

THE AFFORDABLE CARE ACT

Where Are We Now?

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Jill Hanken, Staff Attorney
Virginia Poverty Law Center
804-782-9430 x13
jill@vplc.org

Patient Protection and Affordable Care Act (ACA)*

- Comprehensive care available to all (lawfully present) Americans, at affordable cost.
- Health insurers compete on good care and customer service, not by avoiding covering people or denying them care.
- Foundation for medical practice reforms
 - Effective health care, not just volume
 - Leads to lower health care costs

*P.L. 111-148, as amended by the Health Care and Education and Reconciliation Act, P.L. 111-152 (March 23, 2010)

ACA's Major Changes

January 1, 2014

- **Medicaid expansion**(+16 million enrolled)
 - 100% federal funding for 3 years
 - Reduces to no less than 90% in 2020
- **State Health Exchanges** (+24 million insured)
 - New marketplace to compare / purchase insurance
 - Access to Federal Tax Credits = Affordability
- **Employer and individual mandates**
- **But, many improvements/protections in place today.**

NFIB v. Sebelius

132 S.Ct. 2566 (July 28, 2012)

- Among over 2 dozen federal court cases
- Actually 3 appeals from 11th Circuit, (including case of 26 states) challenging
 - “Individual Mandate”
 - Medicaid Expansion
- Potentially affecting the entire ACA
- 6 hours of oral argument over 2 days
- 140 Amicus Briefs (new record)

NFIB v. Sebelius

- #1 - Anti-Injunction Act does not bar review of individual mandate issue
 - Is the payment due from people who don't comply with the mandate a tax or a penalty?
 - Congress labeled this payment a “penalty”, while other fees in ACA were labeled a “tax”
 - Congress presumed to act intentionally; did not intend the penalty to be a tax
 - Only unanimous ruling

NFIB v. Sebelius

- #2 – Individual mandate is a valid exercise of Congress' taxing power
 - Inconsistent with AIA ruling?
 - Labels used by Congress not definitive in determining constitutionality
 - The payment operates as a tax
 - Majority also found Congress lacked authority to impose mandate under commerce clause
 - Doesn't regulate existing commercial "activity"
 - Would allow legislation ordering people to buy vegetables

NFIB v. Sebelius

- #3 Medicaid expansion is unduly coercive on States
 - Ruling (7-2) unprecedented – unknown impact on exercise of Spending Clause authority / other federal programs
 - No standards articulated for “coercion”
 - “Gun to the head” - expansion is for entirely new group of individuals (adults); not part of original agreement to participate; 10% state budgets
 - Remedy (5-4) – Federal gov’t may not terminate existing funding to a state that does not implement

Other Litigation

- Pending ACA cases involve
 - Religious freedoms
 - Medicare Advisory board
- Potential cases
 - Constitutionality of other existing laws enacted pursuant to the Commerce and Spending Clause
 - IDEA
 - §504
 - Samuel Bagenstos, U.Michigan Law School

The Bottom Line

- The ACA is constitutional
- States should move forward to full implementation

The Wild Card

- Presidential Election
- Threats/ Promises to repeal

What's happened since March 2010?

Patient's Bill of Rights New Protections for Private Health Insurance

- Federal law incorporated into Va. Code §38.2-3438 *et seq.*
- Provisions take effect at policy renewal starting on/after 09/23/10
- “Grandfathered” Plans - Existed on 03/23/10 and not substantially changed

Patient's Bill of Rights, cont'd

For ALL policies:

- No more lifetime dollar caps
- No arbitrary rescission of health coverage.
- Dependents allowed on parent's plan until 26th birthday (even if married).
 - Exception: Grandfathered group plan can exclude child with an offer of employer coverage

Patient's Bill of Rights, cont'd

For ALL policies except Grandfathered Individual Plans:

- No denial of coverage or waiting periods for kids with pre-existing conditions.
- Restrictions placed on annual limits.
(some companies have received waivers of this requirement.)

