Updated 12/14/2011

In the Spotlight: Halfway to Health Care Reform

Almost two years have passed since health care reform was signed into law, and the implementation process is well underway. A handful of impactful provisions began in late 2010 and several others went into effect during 2011 but 2012 will be altogether different. In addition to the implementation of several provisions described below, this will be a seminal year for the Affordable Care Act (ACA) because it's when we'll get clarity about questions which have been on everyone's mind since the law passed:

- *Is it constitutional?*
- *If it is indeed constitutional, will it get repealed or replaced next year?*
- *If it weathers today's constitutional and political challenges, is my state prepared to actually get the job done?*

Answers to each of these questions, discussed in this brief, will begin to crystallize in coming months. They will determine not only the fate of health care reform's most transformative changes slated for 2014 – like the law's Insurance Reforms and the Individual Mandate – but how the nation's health care system functions in the short term as well.

Reforms Going Into Effect

Several ACA provisions either go into effect or ramp up throughout 2012. Below is basic information about some of the most important; click the links for details on each.

Provision	What it Means in a Nutshell	In Effect
Accountable Care Organizations	New models of care coordination for Medicare	January
Annual Fee on Pharmaceutical Companies	Fee of $2.5 billion	Tax year 2012
Comparative Effectiveness Research	Move towards promoting evidence-based medicine	January
Consumer Owned and Oriented Plans	Creation of new insurers created and run by members	January
Medicare Advantage Payment Changes	Phasing in of new payment models	January
Medical Loss Ratio rebates	Enrollee rebates if insurers fail to meet MLR requirements	January
Uniform Summaries of Benefits & Coverage	Introduction of forms intended to help consumers shop	Delayed - TBD
W-2 changes *(and other employer impacts)*	Large employers must report health benefits differently	Tax year 2012
Women's Preventative Health Benefits	Specific services must be provided at no cost share	Plan years on or after August 2012

Rules Needed

Regulations that will serve as the building blocks for many longer-term provisions – like defining "Essential Health Benefits" and final rules on Exchanges and Insurance Reforms, among others – are also expected to be issued by the federal government during 2012. The importance of such regulations being released in a timely and predictable manner cannot be overstated, as insurers and other stakeholders need adequate time to prepare for these seismic changes on the horizon.

Administrative Simplification

In addition to its many new provisions, the Affordable Care Act also amends or expands upon certain existing laws. For example, the Administrative Simplification section of ACA builds upon the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Among other things, it requires HHS to adopt a set of consensus-based "operating rules" for HIPAA covered transactions – business rules and guidelines for electronic transactions with health plans; assign each insurer with a unique, standard Health Plan Identifier; and create a standard for electronic funds transfer. These and other changes, to be implemented between 2012 and 2016, will result in a single format for claims, remittance advice, service authorization, eligibility verification and claims status inquiries – allowing the health care system as a whole to "speak the same language" better than it does today. For more detail, a good source is the Centers for Medicare & Medicaid Services (CMS) website.

Clarity on Constitutionality

On the day ACA was signed into law, arguments about its constitutionality began, thus triggering a pile-on where legal challenges were filed in (and on behalf of) dozens of states and calling into question various components of the law. More than eighteen months later, amidst judicial disagreement at the federal district court level, the United States Supreme Court agreed to hear the case. Oral arguments will be held in late February or early March 2012, with a ruling expected by June.

The court agreed to address a range of issues but at the heart of the matter is:

- Whether or not it is constitutional for the government to require the purchase of health insurance through the individual mandate or face a federal penalty, and
- Whether or not the mandate is "severable" from the rest of the law. If the mandate is severable, the rest of the law (minus the mandate) can stand. If found "inseverable", the entire law could be struck down.

What will result is unclear at this point: the entire law could be upheld, certain specific provisions could be struck down, or the Court may decide a definitive decision is premature.

