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## STATE LEGISLATION AND ACTIONS CHALLENGING CERTAIN HEALTH REFORMS

Updated: October 2013 - subject to additions

by: Richard Cauchi, Program Director, NCSL Health Program

In response to the federal health reform law, the Patient Protection and Affordable Care Act (PPACA or just ACA)\*, and separate state reform initiatives, some members of at least 47 state legislatures proposed legislation to limit, alter or oppose selected state or federal actions.

On June 28, 2012 the U.S. Supreme Court upheld most provisions of the Patient Protection and Affordable Care Act, but rejected the portion of the law that would have penalized states that did not comply with the expanded eligibility requirements for Medicaid. The law called for cutting off all Medicaid funding to states that did not go along with the expanded eligibility provision. NCSL will continue to update and analyze the law and its effects on states. > See latest information at U.S. Supreme Court and the Federal Health Law.

**ENACTED AND PASSED:** Between 2010 and October of 2013, 21 state legislatures had enacted laws and measures related to challenging or opting out of broad health reform related to mandatory provisions of the Patient Protection and Affordable Care Act (PPACA).

> NCSL Summary Report: States Opting-Out or Opposing Certain Provisions of the ACA - Including all 2013 enacted measures - September 2013

**2013 SESSIONS - FILED AND PENDING:** **NEW** As of Oct. 21, 2013, there were 81 bills in 32 different states, territories or DC that relate to challenges, opposition or alternatives to health reform. Summaries by state are contained in the NCSL Health Reform Legislation Database online. These measures may include formal rejections of Medicaid expansion and prohibitions on running a state-based exchange. This number does not include all measures that may oppose HHS regulations or interpretations of implementation of the PPACA, such as mandated coverage of contraception, or optional steps such as administration and enforcement of insurance regulations. For more complete Exchange and Medicaid legislation, select those keywords in the database.

Table 1: State Legislative Enactments and Ballot Results:

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A Post-Supreme Court Ruling Analysis, as of August 1, 2013

**State Laws and Constitutional Language Opposing and Opting-out of Insurance Reforms (including any individual or employer health coverage mandate).**

These enacted measures generally do not affect federal implementation of required ACA provisions.

STATE Key: ■ = constitutional amendment ■ = state law	No individual mandate; No employer mandate; No fines/penalties (16)	Bar on implementing ACA or exchanges without legislature. (6)	Interstate Health Compact Law (7)	2012 Ballot question adopted by Legislature; required Yes/No by voters
Alabama	■ ■ ■ Constitutional			■ ■ ■ Constitutional
Arizona	■ law ■ ■ Constitutional			
Florida	■			(did not pass)
Georgia	■		■	
Idaho	■			
Indiana	■		■	
Kansas	■			
Louisiana	■			
Missouri	■	■	■	■
Montana	■	■		■
New Hampshire	■	■		
North Carolina		■ (2013)		
North Dakota	■			
Ohio	■ ■ ■ Constitutional			
Oklahoma	■ ■ ■ Constitutional		■	
South Carolina	■		■	
Tennessee	■			
Texas			■	
Utah		■	■	
Virginia	■			
Wyoming	■ ■ ■ Constitutional	■		■ ■ ■ Constitutional

This table does not include federally-authorized state options for or against exchanges and Medicaid expansion, non-binding resolutions or memorials urging actions by federal or state government, nor measures still pending at the state level.

**Summary of Enacted Provisions:** The 21 state laws and measures related to challenging or opting out of broad health reform including the Patient Protection and Affordable Care Act (PPACA) vary, using three general approaches:

**Legislative approval required.** Five states, Missouri, Montana, New Hampshire, Utah and Wyoming, have passed restrictions on further compliance with PPACA unless approved by the legislature.

**The individual and employer coverage mandate** has been a primary focal point for state opposition. 16 states currently have statutory or state constitutional language providing that state government will not implement or enforce mandates requiring the purchase of insurance by individuals or payments by employers. Because the U.S. Supreme Court upheld the individual coverage mandate, which does not require a state role, the federal law fully applies and any contradictory state laws will have no current effect on PPACA provisions, other than barring state agencies and employees from enforcing it as of 2014. Voters in three other states will be asked to say yes or no to this question this November in Alabama, Florida and Wyoming. These actions are distinct from the 26 states that were parties to the federal court challenge ruled on by the Supreme Court on June 28, 2012.

**"Interstate Health Compacts."** Separately, seven states have recently enacted laws intended to create Interstate Health Compacts-- these take a first step toward allowing a group of states to join together to establish broad health care programs that operate outside of the PPACA or other federal law. However, these compacts do not block PPACA implementation, and are not yet binding; they will require congressional approval because they seek to substitute state control where federal law and regulations exist. These states (including Georgia, Indiana, Missouri, Oklahoma, South Carolina, Utah and Texas) aim to obtain "primary responsibility for regulating health care goods and services" within their boundaries.

**State Nullification.** While 23 states have considered bills seeking to nullify the legal validity of the ACA, none of the bills have become law in their original form. One state, North Dakota, has enacted a law using portions of model state nullification language. S. 2309 establishes by statute that, "The legislative assembly declares that the federal laws known as (PPACA) likely are not authorized by the United States Constitution and may violate its true meaning and intent as given by the founders and ratifiers." The original bill as filed provided that the ACA is "considered to be null in this state" and making it a criminal offense for any federal official to implement the ACA; however these two provisions were deleted and omitted from the signed law.

The legal language opposing reforms varies from state to state and includes statutes and constitutional amendments, as well as binding and non-binding state resolutions.

Nine state legislatures adopted some type of non-binding resolution or memorial to the federal government. These are not repeated in the table above.

\* PPACA also has been termed "Obamacare," a name referenced within some state filed legislation.

### Binding enacted laws & constitutional provisions





The U.S. Supreme Court issued its final ruling on "**Department of Health and Human Services (HHS) v. Florida**" on June 28, 2012 - read NCSL's analysis and related reports [here](#). Additional and earlier, 2010-2012, court actions and analyses are available online.

