

The Majestic Equality of the Healthcare Law

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My favorite Bolshevik quote

- The Law, in its majestic equality, forbids the rich, as well as the poor, to sleep under bridges, the beg in the streets, and to steal bread.” (Anatole France, 1894)
- Big business vs. small business
- PPACA – harms business overall, devastates small business

NFIB's position

- NFIB opposed House and Senate bills
- We support repeal, followed by real reform
- Joining with 20 states, we are the 21st litigant in challenging the law's constitutionality.

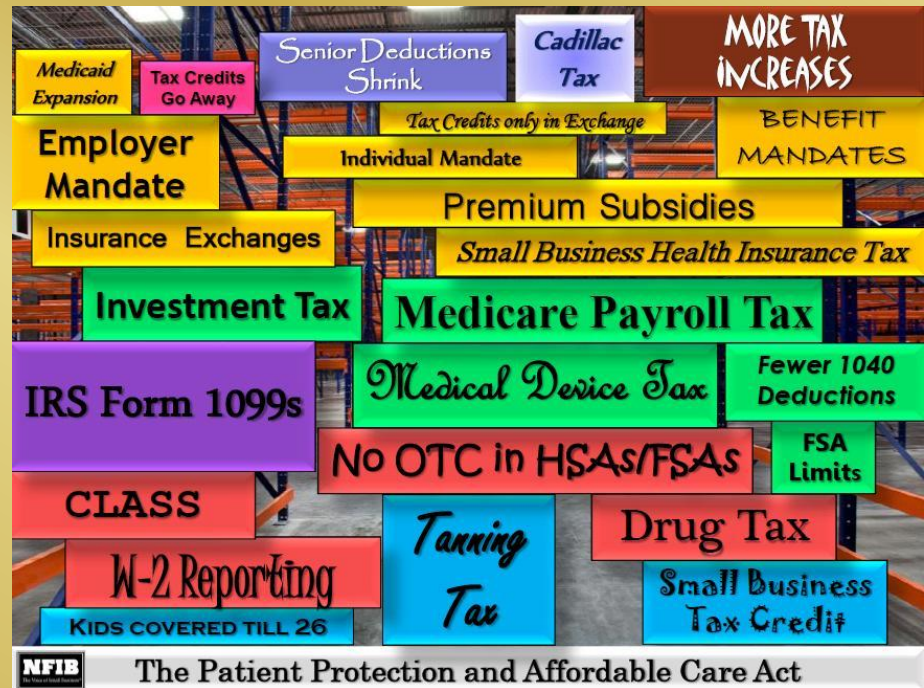
- Economics today

Costs

- PPACA: Way to moderate spending and control deficit
 - Foster / Elmendorf
 - Worse news each day
- Massachusetts
 - Soaring costs
 - Influx of patients, not of providers
 - Individual mandate gaming
 - Small group convulsing

New law: 3 sets of problems +

- Increases monetary costs
- Expands the administrative burden
- Deforms the structure of business and workforces in response to arbitrary and incoherent provisions



+ Adds tremendous unpredictability to each of these three.

Increases monetary costs

- Small business health insurance tax
 - Not big business, labor unions
- Medicare payroll tax
- Medicare investment tax
 - “Rich”
 - “Medicare”
 - “Payroll”
- Health Choices Commissioner. Limitless, shifting mandates.

Administrative burden

- IRS Form 1099
 - Currently quasi-W-2
 - Now, corporations & goods
 - Collation nightmare
 - Withholding
 - Good news
- Grandfathering
 - Less choice, less flexibility
 - 80% of SB could lose the plans they have
 - Pay more, buy a pricier plan, drop coverage

Skewed incentives

- Best example: Premium credits/Free rider
 - Individual mandate: You must buy insurance (or pay a penalty)
 - If insurance isn't affordable, the government will give you a premium tax credit to offset part of the bill
 - If you get a premium credit, your employer (50+ employees) will pay large penalties
- Incentives – see chart

The Free Rider Provision: A One-page Primer

Calculating the healthcare law's free rider tax penalties for businesses with one or more employees receiving insurance subsidies. Understanding the free-rider provision's bottom-line effects.

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[1] A business owes a free-rider penalty ONLY if it meets two conditions.

