013 baseline projections, CBO projected that the insurance coverage provisions of the Affordable Care Act would have a net cost to the federal government of \$1,363 billion over the 10-year period from 2014 to 2023 (see the attached table).⁴ As a result of the Administration's announcement and recently issued final rules, the net cost is now estimated to be \$1,375 billion—\$12 billion more than previously estimated. The largest change is a \$10 billion reduction in penalty payments by employers that would have been collected in 2015. (Penalties assessed for 2014 would have been collected in 2015.) Costs for exchange subsidies are expected to increase by \$3 billion. Other small changes, including an increase in taxable compensation resulting from fewer people enrolling in employment-based coverage, will offset those increases by about \$1 billion, CBO and JCT estimate.

The budgetary effects other than the loss of revenues from penalty payments stem primarily from changes in how many people will obtain insurance coverage and from what source. CBO and JCT expect that some large employers that would have offered health insurance coverage to their employees in 2014 will no longer do so as a result of the one-year delay of penalties for those that do not offer affordable coverage. However, most large employers currently offer health insurance coverage to their employees, and because the delay is only for one year, CBO and JCT expect that few employers will change their decisions about offering such coverage.

Further, as a result of the temporarily looser procedures for verifying offers of employment-based coverage, CBO and JCT expect that some additional workers with affordable offers from their employer will obtain subsidized coverage through exchanges in 2014. However, applicants for subsidies will still have to provide exchanges with information about how to contact their

4. The ACA includes many other provisions that, on net, will reduce federal budget deficits. Taking the coverage provisions and other provisions together, CBO and JCT estimated that the ACA will reduce deficits over the next decade. See Congressional Budget Office, letter to the Honorable Paul Ryan regarding the potential budgetary impact of H.R. 45 (May 15, 2013), www.cbo.gov/publication/44215.

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employer and will have to sign a statement indicating that their answers are accurate to the best of their knowledge; moreover, employers will be notified of employees who qualify for premium tax credits. Consequently, although CBO and JCT expect that the verification process will have significant effects on people's behavior in coming years, the temporary loosening of verification procedures in 2014 is estimated to have only a small effect.

CBO and JCT also anticipate that the change in procedures for verifying income will have only a slight impact on the number of enrollees in the exchanges and on the accuracy of their income reporting because the Internal Revenue Service will be able to identify misreporting when it compares reported income with tax returns at year-end.

In addition, CBO and JCT expect that the delay in implementing reporting requirements will have only a negligible effect on sources of insurance coverage and on revenues collected through the penalties for individuals who do not obtain coverage in 2014. Although CBO and JCT expect that the reporting requirements will have significant effects on people's behavior in coming years, the projected effects on coverage and revenues from penalties for 2014 (which will be collected in 2015) are already lower than the projected collections in subsequent years to allow for initial difficulties in implementing those provisions of the law. Moreover, the Administration has said that it will encourage insurers and self-insured employers to voluntarily comply with the reporting requirements and report the names of those covered to the Treasury.

All told, as a result of the announced changes and new final rules, roughly 1 million fewer people are expected to be enrolled in employment-based coverage in 2014 than the number projected in CBO's May 2013 baseline, primarily because of the one-year delay in penalties on employers. Of those who would otherwise have obtained employment-based coverage, roughly half will be uninsured and the others will obtain coverage through the exchanges or will enroll in Medicaid or the Children's Health Insurance Program (CHIP), CBO and JCT estimate. In particular, fewer than half a million additional people are expected to be uninsured in 2014 than the number projected in the May baseline.

Related Issues

With those changes incorporated in CBO's assessment of what will occur under current law, legislation that would enact into law those announced changes and final rules would have no budgetary effect. Thus, CBO and JCT recently estimated that enacting H.R. 2667, a bill that would essentially codify the Administration's July 2 announcement, would not affect direct spending or revenues.⁵

CBO and JCT have not estimated the impact of a permanent change in penalties on employers and reporting requirements for insurers and employers. Both individuals and employers would probably react differently to permanent changes than to temporary ones. Specifically, the projected annual budgetary impact from a permanent elimination of those penalties and reporting requirements would be larger than the effects shown here for three reasons. First, with a permanent elimination of penalties, more employers would decide not to offer coverage to their

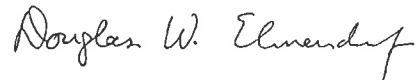
5. See Congressional Budget Office, cost estimate for H.R. 2667, the Authority for Mandate Delay Act (July 16, 2013), www.cbo.gov/publication/44424.

