

# Health Care Reform After the Supreme Court – An Actuarial Perspective

Wednesday, July 11, 2012  
11am – Noon

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# ***NFIB v. Sebelius: An Overview***

*Presented to the American Academy of Actuaries  
by Kannon K. Shanmugam  
July 11, 2012*

# *NFIB v. Sebelius*

Question presented:

Is the Affordable Care Act constitutional?

Answer:

Yes (as construed).

# NFIB v. Sebelius

- Five Justices agree that the individual mandate is not valid as an exercise of Congress's power under the Commerce Clause.
  - The Chief Justice: "As expansive as our cases construing the scope of the commerce power have been, they all have one thing in common: They uniformly describe the power as reaching 'activity.' . . . Construing the Commerce Clause to permit Congress to regulate individuals precisely *because* they are doing nothing would open a new and potentially vast domain to congressional authority."

# *NFIB v. Sebelius*

- Five Justices agree that the individual mandate is valid as an exercise of Congress's taxation power.
  - The Chief Justice for the Court: "The exaction the Affordable Care Act imposes on those without health insurance looks like a tax in many respects," even though "the Act describes the payment as a 'penalty,' not a 'tax.' . . . Because the Constitution permits such a tax, it is not our role to forbid it, or to pass upon its wisdom or fairness."

# *NFIB v. Sebelius*

- Seven Justices agree that the Medicaid expansion may exceed Congress's authority under the Spending Clause; five Justices agree that the constitutional concern can be avoided by preventing the federal government from withdrawing existing Medicaid funding from States that refuse to participate in the expansion.
  - The Chief Justice, joined by Justices Breyer and Kagan: “In this case, the financial ‘inducement’ Congress has chosen is much more than ‘relatively mild encouragement’—it is a gun to the head.”

# *NFIB v. Sebelius*

- Justice Ginsburg, joined by Justice Sotomayor, would have held the individual mandate constitutional under the commerce power as well, and would also have rejected the Spending Clause challenge.

# *NFIB v. Sebelius*

- Justices Scalia, Kennedy, Thomas, and Alito would have held the Act unconstitutional in its entirety, invalidating the individual mandate and holding the rest of the statute non-severable.

# ACA Post-SCOTUS: States and NAIC

Steve Ostlund, FSA, MAAA  
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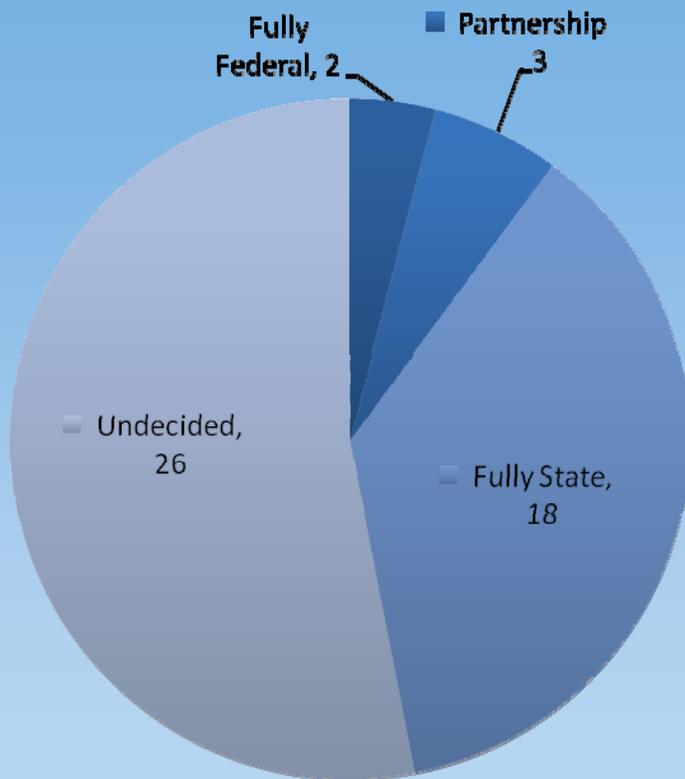


# NAIC Statement on SCOTUS Ruling

“While the NAIC has taken no position on the law, as an organization we have continued our mission of providing information and support to state regulators so that they may best serve their consumers and their markets. We will continue to work to give regulators the tools they need to ensure a stable health insurance marketplace in the states. Where the ACA provides states with latitude, regulators will continue to work with insurers, consumer groups and the public to provide the best regulatory framework going forward.”



# State Exchange Planning



- State Exchange planning is ongoing and very fluid.
- Final decisions will not be made until November or later, in many cases.
- Once decisions are made, time for implementation will be very limited.



