

# Timeline and Implications of the Affordable Care Act REMDC June 2013

Download the Complete Presentation at:

<http://www.mdfhrconsulting.com/Downloads.html>

**MDF HR  
Consulting**

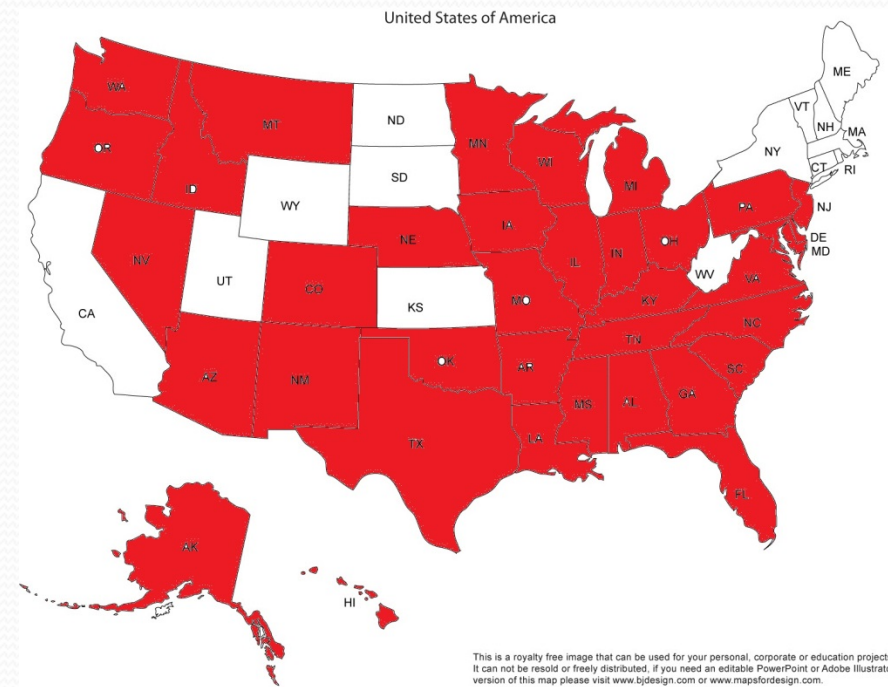


# Who I am

- 25+ years professional Human Resources Experience
- Full time consultant for since 1998
  - Sample Clients
    - Internal Revenue Service
    - Department of Defense
    - US Customs Service
    - UK Ministry of Defense
    - Cooperatives Nationwide since 2001

# Our Current Clients

- 112 Cooperatives
- 33 States
- Service an employee base of ~8,000
- \$336 Million in Payroll
- Who serve ~2.3 Million members
- Our Service Territory



# Topics

- Background
- Timeline
  - 2010
  - 2011
  - 2012
  - 2013
  - 2014
  - 2018



# Disclaimer

- I am not an attorney, and do not represent myself as such
- This presentation is not intended as legal advice
- PPACA rules are constantly changing
  - Everything in this presentation is thought to be accurate when I started it
  - It may not be true by the time we are done



