



LEGISLATIVE SERVICES AGENCY

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# LEGISLATIVE GUIDE

## Legal Services Division



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Legislative Guides, prepared in an objective and nonpartisan manner, provide a general survey of a particular area of the law and are intended for use primarily by members of the Iowa General Assembly and their staffs. Legislative Guides are updated periodically to reflect changes in the law. The reader is cautioned against using information contained in a Legislative Guide to draw conclusions as to the legality of a particular behavior or set of circumstances.

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Des Moines, IA 50319

December 2012 with  
October 2013 update

## HEALTH INSURANCE REFORM: FEDERAL RULING — IOWA INITIATIVES — 2013 UPDATE

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### I. Overview

The federal Patient Protection and Affordable Care Act (ACA) was enacted in March 2010. The requirements contained in the ACA are phased in incrementally beginning upon enactment and continuing on an annual basis through January 2020. A number of the most significant provisions affecting health care coverage of individuals take effect in January 2014. Various states, a private entity, and two individuals brought a lawsuit challenging the constitutionality of these significant provisions. The United States Supreme Court issued its ruling in the case in June 2012.

This guide summarizes the pertinent holdings of the Court ruling, the most significant health insurance-related ACA provisions by year of implementation, and Iowa health insurance reform activity to date. References to the Iowa Code are to the 2013 Iowa Code and references to the Iowa Administrative Code are current through September 30, 2012.

Various sections and subunits of part III of this guide have been revised to include updates that reflect changes or provide new information that became available in 2013. The term “2013 Update” is noted in the affected portion of the table of contents where the update text can be found.

### II. U.S. Supreme Court Decision: *National Federation of Independent Business v. Sebelius*<sup>1</sup>

#### A. Major ACA Requirements

Congress enacted the ACA with the intent of increasing the number of Americans covered by health insurance and decreasing the cost of health care.

One key provision of the ACA is the individual mandate which requires most Americans to maintain “minimum essential” health insurance coverage. For individuals who are not exempt from this requirement, and do not receive health insurance through an employer or government program, this requirement is satisfied by purchasing insurance from a private company. Beginning in 2014, those who do not comply with the mandate must make a “shared responsibility payment” to the federal government. The ACA characterizes this payment as a “penalty” that is payable to the Internal Revenue Service (IRS) with an individual’s taxes and is “assessed and collected in the same manner” as a tax penalty.<sup>2</sup>

Another key provision of the ACA is an expansion of Medicaid which requires state programs to provide Medicaid coverage by 2014 to certain low-income adults not currently eligible for the program and increases federal funding to cover the states’ costs in providing such expanded coverage. The ACA provides that if a state does not comply with the Act’s new coverage requirements, the state may lose not only funding for those requirements but all of the state’s federal Medicaid funds.<sup>3</sup>

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<sup>1</sup> *National Federation of Independent Business v. Sebelius*, 567 U.S. \_\_\_\_, 132 S.Ct. 2566 (2012).

<sup>2</sup> 26 U.S.C. §5000A.

<sup>3</sup> 26 U.S.C. §2496.



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### B. Lawsuit and Court of Appeals Holding

Twenty-six states, two individuals, and the National Federation of Independent Business brought suit in federal district court challenging the constitutionality of the individual mandate and the Medicaid expansion.<sup>4</sup> The 11th Circuit Court of Appeals upheld the Medicaid expansion as a valid exercise of Congress's spending power, but concluded that Congress lacked the authority to enact the individual mandate.<sup>5</sup> Certiorari was granted by the United States Supreme Court in November 2011.<sup>6</sup>

### C. Issues before United States Supreme Court

On June 28, 2012, the United States Supreme Court held that the individual mandate is within Congress's constitutional power to tax but the Medicaid expansion is unduly coercive and is not a legitimate use of Congress's constitutional power under the Spending Clause.<sup>7</sup> This guide focuses on aspects of the ACA involving private health insurance and does not address ACA provisions pertaining to expansion of the Medicaid Program.

The decision addressed the following jurisdictional and constitutional questions raised in the lawsuit:

#### 1. Jurisdictional Issue — Anti-Injunction Act

**a. Issue.** Whether the lawsuit, which seeks to restrain the collection of the shared responsibility payment from those who do not comply with the individual mandate, is barred by the federal Anti-Injunction Act. The Anti-Injunction Act usually requires that taxes be paid before they can be challenged. The lawsuit sought to restrain the penalty's future collection.<sup>8</sup>

**b. Holding.** The Court held 5-4 that the ACA describes the shared responsibility payment as a "penalty" not a "tax" and concluded that Congress did not intend the payment to be treated as a "tax" for purposes of prohibiting the lawsuit under the Anti-Injunction Act.<sup>9</sup> However, the Court said that labeling the payment as a "penalty" is not controlling in determining whether the payment is a tax for purposes of the Constitution.

#### 2. Constitutional Issue — Commerce Clause and Necessary and Proper Clause

**a. Issue.** Whether the individual mandate is a valid exercise of Congress's power under the Constitution. The federal government must show that each of its actions is authorized by a constitutional grant of power. The Court considered the government's claims that the individual mandate is a valid exercise of Congress's power under either the Commerce Clause or the Necessary and Proper Clause. The Court held 5-4 that the mandate is not authorized under either clause.

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<sup>4</sup> *Florida ex rel. Bondi v. U.S. Dept. of Health and Human Services*, 780 F.Supp.2d 1256 (N.D. Fla. 2011), order clarified at 780 F.Supp.2d 1307 (N.D. Fla. 2011).

<sup>5</sup> *Florida ex rel. Atty. Gen. v. U.S. Dept. of Health and Human Services*, 648 F.3d 1235 (11th Cir. 2011).

<sup>6</sup> *National Federation of Independent Business v. Sebelius*, 565 U.S. \_\_\_, 132 S.Ct. 603 (2011).

<sup>7</sup> *National Federation of Independent Business v. Sebelius*, 567 U.S. \_\_\_, 132 S.Ct. 2566 (2012). Subsequent page references to this opinion are to the slip opinion as the reported version of the opinion was not available at the time of publication of this guide.

<sup>8</sup> *Id.* at 11-12.

<sup>9</sup> *Id.* at 11-15.