#### Recent Action on Legal Challenges, post-Supreme Court

The following are initial analyses and comments about three federal lawsuits under consideration in 2013:

##### 1) **Suit to Block Premium Subsidy Provisions refiled by Oklahoma Attorney General.**

Three lawsuits challenging the IRS's attempt to offer subsidies through federal Exchanges are pending, and termed "heating up" by some constitutional experts.

In *Halbig v. Sebelius*, the plaintiffs (four individuals and three small businesses) in early June 2013 filed a motion for summary judgment asking the U.S. district court for the District of Columbia to rule on their complaint this year, since the IRS's claimed "illegal subsidies" (and the illegal penalties they trigger) would take effect in 2014. On Oct. 22, 2013, Judge Paul L. Friedman ruled that four individuals plaintiffs could pursue their lawsuit to challenge President Obama's health care law on the grounds that the federal government cannot legally provide subsidies to people who buy insurance through the federally-facilitated exchanges. The plaintiffs are from states with a federal exchange: Tennessee, Texas, Virginia and West Virginia. The subsidies make insurance more affordable for them. Without the subsidies, they say, insurance would be unaffordable, and they would be exempt from the requirement to carry insurance. *[N.Y. Times article: Judge Allows Legal Challenge of Law to Continue, 10/22/2013.]* [NEW](#)

Read an overview of the latest activity, *Health Reform Back in the Courts*, posted by Rachel Morgan, Committee Director with NCSL's federal affairs staff, 10/22/2013. [NEW](#)

The earliest lawsuit, filed Sept. 19, 2012 in the U.S. District Court for the Eastern District of Oklahoma in Muskogee, *Pruitt v. Sebelius* argues that the IRS' regulation directly contradicts the Affordable Care Act's original language regarding the (federally administered) exchanges and—more specifically—the premium subsidies, which carry significant financial penalties for certain employers that do not provide adequate and affordable employee health benefits as defined by the law. According to one analysis, "the amended lawsuit appears to yield the federal government's authority to apply the provision, as long as it doesn't run afoul of a November 2010 amendment to the state's constitution designed to prohibit any law that "compels, directly or indirectly, any person, employer or health care provider to participate in any health care system." (Read *Workforce Management article "Oklahoma Attorney General...," 9/21/2012.* In *Pruitt v. Sebelius*, the U.S. district court for the Eastern District of Oklahoma has scheduled a June 20, 2013 hearing on the government's motion to dismiss Oklahoma's similar lawsuit. In Muskogee, Oklahoma. In August, U.S. District Judge Ronald White allowed Oklahoma to proceed with a similar case against the subsidies. *[updated 8/31/2013]*

Judge James R. Spencer of the U.S. District Court for the Eastern Division of Virginia in Richmond is expected to rule on the same challenge from another group of plaintiffs, the week of Oct. 31, 2013 or later. [NEW](#)

The Cato Institute's Michael Cannon's has led research on the IRS's "ObamaCare tax-credit rule", in a 79 page study, published in mid-2012.

**2) Religious Employers Challenge Health Care Law's Contraception Rule.** As of early 2013, more than 45 lawsuits have been filed in federal courts challenging the contraceptive coverage requirement of the Affordable Care Act. The Supreme Court, on November 16, 2012 revived part of a 2010 challenge to the PPACA by Liberty University. The case is now remanded to the federal Fourth Circuit Court of Appeals. A federal district court in Missouri on December 21, 2012, decided a related question in a lawsuit brought by a group of insurers, enjoining temporarily the enforcement of a Missouri statute that requires insurers to exclude "coverage for contraceptives if the provision of such contraceptives is contrary to the moral, ethical, or religious beliefs or tenets of such person or entity exempted." The court held that the state law was in conflict with the ACA and thus preempted by the federal law. Twenty-eight states currently require insurers to cover contraceptives, although many contain religious exemptions. (Read full article by Tim Jost, 1/2/2013, *Health Affairs Blog*)

Feds Seek Dismissal Of Contraception Mandate Challenge Filed By Archdiocese Of Atlanta - news summary by Kaiser Network News, 12/12/2012

A Flood of Suits Fights Coverage of Birth Control - New York Times 1/26/2013 - In a flood of lawsuits, Roman Catholics, evangelicals and Mennonites are challenging a provision in the new health care law that requires employers to cover birth control in employee health plans. The Times, reports, "Most come from religiously-affiliated institutions and remain largely suspended while the government tries to offer a compromise."

North Carolina's Belmont Abbey College is trying to resurrect a religious school charge against the Obama administration's signature health care law. But first, the school and its many allies must prove their time has come. On Friday, in a cutting-edge case, attorneys for Belmont Abbey and Illinois-based Wheaton College will try to convince a key appellate court that their challenge to the law's contraception coverage mandate is not premature. If the colleges prevail, they will be poised for a head-on religious liberty showdown. ... The oral argument Friday before a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit will focus on seemingly technical points called "ripeness" and "standing." Both sound more boring than the First Amendment's guarantee of religious freedom, but both are crucial (Read the full article by McClatchy News, 12/11, 2012).

**3) Liberty University's Remanded and Added Challenges on Mandates and Anti-injunction Act.** (As reported by Tim Jost, J.D., in *Health Affairs Blog*.) On July 11, 2013, the Fourth Circuit Federal Court of Appeals unanimously affirmed the 2010 decision of district court judge Norman Moon dismissing a case brought by Liberty University and several individual plaintiffs challenging the Affordable Care Act. The Fourth Circuit had rejected Liberty's appeal in a 2011 decision, holding that Liberty's case challenging the individual mandate was barred by the tax Anti-Injunction Act (AIA), which prohibits lawsuits enjoining the collection of a tax.

That Fourth Circuit decision had been vacated, reversed, and remanded by the Supreme Court, however, after it rejected the AIA argument in the National Federation of Independent Business case. The Supreme Court's NFIB decision upheld the individual mandate but remanded Liberty University's case to the Fourth Circuit to decide the remaining issues in the case: whether the employer mandate is constitutional and whether the ACA violated Liberty University's religious liberty rights or the First Amendment's Establishment Clause. On remand, Liberty University attempted to add several other issues to the case, including an Origination Clause claim and

a challenge to HHS regulations requiring coverage of contraceptives. This history has been described in earlier posts.

