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Unpacking PPACA:

Understanding the Patient Protection Affordable Care Act

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The University of Tennessee
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Introduction

The Patient Protection and Affordable Care Act (PPACA) was signed into law on March 23, 2010 by President Barack Obama (Maniam, Black, and Leavell 201). This landmark health care legislation has the potential to bring about unprecedented change to the health insurance system on a national level. Since its inception, PPACA has been both supported and criticized by Americans across the country. The historic legislation has received an insurmountable amount of media coverage over the past several years as the Act is heavily debated, challenged, amended, and implemented.

The motives behind PPACA are admirable, striving to make health care insurance available and affordable to all Americans; however, being 906 pages long, the Act is quite challenging to comprehend, difficult to implement, and hard to understand the implications it will have on everyday life as we know it. Regardless, PPACA is most likely here to stay so it is increasingly important for all Americans to learn about the basics of PPACA and how the Act will affect them.

History of Health Care Reform

The subject matter of health care has existed for decades in the United States. President Theodore Roosevelt took the first initiative to promote national health care in 1912. He ran on a platform of supporting health insurance for industry workers during his campaign. In 1920 the Committee on the Costs of Medical Care became a well-known promoter of health insurance. Then, in the 1930s, health care was once again a subject of interest when the effects of the Great Depression began to spread across the country. During the Great Depression, unemployment was high, there was little access to health care, medical costs were increasing, and sickness became one of the primary causes of poverty. In 1945, after World War II had ended, President Harry Truman pressed Congress to pass legislation that would allow all Americans to have the right to health care, but to no avail. The AMA kept responding with warnings of "socialized medicine". Finally, in the 1960s, President Lyndon Johnson was able to address health care by amending the Social Security Act to include Medicare and Medicaid. In the 1970's, President Richard Nixon was unable to achieve any other health care expansions. In the 1990s, President Bill Clinton was also blocked by Congress and unable to expand national health care. In 1997, Congress did attempt to expand health care to the public sector by amending the Social Security Act to include the State Children's Health Insurance Program (CHIP). Finally, in

2003, President George W. Bush made some progress by passing the first major expansion to Medicare in decades - the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) (Maniam, Black, and Leavell 201). None of these previous legislative acts addressed the coverage of all Americans. However, health care reform has one again been brought into the spotlight, and the subject of nation-wide health care coverage is now widely debated. In 2010, President Barack Obama was the next politician to address national health care reform, and passed the Patient Protection and Affordable Care Act (PPACA) (Maniam, Black, and Leavell 201).

PPACA – General Overview

The Patient Protection and Affordable Care Act (PPACA) was signed into law on March 23, 2010. The Act is the most significant expansion and "overhaul" of the national health care system since 1965 when Medicare and Medicaid were created. PPACA is a piece of historical landmark legislation. The primary goals of PPACA are to increase the availability of health insurance coverage to all Americans and to reduce the overall costs of health care. In order to achieve these goals, PPACA entails the use of mandates, subsidies, tax credits, taxes and penalties, innovations, etc.

The Henry J. Kaiser Family Foundation has summarized the main topics and main provisions set forth in PPACA (Maniam, Black, and Leavell 202).

PPACA Main Topics:
1. Individual and Employer Mandates
2. Expansion of Public Programs
3. Premium and Cost-Sharing Subsidies to Individuals and Employers
4. Tax Changes Related to Health Insurance or Financing Health Reform

5. Health Insurance Exchanges
6. Benefit Design Changes
7. Changes to Private Insurance
8. Changes to State Requirements and its Role
9. Improving Quality and Health System Performance
10. Prevention and Wellness
11. Long-Term Care
12. Other Investments
13. Financing

PPACA Main Provisions:
1. Extending Dependent Coverage to Young Adults (up to age 26)
2. Eliminating Denials of Coverage due to Pre-existing Conditions
3. Prohibiting the Rescinding of Health Insurance Benefits except in the case of fraud
4. Small Business Tax Credit

President Barack Obama's administration recently released additional proposed regulations to PPACA on November 20, 2012. The new regulations affect wellness program provisions, nondiscrimination for preexisting conditions, and the definition of essential health benefits. Notably, the proposed regulation regarding essential health benefits includes a list of categories that must be included in essential health benefits. Additionally, there will be a benchmark plan designed for each

state and every plan created within that state would have to offer benefits equal in scope to the benchmark plan ("Federal Gov. Releases Additional Proposed Regulations" 61).

