State Flexibility in Health Reform Implementation

PPACA uses the same preemption scheme as HIPAA, preserving any state law, regulation, or requirement that does not prevent the application of the federal statute. The effect of this scheme is to provide federal minimum standards that states must meet in order to retain regulatory authority, while providing states the flexibility to enact their own requirements that go beyond the requirements of PPACA. Key areas where states may wish to exercise this flexibility include:

- Rating rules-States could enact rating rules that permit less variation than the federal standards.
- Patient protections-States could enact patient protections that go beyond what is specified in PPACA.
- Appeals-States could enact internal and external review laws that provide greater protection to consumers than the requirements in PPACA.
- Mandated benefits-States could enact mandated benefits, but would be required to reimburse the federal government for amounts.
- Individual and employer mandates-States could enact their own individual or employer mandate requirements to bolster the federal penalties which may not be sufficient to fully ameliorate the risk of adverse selection.
- Medical loss ratios-States could enact requirements that plans meet higher loss ratios than the federal requirement.
- Rate review-States could enact rate review provisions

One significant exception to this scheme exists, however, is the provision that exempts policies in force as of the date of enactment from most reforms, as long as no new policies are sold and there are no significant changes. The bill attempts to limit the ability of states to apply reforms to these plans using state law. This could be a difficult provision to enforce, however, and we expect states to attempt to apply reforms to these plans in order to prevent market segmentation.

Exchanges

In addition, states would have significant flexibility in developing and operating health insurance exchanges. Under the bill, state exchanges must, at a minimum:

- Certify health plans for participation in the exchange
- Operate a toll-free hotline to provide consumer assistance
- Maintain a website with standardized information about plans in the exchange
- Rate health plans
- Use a standardized format for presenting plan options in the exchange
- Inform individuals of eligibility requirements for Medicaid, CHIP, and state or local assistance programs, and enroll them in these programs if eligible
- Provide an online calculator for individuals to determine their actual cost of coverage after subsidies and any cost sharing reductions.
- Grant certifications that individuals are exempt from the individual mandate penalty
- Provide information to the Secretary of Treasury on individuals who are exempt from the mandate, who are employed but receiving subsidies, individuals who change employers, and individuals who drop coverage
- Notify employers of employees who drop coverage
- Establish a Navigators program

Beyond these basic requirements, there is much flexibility. Structurally, the state could decide to locate the exchange within a new or existing state agency, or in a quasi-governmental or non-profit organization. They may choose to contract with outside entities (that are not health insurers) to provide services. States may also choose to make the exchange the exclusive distribution channel for health insurance in the individual and/or small group markets in order to eliminate the risk of adverse selection inside and outside of the exchange. Multiple states could also opt to join together to jointly operate a regional exchange.

Alternative Programs

PPACA contains a number of provisions providing flexibility for states to establish alternative programs to provide coverage to their residents.

Basic Health Programs for Low-Income Individuals

The legislation allows states to enter into contracts to provide one or more standard health plans that cover at least the essential benefits package for individuals whose income is between 133% and 200% of FPL and legal immigrants below 133% FPL who are not eligible for Medicaid. Such coverage would be in lieu of exchange coverage.

Waiver for State Innovation

PPACA allows states to apply to the Secretary of HHS for waivers of various requirements of the legislation beginning

in 2017. In states receiving waivers, individuals would not be eligible for subsidies or tax credits, and those funds would be transferred to the state for purposes of implementing the state plan to provide coverage at least equivalent to that under PPACA, so long as it does not increase the federal deficit.

Interstate Compacts for Sales Across State Lines

States could enter into interstate compacts to facilitate the sales of health insurance coverage across state lines under the laws of a compacting state of the insurer's choice. Certain consumer protections would remain under the jurisdiction of the consumer's home state.

PPACA Section	Statutory Section	Provision	Effective	Financial Impact on States
1001	2711	No lifetime limits on essential benefits. Restricted annual limits allowed prior to 2014 on essential benefits, as determined by Secretary.	6 months after enactment	Minimal
	2712	Rescissions only for fraud or intentional misrepresentation of material fact.	6 months after enactment	Minimal
	2713	Coverage of preventive health services	6 months after enactment	Minimal-Some cost for state employee plan?
	2714	Extension of adult dependent coverage to age 26	6 months after enactment	Minimal-Some cost for state employee plan?
	2715	Uniform explanation of coverage documents and standardized definitions	Standards developed within 12 months Uniform documents implemented within 24 months	Some increased resources may be needed to review explanations of coverage
	2715A	Additional information-compliance with sec, 1311(e)3		
	2716	Fully-insured group health plans may not discriminate in favor of more highly compensated employees	6 months after enactment	Minimal
	2717	Annual reports of quality improvement benefits and reimbursement structures	2 years after enactment	Minimal
	2718	Reporting of loss ratios and rebates by large group plans with loss ratios below 85% and small group and individual market plans with loss ratios below 80%.	01/01/11	Increased resources to review filings and ensure compliance.
	2719	Internal and external review	6 months after enactment	Minimal
	2719A	Coverage of emergency services and direct access to providers	6 months after enactment	Minimal
1002	2793	Health insurance consumer assistance offices and ombudsmen	Date of enactment	Grant opportunity- $30 million in the first year and such sums as may be necessary in future years
1003	2794	Rate review	Date of enactment	Grant opportunity- $250 million Strengthening state rate review efforts could also require expanding the insurance department's actuarial capacity.
1101		Temporary high risk pool program	90 days after enactment	Grant opportunity- $5 billion
1102		Temporary reinsurance program for early retirees. Employment-based plans providing coverage to retirees between 55 and 64 may submit claims to the reinsurance program. Program will reimburse 80% of claims between $15,000 and $90,000 for a retiree in a year.	90 days after enactment	
1103		Web portal to identify affordable coverage options	07/01/10	Providing data to HHS will require some resources. Cost is likely modest.
1104	SSA 1171	Administrative simplification requirements	Rules adopted by July 1, 2011 to become effective by January 1, 2013.	