**Anti-Injunction Act.** The court began by rejecting the government's defense that Liberty University's employer mandate claim was barred by the AIA. Although the court recognized that the employer mandate provision labels the exaction that enforces it a tax at a couple of places, it held that the mandate penalty was nonetheless not a tax for purposes of the AIA. [see full article]

Table 2:

Summary of 2011-2012 State Legislation & Resolutions:

The map and Table 1 above for 2011-2013, provides a snapshot of recent actions, including enacted, failed and pending measures. The previous sessions' 2009-2010 results, including eight states with binding measures passed and 30 states with failed legislation, are summarized in Section 3 below and in a separate 2009-10 archive report.

In 2011, a total of 45 states considered more than 200 filed measures, opposing elements of health reform or proposing alternative policies.

**2012 Opposition Legislation:** at least 162 bills in 38 states were filed for 2012 sessions, or subject to carry-over from 2011.

Measures include:

States with Filed Proposals:	Total # States	States (Bold indicates examples of 2011-12 final passage or adopted)
<b>State constitutional amendments</b> (includes legislative approval requiring voter action)	24 (2011-12) + 3 (2012) = 27	AK, AL, FL, GA, IN, IA, KS, KY, MD, MS, MO, MT, NJ, NY, ND, OH*, PA, SC, TN, TX, WA, WV, WI, WY. New for 2012: AZ, IL, MN
<b>Bills to enact state statutes</b>	38 (2011-12) + 4 (2012) = 42	AZ, AR, CO, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MI, MN, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, (SC**), SD, TN, TX, WA, WV, WY. New for 2012: AL, NJ, UT, VA, WY
<b>Advisory or non-binding resolutions</b>	19 (2011-12) + 5 (2012) = 24	AR, CO, IL, IN, IA, KS, KY, MI, MS, MO, MT, NE, NH, NJ, NM, ND, RI, SD, TX. New for 2012: FL, GA, ID, OH, TN
<b>Specific Opposition Provisions: (Wording and enforceability varies among bills)</b>		
<b>Block state agency implementation</b> unless approved by the legislature	10	AR, GA, ID, IL, IN, MO, MT, NH, OH, TX, WY
<b>Interstate Health Care Compacts</b> [details online]	16 (2011-12) + 9 (2012) = 25	2011: AZ, CO, GA*, LA, MI, MO*, MT, NM, ND, OH, OK*, SC*, TN, TX*, WA New for 2012: AL, FL, IN*, KS, MN, NH, SD, UT*, VA, WV New for 2013: AZ, OH, TN, (UT=future repeal)
<b>Nullification/ state sovereignty bills:</b> some seek criminal penalties for federal or state enforcement of ACA [details]	11 (2011-12) + 12 (2012) = 23	ID, IN, ME, MO, MT, NE, ND [text*], OK, OR, TX, WY New for 2012: AL, AZ, FL, KS, MI, MN, NH, SC, SD, UT, VA, WA
<b>2012 statewide ballot questions</b> (structure and process varies)	5 .....	AL, FL, MO, MT, WY (as approved by legislative branches). November ballot Results

NCSL's Health Reform 2011-2013 State Legislative Tracking Database provides details by state. This online feature includes latest listings with individual bill summaries and status for 206 challenge-related measures from 2011 and a total of 1,100+ health reform-related measures filed for 2011 and 2012 legislative sessions.

>> Select "Challenging/Alternatives" for an updated state-by-state listing on this topic.

The challenge by state legislation approach garnered state legislative interest during 2009-2012 in significant part due to the American Legislative Exchange Council's (ALEC) model "Freedom of Choice in Health Care Act," which the organization described as "How Your State Can Block Single-Payer and Protect Patients' Rights." The ALEC-endorsed language mirrors Arizona Proposition 101, which was narrowly defeated in 2008 but passed on their November 2010 ballot.

**Table Notes:** \* Ohio: A citizen-initiative petition for a constitutional amendment passed on the November 2011 ballot. Similar pending Ohio legislation was not enacted in 2011.

\*\* South Carolina's budget for 2011-12 included language stating "If federal law permits, the State of South Carolina opts out of" certain provisions of the ACA. This is binding but not statutory.

2011-2013 Highlights of Completed Legislative Actions  
report: 2009-2010 Challenge Laws and Bills

ALSO SEE: 2009-2010 Archive

## Signed Laws and Binding Resolutions for Ballot Questions

**Alabama** - HB 60, passed House and Senate; enacted without governor's signature, June 9, 2011. Would oppose elements of federal health reform, providing by constitutional amendment that residents may provide for their own health care, and that "a law or rule shall not compel any person, employer, or health care provider to participate in any health care system." This amendment required voter approval or disapproval on the November 6, 2012 ballot. "Amendment 6" Passed with 59.0% Yes votes.

**Florida** - H 1193, passed House and Senate; signed by the governor as Chapter No. 2011-126, June 2, 2011. By state statute, prohibits a person from being compelled to purchase health insurance except under specified conditions including dangerous occupation, voluntary enrollment in public benefits or contracts between private parties.

**Florida** - S 2, passed Senate and House; sent to the secretary of state, 5/4/2011. Joint resolution proposes a State Constitutional amendment to prohibit laws or rules from compelling any person, employer, or health care provider to participate in any health care system, permit any person or employer to purchase lawful health care services directly from health care provider, or permit health care provider to accept direct payment from person or employer for lawful health care services. This amendment required voter approval or disapproval on the November 6, 2012 ballot. "Amendment 1" Failed, with 48.5% Yes votes.

**Georgia** - H 461, passed House and Senate; signed by the governor as Act 10, April 20, 2011. Adopts the interstate Health Care Compact; provides for member state control over personal health care decisions; vests regulatory authority to the states; provides that member states resolve by the adoption into law provisions of the Health Care Compact to define health care as including an individual or group plan that provides or pays the cost of health care, services, or supplies; provides for the right to federal monies.

