The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Health Regulation Committee

BILL:	SM 1854
INTRODUCER:	Senator Garcia
SUBJECT:	Patient Protection and Affordable Care Act
DATE:	February 17, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davlantes	Stovall	HR	**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

Senate Memorial 1854 urges the Congress of the United States to repeal the Patient Protection and Affordable Care Act (PPACA or the Act) signed into law by President Obama in 2010.

This bill creates a Senate Memorial.

II. Present Situation:

Patient Protection and Affordable Care Act

The PPACA,[1] often referred to as federal health care reform, was signed into law by President Barack Obama on March 23, 2010. The Act is far-reaching and is so broad that it will be years before all of its provisions will be fully implemented and its ramifications fully understood.

Changes for the Federal Government

The primary changes for the federal government center on Medicare, the establishment of a number of new organizations, and increasing government spending on health care. Medicare will provide more preventative care without co-pays and deductibles, cover more prescription drugs, and test new health care delivery and payment programs. Medicare payments for primary care providers, including general surgeons working in rural areas, will be raised by 10 percent. Certain Medicare beneficiaries will be required to pay higher premiums, depending on their income level.

[1] Found at: <http://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf> (Last visited on January 31, 2012).

The Act creates a variety of federal institutes and boards to focus on national quality and prevention strategies, greater coordination between health care institutions, comparative effectiveness research, and workforce research.

The federal government will enhance the financial participation initially for Medicaid, subsidize low-income people trying to obtain health insurance through the state exchanges created by the Act, and fund incentives and tax breaks for businesses who exhibit innovation in health care.

Changes for State Governments
Medicaid currently focuses on covering low-income children, pregnant women, and adults who are elderly or have disabilities. The PPACA increases the mandatory population to all adults, regardless of whether they are disabled or elderly, up to 133 percent of the poverty level. The PPACA would finance the expansion by raising the federal match rate for the new groups. States would still have to pay a share for the new groups, but it would be smaller than for existing groups. However, the additional federal match is time-limited.

The costs of PPACA to Florida Medicaid will be significant. Florida is expected to have over 379,000 new enrollees from the expanded PPACA Medicaid population in 2014, at a cost of $1.5 billion (of which $142 million will be paid by the state), bringing the total cost of Medicaid that year to $25 billion. By 2019, Florida Medicaid will have 1.9 million additional enrollees, at an additional cost of over $7.7 billion (of which $1 billion will be paid by the state).[2] In subsequent years, the state share may increase.

The PPACA will create additional costs unrelated to caseload expansion. For example, the law increases the minimum federal rebate for brand drugs from 15.1 percent to 23.1 percent and requires that 100 percent of this portion of rebates be withheld by the federal government rather than the current procedure of sharing rebate revenue with the states. This provision will cost Florida approximately $37 million annually at current levels.[3] The FY 2010-2011 impact was estimated to be a loss in rebate general revenue of $39.8 million. This will be a recurring loss. Additionally, when the federal enhanced payments to primary care providers expire in 2014, it is estimated that continuing the payments will cost the state $247.9 million in 2015.

The Act seeks to expand access to health insurance coverage by requiring most U.S. citizens and legal residents to have health insurance and providing for the creation of state-based American Health Benefit Exchanges (commonly known as health insurance exchanges) through which individuals can purchase qualifying coverage. Exchanges are new organizations that will be set up to create an organized, competitive market for buying health insurance. They will offer a choice of different health plans, certifying plans that participate and providing information to help consumers better understand their options. They will also be the mechanism through which low and moderate-income individuals receive premium and cost-sharing subsidies to make health coverage more affordable.

[2] Agency for Health Care Administration, Overview of Federal Affordable Care Act, August 13, 2010; State of Florida Long-Range Financial Outlook Fiscal Year 2011-12 through 2013-14, Fall 2010 Report.
[3] Agency for Health Care Administration, Patient Protection and Affordable Care Act Overview of Medicaid Prescribed Drug Changes, October 21, 2010.

