STATE EMPLOYMENT LAWS

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Health Care Reform

On March 23, 2010, President Obama signed into law a comprehensive health care reform bill, the Affordable Care Act (ACA). The ACA includes numerous reforms aimed at improving the U.S. health care delivery system, controlling health care costs and expanding health coverage. The ACA's reforms have staggered effective dates, with many key reforms taking effect in 2014.

The ACA is a federal law and federal agencies, namely the Departments of Labor, Health and Human Services and the Treasury, are primarily responsible for the law's overall enforcement. However, the ACA also creates significant responsibilities for state governments. A number of the ACA's key health care reforms will be carried out at the state level.

This Employment Law Summary provides a high-level overview of selected ACA reforms to be implemented by state governments, and highlights the progress being made in Florida.

HEALTH INSURANCE EXCHANGES

The ACA requires each state to have a health insurance exchange (Exchange) to provide a competitive marketplace where individuals and small businesses will be able to purchase affordable private health insurance coverage, effective Jan. 1, 2014. According to the Department of Health and Human Services (HHS), the Exchanges will make it easier for individuals and small businesses to compare health plan options, receive answers to health coverage questions, determine eligibility for tax credits for private insurance or public health programs and enroll in suitable health coverage.

Individuals and small employers with up to 100 employees will be eligible to participate in the Exchanges. However, states may limit employers' participation in the Exchanges to businesses with up to 50 employees until 2016. Beginning in 2017, states may allow businesses with more than 100 employees to participate in the Exchanges. Enrollment in the Exchanges begins on **Oct. 1, 2013**.

States have three options with respect to their Exchanges. A state may:

- Establish its own state-based Exchange;
- Have HHS operate a federally facilitated Exchange (FFE) for its residents; or
- Partner with HHS so that some FFE Exchange functions can be performed by the state.

In addition, a state may elect to partner with HHS so that the state runs the Exchange's small business health options program (SHOP) component and HHS runs the Exchange's individual market component.

States that intend to pursue a state-based Exchange or a state partnership Exchange must submit an application to HHS for its approval. If a state does not move forward with its Exchange or select the partnership model, HHS will operate the FFE in the state.

In December 2012, Governor Rick Scott (R) announced that Florida will not operate a state-based Exchange for 2014. Effective Jan. 1, 2014, HHS will operate the FFE for Florida residents.

Florida is moving forward with an initiative to create a web portal for small businesses (employers with 50 or fewer employees) to shop for health coverage. This program, which is called Florida Health Choices Corporation, was created before the ACA became

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. It broadly summarizes state statutes and regulations generally applicable to private employers, but does not include references to other legal resources unless specifically noted. Readers should contact legal counsel for legal advice.

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law and it does not comply with the ACA's standards. In 2012, Florida Health Choices began rolling out the marketplace in several phases. The roll out process is estimated to take 18 months, with more vendors, products and web-based functionality added in each phase. More information on Florida Health Choices is available at: http://myfloridachoices.org.

ESSENTIAL HEALTH BENEFITS

Beginning in 2014, the ACA requires non-grandfathered plans in the individual and small group markets, both inside and outside of the Exchanges, to offer a core package of items and services. This core package is known as essential health benefits (EHBs).

Under the ACA, EHBs include items and services in 10 general benefit categories, including hospitalization, maternity and newborn care, mental health and substance use disorder services and prescription drugs.

The ACA also directs that EHBs should be equal in scope to benefits offered by a typical employer health plan. To meet this requirement in every state, HHS further defines EHBs based on a state-specific benchmark plan. States can select a benchmark plan from among the following options:

- The largest plan by enrollment in any of the three largest products by enrollment in the state's small group market;
- Any of the largest three state employee health benefit plans options by enrollment;
- Any of the largest three national Federal Employees Health Benefits Program (FEHBP) plan options by enrollment; or
- The HMO plan with the largest insured commercial non-Medicaid enrollment in the state.

If a state does not select a benchmark, HHS will select the largest plan by enrollment in the largest product by enrollment in the state's small group market as the default benchmark plan.

The selected benchmark plans have been finalized for benefit year 2014. Florida defaulted to a plan from the largest small group product as its EHB benchmark. More information on Florida's default benchmark plan is available on The Center for Consumer Information & Insurance Oversight (CCIIO) website.

INSURANCE RATE REVIEW

To hold insurance companies accountable for their proposed rate hikes, the ACA requires HHS to establish a process to review the reasonableness of certain premium increases.

Effective Sept. 1, 2011, insurers seeking rate increases of **10 percent or more** for non-grandfathered plans in the individual and small group markets must publicly disclose the proposed increases, along with justification for the increases. After 2011, states may work with HHS to set state-specific thresholds for disclosure of rate increases, using data and trends that reflect cost trends particular to a state.

The proposed increases must be reviewed by either state or federal experts to determine whether they are unreasonable. States with effective rate review systems will conduct their own reviews, but if a state does not have the resources or authority to conduct rate reviews, HHS will conduct them.

According to HHS, Florida has an effective system for reviewing insurance rates. In Florida, the Florida Office of Insurance Regulation (FOIR) conducts rate reviews for the individual and small group markets. However, HHS reviews rates individual and small group associations that are not sitused in Florida because the state does not have an effective rate review system for these products.

HEALTH INSURANCE REFORMS

The ACA requires sponsors of self-funded and insured group health plans to make changes to their plans' design and administration over the next several years. For example, effective for plan years beginning on or after Sept. 23, 2010, the ACA requires:

- Group health plans to extend dependent coverage up to **age 26**; and
- Non-grandfathered group health plans to follow minimum requirements for **external review** of claims appeals.

Health Care Reform

Dependent Coverage Requirements

Although the ACA creates a host of federal standards, the health insurance market is primarily regulated at the state level. Some states may have insurance laws that go beyond the federal minimums established by the ACA. For example, some states extend dependent coverage beyond age 26.

In Florida, an insured may choose to insure his or her adult child until the end of the calendar year in which the child reaches **age 30**, if the child is:

- Unmarried and does not have a dependent of his or her own;
- A Florida resident or a full-time or part-time student; and
- Not provided coverage as a named subscriber, insured, enrollee or covered person under any other group, blanket or franchise health insurance policy or individual health benefits plan, or is not entitled to benefits under Medicare.

The ACA amended the federal tax code so that, for federal tax purposes, the value of employer-provided coverage for young adult dependents is excluded from the employee's gross income through the tax year in which the dependent child turns 26. However, health coverage for an adult child after the year in which the child turns age 26 will be subject to federal tax, unless he or she qualifies as a tax dependent.

Florida has no state individual income tax. Therefore, dependent coverage of adult children will be tax-free at the state level.

External Review Process

The ACA requires insured plans to comply with their state's external review process if it includes certain minimum consumer protections. If a state's external review process does not include the required minimum consumer protections, health insurers in the state must comply with a federal process for conducting external reviews.

HHS has concluded that the Florida external review process does not include the minimum consumer protections. Thus, until Florida makes changes to its external review process, insured health plans in Florida must conduct external appeals in accordance with a federal external review process.