**Indiana** - S 461, passed Senate and House; signed by the governor as Public Law No. 160-2011, May 12, 2011. Provides by statute that "a resident of Indiana may not be required to purchase coverage under a health plan. A resident may delegate to the resident's employer the resident's authority to purchase or decline to purchase coverage under a health plan." Also authorizes consumer protections, rate review and rescissions compatible with the ACA. Note: Other provisions restricting agencies from implementing ACA provisions were deleted from the final enacted bill.

**Indiana** - H 1269 of 2012; signed by the governor as Chapter 150 of 2012 on March 19, 2012. Authorizes the state to join the "Health Care Compact," requiring member states of the compact to take action to secure the consent of Congress for the compact; asserting that member states of the compact have the primary responsibility to regulate health care in their respective States. Also seeks to establish that "Each member state, for the member state's jurisdiction, may, to the extent allowed under the Constitution of the United States and the constitution of the member state, suspend by legislation federal laws, regulations, and orders concerning health care that are inconsistent with the laws and regulations adopted by the member state under the compact." Also creates the Interstate Advisory Health Care Commission and would assert the rights of member states to certain federal health money.

**Kansas** - H 2182, passed House and Senate; signed by the governor May 25, 2011. Opposes specific provisions of federal health reform, providing (in Sec. 7) by state statute that "The government shall not interfere with a resident's right to purchase or refuse to purchase health insurance." Also provides that residents, employers and health providers "shall not be required to pay penalties or fines" for direct payment without using health insurance; the "government shall not enact a law" that "would impose a form of punishment for exercising these rights." Effective date is July 1, 2011.

**Kentucky** - H 265 passed House and Senate, signed by governor, April 11, 2012. 2012-14 Appropriations act section 10, authorizes the state to "to explore the feasibility of an Interstate Reciprocal Health Benefit Plan Compact (IRHBPC) with contiguous states" to allow Kentucky and residents of contiguous states to purchase health benefit plan coverage among the states participating with the compact. The purposes of this compact are, through means of joint and cooperative action among the compacting states to promote and protect the interest of consumers purchasing health benefit plan coverage. (Note: this law is not a challenge to the provisions of PPACA; It is included as an alternative approach, for comparative information purposes.)

**Missouri** - H 45, passed House and Senate; signed by the governor, 7/8/2011. Provides that "any federal mandate implemented by the state shall be subject to statutory authorization of the general assembly." Creates a new \$20,000 employer tax deduction for each new full-time job created with an annual salary of at least the average annual county wage if the small business also offers new employee health insurance and pays at least 50% of the health insurance premiums of all full-time employees who opt into the offered plan. Any new proposed rule must "Certify that the rule does not have an adverse impact on, or must exempt small businesses with fewer than fifty full- or part-time employees."

**Missouri** - H 423, passed House and Senate; became law without governor's signature, 7/14/2011. Establishes the Interstate Health Care Compact, which would pledge member states to act jointly to oppose certain elements within health reform.

**Missouri** - S 464, passed Senate and House, sent to Secretary of State, 5/31/2012; governor's signature not required. Would amend state law chapter 376, a new section relating to the authority for creating and operating health insurance exchanges in Missouri. Would prohibit the establishment and operation of health insurance exchanges in Missouri unless the exchange is created by a legislative act, an initiative petition, or referendum, requiring voter approval. S464, as Proposition E, was on the statewide ballot November 6, 2012 for a binding vote. "Proposition E" Passed with 61.8% Yes votes.

**Montana** - S 125, passed Senate and House; governor's amendments rejected; signed by the governor as Chapter 402, May 13, 2011. Opposes elements of federal health reform, providing that by state law state agencies "may not implement or enforce in any way the provisions" or any federal regulation or policy implementing federal health reform "that relates to the requirement for individuals to purchase health insurance and maintain minimum essential health insurance coverage." Bars public employers or state employees from implementing or enforcing participation in the



Individual mandate to purchase health insurance.

**Montana** - S 418, passed House and Senate; enacted as Chapter 310 and sent to the Secretary of State, May 4, 2011. Would prohibit, by state statute, the federal and state government from mandating the purchase of health insurance coverage; would prohibit imposing penalties related to health insurance decisions. The act will be submitted by referendum to voters for approval or disapproval in the November 2012 state election.

**New Hampshire** - S 148, passed Senate and House; became law as Chapter 266 without governor's signature, 7/14/2011. Provides by insurance statute that a resident of New Hampshire shall not be required to obtain, to maintain, or be assessed a fee or fine for failure to obtain health insurance coverage. Effective date July 1, 2011. **New Hampshire** - H 601, Passed House and Senate; became law as Chapter 264 without governor's signature, 7/14/2011. By statute, requires that before establishing standards for enforcing the provisions of the federal Affordable Care Act, the insurance commissioner shall obtain approval from a newly created N.H. legislative Health Insurance Reform Oversight Committee. The provision applies "to any state official or agency that seeks to enforce the insurance provisions of the Act" and includes enforcing the immediate "consumer protections and market reforms." Effective date July 1, 2011.

**New Hampshire** - S 1297, passed Senate and House, signed by the governor as Chapter No. 2012-231, June 18, 2012. Prohibits the state from establishing a state based health insurance exchange. Also provides that in the event a federally-facilitated exchange is established for New Hampshire, the insurance commissioner retains authority with respect to insurance products sold in New Hampshire "on the federally-facilitated exchange to the maximum extent possible by law." Also required the state attorney general to join the lawsuit challenging the Patient Protection and Affordable Care Act and require federal grant moneys received by the state for implementation of the PPACA to be returned to the federal government. Effective date June 18, 2012.

**North Dakota** - H 1165 was enacted and signed by the governor, April 4, 2011; providing by state law that a resident is not required to have a policy of individual health coverage, and would not be "liable for any penalty, assessment, fee, or fine." Applies regardless of whether the resident has or is eligible for health insurance coverage under a policy, through an employer or under a plan administered by the state or federal government. Continues an exception if health coverage is required by a court or by the state Department of Human Services through a court or administrative proceeding.