Health exchanges are scheduled to open in 2014. The purpose of the exchange is to offer affordable health care and provide a variety of choices of plans and providers. This means that health insurance companies will have much more competition. Consumers that choose to go to an exchange will have the choice between bronze, silver, gold, and platinum level health care plans (Fuscaldo).

PPACA – Timeline

The Patient Protection Affordable Care Act		
Year:	**Date:**	**Description:**
2010	March 23	PPACA becomes law
	April 1	States receiving federal matching funds to cover more people on Medicaid
	June 1	Applications available to expand coverage for retirees
	July 1	PCIP plans providing access for uninsured Americans with preexisting conditions
		Putting information online at healthcare.gov
	September 23	Extending coverage for young adults up to age 26
		All new plans must provide free preventive services
		Insurance companies are prohibited from rescinding coverage
		Consumers have a way to appeal insurance company decisions
		Eliminating lifetime limits on insurance coverage
		Regulating annual limits on insurance coverage
		Prohibits denying coverage of children based on preexisting conditions
	October	Grants awarded to states to establish consumer assistance programs
	Other 2010	Estimated 4 million seniors received a one-time $250 rebate for relief from the “donut hole” of Medicare
		Grants will be awarded to states that hold insurance companies accountable for unreasonable rate hikes
		$15 Billion Prevention and Public Health Fund established

2011	January 1	Prescription drug discounts for seniors who reach coverage gap
		Established Center for Medicare and Medicaid Innovation
		Established The Community Care Transition Program
	October 1	Established The Independent Payment Advisory Board
		Established The Community First Choice Option
2012	January 1	Incentives for physicians to form Accountable Care Organizations
	March	Federal health programs required to collect and report racial, ethnic, and language data
	October 1	Standardize billing and adopt electronic health records
		Established a hospital Value-Based Purchasing Program in original Medicare
2013	January 1	Requires states to pay primary care physicians no less than 100% of Medicare payment rates
		Pilot program established to encourage payment "bundling"
	October 1	Open Enrollment Begins
	Fall 2013	Distribution of notices for employers to use to inform employees of the availability of health insurance exchanges
	December 31	HIPPA certification for employers with group health plans
2014	January 1	Health Insurance Exchanges
		Individual Mandate
		Employer Coverage Requirements
		Requirement to enroll in Medicaid if eligible
		Individual tax credits
		Small business tax credits
2015	January 1	Provision that ties physician payments to the quality of care they provide
2018		"Cadillac Tax" – 40% excise tax imposed on high cost employer-sponsored health insurance plans

(“What’s Changing and When”; “Patient Protection and Affordable Care Act (PPACA)”)

NFIB v. Sebelius (2012) Supreme Court Ruling

The individual mandate and the Medicaid expansion were two provisions of the PPACA were so hotly debated that they reached the Supreme Court of the United States for review. Opponents of these two provisions claimed that they were unconstitutional. The individual mandate provision requires that “most Americans maintain minimum essential health insurance coverage or else make a shared responsibility payment to the Federal Government” (“NFIB v. Sebelius” 73). The Medicaid expansion provision “expanded the scope of the Medicaid program and increased the number of individuals the State must cover by dictating that any state that did not comply with the Act’s new coverage requirements might lose not only the federal funding for those requirements, but all of its federal Medicaid funds” (“NFIB v. Sebelius” 73).

