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Update on New Jersey's Implementation of the Patient Protection and Affordable Care Act

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In a budget address on February 26, 2013, New Jersey Governor Chris Christie announced his plan to expand the State's Medicaid program by accepting federal resources provided under the Patient Protection and Affordable Care Act ("ACA"), Pub. L. 111-148, enacted into law on March 23, 2010. Under the ACA, the federal government has agreed to provide 100% of the funding for the first three years, and thereafter to scale back to 90% of funding, for states to expand their Medicaid programs. The Governor stated that the expansion would add 104,000 low-income New Jerseyans to the Medicaid program and is expected to save the State up to \$227 million a year.

This decision, although welcomed by many constituencies in the State, should not be confused with a full embrace of the ACA. Under the ACA, states are required to establish a health insurance exchange to begin operating on January 1, 2014. The exchanges are another critical element of the ACA's goal of subsidizing low and middle-income individuals who cannot afford health insurance because people with incomes between the federal poverty level and 4 times the federal poverty level (\$23,050 - \$92,200 for a family of four) would be eligible for subsidies to buy coverage through the exchanges. Health exchanges are designed to control costs by pooling insurance consumers together online to enhance their insurance buying power as a group. Thus, the larger the group, the greater the buying power, at least in theory.

States can choose to implement their own health insurance exchange, enter into a partnership with the federal government to establish an exchange, or opt to let the federal government establish the mandated health insurance exchange for them. In December, Governor Christie decided to veto a bill that would have established a New Jersey state-run health insurance exchange, thereby ceding to the federal government complete control over the implementation of New Jersey's health insurance exchange, including which plans will be offered and what will be done to reach out to consumers, operating the exchange website, designing the insurance application, picking and funding the "navigators" that will help guide consumers through the process, determining eligibility for subsidies, and enforcing the mandate that everyone eligible for the benefits through the exchange must purchase coverage in some fashion or pay a penalty. 26 states, including New Jersey, also let the February 15, 2013 deadline for forming state-run insurance exchanges pass, leaving the cost of implementation of the exchanges and their operation to the federal government. The Governor's decision to forego State involvement with respect to the exchange, however, only applies to 2014 and can be revisited in later years.

Many concerns have been raised about the Governor's decision to cede the implementation of New Jersey's health insurance exchange to the federal government. Primary among them is the perceived burden of dual regulation of the insurers

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who participate in the exchange by the State and by the federal government. States would still regulate the insurers who offer coverage through the exchange as to sales practices, arguably policy form content, and claims handling because their residents would be the purchasers. However, eligibility criteria, application of the ACA mandates and administration and operation of the exchange would be left to the federal government. Health insurers doing business in government-funded markets (*i.e.*, Medicare and Medicaid) are already subject to dual regulation from state regulators and the Centers for Medicare & Medicaid Services or CMS. The exchange, thus, is not unique in this regard, nor does it necessarily enhance an insurer's or health plan's risk of federal regulation.

Most observers believe the State will get involved with the implementation and management of New Jersey's health insurance exchange at some point. Indeed, within the last few days, the New Jersey Senate and Assembly have both introduced concurrent resolutions (SCR144 and ACR184) to establish a Joint Legislative Task Force on Health Insurance Exchange Implementation. Further, a bill has been introduced in the Assembly to require the New Jersey Commissioner of Banking and Insurance to establish a public awareness campaign about the federally mandated health insurance exchanges (A3878).

New Jersey appears committed to satisfying its obligations under the ACA. However, Governor Christie is determined to proceed cautiously and in a manner that is both efficient and cost-

effective for New Jersey policyholders and the businesses that will bear the financial burden of implementing the Act. Until more information is made available by the U.S. Department of Health and Human Services regarding the cost to residents of operating a state-run exchange, Governor Christie appears unwilling to commit to the program. ■

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