



South Carolina

**BB&T** Insurance Services

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## **HR Health Care Reform:**

**WHAT TO EXPECT AND CONSIDER DURING  
THE 2011 RENEWAL SEASON**

# FYI

- Please use your chat box to submit questions during the presentation.
- If you have any questions after the presentation, please email [sslaughter@nexsenpruet.com](mailto:sslaughter@nexsenpruet.com)



# Speakers



Mike Brittingham, Nexsen Pruet



James D'Alessio, BCBSSC



Darren Hardin, Elliott Davis



Bruce Williams, BB&T

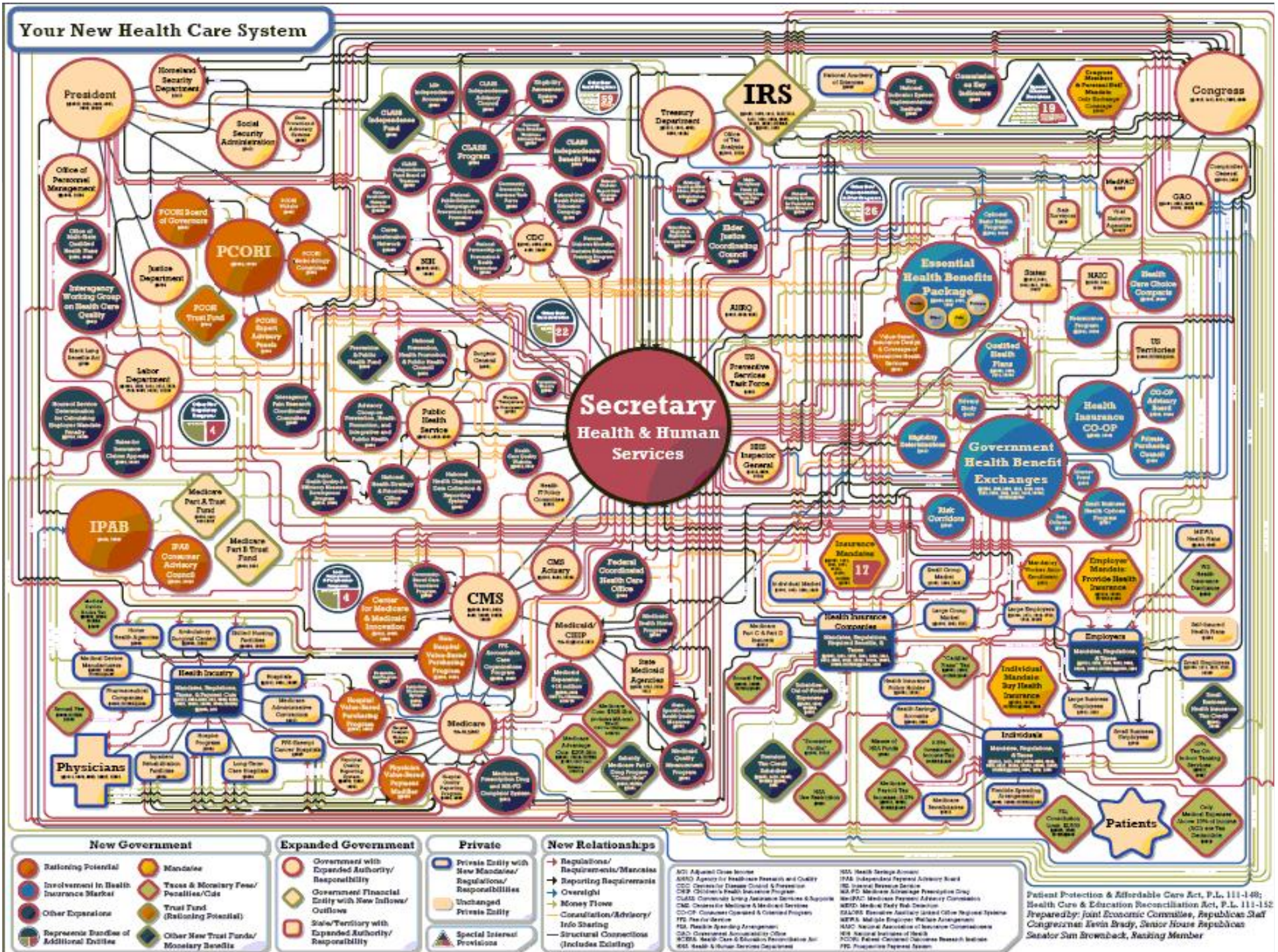
# Legal Issues

**Patient Protection and  
Affordable Care Act (PPACA)**  
(March 23, 2010)

**Health Care and Education  
Reconciliation Act (RA 2010)**  
(March 30, 2010)



# Your New Health Care System



Patient Protection & Affordable Care Act, P.L. 111-148;  
 Health Care & Education Reconciliation Act, P.L. 111-152  
 Prepared by: Joint Economic Committee, Republican Staff  
 Congressman Kevin Brady, Senior House Republican  
 Senator Sam Brownback, Ranking Member