The Supreme Court heard the case over the course of three days. The ruling from the Court affirmed the Eleventh Circuit Court in part and reversed in another part. Essentially this means that the Court decided that the individual mandate was a "tax" for constitutional purposes and was allowed; however, the Court did not allow the Medicaid expansion. The Medicaid expansion was not allowed because it gave the Secretary of the Department of Health and Human Services the power to withdraw existing Medicaid funds for failure to comply with the requirements listed in the new provision. Congress is not allowed to simply "conscript states into the national bureaucratic army" through coercive measures. By far, the individual mandate provision received the most time in the spotlight and was under the most scrutiny by the Supreme Court. Chief Justice Roberts addressed the political controversy by stating on behalf of the Supreme Court, "we do not consider whether the Act embodies sound policies…We ask only whether Congress has the power under the Constitution to enact the challenged provisions" ("NFIB v. Sebelius" 76). The Supreme Court had to face the challenge of defining the individual mandate as a "tax" or a "penalty". If the provision was a "tax" then it would be considered constitutional; however, if it was a "penalty" then it would be considered unconstitutional. Most critics argue that the individual mandate is a "penalty" rather than a "tax". One of the most memorable statements from the proceedings was issued by Chief Justice Roberts who said "if a statue has two possible meanings, one of which violates the

Constitution, courts should adopt the meaning that does not do so" ("NFIB v. Sebelius" 77). The Supreme Court held that the individual mandate was a "tax" for constitutional purposes and allowed the individual mandate provision to remain a part of PPACA. The overall complex set of opinions written by the various Supreme Court Justices seemed to add more fuel to the fire of PPACA controversy.

Pay or Play – Effects on Employees

One of the most controversial aspects of PPACA is the individual mandate provision. This provision requires that all Americans have health insurance by the year 2014. Additionally, there will be penalties for not having such coverage. (Maniam, Black and Leavell 202). Consumers that oppose PPACA primarily take issue with the individual mandate. Opponents do not agree that the requirement will save money in the long run. The penalty for not having health insurance, paying rather than playing, will be either a percentage of your taxable income or a flat dollar amount. The penalty fee will be the greater amount of those two options (Fuscaldo).

"Pay or Play" Individual Mandate Penalty Fees:		
% of Taxable Income	2014	1%
	2015	2%
	2016	2.5%
Flat Dollar Amount	2014	$95
	2015	$325
	2016	$695

An advantage of PPACA will be the reduction in uninsured patients and more people will have health coverage. However, a disadvantage is that the exchanges created by PPACA may cause people to lose their employer-based coverage and the coverage through exchanges may entail less benefits and higher deductibles (Maniam, Black, and Leavell 202).

The main motivation that existed behind the creation of exchanges was to find a way to reduce the number of people that visit the emergency room each day. Non-emergency visits to hospitals cost billions of dollars each year. The hope was to provide health insurance to everyone in order to encourage individuals to schedule regular doctor appointments (Fuscaldo). In general, the health exchanges are very focused on the consumer. One of the main goals of establishing exchanges was to provide coverage for lower prices, which would benefit the consumer. Also, the variety of plans and providers that the exchange will offer gives consumers the ability to compare "apples to apples" and choose which

plan is right for them (Fuscaldo). The recently proposed regulations regarding essential heath benefits and benchmark plans will benefit consumers. Since all plans will be required to meet a minimum standard, consumers will know that they are enrolling in a decent plan. Exchanges will have an open enrollment period once each year, so if a consumer is unhappy with their plan they will have the option to change plans during the next open enrollment period (Fuscaldo).

To help provide an overall view of the impacts PPACA will have on consumers (employees), the NFIB has identified some of the major benefits and costs that may be encountered.

Benefits:	**Costs:**
1. Children can stay on your health insurance policy up to age 26	1. You must buy health insurance of pay fees (pay or play)
2. Insurers cannot refuse to sell you insurance or charge you higher premiums just because you have a preexisting condition	2. If you get insurance through a small business or buy it on your own, you will have to pay a new Health Insurance Tax of around $500 a year
3. Insurers cannot cancel your policy if you become ill	3. You will pay a new tax on brand-name prescription drugs
4. Insurers must provide preventive services with no cost	4. You will pay a new tax on the use of medical devices
5. Some people will get subsidies (if your household income is below 4 x federal poverty level)	5. You may potentially pay a new tax on over-the-counter products
6. Insurance premiums will appear on your IRS Form W-2	6. Flexible Spending Accounts are limited to $2,500 per year
7. Medicare's "doughnut hole" will disappear by the year 2020	7. If your income and family size qualify you for Medicaid, then PPACA will not allow you to stay on your employer's plan
	8. If your household income tends to fluctuate, you may have to move