**North Dakota** - S 2309 was enacted and signed by the governor, April 27, 2011. [Full text] Using parts of model language invoking "nullification," establishes by statute that, "The legislative assembly declares that the federal laws known as (PPACA) likely are not authorized by the United States Constitution and may violate its true meaning and intent as given by the founders and ratifiers." ... no provision "may interfere with an individual's choice of a medical or insurance provider except as otherwise provided by the laws of this state."

**Ohio** - Issue #3, a citizen-initiated constitutional amendment was approved by voters on the November 8, 2011 ballot. It seeks to preserve their "freedom to choose their health care and health care coverage." It passed 66 percent Yes to 34 percent No. Similar pending Ohio legislation was not enacted in 2011-2012 (as of 8/10/12).

**Oklahoma** - S 722 was enacted and signed by the governor, May 18, 2011. Adopts the Interstate Health Care Compact; provides for member state control over personal health care decisions; vests regulatory authority to the states; provides that member states resolve by the adoption into law provisions of the Health Care Compact to define health care as including an individual or group plan that provides or pays the cost of health care, services, or supplies.

**South Carolina** - H3700 State budget for fiscal year 2011-12 was enacted and signed by the governor, August 2, 2011. It includes Section 89.126, that provides that "If federal law permits, the State of South Carolina opts out of "certain provisions in the Affordable Care Act, including the individual mandate or minimum coverage requirement, the employer contribution requirement, and insurance expansions including coverage for adult dependents up to age 26. **South Carolina** - S 838, passed Senate and House, signed by the governor as Act 221, 6/21/2012. Enacts state participation in the Interstate Healthcare Compact; providing that state compact members must take action to obtain congressional consent to the compact; providing that the legislature is vested with the responsibility to regulate healthcare delivered in their state; provides for healthcare funding; also establishes the S.C. Interstate advisory Health Care Commission.

**Tennessee** - S 79 was enacted and signed by the governor as Chapter 9, March 18, 2011. A statute declaring it state public policy that every person within the state "shall be free to choose or to decline to choose any mode of securing health care services without penalty or threat of penalty." It requires that no state or local public official, employee, or agent "shall act to impose, collect, enforce, or effectuate any penalty in this state."

**Texas** - SB 7, passed Senate, passed House, 96y-48n, 6/27/2011; signed by the governor, July 19, 2011. State market reform act; includes an interstate health care compact, allowing Texas to partner with other states to ask the federal government for control — both fiscal and governmental — over Medicare, Medicaid and commercial coverage; also directs state officials to seek a waiver from Washington to operate Medicaid with a federal block grant.

**Utah** - H 175 and S 208 of 2012 - Passed House and Senate; signed by the governor, 3/19/2012. Provides by statute that the state join an Interstate Health Care Compact, including a pledge to take joint and separate action to secure congressional approval "in order to return the authority to regulate health care to the member states." Would seek to authorize that "Each member state, within its state, may suspend by legislation the operation of all federal laws, rules, regulations, and orders regarding health care that are inconsistent with the laws and regulations adopted by the member state pursuant to this compact."

**Utah** - H 131 of 2013 - signed by the governor as Chapter 101, 3/26/13. Renames the Constitutional Defense Council and creates the Commission on Federalism; provides for the repeal of the State Health Compact by July 1, 2014, and subjects these provisions to a 10-point sunset review prior to repeal.

**Wyoming** - SJR 2, approved by both House and Senate by a 2/3rds vote; governor's signature not required. A proposed constitutional amendment, states that residents have the right to make their own health care decisions, while "any person may pay, and a health care provider may accept, direct payment for health care without imposition of penalties or fines for doing so." Also provides that the state "shall act to preserve these rights from undue

governmental infringement." Scheduled to appear on the November 6, 2012 ballot for voter approval or disapproval by majority vote.

**Wyoming** - S 58 of 2012 - Enacted by Senate and House; signed by the governor as Chapter 61, 3/9/2011.

Amends the duties of the Wyoming Health Insurance Exchange Steering Committee to require a study report with 3 options including 1) an exchange based on Wyoming data without influence from the health care reform acts, 2) using selected parts of required federal features and 3) an exchange in complete compliance with the Act. The statute limits the state's authority to operate a federally required health insurance exchange, restating that "No state agency or any person representing the state of Wyoming shall, prior to April 1, 2013, commit the state" to operating an exchange.

#### Non-Binding Resolutions, Adopted 2011-2012

**Colorado** - HR 11-1010, Adopted non-binding House-only resolution, citing the 10th Amendment, requests the U.S. Congress to repeal the individual mandate required by PPACA; also strongly encourages Congress to "recognize individual states' efforts to reform health care by grandfathering any state laws, regulations, or practices intended to contain costs, improve quality, increase consumerism, or otherwise implement health system reform concepts."

**Colorado** - HR 12-1003 of 2012, Adopted non-binding House-only resolution, requesting the U.S. Congress to call a constitutional convention to propose an amendment to repeal the Affordable Care Act. Article 5 requires two-thirds of the legislatures to make such a formal request in order to convene a constitutional convention.

> Article: Colorado House Seeks U.S. Convention to Repeal ACA.

**Missouri** - SR 27, Adopted non-binding Senate-only resolution calls on the state Attorney General to file an independent lawsuit or join 20 state attorneys general in their lawsuit challenging the constitutionality of the federal health care reform legislation, including to "aggressively defend the validity of Proposition C as voted on by the people of Missouri in the 2010 Missouri General Election."

**New Hampshire** - SR 9, Adopted Senate-only resolution, requests an opinion of the state Supreme Court justices concerning the constitutionality of H 89, a legislative measure requiring the attorney general to join the lawsuit challenging the Affordable Care Act.

**North Dakota** - HCR 3016, Adopted non-binding concurrent resolution, urges the U.S. Congress to repeal the Patient Protection and Affordable Care Act. Adopted by the House and Senate, April 18, 2011.

**South Dakota** - HCR 1004, Adopted non-binding resolution, opposes elements of the Affordable Care Act, declaring that the "Legislature finds that in the absence of such specific (constitutional) authority," and in conjunction with "powers retained by the people and the states pursuant to the ninth and tenth amendments, all such federal legislation is inherently unconstitutional. Adopted by House 42y-26n; adopted by Senate 28y-5n.

