Health Care Reform

Research Training
Spring 2016

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(619) 260-4766

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<thead>
<tr>
<th>Title</th>
<th>Author(s)</th>
<th>Year</th>
<th>Availability</th>
<th>Additional actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Healthcare changes and the affordable care act: a physician call</td>
<td>James S. Powers, editor</td>
<td>2015</td>
<td>CL Book Stack (RA95.A3 H44 2015) plus more see all</td>
<td>Request it</td>
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<td>Eleanor D. Kinney, Indiana</td>
<td>2015</td>
<td>LRC Reading Room (RA412.2.K56 2015)</td>
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<td>and Medicare in comparative context</td>
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<td>Kinney, Eleanor D., author</td>
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<td>JCT technical explanation of P.L.</td>
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<td>P.L. 111-148, as signed by the</td>
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<td>Request it</td>
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<td>President on March 30, 2010; text</td>
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<table>
<thead>
<tr>
<th></th>
<th>Title</th>
<th>Details</th>
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<tbody>
<tr>
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<td>The Affordable Care Act decision: philosophical and legal implications</td>
<td>New York: Routledge, 2014</td>
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Unpublished or forthcoming
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<table>
<thead>
<tr>
<th>Content Type</th>
<th>Federal</th>
<th>State</th>
<th>Practice Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases</td>
<td>Secondary Materials</td>
<td></td>
<td>Directories</td>
</tr>
<tr>
<td>Statutes and Legislation</td>
<td>Briefs, Pleadings and Motions</td>
<td></td>
<td>News</td>
</tr>
<tr>
<td>Administrative Codes and Regulations</td>
<td>Jury Verdicts and Settlements</td>
<td></td>
<td>Legal News</td>
</tr>
<tr>
<td>Administrative and Agency Materials</td>
<td>Expert Witness Analysis</td>
<td></td>
<td>Scientific</td>
</tr>
<tr>
<td>Jury Instructions</td>
<td>Dockets</td>
<td></td>
<td>Company and Financial</td>
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<tr>
<td>Forms</td>
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Secondary Materials (148)

1. 11 Ind. Health L. Rev. 225

Indiana Health Law Review, ARTICLE: ACCOUNTABILITY PARTNERS: LEGISLATED
COLLABORATION FOR HEALTH REFORM, 26705 words

The Affordable Care Act encourages preventative wellness by mandating that insurance
companies offer a ...

... (2013)). In addition, many preventive services now are required to waive any
coinsurance payments that were previously required. 98 Id. § ...

... 2014). In addition, many preventive services now are required to waive any coinsurance
payments that were previously required. 179 Patient Protection and Affordable Care Act of
2010, Pub. L. No. 111-148, § 10406, 124 Stat. ...

... at 42 U.S.C. § 1395l (2013)). As of 2013, the Affordable Care Act has extended free
preventive care to 71 million Americans. 180 Press Release, Dep't Health & Human Servs,
Affordable Care Act Extended Free Preventive Care to 71 Million Americans with Private ...

Passage of the Affordable Care Act means that millions more people are covered, but will
there be enough providers to take care of these additional patients? 250 David Troxel,
Op-Ed., Doctor Shortage ...

2. 40 Hastings Const. L.Q. 525

Hastings Constitutional Law Quarterly, ARTICLE: Negative Lawmaking Delegations:
Constitutional Structure and Delegations to the Executive of Discretionary Authority to Amend,
Waive, and Cancel Statutory Text, by R. Craig Kitchen*, 35247 words

... to issue "an executive order paving the way for Obamacare waivers to all 50 states" if
elected President). The executive order ...

... design health-care solutions that work best for them." Id. The waiver to which Governor
Romney referred is known as a "Waiver for State Innovation." Patient Protection and
Affordable Care Act, Pub. L. No. 111-148, § 1332(a)(1), 124 Stat. 119 ...