	back and forth between insurance plans frequently
	9. PPACA may force your insurer to cease offering your current policy; therefore, dropping you as a customer
	10. Demand for medical providers may increase, making it more difficult to schedule an appointment and may result in higher prices
	11. Essential Health Benefits only apply to insurance you get on your own or through a small business
	12. PPACA reduces Medicare reimbursements
	13. Many seniors will lose Medicare Advantage plans

("PPACA: A Healthcare Law Guide for Employees")

Pay or Play – Effects on Employers

The vast majority of PPACA provisions are scheduled to go into effect January 1, 2014. Employers have been frantically trying to learn about PPACA and how the law will affect their business and employees.

Most employers find themselves at a crossroads when trying to decide whether to “pay or play” with PPACA. It is critically important for employers to understand what PPACA is, how it will apply to their business, and how they can best prepare for the stages of implementation.

Historically, “employer-based insurance has been the foundation of health care financing in the United States. The majority of Americans receive health insurance through their jobs” (Maniam, Black, and Leavell 204). The implementation of PPACA will most definitely have effects on the roles that employers play in the arena of health care insurance. Some of the provisions will essentially force businesses to update and enhance information systems in order to assess and comply with PPACA, which will be costly to do (Maniam, Black, and Leavell 204).

Under the “employer shared responsibility rules”, PPACA requires “large employers” to provide “affordable” group health coverage with “sufficient” value to all “full-time” employees and their dependents (Austin and Mustone). “Large employers” are defined as those that have 50 or more full-time employees. “Full-time employees” are those that work an average of 30 hours a week or more. “Unaffordable” coverage is determined if the individual premium cost exceeds 9.5% of the employee’s household income. “Insufficient value” is determined if the coverage pays less than 60% of the covered costs, which the IRS will help determine by using employees’ W-2 earnings (Austin and Mustone). Employers will face potential penalties if at least one (it only takes one) full-time employee is able to obtain health care coverage from an exchange. The penalty fee will be based on the total number of full-time employees, regardless of how many of those employees were able to receive health insurance coverage from an exchange (Austin and Mustone).

Pay or Play Penalties for Employers:	
Failure to Offer Coverage Penalty	Up to $2,000 per year per each full-time employee
Insufficient Coverage Penalty	Up to $3,000 per year per each employee that receives coverage from an exchange

The IRS has issued guidelines to assist employers in determining who qualifies as a full-time employee that is eligible for coverage under PPACA (Austin and Mustone).

Criteria:	Application:
Initial Measurement Period	Designated period to determine whether a newly hired employee is full-time: Must last between 3 months and 12 months
Standard Measurement Period	Annual designated period to determine whether all ongoing employees are full-time: Must last between 3 months and 12 months
Administrative Period	Period to make full-time determination, offer, and implement full-time employee health care coverage: up to 90 days
Stability Period	Annual designated period when employer must offer affordable minimum essential health coverage to all full-time employees: must last between 6 months and the length of measurement period
Full-Time Employees	Works an average of 30 hours per week: must offer health care coverage within 3 months of hire
Variable Hour Employees	Employer cannot reasonably determine if employee averages 30 hours a week or

	not: if employee averages 30 hours a week during the initial measurement period OR standard measurement period, then employer must offer affordable minimum essential health coverage during the stability period
Seasonal Employees	No official definition, presumption is that employee only works on seasonal basis: if employee averages 30 hours a week during the initial measurement period OR standard measurement period, then employer must offer affordable minimum essential health coverage during the stability period

There has been much dissent regarding the employer-shared responsibility rules within PPACA. For example, PPACA's definition of "large employer" consists of an amount of employees that is far below what most businesspeople would consider acceptable for a "large business" (Smith). Also, few employees consider 30 hours a week as being full-time. Many employees are scared that their hours will be cut due to PPACA's definition of "full-time employee". Employers get countless calls from employees who read and learn about PPACA and voice concerns about their hours being cut below the 30-hour threshold (Smith).

