

ALASKA STATE LEGISLATURE



SENATOR HOLLIS FRENCH

April 1, 2011

Senator Bert Stedman
Co-Chair, Senate Finance Committee
State Capitol, Room 516
Juneau, AK 99801

Senator Stedman,

First, I would like to thank you and the other members of the Senate Finance Committee for your consideration of Senate Bill 70 on Monday, March 28. This letter addresses several questions that came up during that hearing.

What language is required to comply with federal law?

You asked which provisions of SB 70 were mandated by the Patient Protection and Affordable Care Act. What follows is a sectional analysis answering that question.

Section 1 of the legislation

The intent language in paragraphs 1 and 2 comes from section 1311(b)(1) of the PPACA.

The language in paragraphs 3-5 is not mandatory.

Section 2 of the legislation

Sec. 21.54.200 establishes the Alaska Health Benefit Exchange.

The PPACA leaves the choice of structures for the exchange – governmental agency or nonprofit – up to the states in section 1311(d)(1).

Sec. 21.54.210 establishes the Alaska Health Benefit Exchange board.

The PPACA does not mandate a particular exchange governance structure.

Sec. 21.54.220 of the legislation relates to the duties and powers of the Alaska Health Benefit Exchange.

- (a)(1) is mandated in section 1311 (b)(1)(A)
- (a)(2) is mandated in section 1311(b)(1)(B)
- (a)(3) is mandated in section 1311(d)(4)(C)
- (a)(4) is mandated in section 1311 (c)(6)
- (a)(5) is mandated in section 1311(d)(4)(C)
- (a)(6) is mandated in section 1311(d)(4)(A)
- (a)(7) is mandated in section 1311(d)(4)(D)
- (a)(8) is mandated in section 1302(d)(2)(A)
- (a)(9) is mandated in section 1311(d)(4)(E)
- (a)(10) is mandated in section 1311(d)(4)(F)
- (a)(11) is mandated in section 1311 (d)(4)(G)
- (a)(12) is mandated in section 1311(b)(1)(B)
- (a)(13) is mandated in section 1311(d)(4)(H)
- (a)(14) is mandated in section 1311(d)(4)(I)
- (a)(15) is mandated in section 1311(d)(4)(J)
- (a)(16) is mandated in section 1412(a)(1)
- (a)(17) is mandated in section 1311(i)
- (a)(18) is mandated in section 1311(e)(2)
- (a)(19) is not mandatory
- (a)(20) is mandated in section 10108(d)(2)
- (a)(21) is mandated in section 1311(d)(6)
- (a)(22) is not mandatory
- (a)(23) is mandated in section 1313(a)

(a)(24) is mandated in part by section 1313(a)(1).

(a)(25) is mandated in section 1313(a)(2)

(a)(26) is mandated in section 1311(d)(2)(B)(ii)

(a)(27) is not mandatory

(a)(28) is not mandatory

(a)(29) is not mandatory

(b)(1) is not mandatory

(b)(2) is not mandatory

(b)(3) is not mandatory

(c) is mandated in section 1311(d)(5)

(d) is mandated in section 1312(d)(4)

Section 21.54.230 relates to Health Benefit Plan Certification.

(a)(1) is mandated by section 1302(b)(1)(J), 1302 (b)(4)(F) and 1311(d)(2)(ii)

(a)(2) is not mandatory

(a)(3) is mandated in section 1303(e), 1311(c)(3), and 1311(d)(2)

(a)(4) is mandated in section 1302(c)(1) and section 1302(c)(2)

(a)(5) is mandated in section 1301(a)(1)

(a)(6) is mandated in section 1311(c)(1)

(a)(7) is mandated in section 1311(e)(1)(B)

(b) is mandated in section 1311(e)(1)(B)(i through iii)

(c)(1) is mandated in section 1311(e)(2)

(c)(2) is mandated in 1311(e)(3)(A) and (B)

(c)(3) is mandated in 1311(e)(3)(C)

(d) is not mandatory

(e) is mandated in section 1302(b)(1)(J) and 1311(d)(2)(B)(ii)

Section 21.54.240 relates to exchange funding

(a) is mandated in section 1311(d)(5)(A)

(b) is mandated in section 1311(d)(7)

Section 21.54.250 relates to regulations; it is not mandatory

Section 21.54.260 relates to an exchange's relation to other laws; it is mandated by 1321(d)

Section 21.54.270 relates to definitions of terms used in this legislation

Section 3 of the legislation

The PPACA does not mandate the classification of employees in the partial exempt service

Section 4 of the legislation

The PPACA does not mandate that an Exchange's Executive Director is defined as a public official

Section 5 of the legislation

The PPACA does not mandate the exchange governance structure.

Section 6 of the legislation

The PPACA does not mandate the exchange governance structure, or the transitional provisions in this section given the bill's selection of board governance.

Section 7 of the legislation

The PPACA does not require states to grant regulatory authority.

Section 8-10 of the legislation relate to effective dates

The PPACA requires HHS to make a determination on Jan 1, 2013 regarding a state's exchange implementation status. Sec. 10 of the legislation fully implements the exchange starting on July 1, 2012, to ensure 6 months of operation prior to this federal determination, but the specific July 1, 2012 effective date is not mandated by the PPACA.