PPACA Section	Statutory Section	Provision	Effective	Financial Impact on States
1201	2704	Prohibition of preexisting condition exclusions	6 months after enactment for individuals 19 and under. Plan years beginning 01/01/14 for all others.	Minimal cost
	2701	Adjusted community rating. No health status, age 3:1 max, tobacco 1.5:1 max, geography, family size	Plan years beginning 01/01/14	Minimal cost
	2702	Guaranteed issue in all markets	Plan years beginning 01/01/14	Minimal cost
	2703	Guaranteed renewability in all markets	Plan years beginning 01/01/14	Minimal cost
	2705	No discrimination based upon health status. Requirements for disease prevention, wellness programs.	Plan years beginning 01/01/14	Minimal cost
	2706	Carriers may not discriminate against any provider operating within their scope of practice.	Plan years beginning 01/01/14	Minimal cost
	2707	Essential benefits package	Plan years beginning 01/01/14	Minimal cost
	2708	Waiting periods for group plans limited to 90 days	Plan years beginning 01/01/14	Minimal cost
	2709	Coverage for clinical trials. Health plans must provide coverage for routine costs associated with clinical trials.	Plan years beginning 01/01/14	Minimal cost
1251		Grandfathering	Date of enactment	Minimal cost
1252		Rating rules must apply evenly to all plans in a state market to which the rules apply	Plan years beginning 01/01/14	Minimal cost
1253		Annual report on self-insured plans	1 year after enactment and annually thereafter	
1254		Study of whether reforms encourages larger employers to self-insure	1 year after enactment	
1301		Requirements for qualified health plans	Plan years beginning 01/01/14	Minimal cost
1302		Essential health benefits packages, limits on deductibles and cost sharing, levels of coverage.	Plan years beginning 01/01/14	Minimal cost
1303		State opt-out of abortion coverage, special rules relating to coverage of abortion services	Plan years beginning 01/01/14	Minimal cost
PART II—Consumer Choices and Insurance Competition Through Health Benefit Exchanges				
1311-1313, 1321		Establishment of Exchanges	Plan years beginning 01/01/14	Cost could be substantial to states. Massachusetts currently spends about $30 million annually to operate its exchange. Some funds will be available in amounts to be determined by the Secretary.
1322		Cooperatives	Grants awarded no later than July 1, 2013	Minimal cost
1324		Level playing field for cooperatives and multi-state plans	Plan years beginning 01/01/14	No cost
1331		Optional state basic health programs	01/01/14	Optional program
1332		Waiver for state innovation to develop alternative	Plan years beginning	

PPACA Section	Statutory Section	Provision	Effective	Financial Impact on States
		coverage programs	01/01/2017	
1333		Interstate compacts for interstate sales	Regulations for compacts drafted by 01/01/2013	
1334		Multistate plans		States must assume costs of additional benefits required beyond the essential benefits package
1341		Transitional individual market reinsurance -States shall establish or contract with a reinsurance entity to administer a reinsurance mechanism in the individual market	01/01/14	Administrative costs may be taken from insurer assessments.
1342		Individual and small group risk corridors	2014-2016	No cost
1343		Risk adjustment	01/01/14	
PART I-Premium Tax Credits and Cost-Sharing Reductions				
1401	IRC 36B	Refundable credit for exchange coverage for individuals between 100% FPL and 400% FPL	01/01/14	Administration of subsidies by exchange will require additional state resources. State must pay any subsidy amounts due to mandated benefits beyond those included in essential benefits package.
1402		Reduced cost sharing for individuals between 100% FPL and 400% FPL	01/01/14	Minimal cost
1411		Eligibility determinations for exchange participation, subsidies, and individual mandate exemptions by Exchanges	01/01/14	Eligibility determinations and verifications will require additional state resources
1412		Advance determination and payment of subsidies	01/01/14	
1413		Streamlined enrollment procedures through an Exchange and Medicaid, CHIP and subsidy programs	01/01/14	Streamlined enrollment procedures will help increase Medicaid and CHIP enrollment, which will increase costs in those programs.
1414		Disclosures to carry out eligibility requirements	01/01/14	
1415		Disregard of subsidy payments for eligibility determinations	01/01/14	
1416		Study of geographic variation in application of federal poverty level	01/01/13	
1421	IRC 45R	Tax credit for small businesses with up to 25 employees for up to 50% of health benefits cost	01/01/10	
1501	IRC 5000A	Individual mandate	01/01/14	
1502	IRC 6055	Reporting health insurance coverage to the IRS for mandate enforcement purposes	01/01/14	
1511	FLSA 18A	Requirement for employers of more than 200 employees to auto-enroll employees in coverage with an opt-out	01/01/14	
1512	FLSA 18B	Requirement for employers to notify employees of coverage options	03/01/13	
1513	IRC 4980H	Penalty on non-offering employers whose employees receive Exchange subsidies	01/01/14	

PPACA Section	Statutory Section	Provision	Effective	Financial Impact on States
1514	IRC 6056	Reporting health insurance coverage by large employers	01/14/14	
1515	IRC 125	Offering of exchange plans through section 125 cafeteria plans by qualified employers	01/01/14	
10108		Vouchers to purchase coverage through the exchange must be offered to employees for whom the cost of coverage is between 8% and 9.8% of household income.	01/01/14	
		40% excise tax on plans with premiums exceeding $x		Applies to state government plans

FLSA-Fair Labor Standards Act of 1938
IRC-Internal Revenue Code of 1986
SSA-Social Security Act of 1932