

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HM 1281 Patient Protection and Affordable Care Act

SPONSOR(S): State Affairs Committee and Brodeur

TIED BILLS: **IDEN./SIM. BILLS:** SM 1854

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee	10 Y, 4 N	Camechis	Camechis
2) State Affairs Committee	11 Y, 4 N, As CS	Camechis	Hamby

SUMMARY ANALYSIS

This memorial urges Congress to repeal the Patient Protection and Affordable Care Act signed into law by President Obama in 2010.

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010 ("PPACA"). The PPACA consists of 2,562 pages of text and several hundred sections of law, which, when viewed together, comprehensively change the United States health care system. Most of the PPACA provisions take effect in 2014; however, many changes are phased in, starting from the day the bill was signed on March 23, 2010, and continuing through 2019.

In response to the enactment of the PPACA, many state legislatures have considered statutory or constitutional measures that attempt to remove or lessen the impact of the PPACA's policy provisions. State constitutional amendments are pending a vote by the electorate in at least three states, including Wyoming, Montana, and Florida.

The PPACA has also been the subject of various legal challenges in the federal courts. A joint lawsuit filed by twenty-six states, including Florida, is challenging the constitutionality of the law. As a result of these challenges, some federal courts have upheld the PPACA in whole or in part, while others have invalidated part or all of the law as an unlawful exercise of Congressional power. Due to the conflicting decisions issued by federal appellate courts, the United States Supreme Court has agreed to review the law and determine the constitutionality of several sections of the PPACA. The Court will hear oral arguments over a three-day period in March 2012.

This memorial has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Effect of Proposed Changes

This memorial urges Congress to repeal the Patient Protection and Affordable Care Act signed into law by President Obama in 2010.

Current Situation

A. *Patient Protection and Affordable Care Act*

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 ("PPACA").¹ The PPACA consists of 2,562 pages of text and several hundred sections of law², which, when viewed together, comprehensively change the United States health care system. Most of the PPACA provisions take effect in 2014; however, many changes are phased in, starting from the day the bill was signed on March 23, 2010, and continuing through 2019.

Effective for health plan years that begin after September 23, 2010:

- All new private health insurance plans are required to cover immunizations, preventive care for infants, children and adolescents, and additional preventive care and screenings for women.
- Health insurers are prohibited from rescinding insurance coverage from members of a health insurance plan, except in case of fraud or material misrepresentation.
- Denial of coverage by health insurers for children with pre-existing conditions is prohibited.
- Lifetime limits on the amount paid out by the health insurance plan are prohibited.
- Copayments or deductibles for certain preventative services are prohibited.
- Coverage is required for dependents up to 26 years of age.

In 2011, health insurance companies are required to spend at least 85 percent of premium dollars on medical services in large group policy markets and 80 percent of premium dollars on medical services in small group and individual policy markets. The failure of insurers to reach the new medical loss ratio targets will result in the issuing of rebates to policyholders.

Effective in 2014:

- Health insurance coverage will be mandatory for almost all U.S. citizens. Those who do not purchase health insurance will be fined by the U.S. government through enforcement by the Internal Revenue Service. The fine increases from \$95 in 2014 to \$750 in 2016, and is indexed for subsequent years.³ Exemptions for mandatory health insurance coverage will be granted for American Indians, in cases of extreme financial hardship, for those objecting to the mandatory provision for religious reasons, individuals without health insurance for less than three months, and individuals in prison.⁴
- Health insurance exchanges will be established, from which citizens can purchase health insurance coverage that meets the minimum essential coverage provisions of PPACA.

¹ P.L. 111-148, 124 Stat. 119 (2010); P.L. 111-152, 124 Stat. 1029 (2010).

² Michael D. Tanner, *Bad Medicine: A Guide to the Real Costs and Consequences of the New Health Care Law: Updated and Revised for 2011*, at page 49 (FN #3), February 14, 2011; available at <http://www.cato.org/pubs/wtpapers/BadMedicineWP.pdf>.

³ The federal government expects to raise \$17 billion from penalties by 2019. See Letter from Douglas Elmendorf, director, Congressional Budget Office, to U.S. House of Representatives Speaker Nancy Pelosi, March 18, 2010, table 2. Roughly 4 million Americans will be hit by penalties in 2016, with the average penalty costing slightly more than \$1,000. See Congressional Budget Office and the staff of the Joint Committee on Taxation, *Payments of Penalties for Being Uninsured under PPACA*, April 22, 2010.