# Acknowledgement

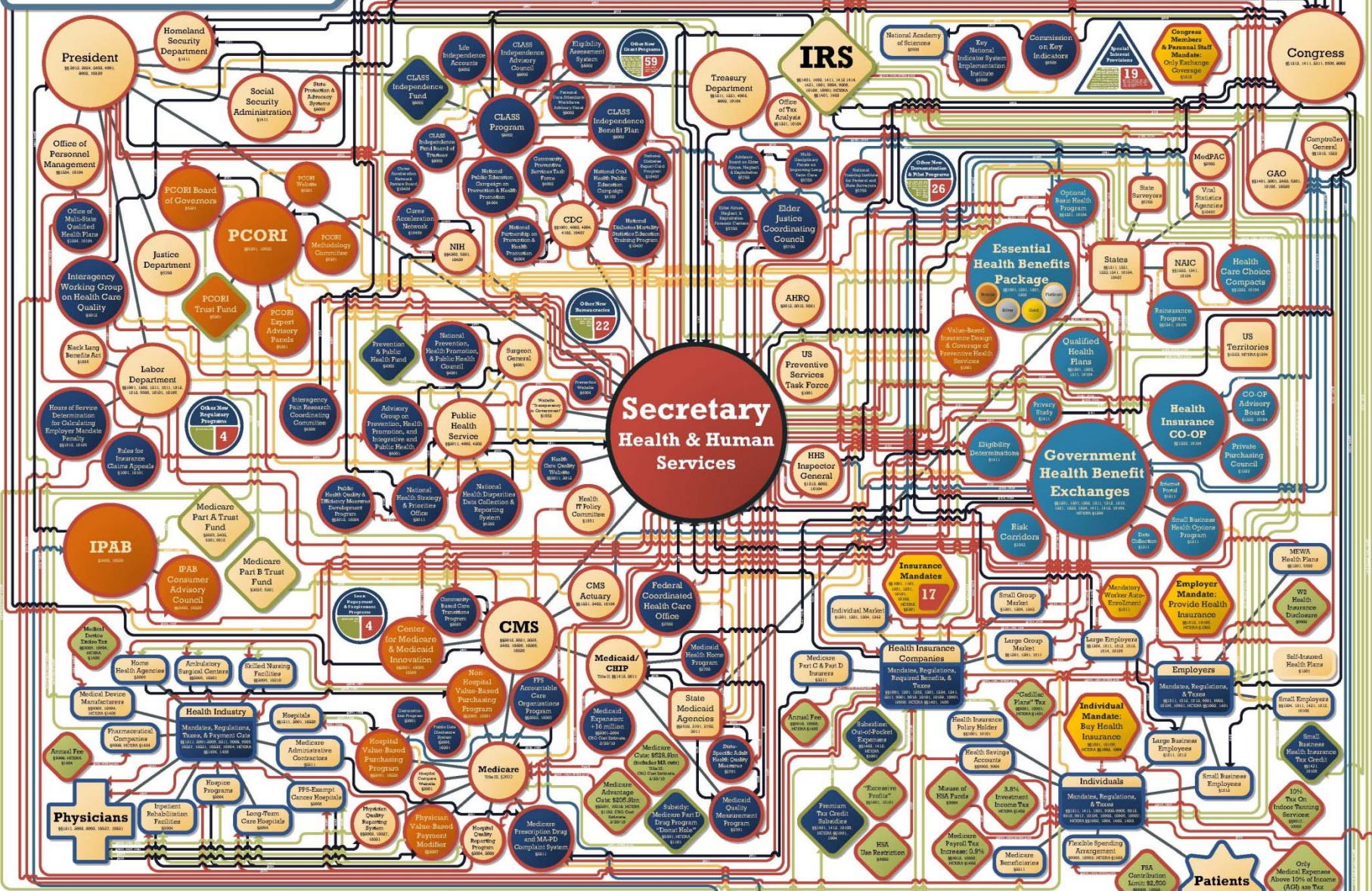
- This presentation was inspired by our friends at
  - McAfee & Taft
  - Offices in Oklahoma City & Tulsa
- In their recent legal seminar entitled
  - Government Gone Wild



# Simple Chart to Understand PPACA

- Prepared by: Joint Economic Committee, Republican Staff
  - Congressman Kevin Brady, Senior House Republican
  - Senator Sam Brownback, Ranking Member
- <http://tinyurl.com/2bd928t>

# Your New Health Care System



New Government	Expanded Government	Private	New Relationships
<ul style="list-style-type: none"> <li>Rationing Potential</li> <li>Involvement in Health Insurance Market</li> <li>Other Expansions</li> <li>Represents Bundles of Additional Entities</li> </ul>	<ul style="list-style-type: none"> <li>Mandates</li> <li>Taxes &amp; Monetary Fees/Penalties/Cuts</li> <li>Trust Fund (Rationing Potential)</li> <li>Other New Trust Funds/Monetary Benefits</li> </ul>	<ul style="list-style-type: none"> <li>Government with Expanded Authority/Responsibility</li> <li>Government Financial Entity with New Inflows/Outflows</li> <li>State/Territory with Expanded Authority/Responsibility</li> </ul>	<ul style="list-style-type: none"> <li>Private Entity with New Mandates/Regulations/Responsibilities</li> <li>Unchanged Private Entity</li> <li>Special Interest Provisions</li> <li>Regulations/Requirements/Mandates</li> <li>Reporting Requirements</li> <li>Oversight</li> <li>Money Flows</li> <li>Consultation/Advisory/Info Sharing</li> <li>Structural Connections (Includes Existing)</li> </ul>