#### Passed but Vetoed by Governors

**Arizona** - S 1088, passed House and Senate; vetoed by governor, May 28, 2011. Would oppose any state role in compulsory participation in a health care system or purchase of health insurance; would prohibit any government official from enforcing prohibitions on purchase or sale of health insurance in private health care systems otherwise authorized by the laws of the state; would affirm a right to direct payment or purchase of lawful health care services; would prohibit threats of penalties, fines, taxes, salaries, wage withholding, surcharges or fees to punish or discourage the exercise of such right. Also would establish an Interstate Health Freedom Compact, to unify states opposing the ACA.

**Arizona** - S 1592, passed Senate and House; vetoed by governor, 4/18/2011. Would authorize the Governor to enter into the "Interstate Health Care Freedom Compact," intended to guarantee the right and freedom of residents to pay or not to pay directly for health care services and to participate or not to participate in health plans and health systems. Compacts would coordinate across state lines to enforce "health care freedom criminal laws" which seek to make it a crime to interfere with residents' health services, specified above. Also would create an "Interstate Advisory Health Care Commission" with representatives from each member state. [See Governor Brewer's veto message, citing state separation of powers and added fiscal burden.]

**Idaho** - H 298, passed House and Senate; vetoed by governor, 4/20/2011. Would have provided that no person within the State shall be compelled to participate in a government health insurance program not authorized by the State; provides that the Affordable Care Act shall not be enforced, administered or enacted by the State and no department, agency or political subdivision shall accept or expend moneys related to the implementation of discretionary provisions of the Act, such as exchanges and insurance consumer protections. [See Governor Otter's executive order of April 20, which includes similar restrictions on the state accepting funds or involvement.]

**Minnesota** - S 760, passed Senate and House; vetoed by governor, May 24, 2011. Would have opposed selected provisions of the ACA, by declaring that the public policy of the state "is that every person within the state of Minnesota is and shall be free to choose or decline to choose any mode of securing health care services without penalty or threat of penalty." Also would provide that no state official or employee "shall act to impose, collect, enforce, or effectuate any penalty" related to ACA mandates for coverage.

**Montana** - H 526, passed Senate and House; vetoed by governor, 5/12/2011. Would provide for an "Interstate Health Care Freedom Compact," intended to guarantee the right and freedom of residents to pay or not to pay directly for health care services and to participate or not to participate in health plans and health systems. Compacts would coordinate across state lines. Would create advisory representatives from each state and require congressional approval.

**Montana** - S 224, passed Senate and House; vetoed by governor, 4/21/2011. Would require legislative approval for any grant application, expenditure or implementation of the federal Affordable Care Act.

**Montana** - S 228, passed Senate and House; vetoed by governor, 4/13/2011. Would prohibit the creation of a state-based health insurance exchange.

**North Carolina** - H 2, passed House and Senate; vetoed by governor, 3/5/2011; veto override failed in House 3/9/2011. Would oppose elements of federal health reform, providing by state law that "no law or rule shall compel a



person" to provide for health care services or medical treatment for that person or contract with, or enroll in, a public or private health care system or health insurance plan as a condition of receiving state economic aid.

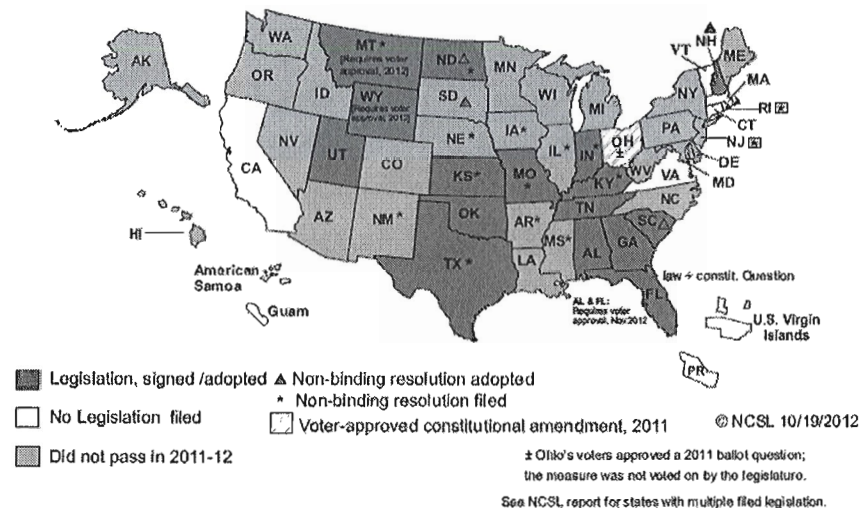
**Texas** - H 335, passed House and Senate; sent to the governor, 5/30/2011; vetoed by governor 6/17/2011. Would provide that a state agency may not implement requirements for mandated provisions of federal health care reform laws unless the agency submits a report of expenses incurred. Relates to required purchase of health insurance by a person or employer, penalties imposed for failure of employers to provide such insurance, expanded eligibility for the state Medicaid program or state child health plan program, mandates and new health insurance programs.

#### Articles and Opinions: ~~new~~

An advance look at 2013 state legislation - compiled by the 10th Amendment Center 10/2012

Map B:

2011-12 State Legislation Opposing Elements of Federal Health Reform



### Section 3: Summary of 2009-2010 Legislative and Ballot Question Results

**November 2, 2010 ballot questions.** A focus of attention shifted to the three states with proposed constitutional ballot questions facing voters in Nov. 2, 2010, elections:

Arizona - passed by voters, 55.4% Yes to 44.7% No [results]

Colorado - rejected by voters, 53% No to 47% Yes. [article 11/3/10]

Oklahoma - passed by voters 64.73% Yes to 35.27% No [state results 11/3/10]

**State constitutional amendments:** In 30 of the states, the filed measures included a proposed constitutional amendment by ballot question. In a majority of these states, their constitution includes an additional hurdle for passage—requiring either a “supermajority” of 60 percent or 67 percent for passage, or requiring two affirmative votes in two separate years, such as 2010 and 2011.