⁴ Hinda Chaikind, et al., *Private Health Insurance Provisions in Senate-Passed H.R. 3590, the Patient Protection and Affordable Care Act*, CRS Report R40942

- Companies with 50 or more full time employees that do not provide health insurance coverage to its workers, resulting in at least one worker qualifying for a subsidy to purchase health insurance coverage through an exchange, must pay a tax penalty of \$2,000 for every full time employee, less 30 workers.⁵
- An excise tax will be imposed on health care plans costing more than \$10,200 for individual coverage and \$27,500 for family coverage.
- Denials of coverage to anyone with a pre-existing condition will be prohibited.
- All plans must cover federally defined “essential benefits”.
- Plan rating factors will be set by federal law, which limits the degree of pricing differential among differently situated people.

Other provisions of PPACA include:

- Medicaid eligibility is expanded to include those individuals with incomes up to 138 percent of the federal poverty level, resulting in coverage of 32 million previously uninsured Americans by 2019.
- Medicare payment rates for certain services will be permanently reduced.
- Various additional changes will be made to the federal tax code, Medicare, Medicaid, and other social programs necessary to fully implement the new law.

Nearly 1 in 4 Americans are receiving Medicaid benefits.⁶ Over the next ten years, the federal government will spend \$4.4 trillion on the Medicaid program.⁷ The Congressional Budget Office (CBO) originally estimated new state spending on Medicaid, as a result of the provisions of PPACA, at \$20 billion between 2017 and 2019. More recently, the CBO has estimated a cost to the states of \$60 billion through 2021.⁸ However, a report issued by the Senate Finance Committee estimates that PPACA will cost state taxpayers at least \$118.04 billion through 2023.⁹

The Florida Agency for Health Care Administration has estimated the financial impact of added Medicaid costs to the state, under the provisions of PPACA, to be \$12.944 billion from FY 2013 through FY 2023.¹⁰

B. *State Reaction to Federal Health Care Reform*¹¹

After PPACA was enacted, members of at least 45 state legislatures proposed legislation to limit, alter, or oppose selected state or federal actions, including single-payer provisions and mandates that require the purchase of insurance. In general, many of the opposing measures considered in 2010 and 2011:

- Focus on not permitting, implementing or enforcing mandates (federal or state) that would require purchase of insurance by individuals or by employers and impose fines or penalties for those who fail to do so.

⁵ S. 4908H(a), PPACA, as amended by the Reconciliation Act, s. 1003 (2010). The Congressional Budget Office estimates that company penalties will cost businesses \$52 billion from 2014 through 2019. See Letter from Douglas Elmendorf, director, Congressional Budget Office, to U.S. House of Representatives Speaker Nancy Pelosi, March 18, 2010. At least 728 waivers have been issued to employers by the Obama administration as of February 2011, exempting the employers from the provisions of PPACA. The list is available at http://www.hhs.gov/ociio/regulations/approved_applications_for_waiver.html (last viewed March 25, 2011).

⁶ Congressional Budget Office, *Spending and Enrollment Detail for CBO's August 2010 Baseline: Medicaid*, August 2010; available at <http://www.cbo.gov/budget/factsheets/2010d/MedicaidAugust2010FactSheet.pdf>.

⁷ Office of Management and Budget, *FY 2012 Budget of the U.S. Government*, February 2011; available at <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/budget.pdf>.

⁸ *Medicaid Expansion in the New Health Law: Costs to the States*, Joint Congressional Report by Senate Finance Committee, U.S. Congress, March 1, 2011, at page 1; available at <http://energycommerce.house.gov/media/file/PDFs/030111MedicaidReport.pdf>.

⁹ *Id.* at pg. 2.

¹⁰ *Overview of Federal Affordable Care Act*, Florida Agency for Health Care Administration, January 4, 2011; available at http://ahca.myflorida.com/Medicaid/Estimated_Projections/medicaid_projections.shtml.