ACR: Actuarial Gross Income  
 ARHO: Agency for Healthcare Research and Quality  
 CDC: Centers for Disease Control & Prevention  
 CHIP: Children's Health Insurance Program  
 CLASS: Community Living Assistance Services & Supports  
 CMS: Centers for Medicare & Medicaid Services  
 CO-OP: Consumer Operated & Oriented System  
 FFS: Fee-for-Service  
 FSA: Flexible Spending Arrangement  
 GAO: Government Accountability Office  
 HCRPA: Health Care & Education Reconciliation Act  
 HHS: Health & Human Services Department  
 HSA: Health Savings Account  
 IPAB: Independent Payment Advisory Board  
 IRS: Internal Revenue Service  
 MedPAC: Medicare Payment Advisory Commission  
 MERA: Medicare Early Risk Detection  
 EALORS: Executive Auxiliary Linked Office Regional System  
 MEWA: Multiple Employer Welfare Arrangement  
 NAIC: National Association of Insurance Commissioners  
 NIH: National Institutes of Health  
 PCORI: Patient-Centered Outcomes Research Institute  
 PPS: Prospective Payment System

**Patient Protection & Affordable Care Act, P.L. 111-148;**  
**Health Care & Education Reconciliation Act, P.L. 111-152**  
 Prepared by: Joint Economic Committee, Republican Staff  
 Congressman Kevin Brady, Senior House Republican  
 Senator Sam Brownback, Ranking Member





# Grandfathered Plans

- If your plan was in place March 23, 2010
  - You may have a grandfathered plan
  - Unless you killed Granpa by any of the following:
    1. Eliminated benefits for a particular condition
    2. Increased co-insurance amounts
    3. Increased deductibles or out of pocket limits
    4. Increased co-pays by more than the sum of medical inflation plus 15%
    5. Decreased employer contribution by more than 5%
    6. Changed annual or lifetime limits
- If you make any of these changes going forward, Granpa is dead

# What having a grandfathered plan exempts you from

- Not much
- Each provision applicable to a grandfathered plan will be indicated by:
- If a grandfathered plan is actually exempted, it will be indicated by





# Who is covered

- Employers with 50 or greater full time employees
- What is full time
  - Regularly works 30 or more hours per week
  - Works an average of 30 or more hours per week in any given month



# Avoiding the threshold

- Just reduce everyone's hours to 29, and add more staff?
- Won't work
- For PPACA purposes
  - Add up total hour of all part time employees
  - Divide by 30
  - This is the number of “full time employees” you have



# Variable Hour Employees

- Measurement period
  - Not less than 3 months
  - No More than 12 Months
- Administrative Period
  - No More than 90 Days
- Stability Period
  - Can not exceed the measurement period

The background features a stylized landscape with rolling green hills under a blue sky. The hills are represented by smooth, curved lines, and the sky is a gradient of blue. The overall aesthetic is clean and modern.

2010



# 2010

- Annual Limits on essential Health benefits restricted
- Lifetime limits on Essential health benefits prohibited
- Dependent coverage for children under 26
- Pre-Existing Condition Exclusions prohibited for participants under 19
- Preventative Health must be covered at 100%
- Lactation Lounge requirements

# 2010 Annual Limits on essential Health benefits restricted



- Plans beginning:
  - Before or after 9/23/2010, but before 9/23/2011
    - \$750,000
  - On or after 9/23/2011, but before 9/23/2012
    - \$1.25 Million
  - on or after 9/23/2012, but before 1/1/2014
    - \$2 Million
- Penalty for non compliance
  - If found by the Feds \$110 per day per violation, per each qualified beneficiary
  - If you find it must correct within 30 days of discovery
  - Must “self report” violation
    - \$100 per day penalty
    - \$200 per day, if more than one qualified beneficiary in the same family affected