Further muddying the waters for waiver delegations is the distinct but related issue of
executive discretion ...
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Law Reviews & Journals

Journal of Land, Resources, & Environmental Law
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Cases

Dockets

Administrative Decisions & Guidance
1. **ADMINISTRATIVE LAW WITHOUT CONGRESS**

Administrative law has re-emerged as a subject of intense controversy. The chief justice of the United States has heard aloud whether the existing corpus juris is sufficient to protect against the “danger posed by the growing power of administrative state.” Prominent scholars have argued that administrative law canons no longer reflect the...

...2) procedural shell games and manipulation; and (3) broad regulatory waivers without or in excess of a statutory casting...

...how to deal with rewrites, shell games, and broad regulatory waivers. We provide illustrations in the “old statutory “hyper-legislation..."

2. **ACCOUNTABILITY PARTNERS: LEGISLATED COLLABORATION FOR HEALTH REFORM**
   Indiana Health Law Review | 2014 | 11 Ind. Health L. Rev. 225

I. INTRODUCTION. 226. II. PATIENT ACCOUNTABILITY. 236 A. Shifting Role of Physician-Patient Relationship. 236 Accountability for Rising Patient Care Costs. 239 C. Models of Cost Containment Before the Affordable Care Act. 244 E. Toward Patient-Centered Medicine and Consumer Drive...

...Care Costs 239 C. Models of Cost Containment Before the Affordable Care Act 241 D. Accountability to Patients for Cost Containment Under Affordable Care Act 244 E. Toward Patient-Centered Medicine and Consumer Drive...
"affordable care act" "take care" waiver

Scholar

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1. Health insurance exchanges and the Affordable Care Act: key policy issues
   TS Jost, C Fund - 2010 - cooleyasanemia.com
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   HEALTH INSURANCE EXCHANGES AND THE Affordable Care Act: KEY POLICY ISSUES...
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2. The affordable care act and health promotion: the role of insurance in defining responsibility...
   [PDF] from bu.edu
   ... for health risks and costs.
   WK Mariner - Duquesne University Law Review, 2012 - papers.ssm.com
   ... 8. See, eg, Patient Protection and Affordable Care Act § 1003 (authorizing Secretary of the...
   Cited by 19 Related articles All 5 versions Cite Save More

3. Commentary: Navigating the labyrinth of long-term care: Shoring up informal caregiving in a...
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   Commentary: Navigating the labyrinth of long-term care: Shoring up informal caregiving in a...
   EA Miller, SM Allen, V Mor - Journal of aging & social policy, 2009 - Taylor & Francis
   ... up to 150% of the poverty level—without having to go through the federal waiver approval process...
   In contrast to HCBS waivers, these provisions, which went into effect January 2007, permit states...
   Cited by 30 Related articles All 3 versions Web of Science: 14 Cite Save

4. Bridging troubled waters: family caregivers, transitions, and long-term care
   [HTML] from healthaffairs.org
   Bridging troubled waters: family caregivers, transitions, and long-term care
   C Levine, D Halper, A Peist, DA Gould - Health Affairs, 2010 - Health Affairs
   ... Hospitalists—doctors who are specially trained to take care of acute illnesses in the hospital...
   In the title—Family Care—of the Medicaid waiver program in Wisconsin,...
   Cited by 108 Related articles All 8 versions Web of Science: 52 Cite Save

5. What the evidence shows about patient activation: better health outcomes and care...
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   What the evidence shows about patient activation: better health outcomes and care...
   JH Hibbard, J Greene - Health affairs, 2013 - Health Affairs
   ... The Affordable Care Act recognizes that engaging patients in their own care is a cornerstone...
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* affordable care act
* waiver

1. **Federalism by Waiver after the Health Care Case**
   - Samuel R. Popkin
   - University of Michigan Law School
   - Date posted: 15 Oct 2012
   - Last revised: 18 Oct 2012
   - 274 Downloads
   - Number of Pages in PDF File: 18

2. **Administrative Law Without Congress**
   - Michael Grae and Ashley C. Parish
   - George Mason University School of Law and King & Spalding LLP
   - Date posted: 25 Oct 2014
   - Last revised: 25 Apr 2015
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3. **From Sovereignty and Process to Administration and Politics: The Afterlife of American Federalism**
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   - Columbia University - Law School
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   - University of San Diego School of Law
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   - 130 Downloads
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Hb 429