¹¹ See *State Legislation and Actions Challenging Certain Health Reforms, 2011*, National Conference of State Legislatures, <http://www.ncsl.org/IssuesResearch/Health/StateLegislationandActionsChallengingCertai/tabid/18906/Default.aspx?tabid=18906>, last accessed January 12, 2012.

- Seek to keep in-state health insurance optional, allowing citizens to purchase any type of health services or coverage they choose.
- Contradict or challenge policy provisions contained in the 2010 federal law.

The language varies from state to state and includes statutory changes and constitutional amendments, as well as binding and non-binding state resolutions. In 2011, there were several new approaches:

- Several states considered bills that would prohibit state agencies or officials from applying for federal grants or using state resources to implement provisions of the PPACA, unless authorized to do so by state legislation.
- Sixteen states considered measures to create an "Interstate Freedom Compact," joining forces across state lines to coordinate or enforce opposition (four states now have enacted laws).
- Several states considered bills that propose the power of "nullification," seeking to label the federal law "null and void" within state boundaries.

C. 2010 Florida Legislation: CS/CS/HJR 37

During the 2010 Regular Session, the Florida Legislature passed CS/CS/HJR 37 by the required three-fifths vote in each chamber. The joint resolution proposed an amendment to the Florida Constitution to create Section 28 of Article I relating to health care services. Specifically, the proposed constitutional amendment:

- Prohibited persons and employers from compelled participation in a health care system;
- Allowed direct payment of health care services and prohibits penalizing persons, employers and health care providers from utilizing a direct payment system;
- Allowed the purchase or sale of health insurance in the private market, subject to certain conditions;
- Exempted from the prohibition any general law passed by a 2/3 vote of the membership of each house of the Legislature, passed after the effective date of the Amendment, provided that such law stated with specificity the public necessity justifying such exception; and
- Exempted laws enacted prior to March 1, 2010, from requirements of the amendment.

Following passage of CS/CS/HJR 37, it was filed with the Department of State for inclusion on the statewide ballot for the 2010 general election, and the proposed amendment was designated as Amendment 9 by the Division of Elections.

Thereafter, a group of citizens filed a lawsuit in the Second Judicial Circuit Court in Tallahassee asking the court to determine whether the legislative ballot summary contained in the joint resolution proposing Amendment 9 complied with the legal requirements for ballot summaries.¹² Ultimately, the Florida Supreme Court, upholding the Circuit Court's decision, removed the proposed amendment from the ballot after finding the ballot summary provided by the Legislature contained misleading and ambiguous language.¹³

¹² See *Fl. Dept. of State v. Mangat*, 43 So.3d 642, 646 (Fla. 2010); see also s. 101.161(1), F.S., states, "Whenever a constitutional amendment or other public measure is submitted to the vote of the people, the substance of such amendment or other public measure shall be printed in clear and unambiguous language on the ballot after the list of candidates, followed by the word 'yes' and also by the word 'no', and shall be styled in such a manner that a 'yes' vote will indicate approval of the proposal and a 'no' vote will indicate rejection. The wording of the substance of the amendment or other public measure and the ballot title to appear on the ballot shall be embodied in the joint resolution, constitutional revision commission proposal, constitutional convention proposal, taxation and budget reform commission proposal, or enabling resolution or ordinance. Except for amendments and ballot language proposed by joint resolution, the substance of the amendment or other public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure. In addition, for every amendment proposed by initiative, the ballot shall include, following the ballot summary, a separate financial impact statement concerning the measure prepared by the Financial Impact Estimating Conference in accordance with s. 100.371(5). The ballot title shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of."

¹³ *Id.*

D. 2011 Florida Legislation: CS/SJR 2

During the 2011 Regular Session, the Florida Legislature passed CS/SJR 2 by the required three-fifths vote in each chamber. CS/SJR 2 proposes an amendment to the Florida Constitution to create Section 28 of Article I relating to health care. Specifically, the proposed constitutional amendment:

- Prohibits a law or rule from compelling, directly or indirectly, any person or employer to purchase, obtain, or otherwise provide health care coverage;
- Allows a person or employer to pay directly for lawful health care services and allows a health care provider to accept direct payment for lawful health care services;
- Prohibits the imposition of taxes or penalties on health care providers who choose to participate in a direct payment system;
- Provides that the purchase or sale of health insurance in private health care systems may not be prohibited by rule or law; and
- Exempts laws or rules in effect as of March 1, 2010.