**b. Holding — Commerce Clause.** The Court held that the Commerce Clause grants Congress the power to “regulate Commerce” and this power presupposes the existence of commercial activity to be regulated. The individual mandate does not regulate existing commercial activity but instead compels individuals to become active in commerce by purchasing an unwanted product.<sup>10</sup> Congress has the power to regulate commerce, not to compel it.<sup>11</sup>

**c. Holding — Necessary and Proper Clause.** The Court held that the individual mandate cannot be sustained under the Necessary and Proper Clause as an integral part of the ACA’s other comprehensive reforms.<sup>12</sup> The mandate does not involve the exercise of authority derivative of, and in service to, another enumerated power such as the Commerce Clause, and cannot be sustained under the purview of the Necessary and Proper Clause. Even if the individual mandate is “necessary” to the ACA’s insurance reforms, such an expansion of federal power is not a “proper means for making those reforms effective.”<sup>13</sup>

### 3. Constitutional Issue — Taxing and Spending Clause

**a. Issue.** Whether the mandate can be upheld as within Congress’s enumerated power to “lay and collect taxes.” The Court said that “every reasonable construction must be resorted to, in order to save a statute from unconstitutionality.”<sup>14</sup>

**b. Holding.** The Court held 5-4 that despite being labeled a penalty by Congress, the shared responsibility payment falls within Congress’s constitutional power to tax. The payment is not so high that there is no choice but to buy health insurance; the payment is not limited to willful violations, as penalties for unlawful acts often are; and the payment is collected solely by the IRS through normal means of taxation. Taxes that seek to influence conduct are not new.<sup>15</sup> The Court usually declines to closely examine the regulatory motive or effect of revenue-raising measures enacted by Congress.<sup>16</sup>

## III. ACA Insurance-Related Health Care Reforms and Implementation Timeline: Federal and Iowa Initiatives

### A. Overview

The provisions of the ACA are to be phased in and implemented over multiple years.<sup>17</sup> This part of the guide summarizes the implementation timeline for the main private insurance-related health care reforms contained in the ACA by year, with corresponding information specific to Iowa’s insurance-related health reform efforts.

### B. 2010 — Provisions Implemented

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<sup>10</sup> Id. at 18-20.

<sup>11</sup> Id. at 24, 27.

<sup>12</sup> Id. at 27-29.

<sup>13</sup> Id. at 29-30.

<sup>14</sup> Id. at 32.

<sup>15</sup> Id. at 35-36.

<sup>16</sup> Id. at 42.

<sup>17</sup> Implementation Timeline, The Henry J. Kaiser Family Foundation Health Reform Source, *available at* <http://healthreform.kff.org/timeline.aspx> (last visited October 16, 2012).



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### 1. Review of Health Plan Premium Increases

**a. ACA Requirements.** The ACA required the federal government to create a process, in conjunction with states, by which insurers have to justify unreasonable premium increases and provides grants to states for reviewing premium increases. The federal Department of Health and Human Services (HHS) conducts the required actuarial reviews of proposed premium increases in a state unless the state shows that it has its own effective rate review system.

**b. Iowa Rate Review Process.** Premium rate restrictions applicable to small group health insurance coverage are contained in Iowa Code chapter 513B and rules adopted under the chapter. In 2010, Iowa enacted a requirement that applications by health insurers for proposed premium rate increases for individual health insurance coverage exceeding a specified amount are subject to public hearing and comment prior to approval or disapproval of the proposed increase by the Iowa Commissioner of Insurance.<sup>18</sup> According to the Iowa Insurance Division, as of September 1, 2011, HHS approved Iowa as having an effective rate review program for both the individual and small group health insurance markets.<sup>19</sup>

### 2. Early Retiree Reinsurance Program

**a. ACA Requirements.** The ACA created and funded a temporary reinsurance program for employers and unions providing health insurance coverage to retirees over age 55 who are not eligible for Medicare, to be implemented until January 1, 2014.

**b. Iowa Early Retiree Reinsurance Program Participation.** The Iowa Department of Administrative Services — Human Resource Enterprise applied to participate in the new federal program. The program ceased accepting new applications as of May 6, 2011, and ceased accepting claims incurred after December 31, 2011, due to predicted exhaustion of funds. According to the Insurance Division, entities in Iowa had received approximately \$12.5 million from the program as of January 19, 2012.<sup>20</sup>

### 3. Federal Temporary High-Risk Pool Program (PCIP — Preexisting Condition Insurance Program) — 2013 Update

**a. ACA Requirements.** The ACA created a temporary program to provide health coverage to individuals with preexisting medical conditions who have been uninsured for at least six months. The program can be operated by the states or by the federal government. Twenty-seven states opted to operate their own programs. As of August 31, 2012, nationally, 86,072 individuals had enrolled in the program.<sup>21</sup>

**b. HIPIOWA-FED.** Iowa elected to operate a new preexisting condition insurance pool (PCIP) under the federal program, designated as HIPIOWA-FED,

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<sup>18</sup> Iowa Code §505.19.

<sup>19</sup> Insurance Division's Role in Iowa's Implementation of Health Care Reform: Both Federal and State, Iowa Insurance Division (June 27, 2012), available at [http://www.iid.state.ia.us/sites/default/files/page/2010/10/06/level\\_one\\_reform\\_chart\\_updated\\_6\\_27\\_12\\_pdf\\_20683.pdf](http://www.iid.state.ia.us/sites/default/files/page/2010/10/06/level_one_reform_chart_updated_6_27_12_pdf_20683.pdf) (last visited October 16, 2012).

<sup>20</sup> Id.

<sup>21</sup> Enrollment in the Pre-Existing Condition Insurance Plan, as of August 31, 2012, statehealthfacts.org, <http://www.statehealthfacts.org/comparemoreport.jsp?rep=74&cat=7&qsa=2> (last visited November 13, 2012).



which is administered by the state through the Iowa Comprehensive Health Insurance Association. Enrollment in HIPIOWA-FED began on August 10, 2010. HIPIOWA-FED is funded through payment of premiums by individuals enrolled in the program and funding from the federal government. Initially, \$35 million in federal funds was allocated to Iowa to operate the plan through 2013 when health insurers are no longer allowed to refuse to cover individuals based on their preexisting medical conditions. As of June 15, 2012, 324 Iowans had enrolled in HIPIOWA-FED.<sup>22</sup>

**2013 Update.** As of March 2, 2013, state-run PCIP programs, including HIPIOWA-FED were required to stop processing applications received after that date. The PCIP is a temporary program and had a limited amount of federal funding. Based on program experience and trends to that point, it was determined that suspension of enrollment was necessary to ensure that funds would be available through 2013 to cover people who were already enrolled in the program.<sup>23</sup> Beginning on June 30, 2013, coverage through HIPIOWA-FED ended and enrollees in that program were given the option of transitioning to a new benefit plan for coverage beginning July 1, 2013, through the federally run PCIP. Iowa was one of 27 states running its own PCIP program.<sup>24</sup>

**c. HIPIOWA.** Since 1986, Iowa has operated its own state high-risk insurance pool to make health coverage available to Iowans who have been rejected for individual health insurance coverage due to medical reasons, and who meet other eligibility requirements. The Iowa Comprehensive Health Insurance Association (HIPIOWA) is operated under the purview of the Commissioner of Insurance.<sup>25</sup> The state pool is completely segregated from the federal preexisting condition program and is not impacted by the ACA. HIPIOWA is funded through payment of premiums by individuals enrolled in the program and assessments paid by insurance companies providing health care coverage to Iowans. These companies are allowed to offset the assessments from premium taxes over a five-year period.<sup>26</sup> As of March 2012, 3,234 individuals were enrolled in HIPIOWA plans.<sup>27</sup>

#### 4. Consumer Internet Site

**a. ACA Requirements.** The ACA required HHS to develop an Internet site to help consumers identify health coverage options. On July 1, 2010, HHS launched a new consumer-focused health care Internet site, [www.healthcare.gov](http://www.healthcare.gov). The Internet site includes information on private insurance coverage and premiums.