# NAIC Work on ACA Implementation

- Health Insurance and Managed Care (B) Committee
  - Regulatory Framework (B) Task Force: Developing individual and group model laws incorporating all market reforms; Updating attachment points in Stop Loss Model Act
  - Exchanges (B) Subgroup: Plan management white papers; Exchange model regulation?
  - Health Actuarial (B) Task Force
    - Health Care Reform Actuarial Working Group: Updating MLR calculation to account for reinsurance, risk adjustment, and risk corridors in 2014; Reinsurance and risk adjustment; Rate review and actuarial value
- Financial Condition (E) Committee
  - Health Reform Solvency Impact Subgroup: Reconciliation between SHCE and MLR rebate calculation; Overall solvency issues
- SERFF: Revision of SERFF to allow for Exchange plan management functionality; development of other electronic tools to support state regulation



# NAIC Resources

- White Papers
  - [Network Adequacy](#)
  - [Form Review](#)
  - [Rate Review](#)
  - [Accreditation & Quality](#)
  - [Marketing & Consumer Information](#)
- Draft Models
  - [Individual Market Health Insurance Coverage Model Act](#)
  - [Small Group Market Health Insurance Coverage Model Act](#)



# ACA Post-SCOTUS: Implementation and Academy Work

Tom Wildsmith, FSA, MAAA  
Vice President, Health Practice Council  
American Academy of Actuaries



# Implementation Timelines

- Risk Adjustment
  - Fall 2012 – draft payment notice to be published
    - Within 30 days, states should submit any alternate methodology for approval
  - January 2013 – final payment notice to be published
    - Includes list of certified alternate methodologies
  - Mar. 1, 2013 – State should publish its own risk adjustment methodology if approved by HHS



# Implementation Timelines

- State or Federally-Facilitated Exchanges
  - Nov. 16, 2012 – state exchange blueprint are to be submitted for plan year 2014
  - Jan. 1, 2013 – HHS initial exchange approval for plan year 2014
  
- Implementation Forums
  - July 18 – Washington, DC
  - August 2 – Chicago
  - August 10 – Denver
  - August 15 - Atlanta



# Implementation Timelines

- Actuarial Value
- Essential Health Benefits
- Rating Rules



# Looking Forward

- The ACA provided a comprehensive solution to the problem of access
- Court decision left that solution in place

*We still don't have an answer on health care costs*



# Health Care Costs

- Rising costs are a systemic problem affecting
  - Public programs
  - Private programs
  - Individual Americans
- Medicare spending is projected to increase from 3.7% of GDP in 2011 to 5.3% in 2030, and to 6.7% in 2085
- Federal spending on Social Security and health care together are projected to rise to approximately 16% of GDP by 2037
- Average cost of employer-sponsored family coverage rose from \$7,056 in 2001 to \$15,073 in 2011
- Non-elderly with employer-sponsored coverage dropped from 67.8% in 2001 to 58.7% in 2011



# How the Academy's Addressing Health Care Costs

- Letter on Medicare to the Joint Select Committee on Deficit Reduction  
(<http://www.actuary.org/files/publications/Letter%20on%20Joint%20Select%20Cmte%20on%20Deficit%20Reduction%20083111.pdf>)
- Campaign 2012 – Medicare Voters' Guide  
(<http://www.actuary.org/files/publications/Campaign%202012%20Medicare%20FINAL%20042312.pdf>)
- Issue Brief on Revising Medicare's FFS Benefit Structure  
(<http://www.actuary.org/files/publications/Medicare%20FFS%20Design%20Issue%20Brief%20030712%20final.pdf>)
- Campaign 2012 – A Guide to Medicare's Financial Challenges and Options for Improvement  
([http://www.actuary.org/files/publications/2012ElectionToolkit\\_Medicare.pdf](http://www.actuary.org/files/publications/2012ElectionToolkit_Medicare.pdf))
- Issue Brief on Proposals to Improve Medicare's Financial Condition  
([http://www.actuary.org/files/Medicare\\_Financial\\_IB\\_Final\\_051211.8.pdf/Medicare\\_Financial\\_IB\\_Final\\_051211.8.pdf](http://www.actuary.org/files/Medicare_Financial_IB_Final_051211.8.pdf/Medicare_Financial_IB_Final_051211.8.pdf))



# How the Academy's Addressing Health Care Costs

- Issue Brief on Accountable Care Organizations  
([http://www.actuary.org/files/publications/ACO\\_issue\\_brief.pdf](http://www.actuary.org/files/publications/ACO_issue_brief.pdf))
- Issue Brief on Value-Based Insurance Design  
([http://www.actuary.org/files/publications/value\\_based\\_insurance\\_design\\_june2009.pdf](http://www.actuary.org/files/publications/value_based_insurance_design_june2009.pdf))
- Issue Brief on Comparative Effectiveness Research  
(<http://www.actuary.org/files/comparative.4.pdf/comparative.4.pdf>)
- Issue Brief on Taking Control: An Actuarial Perspective on Health Spending Growth  
([http://www.actuary.org/files/spending\\_ib\\_08.4.pdf/spending\\_ib\\_08.4.pdf](http://www.actuary.org/files/spending_ib_08.4.pdf/spending_ib_08.4.pdf))
- Monograph on Emerging Data on Consumer-Drive Health Plans  
([http://www.actuary.org/files/publications/ACO\\_issue\\_brief.pdf](http://www.actuary.org/files/publications/ACO_issue_brief.pdf))



# How the Academy's Addressing Health Care Costs

- Focus of Academy Summer Summit
- Continuing work on Medicare costs and financing
- Creation of new Academy Health Care Costs Work Group – currently recruiting volunteers
- Educate policymakers, media, public on problem and potential options to bend the cost curve
- Potential for collaborative projects with the Society of Actuaries



# For More Information / Provide Feedback

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