Petition For Certiorari, Curtis J Neeley, Jr

Restoring Nobility To The Constitution: A Modern Approach To A Founding Principle, Marc A. Greendorfer

Expanding The Scope Of Practice For Advanced Practice Registered Nurses: A Legislative Call To Action, Adino J. Barbarito

Medical Balance Billing: Inadequate Regulations, Increasing Consumer, Christine O'Neill

Untangling The Branches: An Analysis Of Congressional Standing In The Wake Of United States V. Windsor, Peter Wojcik

Preventing Preemption: Finding Freedom For States To Protect Their Citizens'
Search strategies

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• Use multiple search techniques
  • keyword (natural language & Boolean)
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A note about secondary sources

• Evaluate sources for quality, authority, currency
• Don’t rely solely on a secondary source to tell you what the primary law says
• Best source rule
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- Business & Taxation
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- Health Information & Technology
- Health Insurance & Benefits
- Hospital & Provider Regulation
- Medicare & Medicaid
- Pharmaceuticals & Life Sciences
01. OVERVIEW OF THE AFFORDABLE CARE ACT'S HISTORY AND PROVISIONS

A. Historical Context
B. Enactment and Structure of the ACA
C. Provisions of the ACA
D. Who Regulates Health Coverage?

02. MARKET REFORMS UNDER THE AFFORDABLE CARE ACT

A. Introduction to Market Reforms
B. Availability of Coverage
C. Premium Reforms
D. Health Plan Benefit Reforms
E. Premium Stabilization Programs
## Employer's ACA Compliance Guide: Actions To Take in 2012, 2013, and Beyond

<table>
<thead>
<tr>
<th>2014</th>
<th>2015 (delayed from 2014)</th>
<th>2020 (delayed from 2018)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Restricted annual limits</strong></td>
<td>2014</td>
<td></td>
</tr>
<tr>
<td><strong>Waiting periods</strong></td>
<td>2014</td>
<td></td>
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<tr>
<td><strong>Wellness programs</strong></td>
<td>2014</td>
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<td><strong>Employer shared responsibility excise tax</strong></td>
<td>Make a cost/benefit analysis of offering current health plan (if any) and possible alternatives, but make no meaningful decisions until the IRS and HHS issue guidance containing definitions, calculations and safe harbors. Beginning in 2015, employers with 50 or more (generally 100 or more in 2015) full-time employees must provide health insurance that meets affordability and value requirements or pay a penalty for each exchange certified employee.</td>
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<td><strong>Reporting offers of health insurance coverage and minimum essential coverage</strong></td>
<td>Beginning in 2015, employers that offer self-insured coverage that is minimum essential coverage and employers that employ 50 or more full-time and full-time equivalent employees must compile information about the coverage offered and file and furnish that information in the next year (e.g., coverage for 2015 is reported in 2016).</td>
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<tr>
<td><strong>High cost health (&quot;Cadillac&quot;) plans</strong></td>
<td>Calculate and pay an excise tax based on the excess value of coverage.</td>
<td></td>
</tr>
</tbody>
</table>
### Health Law

#### Patient Protection and Affordable Care Act Implementation

<table>
<thead>
<tr>
<th>ACA/HCERA Section</th>
<th>Category</th>
<th>Subject Matter</th>
<th>Applies To</th>
<th>Administrative Activity</th>
<th>Analysis &amp; Commentary</th>
</tr>
</thead>
</table>
| § 1001 ACA        | Insurance Reforms and Exchanges | Extension of dependent coverage     | Insurers   | Amendment to the Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 70114 (Nov. 17, 2010).  
Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Dependent Coverage of Children to Age 26 Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 27122 (May 13, 2010).  
BNA INSIGHTS, “New Regulations Implement Dependent Child Medical Coverage to Age 26,” by Joan A. Disler and David D. Green (July 7, 2010). |
<table>
<thead>
<tr>
<th>§ 1401 ACA</th>
<th>Insurance Reforms and Exchanges</th>
<th>Affordability premium credits for individuals</th>
<th>Individuals, Exchanges</th>
</tr>
</thead>
<tbody>
<tr>
<td>IRS Notice 2015–37, Eligibility for Minimum Essential Coverage for Purposes of the Premium Tax Credit (April 27, 2015).</td>
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<td>IRS, Notice 2015–9, Penalty Relief Related to Advance Payments of the Premium Tax Credit for 2014 (Jan. 26, 2015).</td>
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<td>IRS Rev. Proc. 2014–41, Examination of returns and claims for refund, credit, or</td>
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Patient Protection and Affordable Care Act

Legislative History
Citation: PL111-148

Date: March 23, 2010
Collation: 906 p.