**Federal constitutional amendment:** Idaho called for adding a U.S. 28th Amendment that Congress shall make no law requiring citizens of the United States to enroll in, participate in or secure health care insurance or to penalize any citizen who declines to purchase or participate in any health care insurance. This was adopted by both Senate and House on March 29, 2010. Florida adopted a non-binding resolution referencing a federal constitutional amendment process.

**Changing state law:** In at least 16 states, proposed bills aimed to amend state law, not the state constitution. These require a simple majority vote and action by the governor; they also can be re-amended or repealed by a future state law. So far in 2010, seven states have enacted such laws. Virginia became the first to enact a new statute section titled, “Health insurance coverage not required.” It became law on March 10, 2010. Georgia, Idaho, Louisiana, Missouri, Utah and Arizona also each enacted similar statutes.

#### 2010 Legislative History: Seven states with signed or enacted statutes.

A Virginia law passed both Senate and House, was amended by the Governor and both branches of the legislature and became law as Chapter 106 on March 10, becoming the first such statute in the nation.\*

Idaho enacted a similar statute, signed as Chapter 46 on March 17.

A Utah statute, signed March 22, prohibits any state agency from implementing health reform unless state agencies recommend action or the legislature passes a provision.

A Georgia statute addition was substituted during a conference committee and passed by Senate and House on the last day; it was signed into law by the governor on June 2.

Louisiana enacted a statute, declaring that residents “shall be free from governmental intrusion in choosing or declining to choose” health coverage; signed July 2.

Arizona enacted a separate statute, similar to their constitutional ballot question for November 2010. (Explained below)

#### Statute by Ballot Question approved in Missouri

Missouri's Legislature passed a proposed statute, but required that it be put to voters for approval or disapproval on their primary election day, Tuesday August 3, 2010. It was approved by a 71.1 percent yes vote.

#### 2010 Constitutional Ballot Questions passed in two states:

Arizona's resolution of June 2009 was the first constitutional ballot question to have passed the legislative process; it was approved by a 55 percent yes to 44 percent no vote on November 2, 2010.

Oklahoma's constitutional amendment ballot question was approved by the Senate and House in May 2010; it was approved by voters on the November 2, 2010 ballot.

#### Question Rejected by Voters

Colorado: Although the legislature rejected a resolution on the topic, a citizen initiative proposed constitutional amendment was placed on the November 2, 2010 ballot; it was rejected by a 47% Yes to 53% No vote statewide.

#### Question Rejected by Court:

Florida's legislature was the second state to approve a constitutional amendment ballot question, on 4/22/10, for a decision by voters on Nov. 2, 2010. However, in late July a Florida District court ruled the question wording as inappropriate; on August 31 their State Supreme Court agreed that the question must be removed from the ballot. In 2011 the legislature placed a new proposal on the ballot for 2012.

#### Non-binding measures:

South Dakota passed a resolution opposing "government take-over" of health care. South Carolina adopted a resolution opposing health mandates and directing the attorney general to challenge such provisions in federal health reform. A Michigan Senate-only resolution urging removal of financial obligations passed in January 2010. Idaho called for adding a U.S. Constitutional Amendment to provide that Congress shall make no law requiring citizens of the United States to enroll in, participate in or secure health care insurance or to penalize any citizen who declines to purchase or participate in any health care insurance. Florida's non-binding Senate resolution, passed after the November 2010 election, urges the U.S. Congress to amend Medicaid law in order to "reestablish a fair and prudent federal-state partnership" that allows each state "the freedom to craft a Medicaid program that meets the needs of its residents" without mandatory expansion and enables states to provide cost-effective health care services to low-income residents.

#### Measures That "Did Not Pass" in 2009-10

For the 2009-2010 legislative sessions, 30 states failed to pass or have rejected bills and resolutions (29 states in 2010, one in 2009)

For 2010 sessions, the states are: Alabama, Alaska, Arkansas, California, Colorado, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Washington, West Virginia, Wisconsin and Wyoming. A 2009 North Dakota constitutional proposal did not pass by the end of their session. An "interim study proposal" resolution was not acted on in Arkansas.

Archive Report: Filed Bills and Resolutions for 2009-2010 - A state-by-state table of all filed measures is available in a separate NCSL online report [[click here](#)]

#### States Returning or Publicly Refusing ACA Implementation Funds

The Affordable Care Act provides a variety of optional state funding grants to pay for or encourage implementation of specific provisions of the ACA. There is no uniform, official list of states that have "refused" such funds, since applying for funds, or meeting most of the federal criteria, is voluntary on the part of states. The following are examples of articles highlighting "returned" funds, included some information in NCSL's Health Reform: State Actions Newsletter. Hyperlinks in the title of the stories below related specifically to funding.

- [Kansas Returns \\$31 Million Early Innovator Grant](#)
- [Oklahoma Returns Federal Grant](#)

States Return Federal Grants After Florida Judge Ruling - The following are examples of states returning or not applying for federal grants in February 2011:

- [Alaska Governor Sean Parnell elected not to apply for federal funds to establish a health insurance exchange.](#)
- [Florida Governor Rick Scott returned \\$1 million that was awarded to the state to begin implementation planning for health insurance exchanges and another \\$1 million that would have funded a system to monitor premiums and insurance-rate changes.](#)
- [New Hampshire's House Republican leaders asked the Executive Council to block a \\$610,000 federal planning contract that would use federal grant funds to create a state health insurance exchange shortly after the Legislative Fiscal Committee voted 9-1 to accept it.](#)
- [Wisconsin.](#) On January 18, 2012 Wisconsin Governor Scott Walker announced he will return \$37.6 million in Early Innovator Grant program funding to the federal government. These grants were given to six states and one multistate consortia last February to help "design and implement the information technology needed to operate health insurance exchanges." Wisconsin joins Kansas and Oklahoma in returning these innovator grants. Together, these three states

have returned more than \$123 million in federal funding to help implement the Affordable Care Act. In February 2011, Governor Walker also returned a \$637,114 federal "consumer assistance" grant.