<sup>22</sup> Insurance Division's Role in Iowa's Implementation of Health Care Reform: Both Federal and State, Iowa Insurance Division (June 27, 2012), available at [http://www.iid.state.ia.us/sites/default/files/page/2010/10/06/level\\_one\\_reform\\_chart\\_updated\\_6\\_27\\_12\\_pdf\\_20683.pdf](http://www.iid.state.ia.us/sites/default/files/page/2010/10/06/level_one_reform_chart_updated_6_27_12_pdf_20683.pdf) (last visited October 16, 2012).

<sup>23</sup> HIPIOWA-FED, Health Insurance Plan of IowaFedPCIP, HIPIOWA-FED Suspension Notice, <http://hipiowafed.com/docs/iowa%20PCIP%20Enrollment%20Suspension%20Notice%2020-20-13%20rev%201%20dm.pdf>.

<sup>24</sup> HIPIOWA-FED, Health Insurance Plan of IowaFedPCIP dated May 28, 2013, <https://www.hipiowa.com/docs/HIPIOWA-Fed%20Enrollee%20Notice%20website%20version.pdf>.

<sup>25</sup> Iowa Code chapter 514E.

<sup>26</sup> Iowa Code §514E.2(13).

<sup>27</sup> Minutes of Board Meeting of Iowa Comprehensive Health Insurance Association (Health Insurance Plan of Iowa) dated April 27, 2012, available at <https://www.hipiowa.com/docs/HIPIOWA%20minutes%20April%2027%202012%2006072012.pdf> (last visited November 13, 2012).



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**b. Iowa Insurance Information Exchange.** In 2010, Iowa enacted legislation requiring the Commissioner of Insurance to establish an Iowa insurance information exchange in the Iowa Insurance Division.<sup>28</sup> This exchange serves as an information clearinghouse where Iowans can obtain information about health care coverage that is available in the state including availability of care delivered by safety net providers and comparisons of benefits, premiums, and out-of-pocket costs. The information is to be maintained on the Insurance Division's Internet site in a manner that is easily accessible, available, and understandable to consumers and purchasers of health care coverage regarding each carrier licensed to do business in this state. The Iowa insurance information exchange became operational in January 2011.<sup>29</sup>

### 5. Adult Dependent Coverage to Age 26

**a. ACA Requirements.** The ACA requires extension of dependent coverage for adult children up to age 26 in all individual and group health insurance policies. An adult child can qualify for the coverage even if the child is no longer living with a parent, is not listed as a dependent on a parent's tax return, or is no longer a student. Married or unmarried young adults can qualify but the coverage does not extend to their spouses or children. The new provision took effect for new plans, and existing plans when they renewed, on or after September 23, 2010. The new provision applies to all private insurance plans, including self-funded plans that are not subject to state insurance regulations.<sup>30</sup>

**b. Iowa Adult Dependent Coverage.** In 2009, Iowa enacted provisions requiring certain policies of health insurance issued in this state to include provisions allowing the continuation of coverage or enrollment in previously existing coverage for an unmarried child of an insured or enrollee through the policy anniversary date on or after the date the child marries, ceases to be a resident of this state, or attains the age of 25, whichever occurs first, or so long as the unmarried child maintains full-time status as a student in an accredited institution of postsecondary education. The requirement applies only to policies of accident or health insurance that are subject to regulation by the state, and does not include self-funded plans.<sup>31</sup>

### 6. Consumer Protections in Insurance

**a. ACA Requirements.** The ACA prohibits individual and group health plans from placing lifetime limits on the dollar value of coverage, rescinding coverage except in cases of fraud, or denying children coverage based on preexisting medical conditions or including preexisting condition exclusions for children. The ACA restricts the use of annual limits on the dollar value of coverage. Some of the provisions took effect for new or existing plans when they renewed on or after September 23, 2010,

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<sup>28</sup> Iowa Code §505.32.

<sup>29</sup> Iowa Health Insurance Information Exchange, available at <http://www.insuranceinfoexchange.iowa.gov/index.html> (last visited October 16, 2012).

<sup>30</sup> Frequently Asked Questions, The Henry J. Kaiser Family Foundation, Health Reform Source, available at <http://healthreform.kff.org/faq/letting-young-adults-remain-on-parents-insurance.aspx> (last visited October 16, 2012).

<sup>31</sup> Iowa Code §509.3(1)(h) (group policies of accident or health insurance); Iowa Code §509A.13B (group insurance for public employees); Iowa Code §514A.3B(2) (individual policies of accident and sickness insurance); and Iowa Code §514B.9A (coverage provided by health maintenance organizations).



while other provisions apply only to new plans established on or after September 23, 2010 (annual limits on all coverage are prohibited after 2014).

**b. Iowa Consumer Protections.** The Iowa Insurance Division issued a series of five educational press releases to provide outreach on changes in the law.<sup>32</sup> The Division also adopted administrative rules requiring an annual open enrollment period for policies sold after June 8, 2011, to cover children under the age of 19.<sup>33</sup>

### 7. Insurance Plan Appeals Process

**a. ACA Requirements.** The ACA requires new health plans to implement an effective process for allowing consumers to appeal health plan decisions and requires new plans to establish an external review process. This requirement is effective for plan or policy years beginning on or after September 23, 2010.

**b. Iowa Health Plan Appeals Process.** Effective July 1, 2011, Iowa enacted a new National Association of Insurance Commissioners' (NAIC) model law regarding external review of health plan decisions through a rewrite of existing Iowa Code chapter 514J. This new review process is effective for requests for external review filed on or after that date. Emergency rules were filed by the Commissioner of Insurance to apply to external review requests. HHS has approved Iowa's new process as meeting its strict standards for compliance with the ACA's external review requirements.<sup>34</sup>

### 8. Coverage of Preventive Benefits — 2013 Update

**a. ACA Requirements.** The Act requires new health plans to provide, at a minimum, coverage without cost sharing for certain preventive services. For children, this includes regular pediatrician visits; vision and hearing screening; developmental assessments; immunizations; and screening and counseling to address obesity and maintenance of a healthy weight.

For women, this includes cancer screening such as pap smears, mammograms, and colonoscopies; immunizations such as HPV vaccinations and flu shots; healthy diet counseling and obesity screening; cholesterol and blood pressure screening; screening for sexually transmitted infections and HIV; depression screening; and tobacco use counseling. Beginning in August 2012, screening for gestational diabetes is required and contraception coverage is also required in most new plans.

For men, required coverage includes recommended immunizations; cancer screening including colonoscopies; healthy diet counseling and obesity screening; cholesterol and blood pressure screening; screening for HIV; depression screening; and tobacco use counseling.<sup>35</sup>

**b. Iowa Coverage of Preventive Benefits Requirements.** Iowa law requires that a number of special health and accident coverages, sometimes referred to as

<sup>32</sup> Iowa Insurance Division Press Releases, available at [http://www.iid.state.ia.us/press\\_release\\_list](http://www.iid.state.ia.us/press_release_list) (last visited November 20, 2012).

<sup>33</sup> 191 IAC 15.11(6), 36.13.

<sup>34</sup> HHS Issues Preliminary Determinations of State External Review Procedures, Practical Law Company (August 5, 2011), available at <http://us.practicallaw.com/7-507-1550> (last visited October 16, 2012).