Patient's Bill of Rights, cont'd

For ALL NEW (Non-grandfathered) Policies :

- No co-pays or other out-of-pocket expenses for preventive care
- Choice of provider/pediatrician as primary physician
- Direct Access to OB/GYN
- No prior authorization for emergency services – even out of network (with same co-pay as in-network)

Patient's Bill of Rights, cont'd

- New Rights to Internal and External Insurance Appeals –Va. Code §38.2-3556 *et seq.*, 14 VAC 5-216-10 *et seq.*, www.scc.virginia.gov/boi
 - For disputes about coverage / covered services
 - Internal appeals
 - Standard
 - Urgent Care (72 hrs.) [can file external]
 - External appeals (BOI & Independent Review)
 - Standard/Expedited
 - Experimental-investigational

Ensuring Reasonable Rates

- **Premiums** based on age, geography, smoking – **not** sex or health status
- **Rate Review**
 - Federal and state government review health insurance premium increases.
 - Any proposed rate increase by individual or small group market insurers at or above 10% will be reviewed by independent experts to make sure it is justified.
 - Virginia reviews individual plans
 - Federal Gov't reviews small group plans

Ensuring Reasonable Rates

- **Medical Loss Ratio (MLR)**
 - Insurers must pay out 80¢ - 85¢ of each \$1 premium for medical benefits -- or pay rebates to consumers.
 - 80% MLR – individual and small group plans
 - 85% MLR – large group plans
 - HHS enforces reporting and rebate requirements
 - \$43 million paid to Virginians in August 2012
 - Does not apply to “self-insured” plans

Pre-existing Condition Insurance Plan (PCIP)

- Temporary High Risk Pool started August 2010
- U.S. citizen or lawfully present
- Uninsured for at least past six months
- Pre-existing condition(s) or denied coverage due to health

• Premiums:

Age	Standard Option	Extended Option	HSA Option
0-18	\$93	\$125	\$97
19-34	\$140	\$188	\$145
35-44	\$168	\$226	\$174
45-54	\$214	\$288	\$222
55+	\$297	\$401	\$309

- Deductibles for covered benefits (except preventive services), & co-pays
- Apply on-line www.pcip.gov; www.healthcare.gov

More Early Reforms

- **Small employer tax credits** available up to 35% of premium cost (up to 50% in 2014-2016).
 - Small firms with ≤ 25 full-time equivalent employees
 - average annual wages under \$50,000
 - employer covers 50% of the premium cost.
- **Grants** available to states:
 - to set up an Office of Health Insurance Consumer Assistance
 - to establish health insurance exchanges
 - \$180+ million to Virginia!
- **Community Health Centers** - Begins new \$11 billion investment
- **Training** initiatives for primary care docs, nurses, other professionals

Medicare Reforms

- **Closing the Rx “Doughnut Hole”**
 - \$250 Rebate (2010)
 - 50% discount on brand-name drugs (2011)
 - **closes doughnut hole entirely by 2020**
- **New preventive benefits (January 2011)**
 - add comprehensive annual check-up, other prevention benefits
 - no out-of-pocket costs

Medicare Reforms (cont'd)

- **Improves solvency of Medicare Trust Fund**
 - slows growth in Medicare spending from 2010 to 2019
 - Cuts overpayments to Medicare Advantage Plans
- **Dual Eligible Demonstration Project**
 - Virginia proposal submitted – awaiting CMS action
 - Merge Funding into single capitated rate
 - Covers acute / long term care / supplemental services

WOMENS' PREVENTIVE HEALTH

- New requirements apply to plan renewals after 8/1/2012*
 - Required services:
 - Well-woman visits
 - Diabetes screening for pregnant women
 - Domestic violence screening, counseling
 - Contraceptives, education, counseling
 - Breastfeeding support, supplies, counseling
 - HPV testing for women age 30 or older
 - Sexually transmitted infections counseling
 - HIV screening, counseling
 - No co-pays
- *some exceptions (e.g. grandfathered plans, nonprofit religious schools and churches)

Virginia Health Reform Initiative (VHRI)

<http://www.hhr.virginia.gov/Initiatives/HealthReform>

- Dec. 2010 Health Reform report with 28 recommendations
- Fall 2011 – Report on Health Benefit Exchange
- 2012 - Recommendation on Essential Health Benefits
 - Anthem PPO

Virginia Center for Health Innovation

- Initiative recommended by VHRI
- Develop value-driven models for health delivery
 - Save \$
 - Increase quality
 - Improve health & worker productivity
- Funded by hospitals, health plans, medical society, some law firms
- <http://vahealthinnovation.org>

Consumer Assistance SCC Bureau of Insurance

- Received federal \$ to enhance consumer assistance
 - Translations of materials/forms, telephone language line
 - Outreach events and materials on ACA
 - Online filing of complaints and security to protect consumer info
 - More oversight of consumer assistance provided
- Enhanced websites for Ombudsman's Office and Office of Independent External Review
- Virginia did not seek 2nd year funding
- www.scc.virginia.gov/boi/

Virginia Legislative Activity

- 2010 – Anti-mandate legislation adopted
- 2011 Va. Code amendments on private insurance reforms and appeals
- 2011 Legislative authorization to “plan” Health Benefits Exchange with VHRI
 - Includes Governor’s amendment to restrict Exchange plans coverage of abortions
- 2012 – 6 Exchange Bills – Only SB 496 (Watkins) carried over