States are expected to establish Exchanges – which can be a government agency or a non-profit organization – with the federal government stepping in if a state does not set them up. States can create multiple Exchanges, so long as only one serves each geographic area, and can work together to form regional Exchanges. State Exchanges are required to be fully operational by January 1, 2014. The federal government is providing funding and technical assistance to help states set up Exchanges.

Changes for Insurers
Health insurance companies can no longer deny individuals coverage based on pre-existing medical conditions, end coverage when policyholders become ill, or place annual or lifetime limits on the amount they will pay for policyholders. Insurers may not charge higher premiums based on current or projected health status; the only risk factors that may be considered for setting premiums are age, geographic location, family composition, and tobacco use. Children up to age 26 may be covered under their parents' health insurance.

Insurance companies are also required to maintain medical loss ratios (MLR) of 80 percent or 85 percent, depending on their size. This means that 80-85 percent of all revenues of the insurance company must be spent on health care payments for policyholders, rather than on administrative overhead. Tax breaks for certain insurance plans have also been discontinued.

Changes for Employers
Small employers are not required to provide health insurance for their employees, but they receive tax credits if they do, and they will be allowed to purchase insurance through the Exchanges. Large employers are required to offer employee health insurance and are penalized monetarily if they do not. All employers may receive federal grants for establishing wellness programs and may offer incentives to employees for participating in such programs and meeting certain health benchmarks.

Changes for Hospitals
Medicare payments to hospitals will be changed from fee-for-service (providing individual reimbursement for each procedure performed on a patient while admitted) to bundled payments (providing one lump sum for a patient stay, regardless of what procedures were performed). Overall Medicare payments are decreased for certain hospitals, although payments to hospitals serving low-income and uninsured areas will increase, and new quality standards are established for certain hospitals.

Changes for Individuals
All individuals other than undocumented immigrants will be required to have health insurance and will face penalties for not doing so. Individuals may be insured by Medicare or Medicaid, receive insurance through their employers, or purchase it individually from state Exchanges. Federal subsidies for purchasing health insurance are available to certain individuals, and fewer out-of-pocket medical expenses will be tax-deductible. To help pay for the PPACA's expanded health care access, Medicare taxes will increase for individuals making more than $200,000 or couples making more than $250,000 annually.

Other Changes

Additional taxes are created by the Act, including a 10 percent tax on indoor tanning services and taxes on medical device companies and pharmaceutical companies. Certain pharmaceutical companies will be required to offer drug discounts to Medicare beneficiaries, and relationships between pharmaceutical companies, hospital systems, and other health care entities must be more public. Restaurants chains with more than 20 locations will be required to post the caloric content of their food on all menus, with certain exceptions.[4]

States' Challenge of PPACA

Immediately after the PPACA was signed into law, 13 Attorneys General filed a lawsuit against the U.S. Department of Health and Human Services, U.S. Department of Treasury and the U.S. Department of Labor alleging the Health Care Reform law signed by the President was unconstitutional.[5] The amended complaint currently features 26 state plaintiffs.[6] Additionally, the National Federation of Independent Business (NFIB) joined the lawsuit as a co-plaintiff on behalf of its members nationwide.

The lawsuit, filed in the federal court's Northern District of Florida on March 23, 2010, alleges the PPACA infringes upon the constitutional rights of Floridians and residents of the other states by mandating all citizens and legal residents have qualifying health care coverage or pay a tax penalty. By imposing such a mandate, the law exceeds the powers of the United States under Article I of the Constitution. Additionally, the tax penalty required under the law constitutes an unlawful direct tax in violation of Article I, sections 2 and 9 of the Constitution.[7]

The lawsuit further claims the health care reform law infringes on the sovereignty of the states and the Tenth Amendment to the Constitution by imposing onerous new operating rules that Florida must follow as well as requiring the state to spend billions of additional dollars without providing funds or resources to meet the state's cost of implementing the law. This burden comes at a time when Florida faces severe budget cuts to offset shortfalls in an already-strained budget.

