FEDERAL HEALTHCARE REFORM:
PATIENT PROTECTION AND AFFORDABLE CARE ACT
SUMMARY OF INSURER TAX PROVISIONS

Blue Cross Blue Shield of Rhode Island

On Tuesday, March 23, President Obama signed into law the "Patient Protection and Affordable Care Act" ("PPACA"). A reconciliation bill making changes to the Act was signed by the President on March 30. The PPACA as amended by the reconciliation bill is collectively referred to as the Act in this summary. This summary provides an overview of the tax provisions impacting BCBSRI.

Summary:	The Act imposes several new taxes, restrictions on existing deductions, and reporting requirements on health insurers. These include: • Changes to the §833 taxation for certain insurers; • Medical Loss Ratio reporting and rebate requirements; • Reporting Payments to Corporations; • Comparative Effectiveness Assessment; • Deductibility of Executive Compensation; and • Annual Fee on Health Insurers.
Taxation under §833 of the Internal Revenue Code (IRC):	For tax years beginning after December 31, 2009, the Act would permit tax treatment of Blue plans and other insurers under section 833 of the IRC only if the plan had a medical loss ratio (MLR) of at least 85%. (§9016 of PPACA, adding subsection (5) to IRC §833(c)) *Open Issue:* This section makes reference only to the percentage of premium spent on clinical services. However, the Act imposes MLR-related requirements which include a more expansive calculation of MLR that also takes into account reimbursements for activities that improve health care quality and which excludes state and federal taxes and licensing fees, see PPACA § 10101(f), adding § 2718 to the Public Health Services Act. That section calls on the NAIC to standardized methodologies for calculating medical loss ratio by December 31, 2010. It is possible that regulations will aligned these two MLR requirements.
Medical Loss Ratios - Rebates:	Beginning January 1, 2011 insurers are required to provide rebates to enrollees if the plan's MLR fails to meet certain thresholds, which vary by market. Insurers must begin reporting MLR in 2010. See BCBSRI's *Healthcare Reform: Rating Reform* and *Medicare Advantage/Part D* fact sheets for more information.
Reporting Information on Payments to Corporations:	Existing law imposes a general information reporting requirement, but exempts payments for goods and payments to corporations. The Act requires businesses to provide information, via Form 1099, for corporate service providers receiving more than $600 per year for services or property. This is effective for payments made in taxable years after December 31, 2011. (§9006 of the Act, amending §6041 of the IRC)
Comparative Effectiveness Research Assessment:	Beginning in 2013, a fee will be assessed on health insurers and self funded plans to support comparative effectiveness research. The assessment is $1 per covered life in 2013, and $2 per life in subsequent years, indexed to increases in national health expenditures. The assessment is eliminated after 2019. In the case of a self-funded plan, the plan sponsor is responsible for the payment. (PPACA §§6301, amending IRC Ch. 34 by creating a new Subchapter B)

Limitation on Deductibility of Remuneration to Employees and Service Providers:

Beginning in 2013 (tax years beginning after December 31, 2012), health insurers are prohibited from deducting as an expense remuneration to an individual in excess of $500,000. The ability to deduct deferred remuneration, attributable to services performed after December 31, 2009, is also limited (the Act provides a calculation to determine the application of this restriction).

This restriction applies to an employer which is a "covered health insurance provider." The Act defines this to mean, for taxable years beginning after December 31, 2009, and before January 1, 2012, an employer which is a health insurance issuer as defined in Internal Revenue Code (IRC) section 9832(b)(2), and which receives premiums from providing health insurance coverage. That IRC section explicitly excludes a group health plan. For subsequent tax years, the Act defines the term to mean those health insurance issuers which receive 25% or more of their gross premiums from providing minimum essential coverage.

The applicable remuneration means the aggregate amount that would otherwise be allowable as a deduction. It does not include remuneration that is deferred to a subsequent taxable year.

This limitation applies to an individual who (1) is an officer, director, or employee, or (2) provides services for or on behalf the covered health insurance provider.

Notes & Open Issue: The application to individuals who provide services "for or on behalf of" the health insurance provider likely includes consultants but not medical providers. "Individual" generally means a natural person and not a corporate entity.

(§9014 of PPACA, adding subsection (6) to IRC §162(m))

Annual Fee on Health Insurers:

Beginning in 2014, entities which provide health insurance will be assessed a fee, apportioned among health insurers based on the ratio designed to reflect market share. It is calculated by comparing the entity's net written premiums for health insurance to the total applicable net premiums written by all such entities. For purposes of calculating the fee for a particular insurer, the following is taken into account:

- The first $25 million in net premiums is excluded;
- 50% of the net premiums between $25 million and $50 million is included in the calculation;
- all of the net premiums above $50 million is included in the calculation.

For example, if an insurer has $100 million in net premiums, the insurer will be assessed on $62.5 million. The percentage paid will depend on the ratio of that amount to the total net premiums written across the country in order to collect the total annual burden specified under the Act.

The annual burden to be allocated among payers, based on their prior-year's ratio, is $8 billion in 2014 and increases annually so that in 2018 it is $14.3 billion. Thereafter, the total assessment will increase by the rate of premium growth.

The fee applies to net written premiums, including reinsurance premiums written, reduced by reinsurance ceded, and reduced by ceding commissions. It includes premiums for hospital/medical, vision, dental, Federal Employees Health Benefit Plan, Medicare, Medicaid, and other health coverage. It does not include amounts arising under arrangements that are not treated as insurance. Premiums for accident, disability income, specific disease or illness, indemnity, long-term care, and Medicare supplemental insurance are excluded.

	Certain health insurers may have a lower insurer assessment: • Only 50% of the net premium is taken into account for entities which are tax-exempt pursuant to IRC section 501(c)(3), (4) , (26), and (29). • Nonprofit entities that receive more than 80% of gross revenue from governmental programs (Medicaid, Medicare, and CHIP) and meet the limitation on lobbying provisions described in section 501(c)(3) are exempt from the assessment. • Self-funded plans are exempt. The U.S. Treasury will require reporting of premium information. It will then calculate the ratios. Payments will be due by September 30 of each applicable year. The fee is not deductible for federal income tax purposes. (PPACA §9010 and 10905, Reconciliation bill §1406)
Other Items of Interest – please see the respective Fact Sheets:	• The individual market reinsurance program imposes $25 billion dollars in assessments over the period of 2014 – 2016. See an upcoming BCBSRI Federal Healthcare Reform Fact Sheet. • The excise tax on high-cost insurance plans, aka the Cadillac Tax, imposes a tax of 40% of the cost of benefits over the threshold, beginning in 2018. See BCBSRI's *Federal Healthcare Reform: Employer Taxation Provisions* Fact Sheet for more information. • An employer will not be able to both deduct the cost of a retiree drug plan and receive the retiree drug subsidy, the amount of which is not otherwise included in gross income, beginning in 2013. BCBSRI's Federal *Healthcare Reform: Employer Taxation Provisions* Fact Sheet for more information.
References:	PPACA: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590enr.txt.pdf Reconciliation: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4872pcs.txt.pdf Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions of the "Reconciliation Act of 2010," as amended, in combination with the "Patient Protection and Affordable Care Act"* (JCX-18-10), March 21, 2010. Available at www.jct.gov. Jt. Comm. Tax. *JCX-18-10*, March 21, 2010.

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