Exchange – Consumer Issues

- Where is Exchange Housed
- Who runs it
 - Governing Board Composition
 - Consumer Representation
 - Conflicts of Interest
- Selection of Plans – Active / Passive
- Preventing Adverse Selection
- Role of Brokers / Navigators

Exchange – Consumer Issues

- Operation of Exchange
 - Seamless transitions between Exchange, Medicaid, FAMIS
 - Consumer Friendly Process
 - No wrong door
 - Online and face-to-face applications
 - Language / ADA Access
- DSS - “CommonHelp”
 - Online applications for all benefit programs –platform for Exchange
 - Improved data-sharing and connect to federal “hub”
 - <https://commonhelp.virginia.gov/access/>

Exchange Implementation

- State Exchange Blueprint due on November 16, 2012
 - State Exchange
 - Federal-state Partnership Exchange
 - Default: Federally Facilitated Exchange
- What will Virginia do?

Medicaid Expansion

- U.S. Citizens & some legal immigrants under age 65.
- **Income eligibility increases to 133% FPL**
 - \$14,857/yr. individual; \$30,657/yr. for family of 4
 - New gross income standard (Modified Adjusted Gross Income – “MAGI”) with 5% “standard deduction”.
 - Tax Filing Units v. Medicaid Assistance Units
 - No Asset Limit for newly eligible under 65 and non-LTC
 - Newly eligible adults will get a benchmark benefit plan

Medicaid Expansion

- \approx 400,000 adults in Virginia will be “newly eligible”
 - Nearly $\frac{1}{2}$ of Virginia’s one million uninsured
 - Parents over 30% FPL
 - Disabled waiting for Medicare
 - Kids aging out of Medicaid at age 19
 - Impoverished childless adults

Medicaid Expansion Costs / Benefits

- **Federal funding:**
 - 100% cost of newly eligible from 2014-2016
 - 95% in 2017
 - 90% in 2020 and beyond
- **State savings:**
 - Hospital DSH payments
 - State funded mental health services
 - Other state funded programs
- **State cost is small fraction of new federal \$\$**

Other ACA Medicaid Changes (2014 unless noted)

- Medicaid until age 26 for all “aging out” of foster care
- New Community Based Long-Term- Care Options
- Higher Rebates for Medicaid Rx
- Increase Primary Care fees to Medicare level in 2013
- Increase CHIP match & CHIP for some state employees

