

IAA Legislative Ledger



March 20, 2012
Special Edition

Health Reform Exchange Update

Exchange Rules Released

We have been provided the honor of receiving a pre-release of the Health Care Exchange Rules. The new rules will provide a major provision of the standards for health insurance exchanges. The regulations will establish where consumers and small businesses will be able to buy coverage from competing private plans.

The Department of Health and Human Services (HHS) will release the 665-page report within the next week or so, which will include details that give state officials broad flexibility and leeway to set up the operation of the exchanges as a way to encourage states to set up the exchanges in their state. For example, a state can choose to run an exchange through an existing state agency or nonprofit entity already in the state or decide how large a role agents and brokers would have in selling insurance through an exchange. Other states can decide to allow large employers to participate. In 2014 and 2015, each exchange will be open to companies with either 1 to 50 or 1 to 100 employees. In 2016, all exchanges will be open to businesses with up to 100 employees, and in 2017 states can let in companies with more than 100 employees.

Are States Ready?

The law requires states to demonstrate readiness by Jan. 1, 2013, in order to be operational by Jan. 1, 2014. For states that are unable to establish an exchange within the timeline, a Federal Exchange will be set up. If a state refuses to set up and establish an exchange, the Federal government will establish

a Federal Exchange plan. This decision was made by HHS to continue to move forward to expand insurance coverage despite the court cases filed in the Supreme Court to argue against the health care law.

Designed To Be A One Stop Shop

The exchanges will provide the ability for anyone searching for health care to compare the prices and benefits of health plans. Insurers will compete for plan participants which are rumored to have the potential to cut health care costs. Under the rules, states that establish an exchange will have to:

- *Certify health insurance plans*
- *Operate a Web site and toll-free hot line to help consumers establish eligibility*
- *Provide grants to "Navigators" for consumer assistance*
- *Compare costs and benefits and help consumers with enrollment and eligibility*
- *The exchange will be required to determine who is eligible for federal subsidies, which was defined as people with annual incomes up to four times the poverty level or (\$92,000 for a family of four).*
- *The final rule establishes the minimum standards states must meet in establishing and operating their exchanges, such as individual and employer eligibility for enrollment.*

The regulation outlines minimum standards that health insurers must meet to participate in the exchange. States will be allowed to use their broad power to create "active

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exchanges" that negotiate on behalf of consumers.

What Does PPACA Mean To Your Budget?

1. The CBO estimates will actually cost US Tax payers up to 2 Trillion Dollars
2. There are at least 15 new tax provisions in the law impacting the middle class
3. The President's 2013 Budget requests an additional \$100 Billion to fund unspecified Health Care Reform items

Supreme Court Review of PPACA

Oral arguments start Mar. 26. Decision expected in June.

This case will be debated and dissected among attorneys and in law schools for a hundred years. Every tiny point will be argued and interpreted over and over. This review is merely intended to be a candid layman's neutral heads-up and alerting you to relevant factors outside normal legal discussion.....and what are the probable real-world effects with the various possible outcomes. So please read it for that simple goal.

THE KEY ISSUES OF THIS CASE (ignoring all the fluff & hype) are:

- (1) Did Congress exceed its Constitutional power to regulate interstate commerce by including the requirement that individuals purchase health insurance? The key point is the difference between when government forces you to do something as part of being an employer, driver, homeowner etc. (in which you can avoid

the mandate by simply not being an employer, homeowner, or whatever), versus the straight demand that you buy a private product (health coverage) if you are a human being. So, as noted in the options below, if the mandate was killed, governments could attach it to some other activity (like states that mandate buying car insurance as part of getting a car license).

- (2) Does Congress have the power to force states to change their Medicaid state laws or else lose federal funding?
- (3) Severability: If one part of the law is found to be unconstitutional, does that make all the provisions unconstitutional? Normally lawmakers include a severability clause to avoid that. PPACA authors forgot. SCOTUS might just "assume" Congress intended to have severability, and act as if it did exist.
- (4) The Anti-injunction Act of 1793 says that a tax cannot be challenged until it is actually paid. For political reasons, during passage of PPACA, supporters absolutely positively said that the penalty for not obeying the individual mandate was a "fine", not a "tax". However, for the court cases, the Administration has reversed itself and based their case that it absolutely positively is only a "tax". Any delay in implementing exchanges could impact (delay) the effective date of the tax.

This information is not intended to be a political position. Its intent is to provide facts of the subject that may impact your business and or employee benefit programs.

Enjoy the rest of your day!
Paul Kelly, President