Following adoption, CS/SJR 2 was filed with the Secretary of State and the proposed amendment was designated as Amendment 1 by the Division of Elections. If approved by 60 percent of the voters in the 2012 general election, the amendment will take effect on January 8, 2013.

To date, CS/SJR 2 has not been challenged in court.

E. Legal Challenges to PPACA

On the same day that PPACA was signed into law by President Obama, Florida's Attorney General Bill McCollum filed a federal lawsuit in Pensacola challenging the constitutionality of the new law.¹⁴ At the time suit was filed, Florida was joined by twelve states, by and through their individual Attorneys General. Currently, twenty six states and several private parties are plaintiffs in the federal action.¹⁵

The lawsuit argues that the PPACA violates the Commerce Clause of the U.S. Constitution by forcing individuals to purchase health insurance or pay a penalty. In addition, the lawsuit targets the expansion of eligibility for Medicaid as an infringement on states' rights. The choice given the states by the new law, according to the lawsuit, is to fully shoulder the costs of health care or forfeit federal Medicaid funding by opting out of the system. Finally, the lawsuit contends that the expansion of Medicaid eligibility to include individuals within 138 percent of the federal poverty level "commandeers" states and their resources to complete federal tasks and achieve federal goals, all in violation of the Tenth Amendment to the Constitution.¹⁶ Most of the counts raised in the plaintiffs' Amended Complaint were dismissed through a pre-trial motion, but the claims alleging violation of the Commerce Clause, regarding the individual mandate, and alleging the Medicaid program under PPACA essentially "commandeers" state resources, were allowed to stand.¹⁷

On January 31, 2011, Judge Vinson of the District Court for the Northern District of Florida in Pensacola entered an Order granting the plaintiffs' Motion for Summary Judgment and declared the individual mandate provision of PPACA unconstitutional.¹⁸ Judge Vinson also ruled that, because the remaining provisions of PPACA were rendered ineffective without the individual mandate and the law lacked a severability clause, the entire Act was void.

The federal government complied with conditions established by Judge Vinson that were necessary to stay his order, and appealed the order to the U.S. Appeals Court for the 11th Circuit. On August 12, 2011, the U.S. Appeals Court for the 11th Circuit decided by a 2 to 1 vote that Congress exceeded its

¹⁴ *State of Florida v. U.S. Dept. of Health and Human Services*, Case No.: 3:10-cv-91-RV/EMT (N.D. Fla.)

¹⁵ In addition, Virginia filed its own federal lawsuit challenging the constitutionality of PPACA. *State of Virginia v. Kathleen Sebelius*, Case No.: 3:10-cv-188-HEH (E.D. Va.).

¹⁶ Kathleen S. Swendiman, *Health Care: Constitutional Rights and Legislative Powers*, CRS Report R40846, page 10, FN 66.

¹⁷ *Florida v. U.S. Dept. of HHS*, Case No. 3:10-cv-91-RV/EMT (N.D. Fla.), *Order and Memorandum Opinion on Defendants' Motion to Dismiss*, October 14, 2010.

¹⁸ *Florida v. U.S. Dept. of HHS*, ---F.Supp.2d---, 2011 WL 285683 (N.D. Fla.)

constitutional authority by requiring individuals to buy coverage; however, the court unanimously reversed the lower court's decision to invalidate the entire law. Because the court's decision conflicted with decisions of other federal appellate courts that upheld part or all of the PPACA, the case was appealed to the United States Supreme Court for resolution.

On November 14, 2011, the Supreme Court agreed to hear arguments regarding the constitutionality of certain provisions of the PPACA.¹⁹ Oral arguments are scheduled to take place over three days beginning on March 28, 2012.

B. SECTION DIRECTORY: Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable.
2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 16, 2012, the State Affairs Committee adopted an amendment by the bill sponsor to remove a whereas clause. The deleted whereas clause said, "WHEREAS, as the cost of employing workers rises, it will become increasingly vital that employers get more production out of their more highly paid employees, which will lead to higher and more sustained unemployment for the lower skilled workforce."

¹⁹ *Florida et al v. U.S. Dept. of Health and Human Services*, U.S., No. 11- 400 (docketed Sept. 29, 2011).