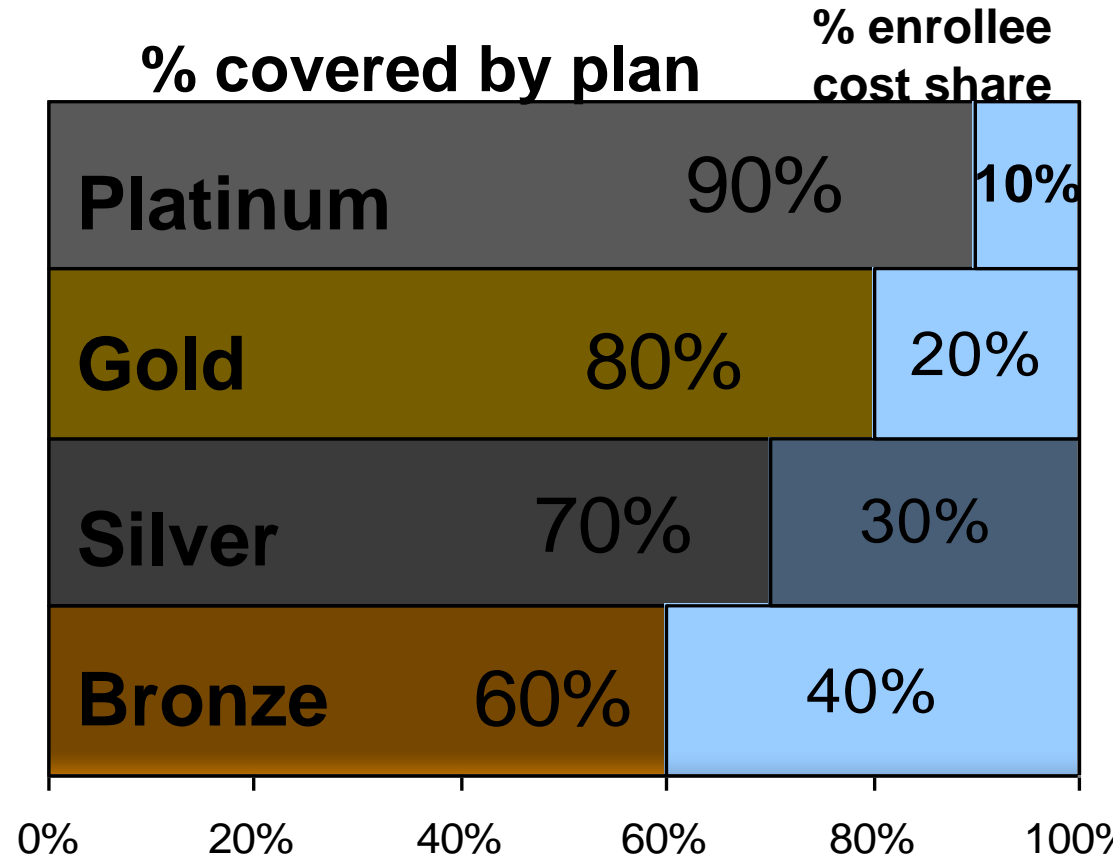
Health Benefit Exchange

- Marketplace to compare & purchase private insurance
- Open to people without affordable job-based coverage and small employers
 - Affordable employer coverage means the employee-only premium is $\leq 9.5\%$ of HH income
 - Plan provides a minimum value (covers 60% of total costs)
- Standardized coverage – four “metal tiers”
- Premium assistance up to 400% FPL (\$92,200 for family of 4)
- Sliding scale deductibles/co-pays and out-of-pocket caps, to increase affordability & reduce medical bankruptcy

Coverage Level Options in the Exchange

4 standard levels, plus a catastrophic plan (for people under age 30 or if no other coverage is affordable)

Options vary by % of average covered benefits paid by the plan vs. % covered through out-of-pocket enrollee cost sharing



All coverage has *essential benefits*: hospital, ER, mental health, maternity, Rx, preventive care, chronic disease management, pediatric (oral/vision) and more.

Subsidies for Exchange Plans

- Federal Tax Credits Subsidize Premiums
 - Advanced credit can be paid directly to insurance plan
 - End of year reconciliation when taxes filed
 - CBO estimates 20 million Americans will benefit, with average subsidy \$5,000/yr
- Credit = premium for 2nd lowest cost Silver “benchmark plan” minus “expected contribution” (2%-9.5% income)
- Can choose different plans to pay more or less

Exchange Subsidies - Example

- **Family of Four with Income of \$50,000**
 - Income = 224% FPL
 - Expected Family Contribution: \$3,500 (7%)
 - Premium for Silver Benchmark Plan: \$9,000
 - Premium Tax Credit: \$5,500 (\$9,000 - \$3,500)
- They could choose a better plan and pay more or pay less by choosing a Bronze plan.
 - Premium for Bronze Plan: \$8,000
 - Family pays \$8000 (premium) - \$5500 (Tax Credit) = \$2500

Limits on Out-of-Pocket (OOP) Expenses

- OOP = Deductibles, coinsurance, copayments, and non-covered costs
- OOP costs capped, depending on family income.
 - E.g. family income \leq 200% FPL, OOP limit \approx \$4,000.
- Cost-sharing subsidy for those with income under 250% FPL who buy Silver plan.

Individual Mandate (2014)

- **Keeping coverage affordable** requires spreading risk over large pool that includes healthy people
- **Who Is Exempt?** No penalty for :
 - Uninsured if lowest-price Exchange plan costs > 8% of family income
 - Anyone with income below the tax filing threshold (e.g. \$9,500 individual/\$19,000 couple in 2011)
 - Those excused for financial hardship (to be defined)
 - Religious objectors
 - Native Americans
 - Undocumented immigrants (also ineligible for Medicaid or premium help)
 - Incarcerated persons
 - Those with a gap in coverage of less than 3 months.

Individual Tax Penalty (2014)

- **If Not Exempt, federal income tax penalty:**
 - Based on # uninsured in a family.
 - Maximum family penalty is greater of 3X individual penalty, or 2.5% of family income, when fully phased in:
 - 2014 - \$95 /person or 1% family income
 - 2015 - \$325/person or 2% family income
 - 2016 - \$695/adult; \$375/child or 2.5% family income (max. \$2,085/family)
- Annual inflation updates penalty after 2016.
- The maximum family penalty of \$2,085 would be **less than 1/6 current cost of insuring a family.**

Will an employer face a penalty in 2014?