<sup>35</sup> ASPE Issue Brief, "Fifty-four million additional Americans are receiving preventive services coverage without cost-sharing under the Affordable Care Act," Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, (February 2012), available at <http://aspe.hhs.gov/health/reports/2012/preventiveservices/ib.shtml> (last visited October 16, 2012).



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“mandates” must be included in specified health care policies issued by insurers that are subject to state regulation of insurance.<sup>36</sup> Self-funded health plans are not subject to these requirements. Over the years various state requirements have been added, including those for a number of preventive services such as mammography, diabetes coverage, prescription contraceptive coverage, biologically based mental illness, and human papilloma virus (HPV) vaccinations. Many of these so-called “mandates” include cost sharing and other limits on coverage which may conflict with ACA requirements.

**2013 Update.** The small group plans that are used as benchmark plans for the exchanges are plans that are generally regulated by the states and may be subject to state mandates that are applicable to the small group market and are in excess of the essential health benefits required by the ACA. To prevent federal moneys from funding state benefit mandates, the ACA requires states to defray the cost of benefits required by state law that are in excess of the essential health benefits for individuals enrolled in any plan offered through an exchange. As a transition in 2014 and 2015, the mandates can be included in the essential health benefits package without that requirement if the benchmark plan for that state’s exchange is one of the three largest small group plans in that state.<sup>37</sup> Iowa meets this requirement.<sup>38</sup>

### C. 2011 — Provisions Implemented

#### 1. Minimum Medical Loss Ratio (MLR) for Insurers

**a. ACA Requirements.** The ACA requires health plans to report the proportion of premium dollars spent on clinical services, quality measures, and other costs and to provide rebates of premiums to consumers if the share of premiums spent on clinical services and quality measures is less than 85 percent for plans in the large group market and 80 percent for plans in the individual and small group markets. Beginning with coverage purchased in 2011, insurers must issue any required rebates to enrollees during the following year.

**b. Iowa Medical Loss Ratio Standards — Waiver.** Iowa requested and received a waiver in July 2011, allowing adjustment of the ACA’s Medical Loss Ratio (MLR) standard due to the inability of some Iowa companies selling individual policies to remain in the market under the stated requirement. HHS adjusted the MLR standard for Iowa in 2011 to 67 percent of premium, and in 2012 to 75 percent of premium, with implementation of the 80 percent of premium standard in 2013 and beyond.<sup>39</sup> The Insurance Division reported that in 2011 one Iowa insurer in the small group market owed a rebate of approximately \$1.5 million.<sup>40</sup>

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<sup>36</sup> Iowa Code chapter 514C.

<sup>37</sup> State Health Insurance Mandates and the ACA Essential Benefits Provisions, <http://www.ncsl.org/issues-research/health/state-ins-mandates-and-aca-essential-benefits.aspx>.

<sup>38</sup> See p. 10 of this Guide relating to Essential Health Benefits Election.

<sup>39</sup> Iowa Receives Federal Waiver for Medical Loss Ratio Implementation, Iowa Insurance Division Press Release (July 25, 2011), available at <http://www.iid.state.ia.us/node/636528> (last visited October 16, 2012).

<sup>40</sup> Insurance Division’s Role in Iowa’s Implementation of Health Care Reform: Both Federal and State, Iowa Insurance Division (June 27, 2012), available at [http://www.iid.state.ia.us/sites/default/files/page/2010/10/06/level\\_one\\_reform\\_chart\\_updated\\_6\\_27\\_12.pdf\\_20683.pdf](http://www.iid.state.ia.us/sites/default/files/page/2010/10/06/level_one_reform_chart_updated_6_27_12.pdf_20683.pdf) (last visited October 16, 2012).



### 2. Funding for Health Insurance Exchanges — 2013 Update

**a. ACA Requirements.** The ACA provides grants to states to begin planning for the establishment of American Health Benefit Exchanges and Small Business Health Options Program (SHOP) Exchanges, whose purpose is to facilitate the purchase of insurance by individuals and small employers. Grants were awarded to states beginning in March 2011. Coverage through exchanges begins January 1, 2014.

**b. Iowa State Exchange Planning Grant.** In September 2010, Iowa received a federal \$1 million state planning grant to be administered by the Iowa Department of Public Health. The grant was used to establish an Interagency Planning Workgroup to ensure collaboration between the Iowa Department of Public Health, the Iowa Department of Human Services (State Medicaid Enterprise), the Iowa Insurance Division, and the Iowa Department of Revenue in creating recommendations that include the organizational structure for a state-based health insurance exchange as required by the ACA.<sup>41</sup>

**c. 2011 Iowa Level One Exchange Establishment Grant.** In November 2011, Iowa received a federal \$7.7 million Level One Establishment Grant to be administered by the Iowa Department of Public Health to conduct insurance market research and analysis to inform policy decisions on the design of Iowa ACA health insurance exchanges. The grant was also to be used to develop a detailed exchange business process and associated business requirements for the exchange IT system.<sup>42</sup>

**d. 2012 Iowa Level One Exchange Establishment Grant.** In August 2012, Iowa received a second federal Level One Establishment Grant in the amount of \$26.6 million to be administered by the Iowa Department of Human Services, to further develop and enhance the eligibility system initiated with the first establishment grant including a redesign of the current database and web application to change the system from an application (household) centered architecture to a person-centered architecture, and implementation of an Enterprise Service Bus, a software model used for interacting between software applications; integration of the eligibility solution into Iowa's system for Medicaid and Children's Health Insurance Program (CHIP) eligibility (Iowa operates the CHIP as part of the hawk-i Program); integration of the eligibility solution into Iowa's health benefit exchange for the determination of Medicaid and CHIP eligibility, as well as tax credit subsidies or other eligibility for participation in qualified health plans through the exchange; and further automation of eligibility business processes and incorporation of expanding populations into online enrollment.<sup>43</sup>

**2013 Update.** As of Fiscal Year 2012, the Iowa Insurance Division received a consumer assistance program grant for the establishment of, expansion of, or support for consumer assistance or ombudsman programs in the amount of \$338,797.<sup>44</sup>

<sup>41</sup> Iowa Affordable Insurance Exchange Grants Awards List, U.S. Department of Health and Human Services (May 23, 2011), available at <http://www.healthcare.gov/news/factsheets/2011/05/exchanges/ia.html> (last visited October 16, 2012).

<sup>42</sup> Id.

<sup>43</sup> Id.

<sup>44</sup> Consumer Assistance Program Grants under the Affordable Care Act, as of FY 2012, <http://kff.org/health-reform/state-indicator/consumer-assistance-program-grants/?state=IA>.



### D. 2012 — Provisions Being Implemented

#### 1. Uniform Coverage Summaries for Consumers

The ACA requires private individual and group health plans to provide a uniform summary of benefits and coverage to all applicants and enrollees to help consumers compare health insurance coverage options before they enroll and understand their coverage after they enroll. This requirement applies to all individual and group health plans, regardless of whether they are grandfathered in or not, and took effect by September 23, 2012. In February 2012, HHS issued final regulations, a final template, and a uniform glossary to be used in providing the coverage summaries.