# Legal Issues

- When must we consider how PPACA impacts our group medical plan?
  - The reforms go into effect “for plan years beginning on or after the date that is 6 months after the date of enactment.”
  - PPACA was signed on March 23, 2010 – 6 months later is September 23, 2010
  - For calendar year plans, compliance begins January 1, 2011



# Legal Issues

- **All group medical plans must comply with the following:**
  - **No lifetime coverage limits for “essential benefits” (2010)**
  - **No annual coverage limits on “essential benefits” except as defined by HHS (thru 2014, then prohibited)**
  - **No pre-existing conditions exclusions (except children younger than 19 until 2014)**
  - **No policy revocations – except for fraud**
  - **Required “dependent” coverage for children to 26<sup>th</sup> birthday – 2010 to 2014 only have to allow if no employer-based access for child**
  - **No waiting period greater than 90 days (2014)**



# Legal Issues

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- What is a “Grandfathered Plan”?

A plan that is “grandfathered” is allowed indefinite protection for existing terms of coverage and benefit levels - with exceptions noted on the previous slide.

- New Interim Final Rules (IFRs) regarding grandfathered plans released June 17, 2010 by Treasury, Labor, and HHS). **The IFRs require a model notice be used.**

# Legal Issues

- **Restrictions on Grandfathered Plans**  
-- any of the following will result in **loss of status**:
  - Eliminating benefits
  - Raising co-insurance amounts
  - “Significantly” raising cost-sharing / co-payments
  - “Significantly” lower employer’s share of plan costs
  - Decreasing or adding new annual limits
  - **Changing insurance carriers**
  - Taking other actions to avoid compliance



# Legal Issues

- **Why Stay A Grandfathered Plan? Avoid:**
  - Application of IRC Section 105(h) nondiscrimination requirements (for insured plans / already applies to self-funded plans)
  - Mandatory free preventive services
  - Out-of-pocket limitations ((\$5k individuals/\$10k families for new plans) (effective 2014))
  - Participant's right to designate primary care physician
  - Participant's right to clinical trial participation (effective 2014)
  - Mandatory appeals rights / notice / outside review / continued claims payment
  - Premium increase review (effective 2011)
  - Quality reporting to participants and HHS (effective 2012)



# Legal Issues

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- **Why Stay A Grandfathered Plan?**  
**In addition to the above, small group plans (<100) and individual policies avoid:**
  - Essential benefits/minimum plan value (effective 2014)
  - Community rating/no medical underwriting (effective 2014)

# Legal Issues

- Other Miscellaneous Legal Issues
  - Limited Benefits (temporarily okay until further guidance issued)
  - Automatic Enrollment requirement for large employers (200+ employees)



# Renewal Issues

- How is the market reacting to HCR / PPACA?
  - Dependents to age 26
  - Pre-existing conditions
  - Lifetime maximums
  - Preventive Care



# Renewal Issues

- Carrier Increases

– Aetna	2 to 5%
– BCBSSC	2.5 to 5%
– BCBSTN	2.5 to 6.5%
– BCBSGA	3 to 5.5%
– BCBSNC	2.5% to 6%



# Renewal Issues

- Partially Self-Funded
  - Increase in stop loss insurance rates
  - Increase in plan administration over time



# Renewal Issues

- Other notable issues for 2011
  - FSAs - change in over-the-counter rules
  - HSAs - some more new rules
  - Form W-2 Reporting – planning ahead and coordinating with all responsible parties
  - Grandfathered Plan Participant Notices
    - [www.dol.gov/ebsa/healthreform](http://www.dol.gov/ebsa/healthreform)



# Renewal Issues

- Will you be Grandfathered?

- A good resource:

- ([www.understandinghealthreform.com/grandfather.php](http://www.understandinghealthreform.com/grandfather.php))



# Insurer Issues

- **Medical Loss Ratio (MLR)** – the requirement that insurers must spend a mandatory percentage for medical claims / treatment and for activities that improve health care.
  - Large Plans (85%)
  - Small Plans (80%)



# Insurer Issues

- **Political Fallout - Updated Polling**
- Gallup Poll – 8/15/2010
  - *Generic Congressional 50% GOP, 43% Democrats*
  - *60 years of tracking has only produced 3 GOP majorities: 1950, 1994, 2002 – All great election years for the GOP.*
  - *Presidential Job Approval = 42% (Independents = 39%)*
    - *First term Presidents with sub 50% job approval historically suffer large Congressional losses.*
  - *Congressional Approval = 19%*
    - *Under 40% dangerous for incumbent party*
    - *1994 = 23%, 2006 = 26%*