**Table 2: Archive Report-- State Attorneys General and/or Governors Seeking to Block Healthcare Law in Court, 2010-2012**

These actions by executive branch officials and private parties are provided for general information. They are legally separate from state lawmaking but may affect state deliberations. NCSL takes no position on the merits or opinions expressed in the cases cited.

In early April, 2010, 13 state attorneys general filed a lawsuit seeking to repeal health care reform in federal court in Florida; by June a total of at least 20 states had some role in support of this legal challenge. Virginia Attorney General Ken Cuccinelli pursued a similar suit in his home state. The cases center on health care reform's mandate that most Americans, starting in 2014, purchase insurance.

#### Key ACA Provisions Challenged

Collectively the initial litigation raises constitutional challenges to four provisions of the ACA, as analyzed in a brief by the George Washington Law Center.

**Individual responsibility** – The law's requirement that beginning January 1, 2014, non-exempt individuals either maintain health insurance coverage (termed "minimum essential coverage")<sup>[10]</sup> or pay a penalty in the form of a tax. The fine would be up to \$750, or 2 percent of their income, whichever is greater.<sup>[11]</sup>

**Medicaid expansion** – The law's requirement that states participating in Medicaid expand their programs, beginning January 1, 2014 to cover non-elderly persons with incomes below 133 percent of the federal poverty level (FPL), including individuals previously ineligible for federally assisted Medicaid benefits.<sup>[12]</sup>

**Insurance market reforms** – Federal reforms aimed at curbing certain practices by health insurers, specifically: reforms that require insurers and self-insured group plans to issue and renew health insurance coverage without regard to the health status of individuals or groups, and to offer coverage that is not subject to annual or lifetime limits and that complies with certain other requirements.<sup>[13]</sup>

**Employer responsibility** – The law's minimum employer contribution responsibilities in the case of employers that either offer no plan or a plan with inadequate subsidies, with contribution responsibilities tied to the number of employees that qualify for a subsidy.<sup>[14]</sup>

#### List of States' Attorneys General (or Governors\*) acting to pursue lawsuits opposing health provisions.

The tally totals 28 states, including 26 acting jointly. In addition, Missouri began as a single state; others joined for the Appeals Court stage. Virginia filed and acted alone.

-As of June 2012

Note: Statements and actions by state executive officials are listed for background information only. This report does not evaluate the role or positions of such officials.

Alabama (3/23/10)	Kansas (1/18/11)	Pennsylvania (3/23/10) §§
Alaska (4/21/10)	Louisiana (3/23/10)	South Carolina (3/23/10)
Arizona (4/7/10) *	Maine (1/18/11)**	South Dakota (3/23/10)
Colorado (3/23/10) §	Michigan (3/23/10) §	Texas (3/23/10)
Florida (3/23/10)	Mississippi (4/7/10) *	Utah (3/23/10)
Georgia (4/13/10)*	Missouri (7/2011) §§§	Virginia (1-state suit); Appeals 9/8/11)
Idaho (3/23/10)	Nebraska (3/23/10)	
Indiana (4/7/10)	Nevada (4/7/10) *	Washington (3/23/10) §
Iowa (1/18/11)**	North Dakota (4/7/10)	Wisconsin (1/18/11)**
	Ohio (1/18/11)**	Wyoming (1/18/11)**

\* = States where legal action was initiated by governors' offices.

\*\* = Newly elected executive branch officials for 2011 announced support for lawsuit.

§ = States where Attorney General initiated action but Governor publicly supports law, opposes challenge.

§§ = The Republican AG of Penn. was elected Governor on 11/2/2010.

§§§ = Missouri Lieutenant Governor Peter Kinder and six state residents sued U.S. officials July 2010. 21 states joined the suit in July 2011.

#### Legal Actions in Support of the ACA-2012 Update

Lawmakers who back the bill also are being heard from. The Working Group of State Legislators for Health Reform announced in January 2012 they were filing a "friend of the court" brief, on behalf of 518 members from 50 states, this



week with the Supreme Court defending the constitutionality of the new health care law. That group was working with the support of the Progressive States Network and the Constitutional Accountability Center.

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#### Legal Definitions:

**Nullification:** *(As applied to proposed state law)* The (proposed) Health Care Nullification Acts declare that "the federal law known as the 'Patient Protection and Affordable Care Act,' signed by President Barack Obama on March 23, 2010, is not authorized by the Constitution of the United States and violates its true meaning and intent as given by the Founders and Ratifiers, and is hereby declared to be invalid, shall not be recognized, is specifically rejected, and shall be considered null and void and of no effect." [description by 10th Amendment Center]

**Petition for Writ of Certiorari.** (Informally called "Cert Petition.") A document which a losing party files with the Supreme Court asking the Supreme Court to review the decision of a lower court. It includes a list of the parties, a statement of the facts of the case, the legal questions presented for review, and arguments as to why the Court should grant the writ.

**Writ of Certiorari.** A decision by the Supreme Court to hear an appeal from a lower court.

#### NCSL Educational sessions in 2011:

**The Affordable Care Act and the U.S. Supreme Court: Issues and Implications** The U.S. Supreme Court will hear oral arguments on the constitutional challenges to the Patient Protection and Affordable Care Act. This NCSL Fall Forum session reviewed the key issues before the court.  
> Speaker: Mark B. Seidenfeld, J.D., Professor of Administrative Law, Florida State University College of Law, Tallahassee, Florida [Slide Presentation, November 30, 2011]

**States Opting Out: Health Reform Challenges, Waivers and Alternatives** NCSL session held August 10, 2011 (click here for audio online) The ink is dry but the action is intense, as some legislators debate using state laws, constitutions or courts to take on parts of the Affordable Care Act.. Hear two leading legal experts comment on constitutional principles and latest developments. Then hear responses from six health leaders in states that have enacted their own approaches – challenging and/or implementing reforms. [CLE]

Visit this report online for future updates, at [www.ncsl.org/?TabId=18906](http://www.ncsl.org/?TabId=18906) || NCSL Health Reform resources:  
[www.ncsl.org/healthreform](http://www.ncsl.org/healthreform)

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