Public Opinion and Political Uncertainty

A November 2011 Kaiser Family Foundation poll measuring national support for ACA shows that while Americans generally like the individual components of ACA, they are somewhat more likely to have an unfavorable view of the law as a whole. Support across the country predictably falls along partisan lines. With each Republican presidential front-runner vowing to repeal ACA, health care reform will assuredly be a hotly contested policy issue during the 2012 campaign season.

Federal Elections

Currently, the U.S. House of Representatives is controlled by a Republican majority and the Senate by Democrats. In addition to the presidential race, all 435 House seats and 33 Senate seats are up for grabs in 2012. These election outcomes – coupled with the Supreme Court decision – will determine what happens to health care reform. If the Democrats maintain control of the White House and Senate, the ACA will likely be fully implemented. If Republicans prevail, an effort to repeal and/or replace or defund the law is inevitable.

State Elections

Twenty-six states are embroiled in the constitutional challenge of ACA. Others have passed legislation or resolutions in opposition of the law; many have begun implementation, and others are taking a wait-and-see approach. While generally state laws are preempted by federal law, state legislatures hold considerable influence about how the federal health care reform will be implemented. This is certainly true in North Carolina, since support of the law tracks closely with political affiliation – and because all 120 House seats and 50 Senate seats in the General Assembly are up for election in 2012.

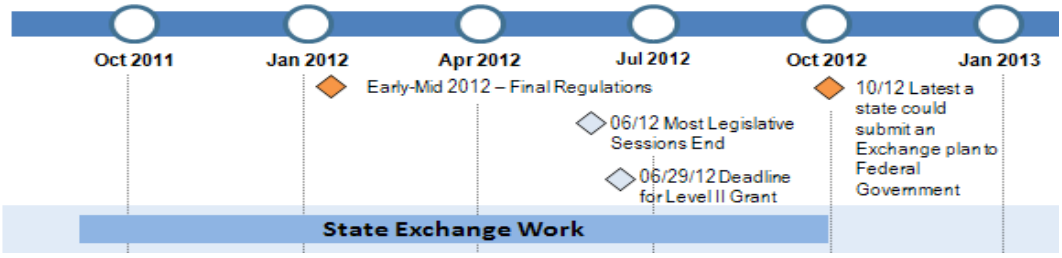
Exchanges: Laying the Groundwork for 2014

Beginning in 2014, health insurance "exchanges" are intended to be the insurance marketplace for millions of Americans; they will provide access to ACA's generous health insurance subsidies, as well serve as the entry point for state-run programs like Medicaid and CHIP. If states plan to operate their own Exchanges in 2014, they must take the necessary steps including applying for and receiving approval from HHS by January 2013. Alternatively, states can opt to have the federal government run the Exchange in their state.

Given that federal regulations governing the Exchange have not yet been finalized (or in some cases not yet issued) states are operating in a highly uncertain environment with looming deadlines. At this time, the State of North Carolina intends to move forward with plans to apply for a state based Exchange in 2012. In August of 2011, North Carolina's Department of Insurance (DOI) was awarded a $12 million Level I Exchange grant. These funds will be used for focus groups, planning for the NC Exchange and meeting the requirements to apply for a Level II grant. Also in 2012, the NC General Assembly will have to determine whether it will pass enabling legislation to provide the legal authority to establish and operate an Exchange. In 2011, HB 115 passed the NC House but was never taken up by the NC Senate.

Both states and the federal government will be very focused on Exchanges in 2012. Stakeholders are advocating for the Exchange rules issued and/or finalized by early 2012. Many are also seeking clarity on what a proposed Federal Exchange model and Federal/State partnership model might look like so the federal government will need to provide those details.

Finally, insurers will have plenty of Exchange work in 2012. To be ready for the Exchange to open in 2014 there is a significant amount of work that must be done - regardless of whether it is run by a state or the federal government. The timeline below highlights some of the key dates discussed to provide an idea of what Exchange activity will look like in 2012.



What happens now?

While 2012 is not the big year that 2014 is for implementation of high profile provisions, it is an extremely critical year in terms of politics and planning. No matter how reform takes shape, BCBSNC is committed to continuing our leadership in improving the health care system in North Carolina.