Citation/Abstract
Permalink
Patient Protection and Affordable Care Act

Legislative History of: PL111-148
Title: Patient Protection and Affordable Care Act
Date: March 23, 2010
Length: 906 p.
Enacted Bill: 111 H.R. 3590; Retrieve Bill Profile Report
Congress Session: 111-2
CIS-Number: 2010-PL111-148
PL Number: P.L. 111-148
Statute at Large: 124 Stat. 119
Bills:
1-25 of 265  Sort by: Relevancy

1. **RESOLUTION**

**H.Res.512** — 114th Congress (2015-2016)

Providing for further consideration of the Senate amendments to the bill (H.R. 22) to amend the Internal Revenue Code of 1986 to exempt employees with health coverage under TRICARE or the Veterans...

Committees:  House - Rules
Committee Reports:  H.Rept.114-326
Latest Action:  11/04/2015 ORDE...
A note about administrative law...

- Legislature passes a law, giving the broad strokes and “enabling” a government agency to implement the law.
- To implement the legislature’s intent, the agency typically will have to do 2 things:
  1. Promulgate regulations that provide more detailed rules & establish oversight processes;
  2. Enforce the law through those processes, including administrative hearings/adjudications.
- These regulations & adjudications are generally referred to as “administrative law.”
Administrative law

Legislative

Executive

Regulations = quasi-legislative

Hearings/adjudications = quasi-judicial

Judicial
Promulgating regulations

- Agency drafts proposed regulations
- Publish proposed regulations in the Federal Register (Fed. Reg. or F.R.)
- Opportunity for public comment
- Agency drafts final regulations
- Publish notice of final regulations in Federal Register
- Codify the final regulations in the Code of Federal Regulations (C.F.R.)
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Warren Commission Report and Hearings
President's Commission on the Assassination of President John F. Kennedy

S. Rept. 113-288
Senate Intelligence Committee Report on Torture and the CIA

Congressional Bills
Consolidated and Further Continuing Appropriations Act, 2015

http://www.gpo.gov/fdsys/
1,811 results for ""affordable care act"

Patient Protection and Affordable Care Act: Benefit and Payment Parameters for 2017
- Document Contents: ... 45 CFR Parts 144, 146, 147, et al. Patient Protection and Affordabe Care Act; HHS Notice of Benefit and Payment Parameters for 2017; Proposed Rule...

Proposed Rule by CMS on 12/02/2015 ID: CMS-2015-0128-0001

Patient Protection and Affordable Care Act: Benefit and Payment Parameters for 2017
- Document Contents: ... 45 CFR Parts 144, 146, 147, et al. Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2017; Proposed Rule...

Proposed Rule by HHS on 12/02/2015 ID: HHS_FRDOC_0001-0609

A Labeling Guide for Restaurants and Retail Establishments Selling Away-From-Home Foods—Part II (Menu Labeling Requirements in Accordance with the Patient Protection Affordable Care Act of 2010); Draft Guidance for Industry, Availability

Proposed Rule by FDA on 09/16/2015 ID: FDA-2011-F-0172-0573

Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-Grandfathered Plans
- Document Contents: Secretary Agency Information Collection Activities; Submission Request for Approval of the Internal Claims and Appeals and External Review Procedures for Non-Grandfathered Plans

Proposed Rule by CMS on 08/21/2015 ID: CMS-2015-0115-0001

A Labeling Guide for Restaurants and Retail Establishments Selling Away-From-Home Foods—Part I (Menu Labeling Requirements in Accordance with the Patient Protection Affordable Care Act of 2010); Draft Guidance for Industry, Availability