- If it has more than 50 full-time employees or full-time equivalents. Each 120 hours per month of part-time labor counts as a full-time equivalent.
- If one or more of its employees receive premium credits (government subsidies) to help purchase health insurance in the exchange.

[2] An employee ONLY receives a premium subsidy if he meets two conditions.

- The employee's household income must be less than 400% of the Federal Poverty Level (FPL), which varies with family size. For a family of four, 400% FPL = \$88,200. Household income includes the income of the employee's spouse and of other dependent members of the household.
- The employee's portion of the insurance premium on the employer's plan must exceed 9.5% of the employee's household income.

[3] If a business DOES owe a free-rider penalty, the calculations are as follows:

- If the business DOESN'T provide health insurance, its annual penalty equals {the total number of employees in the firm (subsidized and unsubsidized) minus 30} x {\$2,000}. In the table below, in [S3] and [S4], the 51-employee firm owes \$42,000 = (51-30)x\$2,000.
- If the business DOES provide health insurance, its annual penalties equal THE LESSER OF {the number of subsidized employees} x {\$3,000} OR {the number of employees in the firm (subsidized and unsubsidized) minus 30} x \$2,000. In [S4], it pays \$6,000 (the lesser of \$6,000 and \$42,000). In [S6], it pays \$44,000 (the lesser of \$75,000 and \$44,000).

[4] Observations from the table

- [S3] vs. [S5]: For a non-providing firm, the free rider provision penalizes the firm \$2,000 for creating an additional job.
- [S3] vs. [S4]: For a non-providing firm, the free rider provision DOES NOT penalize the firm for having more subsidized employees.
- [S3] vs. [S4]: For a providing firm with few subsidized employees, the free-rider provision penalizes the business \$3,000 for each additional subsidized employee.
- [S3] vs. [S5]: For a providing firm with few subsidized employees, the free-rider provision DOES NOT penalize the business for creating an additional job - as long as the new employee is not subsidized.
- [S6], [S7], [S8]: A providing firm with many subsidized employees pays the same penalty as a non-providing firm of the same size.
- [S6] vs. [S7]: For a providing firm with many subsidized employees, the free rider provision penalizes the firm \$2,000 for creating an additional job.
- [S6] vs. [S8]: For a providing firm with many subsidized employees, the free rider provision DOES NOT penalize the firm for having more subsidized employees.
- [S6] vs. [S9]: A firm can reduce its penalties tremendously by replacing full-time employees with part-timers.
- [S1] and [S2]: Unless the business has over 50 full-time employees or FTEs AND has at least one subsidized employee, there are no penalties.

Scenarios	[S1]	[S2]	[S3]	[S4]	[S5]	[S6]	[S7]	[S8]	[S9]
Total employees	50	51	51	51	52	52	53	52	32
# of Unsubsidized employees	49	51	50	49	51	27	28	26	7
# of Subsidized employees	1	0	1	2	1	25	25	26	25
# of Full-time equivalents (part-time hours in one month divided by 120)	0	0	0	0	0	0	0	0	20
Penalty for a business that DOES provide health insurance	\$0	\$0	\$3,000	\$6,000	\$3,000	\$44,000	\$46,000	\$44,000	\$4,000
Penalty for a business that DOES NOT provide health insurance	\$0	\$0	\$42,000	\$42,000	\$44,000	\$44,000	\$46,000	\$44,000	\$4,000

Premium credits / free rider

- **Employee privacy:** If you get a credit, your boss will pay a penalty. The government will notify him that your income is below a fairly modest level. Reveals income of spouses, etc.
- **Mystery tax:** If “something” changes in an employee’s household (aunt moves in, wife takes pay cut, etc.), the boss gets a large tax penalty and doesn’t know why.

Incentives?

- **Rich policy:** No one qualifies for subsidies. More expensive insurance.
- **No new jobs:** Keep business at 50 employees or fewer.
- **Outsource low-income jobs:** Avoid potential subsidy recipients
- **Part-timers:** FRP doesn't apply to those working less than 120 hours per month.
- **Snoop:** Seek private data on employees and prospective employees. Avoid lower-income.
- **Challenge the aunt or the wife's salary:** Choose between paying potentially undeserved penalty or challenging employee's eligibility for a premium credit.



www.NFIB.com/HealthReform

- Free rider primer
- Employee privacy
- Mystery tax
- Video: “Hello Small Business: 25 Ways the New Healthcare Law Impacts You”