#### 2. Essential Health Benefits Election — 2013 Update

**a. ACA Requirements.** The ACA requires that health insurance plans sold to individuals and small employers provide a minimum package of services in 10 categories called “essential health benefits.” (See Subunit III(F)(6) of this guide relating to 2014 implementation requirements.) The Act allows each state to choose a plan to serve as the benchmark or reference plan for the essential health benefits for that state, and requires notice to HHS of that choice by September 30, 2012.

**b. Iowa Essential Health Benefits Selection.** To facilitate a state’s selection of a benchmark plan, HHS has compiled a list of the three largest small group products in each state, based on enrollment data collected as of March 31, 2012. For Iowa, the plans listed are Wellmark, Inc.’s Alliance Select PPO (Preferred Provider Organization), UnitedHealthcare Plan of the River Valley, Inc.’s Heritage POS (Point of Service), and UnitedHealthcare Insurance Company’s Choice Plus POS.<sup>45</sup> To date, Iowa has not yet selected a benchmark plan.

**2013 Update.** Iowa did not recommend a benchmark plan so the state’s benchmark essential health benefits plan defaulted to the small group plan with the largest enrollment in the state, Wellmark, Inc.’s Alliance Select PPO.<sup>46</sup>

#### 3. Notification Regarding Exchange Plans

**a. ACA Requirements.** The ACA requires the establishment of an Affordable Insurance Exchange in each state to help individuals and small employers purchase affordable health insurance coverage. The ACA provides three options for the establishment of an exchange in each state. A state may elect not to establish an exchange, in which case HHS will establish a federally facilitated exchange (FFE) in that state; a state may elect to establish a state-based exchange; or a state may elect to enter into a partnership with an FFE in which the state administers plan management functions, in-person consumer assistance functions (including oversight and management of exchange navigators), or both. In nonpartnership FFE states, the FFE will perform these functions.

Initially, states electing to establish a state-based exchange or a state partnership exchange, were required to submit a complete Exchange Blueprint consisting of a

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<sup>45</sup> Essential Health Benefits: List of the Largest Three Small Group Products by State, Center for Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services (July 3, 2012), available at <http://cciio.cms.gov/resources/files/largest-smgroup-products-7-2-2012.pdf>.PDF (last visited October 16, 2012).

<sup>46</sup> State Exchange Profiles: Iowa, <http://kff.org/health-reform/state-profile/state-exchange-profiles-iowa/>.



Declaration Letter and an Exchange Application to HHS by November 16, 2012, for coverage to be provided in plan year 2014.<sup>47</sup> On November 9, 2012, HHS Secretary Kathleen Sebelius extended the deadline for submission of the state-based Exchange Blueprint from November 16, 2012, to December 14, 2012. The deadline for submission of the Declaration Letter for a state-based exchange remained November 16, 2012. HHS will approve or conditionally approve a state-based exchange for 2014 by the statutory deadline of January 1, 2013.

Additionally, the deadline for a state to submit a Declaration Letter and Blueprint Application for a State Partnership Exchange has been extended to February 15, 2013. HHS approvals of applications for state partnership exchanges will be issued on a rolling basis until March 1, 2013.<sup>48</sup> HHS will continue to award Level I and Level II exchange establishment grants until the end of 2014.<sup>49</sup>

**b. Iowa Administrative Rules.** In 2011, Iowa Code section 505.8(19) was enacted allowing the Commissioner of Insurance to propose and promulgate administrative rules to effectuate the insurance provisions of the ACA.

**c. Iowa Exchange Plan.** On December 14, 2012, Governor Terry E. Branstad submitted a letter to Health and Human Services Secretary Sebelius informing the federal government that Iowa intends to pursue a state-federal partnership exchange in order to avoid default into a federal exchange.

**4. Iowa Exchange — 2013 Update.** On March 5, 2013, Iowa received conditional approval from HHS to establish a partnership exchange with final approval contingent upon the state demonstrating its ability to perform all required exchange activities on time, complying with future regulations, and achieving expected milestones.<sup>50</sup>

As a partnership state, Iowa is assisting mainly with the plan management functions of the exchange including the qualified health plan application and certification process.<sup>51</sup> The Iowa Insurance Division undertook primary responsibility to review applications by health insurers to offer qualified health plans in the Iowa exchange and to certify that the plans offered comply with statutory requirements.

The Division has certified plans from 10 companies to offer health coverage and dental coverage.<sup>52</sup> Two of the companies, Coventry Health Care of Iowa, Inc. and CoOpportunity Health, will offer statewide coverage for individual health care coverage, and CoOpportunity Health will also offer statewide small group plans. Avera Health Plans and Gunderson Health Plan, Inc. will offer individual and small employer

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<sup>47</sup> CCIIO Draft Blueprint for Approval of Affordable State-based and State Partnership Insurance Exchanges, The Henry J. Kaiser Family Foundation Health Reform Source (May 2012), available at <http://healthreform.kff.org/document-finder/ccio-draft-blueprint-for-approval-of-state-based-and-state-partnership-insurance-exchanges.aspx> (last visited October 16, 2012).

<sup>48</sup> American Health Benefit Exchanges, updated November 14, 2012, ncsf.org, <http://www.ncsl.org/issues-research/health/american-health-benefit-exchanges.aspx> (last visited November 15, 2012).

<sup>49</sup> Id.

<sup>50</sup> State Exchange Profiles: Iowa, <http://kff.org/health-reform/state-profile/state-exchange-profiles-iowa/>.

<sup>51</sup> Health Insurance, Patient Protection and Affordable Care Act, Status of CMS Efforts to Establish Federally Facilitated Health Insurance Exchanges, dated June 2013, <http://www.gao.gov/assets/660/655291.pdf> at p. 25; Seven States' Actions to Establish Exchanges under the Patient Protection and Affordable Care Act, dated April 2013, <http://www.gao.gov/assets/660/654331.pdf> at p. 12.

<sup>52</sup> Iowa insurance commissioner writes open letter about Affordable Care Act, posted October 1, 2013, <http://www.kwwl.com/story/23583419/2013/10/01/iowa-insurance-commissioner-sends-open-letter-about-affordable-care-act>.



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group plans for smaller regional markets. Sanford Health and Health Alliance Midwest, Inc. will offer regional small group plans only. In addition, The Guardian Life Insurance Company of America, Dentegra Insurance Company, Delta Dental Plan of Iowa, and BEST Life and Health Insurance Company will offer stand-alone dental plans in the Iowa exchange.<sup>53</sup>

Iowa is also developing the information technology infrastructure necessary to integrate systems and allow consumers to navigate among health programs including Medicaid and the Children's Health Insurance Program.<sup>54</sup>

Iowa has chosen to have limited involvement with the consumer assistance and outreach functions of the exchange, so the Iowa exchange is utilizing the federal call center, the federal website, Healthcare.gov, and the federal consumer complaint tracking system.<sup>55</sup>

Iowa is not establishing an operating structure at this time because HHS will initially establish and operate the exchange. For this reason Iowa is not subject to the requirement that the exchange be self-sustaining by 2015 and have sufficient funding at that time to support ongoing operations.<sup>56</sup>

### 5. Iowa Navigator Licensing — 2013 Update.

**a. Iowa Legislation.** In 2012, Iowa enacted legislation requiring a person to meet certain state licensing requirements before acting as a navigator to perform outreach and enrollment assistance to individuals and families enrolling in qualified health plans offered by an exchange and accessing public resources in this state.<sup>57</sup>

**b. Iowa Navigator Program — 2013 Update.** The ACA requires that all exchanges establish navigator programs to serve as an in-person resource for consumers who want additional assistance in shopping for and enrolling in health plans in the exchange. Federal grants were awarded in states with federally facilitated and state partnership exchanges. A range of public and private entities or individuals may qualify to be navigators, but they cannot be affiliated with or receive any type of compensation from a health insurer. At least one navigator in each state must be a consumer-focused nonprofit group.