Proposed Rule by FDA on 09/16/2015 ID: FDA-2011-F-0172-0573

Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-Grandfathered Plans
- Document Contents: Secretary Agency Information Collection Activities; Submission Request for Approval of the Internal Claims and Appeals and External Review Procedures for Non-Grandfathered Plans

Proposed Rule by CMS on 08/21/2015 ID: CMS-2015-0115-0001
Patient Protection and Affordable Care Act: Benefit and Payment Parameters for 2017

This Proposed Rule document was issued by the **Centers for Medicare Medicaid Services** (CMS)

For related information, Open Docket Folder

**Action**

Proposed rule.

**Summary**

This proposed rule sets forth payment parameters and provisions related to the risk adjustment, reinsurance, and risk corridors programs; cost sharing parameters and cost-sharing reductions; and user fees for Federally-facilitated Exchanges. It also provides additional standards for the annual open enrollment period for the individual market for the 2017 benefit year; essential health benefits; cost-sharing requirements; qualified health plans; updated standards for Exchange consumer assistance programs; network adequacy; patient safety standards; the Small Business Health Options Program; stand-alone dental plans; acceptance of third-party payments by qualified health plans; the definitions of large employer and small employer; fair health insurance premiums; guaranteed availability; student health insurance coverage; the rate review program; the medical loss ratio program; eligibility and enrollment; exemptions and appeals; and other related topics.

**Dates**

To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on December 21, 2015.

**Addresses**

In commenting, please refer to file code CMS-9937-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. Electronic: wwweregulations.gov. Follow the “Comments” link for this rule to submit or view comments. Note: View the Online Docket for this rule at wwweregulations.gov.
2. Fax: 202-452-5955. Please include your name and address in the first page of your submission.
3. Mail: Department of Labor, Office of the Federal Register, New Carrollton Post Office, P.O. Box 75020, New Carrollton, MD 20732-5020. There is no specific address for this rule. In your letter, please include your name and address in the first page of your submission.
4. Federal Express: Department of Labor, Office of the Federal Register, New Carrollton Post Office, P.O. Box 75020, New Carrollton, MD 20732-5020. There is no specific address for this rule. Please include your name and address in the first page of your submission.

If you submit comments in the electronic format, please include your name and address immediately after the comment so that we can verify this information for the public docket record. There is no specific address for this rule. If you have any questions about this rule or need assistance, please call 202-693-6000.

**Comment Period Closed**

Dec 21 2015, at 11:59 PM ET

**ID:** CMS-2015-0128-0001

**View original printed format:**

**Document Information**

- **Date Posted:** Dec 2, 2015
- **RIN:** Not Assigned
- **CFR:** 45 CFR Parts 144, 146, 147, 153, 154, 155, 158
- **Federal Register Number:** 2015-29884
- **Show More Details**

**Comments**

524 Comments Received
There are hundreds of federal agencies. Here’s an index of federal agencies or just Google the name:

http://www.washlaw.edu/doclaw/executive5m.html

Agency websites are a wealth of information, including links to recent bills, statutes, regulations, and decisions.
1. Start with a secondary source
2. If there’s a governing statute, collect case citations from the annotated code
3. Use the digest/headnote system & citators
4. Use keyword searching strategically, or not at all!
§ 300gg-1. Guaranteed availability of coverage

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 6A. Public Health Service (Refs & Annos)
Subchapter XXV. Requirements Relating to Health Insurance Coverage (Refs & Annos)
   Part A. Individual and Group Market Reforms (Refs & Annos)
      Subpart I. General Reform (Refs & Annos)

Unconstitutional or Preempted | Negative Treatment Reconsidered by Florida ex rel. Atty. Gen. v. U.S. Dept. of Health and Human Services | 11th Cir. (Fla.) | Aug. 12, 2011