On January 31, 2011, Senior United States District Judge Roger Vinson ruled that the PPACA is unconstitutional.[8] The district court granted summary judgment to the government on the state plaintiffs' claim that the Act's expansion of Medicaid is unconstitutional and to the plaintiffs on their claim that the Act's individual mandate – that individuals purchase and continuously maintain health insurance from private companies – is unconstitutional. The district court concluded that the individual mandate exceeded congressional authority under Article I of the Constitution because it was not enacted pursuant to Congress's tax power and it exceeded

[4] Elisabeth Askin and Nathan Moore, *Health Care Handbook: A Guide to the U.S. Health Care System*. A copy is on file with the Senate Health Regulation Committee.
[5] *Florida, et al. v. Department of Health and Human Services, et al.*
[6] The 26 plaintiffs include: Florida, South Carolina, Nebraska, Texas, Utah, Louisiana, Alabama, Colorado, Michigan, Pennsylvania, Washington, Idaho, South Dakota, Indiana, Mississippi, Nevada, Arizona, Georgia, Alaska, North Dakota, Wisconsin, Iowa, Ohio, Kansas, Wyoming, and Maine.
[7] Office of the Attorney General of Florida, *The States' Lawsuit Challenging the Constitutionality of the Health Care Reform Law*. Found at: <http://www.healthcarelawsuit.us/> (Last visited on February 17, 2012).
[8] *State of Florida, by and through Attorney General Pam Bondi, et al. v. United States Department of Health and Human Services, et al.*, United States District Court for the Northern District of Florida Pensacola Division, Case No.: 3:10-cv-91-RV/EMT, January 31, 2011. Found at: < http://myfloridalegal.com/webfiles.nsf/WF/JDAS-8DMNTD/$file/VinsonRuling1312011.pdf> (Last visited on February 17, 2012).

Congress's power under the Commerce Clause and the Necessary and Proper Clause. The district court also concluded that the individual mandate provision was not severable from the rest of the Act and declared the entire Act invalid.

The federal government appealed the district court's ruling that the individual mandate is unconstitutional and its severability holding. The state plaintiffs cross-appeal the district court's ruling on their Medicaid expansion claim. On appeal, the United States Court of Appeals for the Eleventh Circuit ruled, on August 12, 2011, that the individual mandate is severable from the remainder of the Act. The court also affirmed the district court's grant of summary judgment to the federal government that the Medicaid expansion is constitutional and concluded that the individual mandate exceeds Congress's enumerated commerce power and is unconstitutional. The court concluded that the individual mandate is a civil regulatory penalty and not a tax.[9]

The parties have filed petitions for the Supreme Court to review the lower court holdings.

On December 19, 2011, the U.S. Supreme Court announced the dates for the oral argument in the States' challenge to the federal health care law. The oral arguments will begin March 26 and continue through March 28. On March 26, the Court will hear one hour of oral argument on the jurisdictional issue of whether the federal Anti-Injunction Act bars challenges to the individual mandate. On March 27, the Court will hear two hours of oral argument limited to the issue of whether the individual mandate is constitutional. On March 28, the Court will hear 90 minutes of oral argument on the severability argument. Also on March 28, the Court will hear one hour of oral argument on the constitutionality of the law's substantial expansion of Medicaid.

III. Effect of Proposed Changes:

Senate Memorial 1854 urges the Congress of the United States to repeal the Patient Protection and Affordable Care Act (PPACA or the Act) signed into law by President Obama in 2010. Copies of this memorial will be dispatched to the President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and to each member of the Florida delegation to the United States Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

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[9] *State of Florida, by an through Attorney General Pam Bondi, et al. v. United States Department of Health and Human Services, et al.,* United States Court of Appeals for the Eleventh Circuit, D.C. Docket No. 3:10-cv-00091-RV-EMT. Found at: <http://myfloridalegal.com/webfiles.nsf/WF/JDAS-8KNNU8/$file/HCR_11thCirOpinion8.12.11.pdf> (Last visited on February 17, 2012).

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.