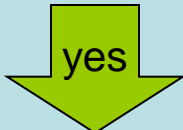
**Are you are large employer?
50+ full-time equivalent workers**



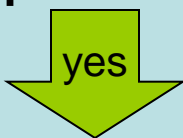
Are any of your full-time employees in a subsidized exchange plan?



Do you have more than 30 full-time employees?



Do you provide health insurance?

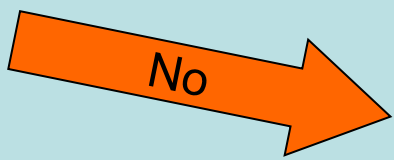
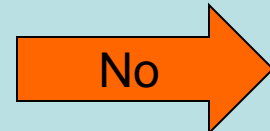
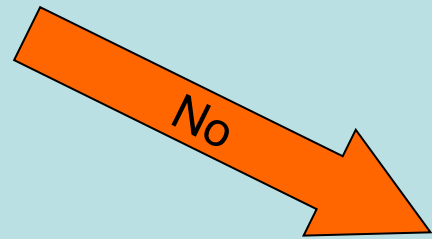


Pay penalty, lesser of:

$\$2,000 \times (\# \text{ of full-time workers} - 30)$

OR

$\$3,000 \times \# \text{ of full-time workers who receive credits in the exchange}$



No penalty

Pay penalty
 $\$2,000 \times (\# \text{ of full-time workers} - 30)$

Health Reform Coverage Options by Income

Family Income ↑

>\$92,200 for a family of four;
>400% of FPL

- Job-based coverage, or
- Full-cost coverage in the exchange

\$69,150-\$92,200
300-400% of FPL

- Job-based coverage, or
- Subsidized exchange coverage: premiums capped at **9.5%** of income

\$46,101-\$69,150
200-300% of FPL

- Job-based coverage, or
- Subsidized exchange coverage: premiums capped at **6.3 – 9.5%** of income

\$30,658-\$46,100
133-200% of FPL

CHIP

- Job-based coverage, or
- Subsidized exchange coverage: premiums capped at **3% - 6.3%** of income

<\$30,657 for a family of four
< 133% FPL

Medicaid

Medicaid IF option adopted

Children

Adults

(non-disabled adults, not eligible for Medicare)

Which Virginians will Gain Coverage?

Of the over 1 Million Uninsured Virginians:

- 400,000 Adults newly eligible for Medicaid if option adopted
- 100,000 Adults and Children eligible for subsidized Exchange coverage
- 100,000 uninsured kids who qualify for Medicaid or CHIP right now will enroll
- Remainder will be uninsured . . .

Who Will Still be Uninsured?

(assuming adoption of Medicaid expansion)

- **U.S. Citizens**

- Who would pay more than 8% of income for most affordable exchange coverage will have no penalty
- Who are exempt from the mandate
- Who can't afford insurance costs (penalty applies)
- Who choose not to be covered (penalty applies)

- **Legal Permanent Residents**

- Adults / children who are excluded from Virginia Medicaid /FAMIS under state law
- Can purchase from Exchange and qualify for help with premiums
- But may still be unaffordable

- **Undocumented**

- no Medicaid (except for emergencies)
- no premium help, and cannot buy at full cost from exchange

Key Statutory Provisions

- Patient Protection and Affordable Care Act of 2010 (PPACA) Pub. L. No. 111-148, as amended by Health Care and Education Reconciliation Act of 2010 (HCERA) Pub. L. No. 111-152
- §1001: Patient Rights provisions
- §1103: Internet portal to identify/compare coverage options
- §1201: Children's Preexisting Condition
- §1301--02: Qualified plans & essential health benefits
- §1311--12: Establishment of state Exchanges, navigator
- §1331: Basic Health option
- §1401--02: Subsidies (premiums and cost---sharing)
- §1411--13: Exchange/subsidy eligibility processes
- §1501: Minimum Essential Coverage
- §2001: Medicaid expansions
- §2002: MAGI
- §2101: Medicaid/CHIP, maintenance of effort
- §2201: Medicaid/Exchange enrollment coordination

Federal Regulations and Guidance

- <http://www.healthcare.gov/law/resources/regulations/index.html>
- 50+ from 6 federal agencies
- Final regulations issued on Medicaid eligibility, establishment of exchanges, qualified health plans, student health coverage, women's preventive health services.....
- More in the pipeline

Websites for More Information

- Official Gov't Website – www.healthcare.gov
- Families USA – www.familiesusa.org
- National Health Law Program – www.healthlaw.org
- Center on Budget and Policies Priorities – www.cbpp.org
- Kaiser Family Foundation – www.kff.org
- Georgetown Center for Children and Families – ccf.georgetown.edu