# 2010 Lifetime limits on Essential health benefits prohibited

- Penalty for non compliance
  - Must correct within 30 days of discovery
  - Must “self report” violation
    - \$100 per day penalty
    - \$200 per day, if more than one qualified beneficiary in the same family affected



# Currently Defined Essential Benefits

- Ambulatory patient services
- Emergency services
- Hospitalization
- Maternity and newborn care
- Mental health and substance use disorder services, including behavioral health treatment
- Prescription drugs
- Rehabilitative and habilitative services and devices
- Laboratory services
- Preventive and wellness services and chronic disease management
- Pediatric services, including oral and vision care
- What else may be covered?
  - Insurers must put forth “good faith” effort to comply

# 2010 Dependent coverage for children under 26



- Required to cover dependents until age 26
- Can use FSA funds for covered child
- Prohibited from using HSA funds for adult child
- Penalty for non compliance
  - Must correct within 30 days of discovery
  - Must “self report” violation
    - \$100 per day civil penalty
    - \$200 per day, if more than one qualified beneficiary in the same family affected



# 2010 Pre-Existing Condition

## Exclusions prohibited for participants under 19



- Penalty for non compliance
  - Must correct within 30 days of discovery
  - Must “self report” violation
    - \$100 per day civil penalty
    - \$200 per day, if more than one qualified beneficiary in the same family affected

# 2010 Preventative Health must be covered at 100%



- Evidence-based items or services with an A or B rating recommended by the United States Preventive Services Task Force;
- Immunizations for routine use in children, adolescents, or adults recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention;
- Evidence-informed preventive care and screenings provided for in the comprehensive guidelines supported by the Health Resources and Services Administration (HRSA) for infants, children, and adolescents; and
- Other evidence-informed preventive care and screenings provided for in comprehensive guidelines supported by HRSA for women

# Preventative Health must be covered at 100%

- Penalty for non compliance
  - Must correct within 30 days of discovery
  - Must “self report” violation
    - \$100 per day excise tax per affected individual
  - Failure to self report known violation
    - \$100 per day civil penalty per affected individual

# 2010 Lactation Lounge requirements

- Employers “will provide”
  - Breaks for mothers to express milk
    - Break does not have to be compensated
  - Designated location
    - Not a bathroom
    - Shielded from view, and free of intrusion by co workers and the public
  - Right in effect from birth to One year of age
  - Law only specifies the right to express milk, no provision for actually feeding the child



The background features a stylized landscape with rolling green hills under a blue sky. The hills are rendered with smooth, curved lines, and the sky is a gradient of light to medium blue. The overall aesthetic is clean and modern.

2011





# 2011

- Medical Loss Ratio Requirements
- Over the counter drug restrictions

# 2011 Medical Loss Ratio Requirements

- $(\text{Claims} + \text{Quality Improvement}) / (\text{Revenue} - \text{Taxes})$
- Small Plans  $\leq 100$  Employees 80%
- Large Plans 85%
- Guidance available:  
<http://www.dol.gov/ebsa/newsroom/tr11-04.html>



# 2011 Over the counter drug restrictions



- FSA, HSA & HRA funds can't be used for most OTC
- Medical equipment & supplies excluded
- Penalties for non compliance
  - HSA Funds spent on ineligible items considered taxable, and subject to additional 20% tax above regular income tax rate
  - No Specific penalties for employer
  - Could jeopardize tax-qualified status of plan



# Practical Absurdity of this provision

- Can be purchased with pre tax dollars
- Purchase prohibited with pretax dollars



The background features a stylized landscape with rolling green hills under a blue sky. The hills are represented by smooth, curved lines, and the sky is a gradient of blue. The overall aesthetic is clean and modern.