IHS Recipients

Senator Olson asked how this legislation would affect Indian Health Service (IHS) recipients. As mentioned during the March 28 hearing, health reform considers IHS coverage as benefits which satisfy the requirement to have insurance, so no penalty will be assessed if a beneficiary doesn't carry private insurance coverage. However, participation in the exchange – whether to acquire private health coverage, or get connected with other public programs, like Medicaid – will be an option for IHS beneficiaries.

If an IHS recipient chooses to purchase health insurance through the exchange, the individual is entitled to free medical services - without cost sharing or copayment requirements - if the recipient's household income falls below 300% of the poverty line. While the poverty line is adjusted annually, this year, for a family of four in Alaska, that level of income is \$83,000.

During the committee meeting the exchange's enrollment periods were discussed, and it was put on the record that most Alaskans can buy or switch health insurance policies once per year. For IHS recipients, monthly open enrollment periods allow beneficiaries to more readily access health insurance policies, to supplement medical services provided by the Indian Health Service.

In closing, health programs operated by the Indian Health Service, Indian tribes, tribal organizations and Urban Indian organizations are the payer of last resort for services provided through those programs, when private coverage is also carried by an individual. The effect of this provision in the Affordable Care Act will bring needed funds into the IHS system when beneficiaries carry additional coverage, helping to finance health benefits provided to program recipients, while giving added flexibility for IHS beneficiaries.

Uncompensated Care in Alaska

Senator Thomas asked about the quantity of uncompensated care delivered in Alaska each year, to individuals who cannot pay for the care they receive. According to Families USA, total uncompensated health care delivered in Alaska to the uninsured amounted to \$174.7 million during 2010. This is up from \$124.8 million in 2005, demonstrating that our problem has been growing.

The dollar amounts are calculated based on the average payout for the uncompensated medical services provided, if private insurance had paid the bill.

Families USA is a national nonprofit, non-partisan organization dedicated to the achievement of high-quality, affordable health care for all Americans. For more information, the report can be accessed at this address:

http://www.familiesusa.org/assets/pdfs/Paying_a_Premium_rev_July_13731e.pdf

Dental Coverage

Senator McGuire asked about dental benefits under the Alaska Health Benefit Exchange.

In general, children's oral health benefits will be required as part of an essential health benefit package.

For adults, exchanges have to allow stand-alone dental plans within the exchange. However, these dental policies don't have to meet the actuarial levels as defined for health benefit plans.

To help consumers understand what they can expect from a health plan they select, exchange policies will be ranked by 'actuarial value' within the exchange. Actuarial value is defined as the percentage of total health costs, on average, that a policy will cover for any individual, taking into account all cost sharing provisions under the policy. For the most basic plans, the actuarial value must be greater than 60%, or otherwise the policy will be considered 'catastrophic' coverage. Dental benefits won't be categorized or judged by these standards.

The legislation doesn't currently require dental coverage for adults as a mandated health benefit. States do have an option of mandating benefits beyond the federal essential benefit package, but if they choose to do so, the state will be responsible for the cost of the additional benefit.

Opting Out of Health Reform

Senator McGuire asked about the federal requirement to have health coverage. While the question seemed more philosophical rather than logistical, I'd like to provide additional details about the Exchange's role in the 'opt-out' process.

The requirement that all Americans acquire some form of health coverage, with few exceptions, was passed by Congress in the Affordable Care Act. Starting in 2014, financial penalties will be assessed if individuals don't meet that requirement. Senate Bill 70 doesn't change this provision. However, the exchange does have an important role relating to a few 'opt-out' provisions, provided for under federal law.

The penalty for not having health insurance won't be levied if a person is part of a religion opposed to acceptance of benefits from a health insurance policy. Incarcerated individuals and individuals/families that earn less than the threshold where an income tax return must be filed will be exempted. Finally, anyone who will have to pay more than 8% of income for health insurance – after taking into account employer contributions and tax credits to make coverage affordable – will be exempt from the requirement to have health coverage. The health exchange will be charged with administering these exemptions in Alaska.

Those covered by Medicaid, S-CHIP programs, Medicare, TRICARE, or employer provided health insurance will be considered 'insured' for the purposes of the Affordable Care Act, as well, in addition to IHS beneficiaries, as described above.

Regional Exchanges

Senator Hoffman asked during the March 28 hearing about regional health insurance exchanges, and whether they were considered when crafting the legislation. The Affordable Care Act specifically allows for the creation of regional health exchanges, under Sec. 1311(f)(1).

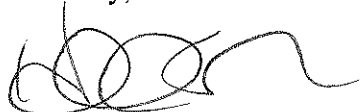
The act requires member states of any regional exchange to consent to such an arrangement, and would require all member states to pass enabling legislation.

A regional exchange, while potentially lowering costs, has added complexities when compared to a state based exchange. In addition to finding partner states who can agree on terms and conditions with Alaska, member states would have to come up with a regional structure that still honors state consumer protection laws, state dispute resolution practices, state mandated benefits, and state insurance oversight, all responsibilities that individual states continue to hold under the Affordable Care Act.

In short, a regional exchange was ruled out by my office during initial drafting of Senate Bill 70 as we felt it required action from the executive branch, which wasn't occurring at the time.

Thank you for consideration of the legislation, and don't hesitate to contact my office if additional questions come to mind.

Sincerely,

A handwritten signature in black ink, appearing to read "Hollis French", with a stylized, flowing script.

Senator Hollis French