Even if employers do not agree with the employer mandate rule issued by PPACA, there is very little they can do to avoid implementation. "Cheating the system" will be extremely difficult with PPACA, especially since the IRS has included an "anti-abuse rule" aimed at penalizing employers that try to structure their business in such a way to avoid PPACA coverage (Smith).

To assist in making the critical decision on wether to "pay or play" with PPACA. The NFIB provides a brief analysis on the major costs and benefits that employers will encounter with PPACA ("PPACA: A Healthcare Law Guide for Employees").

Benefits:	**Costs:**
Some employers will get a temporary tax credit to encourage them to provide insurance	Failure to Offer Coverage Penalty
	Insufficient Coverage Penalty

When employers are weighing their options and trying to decide whether to "pay or play" with PPACA, there are several additional key points to consider that have to do with more than simple cost analyses: (Maurer).

1. **Low Individual Mandate Penalty**
    a. **There is speculation that some young and healthy workers may decide to pay the individual penalty rather than paying the premium contribution for their employer's plan or going to an exchange. These young and healthy workers may simply pay the penalty and wait until they actually need health insurance to purchase it.**
    b. **If the speculation were to be true, then employers should worry about the implications to their group insurance plan. As**

an employer, you certainly don't want to only have older, more ill, and hence more expensive people on your plan.

2. Restrictions on Age-Related Premiums
    a. Under PPACA, policy premiums are limited on the variance based upon age, which may deter young people from buying individual coverage and encourage older individuals to purchase coverage.
3. Exchanges
    a. Many employers may choose to wait to make a decision whether to pay or play until they can observe the success or failure of the exchanges.
4. Excise Tax on High-Cost Plans
    a. The "Cadillac Plans" provision in PPACA will go into effect in 2018. The provision allows a 40% nondeductible tax on the annual value of health plan costs for employees that exceed $10,200 for individual coverage or $27,500 for family coverage. This tax will have a dramatic effect on employers that have more expensive plans. This will make it hard for employers to find the "sweet spot" between offering a health insurance plan that is too expensive and one that is unaffordable or insufficient.

Checklist Guideline for Employers

Employer Checklist:

A Business Guide to Understanding PPACA

Question #1: Do you have 50 or more full time employees?

☐ Yes ☐ No

If you answered "yes" then you are required to offer an employer-sponsored health insurance plan that provides minimum essential benefits to all full time employees (30+ Hrs.), and their dependents under PPACA.

If you answered "no" then you are not required to offer an employer-sponsored health insurance plan. You can STOP here. The rest of the checklist applies only to employer-sponsored plans under PPACA

Note: anyone who works an average of 30 hours or more per week is considered a full time employee

How to Calculate # of Full Time Employees:

Take all employees who work 30 or more hours per week, plus add all PT employees' hours then divide by 120 to get FTE.

*Even if your company has others companies with different FEIN, if they have common ownership then you must count the other companies as well in this calculation.

Question #2: Did you offer an existing employer-sponsored health insurance plan as of March 23, 2010?

☐ Yes ☐ No

If you answered "yes" and if you have not made any major changes to that plan, then it may be "grandfathered" in by PPACA

If you answered "no", or if you have made any major changes to your plan, then it will not be "grandfathered" in by PPACA and must meet non-discrimination rules.

Question #3: Health Plans include medical and prescription coverage. Does your company also offer vision or dental plans?

☐ Yes ☐ No

If you answered yes and if the benefits are included as part of your health plan, then those benefits must also comply with PPACA standards

If you answered no then either you do not offer additional benefits or you offer those benefits as standalone and are not part of the health plan

Question #4: Does your health insurance plan provide at least the minimum 10 essential health benefits required under PPACA?

☐ Yes ☐ No

If you answered yes then your plan covers all essential health benefits

If you answered "no" then you are subject to penalty fees starting in 2014.