Proposed Legislation

42 U.S.C.A. § 300gg-1

§ 300gg-1. Guaranteed availability of coverage

Currentness

(a) Guaranteed issuance of coverage in the individual and group market
<table>
<thead>
<tr>
<th>Title</th>
<th>Date</th>
<th>NOD Topics</th>
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<tbody>
<tr>
<td>1. State v. United States</td>
<td>Jan. 05, 2016</td>
<td>—</td>
<td>Case</td>
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<td>2016 WL 51226, *3+, S.D.Ohio</td>
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<td>In its most recent challenge to the Patient Protection and</td>
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<td>Affordable Care Act of 2010, commonly known as “Obamacare,” the</td>
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<td>State of Ohio takes aim at a lesser-known provision from...</td>
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<td>797 F.3d 1173, 1175+, D.C.Cir.</td>
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<td>CIVIL RIGHTS - Religion. Religious exemption of Patient</td>
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<td>Protection and Affordable Care Act did not violate the</td>
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<td>Establishment Clause.</td>
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<td>135 S.Ct. 2480, 2482+, U.S.</td>
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<td>Background: Virginia residents who did not want to purchase</td>
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<td>comprehensive health insurance brought action challenging</td>
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<td>Internal Revenue Service (IRS) final rule implementing...</td>
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<td>750 F.3d 390, 419, D.C.Cir.</td>
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<td>in dissent</td>
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<td>HEALTH - Medical Assistance. ACA did not authorize tax credits</td>
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<td>for insurance purchased on federally-facilitated health benefit</td>
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<td>exchanges.</td>
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National Federation of Independent Business v. Sebelius

West Headnotes (37)

1 States  Powers Reserved to States
In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder.

12 Cases that cite this headnote

2 Constitutional Law  United States Constitution
The Federal Government is acknowledged by all to be one of enumerated powers, that is, rather than granting general authority to perform all the conceivable functions of government, the Constitution lists, or enumerates, the Federal Government’s powers.

6 Cases that cite this headnote

3 Constitutional Law  United States Constitution
The Constitution’s enumeration of powers for the Federal Government is also a limitation of powers, because the enumeration presupposes something not enumerated.

4 Cases that cite this headnote

4 Constitutional Law  United States Constitution
The Constitution’s express conferral of some powers for the Federal Government makes...
The individual mandate under the Patient Protection and Affordable Care Act of 2010 requires most Americans to maintain "minimum essential" health insurance coverage. 26 U.S.C. § 5000A. The mandate does not apply to some individuals, such as prisoners and undocumented aliens, § 5000A(d). Many individuals will receive the required coverage through their employer, or from a government program such as Medicaid or Medicare, § 5000A(f). But for individuals who are not exempt and do not receive health insurance through a third party, the means of satisfying the requirement is to purchase insurance from a private company. Shepards - Narrows this Headnote

Beginning in 2014, those who do not comply with the individual mandate for insurance coverage under the Patient Protection and Affordable Health Care Act of 2010 must make a "shared responsibility payment" to the federal government. 26 U.S.C. § 5000A(b)(1). That payment, which the Act describes as a "penalty," is calculated as a percentage of household income, subject to a floor based on a specified dollar amount and a ceiling based on the average annual premium the individual would have to pay for qualifying private health insurance, § 5000A(c). In 2016, for example, the penalty will be 2.5 percent of an individual's household income, but no less than $695 and no more than the average yearly premium for insurance that covers 60 percent of the cost of 10 specified services (e.g., prescription drugs and hospitalization), § 5000A(c); 42 U.S.C. § 18022. Shepards - Narrows this Headnote

The Patient Protection and Affordable Health Care Act of 2010 provides that the penalty for failure to comply with the individual mandate for insurance coverage will be paid to the Internal Revenue Service with an individual's taxes, and shall be assessed and collected in the same manner as tax penalties, such as the penalty for claiming too large an income tax refund. 26 U.S.C. § 5000A(q)(1). The Act, however, bars the Internal Revenue Service from using several of its normal enforcement tools, such as criminal prosecutions and levies, § 5000A(q)(2). And some individuals who are subject to the mandate are nonetheless exempt from the penalty—for example, those with income below a certain threshold and members of Indian tribes, § 5000A(e). Shepards - Narrows this Headnote
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Jane Larrington (619) 260-4766 or jlarrington@sandiego.edu