2012



# 2012

- Patient-Centered Outcomes Research Institute (PCORI) fees
- W-2 Reporting

# 2012 Patient-Centered Outcomes Research Institute (PCORI) fees

- To “fund outcomes based research for clinical effectiveness”
- Not a tax deductible expense
- 2013 to 2018
- \$1.00 per participant per year
- \$2.00 starting July 2013
- ~\$3.3 Billion by the end of program





# 2012 W-2 Reporting

- Small employer exception ?
  - Under 250 W-2's in 2011
- Must report the value of health benefits provided to employees
  - Total Premium
  - Any Employer contributions to FSA, HRA, or HSA
- Penalties for non-compliance
  - Depending on Violation
  - \$30-\$100 per W-2
  - Maximum of \$250,000 to \$1.5 million



The background features a stylized landscape with rolling green hills under a blue sky. The hills are represented by smooth, curved lines, and the sky is a gradient of blue. The overall aesthetic is clean and modern.

2013



# 2013

- Exchange Notice
- Healthcare Flexible Spending Account's capped at \$2,500
- Auto enrollment required for employers with more than 200 employees

# 2013

- Exchange Notice
  - Original deadline March 1, 2013
  - DHS still has not written the rules
    - Extended to October 1, 2013





# 2013 Exchanges

- Employers must notify employees by October 1 2013
  - Existence of exchange and services provided
  - Explain eligibility for premium tax credits
  - Explain that if they purchase coverage through an exchange, they may lose any employer contribution to premiums
- Penalty for non compliance
  - If you find it must correct within 30 days of discovery
  - Must “self report” violation
    - \$100 per day civil penalty
    - DOL may bring additional civil action against you

# 2013



- Healthcare Flexible Spending Account's capped at \$2,500





# 2013

- Auto enrollment required for employers with more than 200 employees
  - DHS still has not written the rules delayed until 2014

The background features a stylized landscape with rolling green hills under a blue sky. The hills are rendered with smooth, curved lines, and the sky is a gradient of light to medium blue. The overall aesthetic is clean and modern.

2014



# 2014

- Annual Fee on Health Insurers
- Annual limits prohibited on essential benefits
- Automatic enrollment ?
- Cost-Sharing limitations
- Excessive waiting periods
- PCE Prohibition for all
- Re-insurance payments
- Reporting of health insurance coverage
- Employer shared responsibility
- Individual mandate



# 2014 Annual fee on health insurers

- Exemptions
  - Self Insured Plans
  - Government
  - Non Profit Corporation
  - VEBA
- How much will it cost
  - 2014 \$8 Billion
  - 2015 & 2016 \$11.3
  - 2017 & 2018 \$13.9 Billion
  - 2019 and beyond TBD
  - If you owe it, the IRS will calculate your fair share



# 2014 Annual Limits Prohibited on Essential Benefits

- Penalty for non compliance
  - If found by the Feds \$110 per day per violation, per each qualified beneficiary
  - If you find it must correct within 30 days of discovery
  - Must “self report” violation
    - \$100 per day penalty
    - \$200 per day, if more than one qualified beneficiary in the same family affected



# 2014 Automatic Enrollment

- Employers subject to FLSA who have and offer health insurance
- All eligible employees must be enrolled in your health plan
  - Unless they opt out
  - Must provide “adequate” notice to opt out
- Final rules still not available
- Penalties for non compliance
  - TBD



# 2014 Cost-Sharing Limitations

- Deductibles capped at
  - \$2,000 individual
  - \$4,000 family



# 2014 Excessive Waiting Periods

- May not impose a waiting period in excess of 90 days
- Can require cumulative service
  - As long as it is not designed to avoid compliance
  - Can not exceed 1,200 hours



# 2014 PCE Prohibition for All

- Penalty for non compliance
  - If found by the Feds \$110 per day per violation, per each qualified beneficiary
  - If you find it must correct within 30 days of discovery
  - Must “self report” violation
    - \$100 per day penalty
    - \$200 per day, if more than one qualified beneficiary in the same family affected



# 2014 Re-Insurance Payments

- To fund “free market” exchanges
- 3 Year annual fee on plans 2014-2016
- \$63 per covered life per year
- First report due November 15, 2014
- Penalty for non compliance
  - \$100 per day per covered individual
  - Must correct within 30 days of knowledge
  - Must Self report violation
- \$16 Billion per year