In Iowa, federal grants to implement a navigator program were awarded to Genesis Health System (\$128,430), Visiting Nurse Services of Iowa (\$257,142), and Planned Parenthood of the Heartland, a nonprofit community-based health care agency, (\$214,427). HHS retains authority to approve the activities and budgets of the grantees.<sup>58</sup>

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<sup>53</sup> Six Health Insurers Apply to Offer Health Care Coverage on Iowa Health Insurance Marketplace, <http://www.iid.state.ia.us/node/6083245>.

<sup>54</sup> Seven States' Actions to Establish Exchanges under the Patient Protection and Affordable Care Act, dated April 2013, <http://www.gao.gov/assets/660/654331.pdf> at p. 1.

<sup>55</sup> Health Insurance, Patient Protection and Affordable Care Act, Status of CMS Efforts to Establish Federally Facilitated Health Insurance Exchanges, dated June 2013, <http://www.gao.gov/assets/660/655291.pdf> at pp. 14 and 29.

<sup>56</sup> Seven States' Actions to Establish Exchanges under the Patient Protection and Affordable Care Act, dated April 2013, <http://www.gao.gov/assets/660/654331.pdf> at pp. 17, 18.

<sup>57</sup> Iowa Code chapter 522D.

<sup>58</sup> Navigating Health Insurance Exchanges, National Conference of State Legislatures Legisbrief, Vol. 21, No. 26, July 2013; <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/navigator-list-8-15-2013.pdf>.



In order to meet the requirements of the federal grant, navigators must complete 30 hours of training, pass an exam approved by HHS, and meet state licensure and certification requirements. States with partnership exchanges are responsible for the day-to-day management of navigators and can choose to be responsible for outreach and educational activities. On September 25, 2013, the Iowa Insurance Division implemented administrative rules at 191 IAC chapter 85, setting out additional state requirements, procedures, and fees related to the qualification, licensure, training, continuing education, and regulation of navigators pursuant to Iowa Code chapter 522D, which was enacted in 2012.<sup>59</sup>

**c. Certified Application Counselor Program — 2013 Update.** On July 12, 2013, a final HHS rule was released that requires exchanges to offer certified application counselor programs, which will have a more limited role in assisting eligible consumers in the enrollment process for qualified health plans and insurance affordability programs through the exchange.<sup>60</sup> A certified application counselor is a volunteer who works within the volunteer's community to help individuals complete health care coverage applications, for both public and private options available through the new exchange. Organizations such as community health centers or other health care providers, hospitals, or social service agencies may apply to be designated as organizations that can certify application counselors.<sup>61</sup>

Navigators and certified application counselors are not licensed insurance agents. They are not allowed to recommend a specific insurance plan or sell insurance.<sup>62</sup>

### E. 2013 — Provisions to be Implemented

#### 1. Exchange Enrollment

Enrollment in each state's American Health Benefit Exchange and Small Business Health Options Program (SHOP) Exchange must commence on October 1, 2013.

#### 2. CO-OP Health Insurance Plans

**a. ACA Requirements.** The ACA creates the Consumer Operated and Oriented Plan (CO-OP) to foster the creation of nonprofit, member-run health insurance companies. Such CO-OPs must be established by July 1, 2013. In March 2011, HHS issued a report that included recommendations on governance, finance, infrastructure, and compliance for such entities. In February 2012, HHS announced that seven nonprofits offering coverage in eight states had been awarded \$638.7 million in low-interest loans.<sup>63</sup>

<sup>59</sup> Id.

<sup>60</sup> Navigating Health Insurance Exchanges, National Conference of State Legislatures Legisbrief, Vol. 21, No. 26, July 2013; <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/navigator-list-8-15-2013.pdf>.

<sup>61</sup> The Center for Consumer Information & Insurance Oversight, In-Person Assistance in the Health Insurance Marketplace, <http://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/assistance.html>.

<sup>62</sup> Understanding the Health Insurance Marketplace in Iowa, <http://www.iid.state.ia.us/node/6767399>.

<sup>63</sup> Implementation Timeline, The Henry J. Kaiser Family Foundation Health Reform Source, available at <http://healthreform.kff.org/timeline.aspx> (last visited October 16, 2012).



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**b. Iowa CO-OP.** CoOpportunity Health (formerly Midwest Members Health), a CO-OP that will provide coverage throughout Iowa and Nebraska, was awarded a loan of \$112.6 million by HHS in February 2012.<sup>64</sup>

### F. 2014 — Provisions to be Implemented

#### 1. Individual Requirement to Have Insurance

The ACA requires United States citizens and legal residents to have qualifying health coverage by January 1, 2014. A phased-in penalty applies to those without coverage, with certain exemptions based on religious beliefs, undocumented immigrant status, incarceration, membership in an Indian tribe, family income level, or a showing that meeting the requirement would cost more than 8 percent of family income. The requirement is met if a person has health coverage through Medicare, Medicaid or CHIP, TRICARE (for military service members, retirees, and their families), the veteran's health program, a plan offered by an employer, insurance purchased by an individual that meets the bronze level of coverage, or a grandfathered health plan in existence before the ACA was enacted.

In 2014, the penalty for not being insured will be \$95 per adult and \$47.50 per child (up to \$285 per family) or 1.0 percent of family income, whichever is greater. In 2015, the penalty will be \$325 per adult and \$162.50 per child (up to \$975 per family) or 2.0 percent of family income, whichever is greater. In 2016 and beyond, the penalty will be \$695 per adult and \$347.50 per child (up to \$2,085 per family) or 2.5 percent of family income, whichever is greater, with amounts increased annually based on the cost of living.<sup>65</sup>

#### 2. Health Insurance Exchanges

**a. ACA Requirements.** The ACA requires the creation of state-based American Health Benefit Exchanges and Small Business Health Options Program (SHOP) Exchanges, administered by a governmental agency or nonprofit organization, through which individuals and small businesses with 1 to 100 employees can purchase qualified coverage. Enrollment in these exchanges must begin on October 1, 2013, with coverage commencing on January 1, 2014. The purpose of the exchanges is to help individuals and eligible employers compare and select from qualified health plans that meet benefit design, consumer protection, and other standards. The exchanges will provide a single point of access for individual consumers to receive eligibility determinations for enrollment in the exchanges and for premium payment assistance and premium tax credits.

States must define small employers to include employers with 1 to 50 employees by January 1, 2014, and up to 100 employees by 2016. Exchanges must provide a

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<sup>64</sup> Insurance Division's Role in Iowa's Implementation of Health Care Reform: Both Federal and State, Iowa Insurance Division (June 27, 2012), available at: [http://www.iid.state.ia.us/sites/default/files/page/2010/10/06/level\\_one\\_reform\\_chart\\_updated\\_6\\_27\\_12\\_pdf\\_20683.pdf](http://www.iid.state.ia.us/sites/default/files/page/2010/10/06/level_one_reform_chart_updated_6_27_12_pdf_20683.pdf) (last visited October 16, 2012).