10 essential health benefits:

1. Ambulatory
2. Emergency
3. Hospital
4. Maternity
5. Mental Health & Substance Abuse
6. Prescription
7. Rehab
8. Labs
9. Preventative

Question #5: Do you offer an "affordable" health care insurance plan?

☐ Yes ☐ No

If you answered "yes" then the employee's portion of premium does not exceed 9.5% of the employee's household income.

If you answered "no" then you are subject to penalty fees starting in 2014

Affordable plans MUST meet one of three tests:

9.5% of W-2 income in Box 1

9.5% of Federal poverty level for single individual

or if any FT employee is Medicaid eligible.

Question #6: Do you provide at least "Minimum Value" sufficient health care insurance plan?

☐ Yes ☐ No

If you answered "yes" then you offer at least Minimum Value where the Plan covers at least 60% or more of the covered costs.

If you answered "no" then the plan value is less than 60% minimum value the plan is in violation and must make changes to increase the Plan %.

The employee's expenses must not exceed 40% of the total costs of plan expenses, including deductibles, co-pays, etc. Company may need to check with Insurance Carrier to calculate the total costs or hire an actuary to determine the percentages.

Are you going to Pay or Play?

<u>How to Calculate Potential Penalties:</u>

Failure to Offer Coverage Penalty = up to $2,000 per year per each full time employee

Insufficient Coverage Penalty = up to $3,000 per year per each employee that receives coverage from an exchange

<u>Additional PPACA Features to be Aware Of:</u>

- You must offer benefits to full time employees within 90 days of them being hired
- You must provide employees with a notice to inform them about the availability of health insurance exchange in the fall of 2013

For additional information contact the Department of Labor at:

http://www.dol.gov/ebsa/healthreform/

Implementation

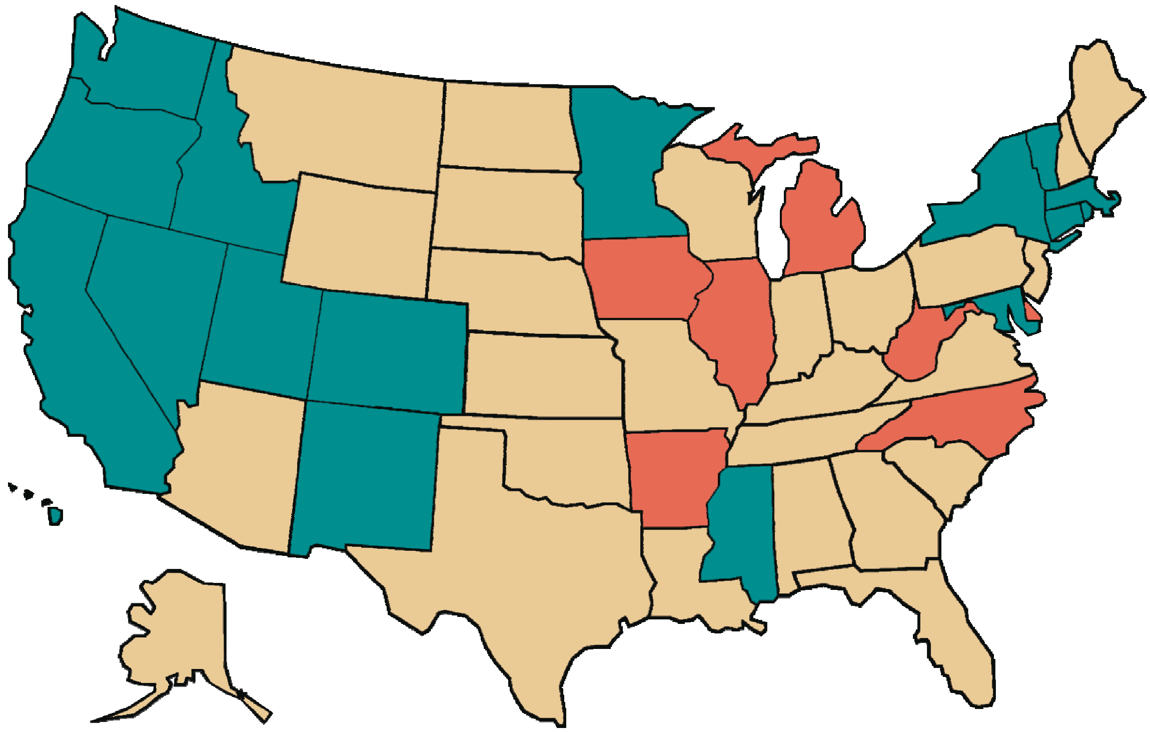
Many American citizens and legislators have referred to the implementation on PPACA as a “train wreck”. The original intent behind PPACA was to do well and improve American society. However, the current status of the PPACA implementation appears to be “backfiring”, or at least is not on the course legislators had intended it to be at this point in time. One logical explanation to the “backfiring” effect could be the state of the economy. If this health care reform act had been initiated back in the 1990s or the early 2000s, when the economy was doing well, then the results would have been significantly different.