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employees, thereby increasing the number of people who obtained coverage in the exchanges or through Medicaid or CHIP; few employers are likely to drop health insurance from their employees' compensation packages for just one year. Second, CBO and JCT expect that many of the incentives created by the ACA will have more impact on people's behavior after 2014 because people will gain greater understanding of the provisions of the law over time; hence, changes in those incentives in 2014 are expected to have less impact than they would if they were implemented in later years. Third, because the cost of health care and health insurance will increase in future years, the budgetary impact of any changes in the implementation of the coverage provisions of the ACA would also grow over time.

I hope this information is helpful to you. If you have any questions, please feel free to contact me or CBO staff. The primary staff contacts for this analysis are Jessica Banthin and Sarah Masi.

Sincerely,

A handwritten signature in dark ink, reading "Douglas W. Elmendorf". The signature is fluid and cursive, with the first name "Douglas" being the most prominent.

Douglas W. Elmendorf
Director

Enclosure

cc: Honorable Chris Van Hollen
Ranking Member

Identical letters sent to the Honorable Dave Camp, Honorable Fred Upton, Honorable John Kline, Honorable Jeff Sessions, Honorable Orrin G. Hatch, and Honorable Lamar Alexander.

Changes in Estimates of the Effects of Insurance Coverage Provisions in the Affordable Care Act

	May 2013 Baseline	Current-Law Projections Incorporating Recent Administrative Action ^a	Difference
Changes in Insurance Coverage in 2014 (Millions of nonelderly people, by calendar year)			
Medicaid and CHIP	9	9	*
Employment-Based ^b	*	-1	-1
Nongroup and Other ^c	-2	-2	*
Insurance Exchanges	7	7	*
Uninsured ^d	-14	-13	*
10-Year Effects on the Federal Deficit, Fiscal Years 2014 to 2023^{e,f} (Billions of dollars)			
Medicaid and CHIP Outlays	710	710	**
Exchange Subsidies and Related Spending ^g	1,075	1,077	3
Small-Employer Tax Credits ^h	<u>14</u>	<u>14</u>	<u>0</u>
Gross Cost of Coverage Provisions	1,798	1,801	3
Penalty Payments by Uninsured Individuals	-45	-45	**
Penalty Payments by Employers ^h	-140	-130	10
Excise Tax on High-Premium Insurance Plans ^h	-80	-80	0
Other Effects on Tax Revenues and Outlays ⁱ	<u>-171</u>	<u>-172</u>	<u>-1</u>
Net Cost of Coverage Provisions	1,363	1,375	12

Sources: Congressional Budget Office; staff of the Joint Committee on Taxation.

Notes: The Affordable Care Act comprises the Patient Protection and Affordable Care Act and the health care provisions of the Health Care and Education Reconciliation Act of 2010 and, in the case of this document, the effects of subsequent related judicial decisions, statutory changes, and administrative actions.

CHIP = Children's Health Insurance Program; * = between -500,000 and 500,000 people; ** = between -\$500 million and \$500 million.

a. Mark J. Mazur, "Continuing to Implement the ACA in a Careful, Thoughtful Manner," *Treasury Notes* (July 2, 2013), <http://go.usa.gov/jKeH>.

Medicaid and Children's Health Insurance Programs: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment, 78 Fed. Reg. 42160 (July 15, 2013), <http://go.usa.gov/jKe5>.

b. The change in employment-based coverage is the net result of projected increases in and losses of offers of health insurance from employers and changes in enrollment by workers and their families.

c. The effects are almost entirely for nongroup coverage; "other" includes Medicare.

d. The count of uninsured people includes unauthorized immigrants as well as people who are eligible for but not enrolled in Medicaid.

e. Excludes effects on the deficit of other provisions of the act that are not related to coverage, which in the aggregate reduce deficits. Also excludes federal administrative costs subject to appropriation.

f. Negative numbers indicate a decrease in the deficit; positive numbers indicate an increase in the deficit.

g. Includes spending for high-risk pools, premium review activities, loans to consumer-operated and -oriented plans, and grants to states for the establishment of exchanges. The effects of recent administrative actions are entirely on exchange subsidies.

h. The effects on the deficit include the associated effects of changes in taxable compensation on revenues.

i. The effects are almost entirely on revenues.