<sup>65</sup> The Requirement to Buy Coverage Under the Affordable Care Act, The Henry J. Kaiser Family Foundation Health Reform Source (2012), available at <http://healthreform.kff.org/the-basics/requirement-to-buy-coverage-flowchart.aspx> (last visited October 16, 2012).



single application for all health programs, including coverage through the Exchanges and Medicaid and Children’s Health Insurance Program (CHIP) programs.

**b. Iowa Small Group Regulations.** Iowa Code chapter 513B contains many of Iowa’s small group health coverage regulations. Currently, the statute defines a “small employer” as an employer with not less than two and not more than 50 full-time employees. This definition will change to include an employer with at least one employee effective on January 1, 2014.<sup>66</sup> A corresponding change will apply to group managed care health plans.<sup>67</sup>

**c. Iowa Insurance Cost Reduction Workgroup.** In 2010, the Commissioner of Insurance was directed to annually convene a workgroup composed of the Consumer Advocate, health insurance carriers, health care providers, small employers, and individual consumers for the purpose of considering ways to reduce the administrative costs of providing health insurance coverage and health care services.<sup>68</sup> The recommendations of the workgroup must be included in an annual report filed with the General Assembly.<sup>69</sup>

**d. Iowa Annual Report on Health Insurance Costs.** Also in 2010, the Commissioner of Insurance was required to prepare and deliver an annual report that makes information readily available to consumers about health spending costs for health insurance plans in the state during the previous calendar year.<sup>70</sup> The report must include information that includes loss ratios of health insurance carriers licensed in the state; rate increase data; health care expenditures in the state and their effect on health insurance premium rates; a ranking and quantification of factors that result in higher costs and those that result in lower costs for each insurance plan in the state; current capital and surplus and reserve amounts held in reserve by each health insurance carrier licensed in the state; a listing of any medical trends affecting insurance costs in the state; and any additional data or analysis deemed appropriate by the commissioner to provide pertinent health insurance cost information to the General Assembly. The workgroup was convened on September 13, 2010, but did not make any recommendations that year. An annual report was issued by the commissioner in 2010, 2011, and 2012.<sup>71</sup>

### 3. Health Insurance Premium and Cost-Sharing Subsidies

The ACA provides refundable and advance tax credits and cost-sharing subsidies to eligible individuals. Premium subsidies will be available to families with incomes between 133 and 400 percent of the federal poverty level to purchase insurance through the exchanges. Cost-sharing subsidies will be available to families with income that is up to 250 percent of the federal poverty level.

<sup>66</sup> Iowa Code §513B.2(18) as amended by 2011 Iowa Acts ch. 70, §26, 49.

<sup>67</sup> Iowa Code §514C.13(1)(j) as amended by 2011 Iowa Acts ch. 70, §27, 49.

<sup>68</sup> Iowa Code §505.8(18).

<sup>69</sup> Iowa Code §505.18(2)(h).

<sup>70</sup> Iowa Code §505.18(2).

<sup>71</sup> Annual Health Care Insurance Costs Reports, Iowa Insurance Division, available at [http://insuranceca.iowa.gov/info\\_reports/reports\\_studies.html](http://insuranceca.iowa.gov/info_reports/reports_studies.html), follow hyperlink then follow “[appropriate year] Annual Health Care Insurance Costs Report” (last visited October 13, 2013).



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### 4. Guaranteed Availability of Insurance

The ACA requires guaranteed issue and renewability of health insurance regardless of health status and allows rating variation based only on age (limited to a 3:1 ratio), geographic area, family composition, and tobacco use (limited to a 1.5:1 ratio) in the individual and the small group markets and the exchanges.

### 5. No Annual Limits on Coverage

The ACA prohibits annual limits on the dollar value of coverage.

### 6. Essential Health Benefits

The ACA creates an essential health benefits package that provides a comprehensive set of services, limiting cost sharing to the limits of Health Savings Accounts as of 2010 for plan year 2014. Those limits are \$5,950 per individual and \$11,900 per family. For plan years beginning in 2015 and later, cost sharing is recalculated as provided in the ACA.<sup>72</sup>

The ACA creates four categories of plans to be offered through the exchanges, and in the individual and small group markets, which vary based on the proportion of benefits they cover. These categories of plans will be denoted as bronze, silver, gold, or platinum plans with a bronze plan providing the minimum required covered benefits and the platinum plan providing the most covered benefits. HHS will define what constitutes essential health benefits.

### 7. Multi-State Health Plans — 2013 Update

The ACA requires the federal Office of Personnel Management to contract with insurers to offer at least two multi-state plans in each exchange. At least one plan must be offered by a nonprofit entity and at least one plan must exclude coverage for abortions beyond those permitted by federal law. This requirement will be phased in nationally with full national coverage in 2017.<sup>73</sup>

**2013 Update.** The United States Office of Personnel Management has entered into a contract with the Blue Cross and Blue Shield Association to offer more than 150 multi-state plan options in 30 states and the District of Columbia through the health insurance exchanges. Currently, no multi-state plan options are available in Iowa but the ACA directs expansion of these options to all 50 states within the next four years.<sup>74</sup>

### 8. Temporary Reinsurance Program for Health Plans

The ACA creates a temporary reinsurance program to collect payments from health insurers in the individual and group markets to provide subsidies to plans in the individual market that cover high-risk individuals.

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<sup>72</sup> Katherine Jett Hayes, Essential Benefits, Health Reform GPS: Navigating Implementation, George Washington University's Hirsh Health Law and Policy Program and the Robert Wood Johnson Foundation (January 12, 2011), available at <http://healthreformgps.org/resources/essential-benefits> (last visited October 16, 2012).

<sup>73</sup> Trish Riley & Jane Hyatt Thorpe, Multi-State Plans Under the Affordable Care Act, George Washington University School of Public Health and Health Services (April 2012), available at [http://sphhs.gwu.edu/departments/healthpolicy/dhp\\_publications/pub\\_uploads/dhpPublication\\_A80A0AAA-5056-9D20-3D25B59C65680B79.pdf](http://sphhs.gwu.edu/departments/healthpolicy/dhp_publications/pub_uploads/dhpPublication_A80A0AAA-5056-9D20-3D25B59C65680B79.pdf) (last visited November 15, 2012).

<sup>74</sup> Multi-state Plan Program and The Health Insurance Marketplace OPM Multi-state Plan Program Fact Sheet, <http://www.opm.gov/healthcare-insurance/multi-state-plan-program/opm-multi-state-plan-program-fact-sheet/>.



### 9. Basic Health Plan — 2013 Update

The ACA allows states the option to create a Basic Health Plan for certain uninsured individuals with incomes between 133 and 200 percent of the federal poverty level who would otherwise be eligible to receive premium subsidies in the exchange.