# 2014 Reporting of Health Insurance Coverage - Insurers

- Insurers and Employers that Self Insure must report
  - Name and ID Number of all insured
  - Coverage Dates
  - If coverage provided through and exchange
  - Name and address of employers maintaining the plan
  - Employer portion of premium
- Any other information required by the IRS





# 2014 Reporting of Health Insurance Coverage - Employers



- Employers must report
  - Employers name and EIN
  - Certification that you offer coverage
  - Number of full time employees for each month of the calendar year
  - Name, address and TIN for each full time employee
  - Months of the year essential coverage made available
  - Employers share of total allowed costs of essential coverage
  - Waiting period with respect to essential coverage
- **Any other information required by the IRS**

# 2014 Employer Shared Responsibility

- No Coverage Tax
- Inadequate Coverage Tax



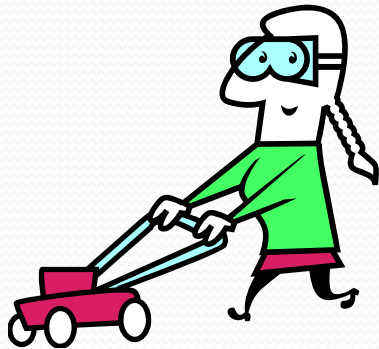
# 2014 No Coverage Tax –Sledge Hammer

- Must cover at least 95% of eligible employees
- \$2,000 per eligible employee minus 30



# Contractor trap

- IRS is cracking down on employees misclassified as contractors
- This is the same agency who enforces PPACA
- Let's say you have 49 full time employees
- But you also have 3 “contractors”
- They on average work over 30 hours per week





# Contractor Trap

- You pay these folks as contractors, and give them a 1099
- Problem is
  - You pay them by the hour
  - You provide the tools
  - You do not allow them to subcontract
- They are really employees
- You covered under the provision of the act
- You now owe \$44,000 for not covering them on your health plan

# 2014 Inadequate Coverage Tax – Tack Hammer

- If any of your employees receive a tax credit because of
  - Unaffordable coverage
    - Premium cannot exceed 9.5% of income
  - Inadequate coverage
    - Must provide minimum value as determined by HHS
- \$250 per month, per employee receiving a credit
- See also the contractor trap



# 2014 Individual Mandate

- Almost all living free Americans must have Minimum Essential Coverage
- Unless
  - Premium exceeds 8% of income
- Penalty
  - Greater of a flat dollar amount or percentage of Adjusted Gross income for each non exempt person
    - 2014 \$95 or 1% of AGI
    - 2015 \$325 or 2% of AGI
    - 2016 and beyond \$695 (to be indexed) or 2.5%
- Penalty reduced by 50% if you are under 18
- Total penalty capped at national average of family coverage for “Bronze” level coverage

The background features a stylized landscape with rolling green hills under a blue sky. The hills are represented by smooth, curved lines, and the sky is a gradient of blue. The overall aesthetic is clean and modern.

2018





# 2018 Cadillac Tax

- Punishment for having benefits beyond what the government thinks you should have
- Not a tax deductible expense
- Annual Premium Threshold
  - \$10,200 Individual
  - \$27,500 Family
- Includes employer portion of Contribution to FSA, HRA or HAS
- Tax 40% for any amount over threshold
- 60% of companies are expected to be hit by this tax

# Resources

- [www.Healthcare.gov](http://www.Healthcare.gov)
  - All the “free” stuff you will get
  - No mention of revenue provisions or compliance implications
- [www.TowersWatson.com](http://www.TowersWatson.com)
- [www.irs.gov](http://www.irs.gov)
- [www.dol.gov](http://www.dol.gov)
- Shaw Hankins
  - [http://www.nfpbenefitpartners.com/shawhankins\\_llc/hr/default.aspx](http://www.nfpbenefitpartners.com/shawhankins_llc/hr/default.aspx)
- [www.SHRM.org](http://www.SHRM.org)



Questions?



[www.MDFHRConsulting.com](http://www.MDFHRConsulting.com)

(336) 406-4075