Overall, the implementation of PPACA has caused many costs to rise and employees are concerned about their job security. Also, there is a large amount of confusion that still exists about the implications of PPACA. Many consumers are upset that the government has not provided any detailed instructions, descriptions, steps, etc. to help ease the transition process. The transition process itself is often criticized since PPACA has more of an “overhaul” effect rather than legislative “baby steps”.

Additionally, the implementation process of PPACA has been very much a “stop and go” process. There have been numerous delays, postponements, and amendments to the Act. Most recently, on January 24, 2013, The Department of Labor announced that it is delaying PPACA’s

requirement that all employers provide their employees with information about the availability of health insurance and premium tax credits through and insurance exchange ("DOL Delays PPACA's Notice of Coverage Options Requirement"). The requirement will most likely be implemented in the late summer or fall of 2013, but even this is vague. The Department of Labor has not committed when it will issue specific guidelines, instructions, and deadlines but did say that is would make sure to provide "adequate time to comply" ("DOL Delays PPACA's Notice of Coverage Options REquirement).

The federal government will create and operate exchanges where there is no state-exchange, but it is still unclear how or when the federal government will get the exchanges established and running in time for the October 2013 open enrollment period. Below is a map that illustrates the various options that states have chosen in regards to the implementation of exchanges.



The most important concern regarding the ability to successfully implement PPACA is about whether or not consumers and employers will fully understand what PPACA is and how to implement it correctly. The majority of small business owners either incorrectly thing or are not sure whether they must provide health insurance to employees by 2014. The confusion over PPACA includes 78% of small business owners who reported being unfamiliar with health insurance exchanges and how they might impact businesses (Rocco). Small business are highly concerned about insurance costs rising and are afraid of the penalties they might face as a result of simply not understanding how to correctly apply PPACA regulations to their business. The obstacle of clarity and education will be

the most significant hurdle that PPACA must overcome during the implementation stages.

The Future of PPACA

Overall, it is hard to predict what the future of PPACA holds or how it will affect the American economy. PPACA will almost certainly remain a hot topic in politics and business for years to come and will be picked apart by critics and supporters alike. However, it is important to understand that PPACA has been signed into law, it was upheld by the Supreme Court, and after Barack Obama was elected to a second term during the 2012 Presidential election, there is very little chance of PPACA being repealed. As you can see by the long history of health care reform in the United States, the subject matter is here to stay, so it is best to learn

as much as possible about PPACA, prepare for the stages of implementation, and plan ahead for any potential impacts to your business.

However, there is one experience that may help project the implications of PPACA (Maniam, Black, and Leavell 205). In April of 2006, the state of Massachusetts passed a health reform law that is similar to PPACA. The main aspect of the Massachusetts reform was to introduce an individual mandate to purchase insurance and the creation of a new program called Commonwealth Care. Commonwealth Care provided subsidized insurance for consumers that fell below 300% of the poverty line. According to the National Tax Journal Forum (2012), the results of the Massachusetts reform have been encouraging and there has been a dramatic expansion of health insurance coverage in the state (Maniam, Black, and Leavell 205).

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