**2013 Update.** The Iowa Medicaid Enterprise has engaged Milliman, Inc. to model the ACA-defined Basic Health Program option. A Basic Health Program can be used to provide a bridge between Medicaid/CHIP coverage and products available through the exchange, focusing on the population that is most at risk of moving in and out of Medicaid eligibility because of changes in income. The ACA allows states to create a Basic Health Program for non-elderly residents who are not eligible for Medicaid and lack affordable access to comprehensive employer-based coverage. HHS is responsible for promulgating regulations and guidance to assist states in implementing the program.<sup>75</sup>

### 10. Employer Requirements — 2013 Update

The ACA assesses a fee of \$2,000 per full-time employee, excluding the first 30 employees, on employers with more than 50 employees that do not offer coverage and that have at least one full-time employee who receives a premium tax credit. Employers with more than 50 employees that offer coverage but have at least one full-time employee receiving a premium tax credit will pay the lesser of \$3,000 for each employee receiving a premium credit or \$2,000 for each full-time employee, excluding the first 30 employees.

**2013 Update.** Implementation of the employer mandate to offer health insurance coverage to employees has been delayed until January 1, 2015.<sup>76</sup>

### 11. Wellness Programs in Insurance — 2013 Update

**a. ACA Requirements.** The ACA permits employers to offer employees rewards of up to 30 percent, potentially increasing to 50 percent, to cover the cost of participating in wellness programs and meeting certain health-related standards. The ACA will establish 10 state pilot programs to permit participating states to allow similar rewards for participation in wellness programs in the individual market.

**b. Iowa Wellness Program Incentives.** In 2007, Iowa enacted legislation allowing a small employer carrier to offer premium credits or discounts to a small employer to encourage employees to voluntarily participate in wellness or disease management programs.<sup>77</sup> The Commissioner of Insurance was directed to adopt rules or orders allowing suspension or modification of premium rate restrictions for a small employer based on measurable reductions in costs of that employer, including but not limited to tobacco use cessation, participation in established wellness or disease management programs, and economies of acquisition or administration. An employee

<sup>75</sup> Milliman Report, Executive Summary, State of Iowa, Department of Human Services, Iowa Medicaid Enterprise, dated November 30, 2012, [http://www.dhs.state.ia.us/uploads/Milliman\\_BasicHealthProgramBenchmark.pdf](http://www.dhs.state.ia.us/uploads/Milliman_BasicHealthProgramBenchmark.pdf).

<sup>76</sup> We're Listening to Businesses about the Health Care Law, <http://www.whitehouse.gov/blog/2013/07/02/we-re-listening-businesses-about-health-care-law>.

<sup>77</sup> Iowa Code §513B.4B.



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cannot be penalized in any way for not participating in such a wellness or disease management program.<sup>78</sup>

**c. Executive Branch State Employees Health Benefits — 2013 Update.** Beginning in 2014, executive branch state employees in Iowa who enroll in the state employee health benefit package will be required to make a 20 percent contribution toward the cost of their health insurance. The new contribution mandate applies to the 3,435 executive branch employees who are not represented by a union in collective bargaining. Such employees can reduce their premium contribution by at least \$90 a month if they participate in a wellness program offered by the state.<sup>79</sup>

**12. Iowa Health and Wellness Plan — 2013 Update.** On May 23, 2013, Iowa enacted the Iowa Health and Wellness Plan. Beginning January 1, 2014, the Plan will cover all Iowans 19 to 64 years of age with incomes up to and including 133 percent of the Federal Poverty Level (FPL). In response to direction from the Centers for Medicare and Medicaid Services, DHS will make two new 1115 waiver applications.

**a. Wellness Plan.** One waiver application will be for the Wellness Plan, the benefits plan offered to those persons with income between 0 and 100 percent of the FPL. The Wellness Plan offers comprehensive health services equivalent to the state employee health benefit package, requires enrollment in a primary care medical home, includes care coordination and management by accountable care organizations, and has no co-payment, except \$8 for use of the emergency room for care that was not a medical emergency. No monthly contributions or premiums are required in the first year. Out-of-pocket costs cannot exceed 5 percent of income. Monthly contributions after the first year are payable only by adults with incomes greater than 50 percent of the FPL who do not receive preventive services and complete wellness activities.<sup>80</sup>

**b. Marketplace Choice Plan.** The other waiver application will be for the Marketplace Choice Plan, whose benefits will be offered to persons with income between 101 and 133 percent of the FPL. The Marketplace Choice Plan is a premium assistance program to enable participants to purchase a commercial health plan with coverage for comprehensive health services, at least equivalent to the state employee health benefit package. No monthly contributions or premiums are required in the first year. Out-of-pocket costs cannot exceed 5 percent of income. Monthly contributions after the first year are payable only by adults with incomes greater than 50 percent of the FPL who do not receive preventive services and complete wellness activities.<sup>81</sup>

### 13. Fees in Health Insurance Sector

The ACA imposes new fees on the health insurance sector.

## G. 2015 Provisions to be Implemented — None

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<sup>78</sup> Iowa Code §513B.4B.

<sup>79</sup> Iowa Politics, Iowa Gov. Branstad: Non-union state employees will pay share of health costs, by Jason Noble, dated April 4, 2013, <http://blogs.desmoinesregister.com/dmr/index.php/2013/04/04/iowa-gov-branstad-non-union-state-employees-will-pay-share-of-health-costs/article>.

<sup>80</sup> Iowa Health and Wellness Plan, <http://www.dhs.state.ia.us/uploads/IHAWP%20Overview%20071513.pdf>.

<sup>81</sup> Iowa Health and Wellness Plan, <http://www.dhs.state.ia.us/uploads/IHAWP%20Overview%20071513.pdf>.



### H. 2016 Provisions to be Implemented

#### 1. Health Care Choice Compacts

The ACA allows states to form health care choice compacts and allows insurers to sell policies in any state participating in the compact.

#### 2. SHOP Exchange Eligibility Increased

The ACA requires states to define employers with up to 100 employees as small employers.<sup>82</sup>

### I. 2017 Provisions to be Implemented

#### 1. Multi-state Health Plan Phase-in Complete

Two federally regulated “multi-state” insurers, with one a nonprofit and one excluding coverage for abortions, will be available in all states.

#### 2. SHOP Eligibility May Be Enlarged By States

The ACA allows states to permit large employers and multi-employer health plans to purchase coverage in an exchange.<sup>83</sup>

### J. 2018 Provisions to be Implemented — Tax on High-Cost Insurance

The ACA imposes an excise tax on insurers of employer-sponsored health plans with aggregate expenses that exceed \$10,200 for individual coverage and \$27,500 for family coverage.

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<sup>82</sup> Lisa Clemans-Cope, How Will the ACA Affect Employers of Different Sizes?, The Urban Institute, available at [http://www.gih.org/files/FileDownloads/Lisa\\_Clemans-Cope\\_PPT.pdf](http://www.gih.org/files/FileDownloads/Lisa_Clemans-Cope_PPT.pdf) (last visited November 15, 2012).

<sup>83</sup> Lisa Clemans-Cope, How Will the ACA Affect Employers of Different Sizes?, The Urban Institute, available at [http://www.gih.org/files/FileDownloads/Lisa\\_Clemans-Cope\\_PPT.pdf](http://www.gih.org/files/FileDownloads/Lisa_Clemans-Cope_PPT.pdf) (last visited November 15, 2012).