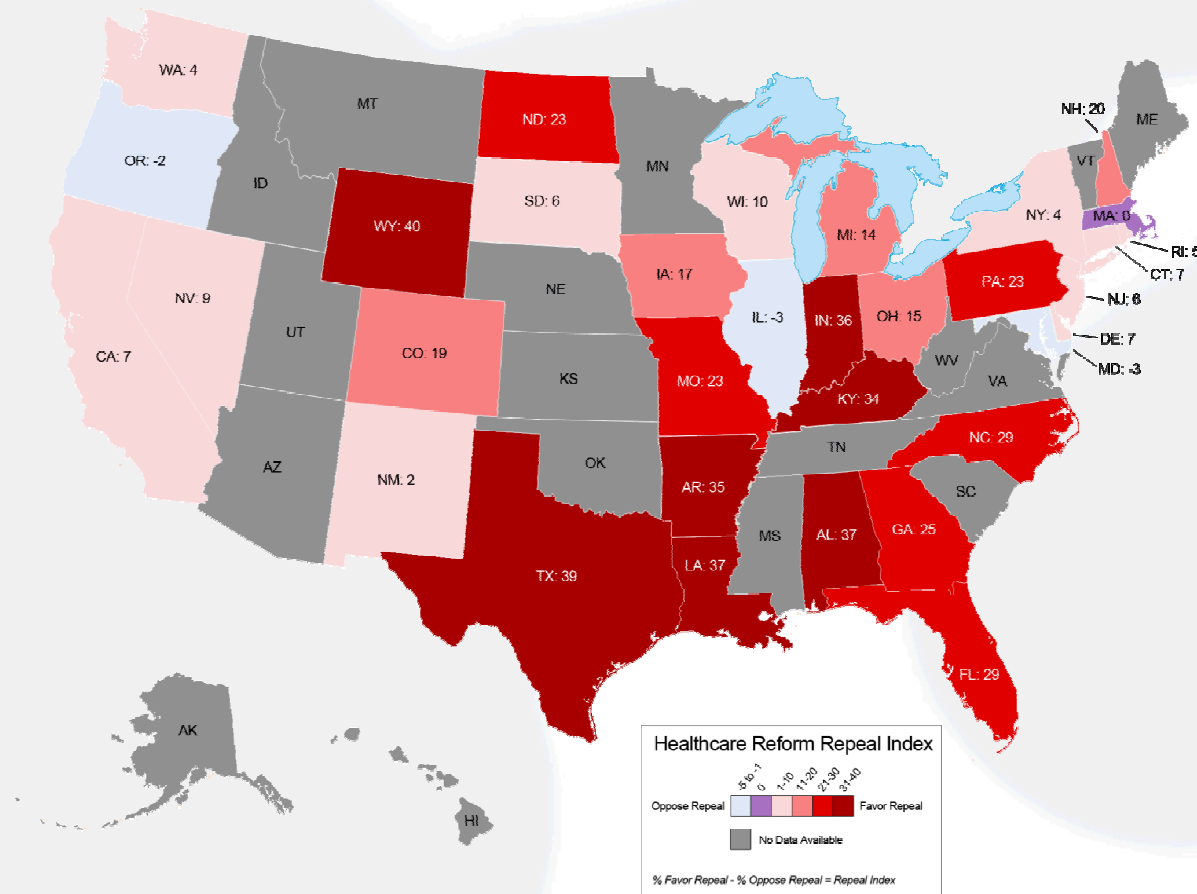


# Insurer Issues

- **Political Fallout - Updated Polling**
- **Rasmussen Poll – 8/16/2010**
  - *60% Support Repeal, 36% Oppose Repeal*
  - *60% increase deficit; 57% increase costs; 51% reduce the quality of care.*
  - *Presidential Approval Index = -18*
  - *Generic Congressional 48% GOP, 36% Democrats*
    - *Independents = 52% GOP, 21% Democrats*
  - *57% of likely voters believe the agenda of Democrats in Congress is “extreme.” (73% of Independents).*



# Insurer Issues



Source: Rasmussen Reports

# Insurer Issues

- **Legal Challenges**

- 20 states have filed suit claiming the act is an unconstitutional exercise of Federal power and a violation of the Tenth Amendment.
  - *District Judge in Virginia dismissed the federal government's motion to dismiss.*
- 38 state legislatures are considering various forms of legislation that challenge implementation of the act within their state.
  - *71% of Missouri voters approved of state plan to challenge the mandate.*



# Tax Issues

- Tax and Reporting Provisions
  - Form 1099 Reporting
  - Form W-2 Reporting
  - Limits on FSAs
  - Credit for Small Business Employee Coverage
  - Economic Substance Doctrine
  - Tanning Tax



# Tax Issues

- Form 1099 Reporting
  - Form 1099 reporting is extended to include corporations and payments for services and property
  - Effective for all payments made after December 31, 2011
  - Revenue estimates are \$17.1 billion through 2019



# Tax Issues

- Form 1099 Reporting
  - Requires businesses to obtain TIN for virtually all payments
  - Logistical challenges to both small and large businesses:
    - Gathering data
    - Verifying data
    - Issuing Form 1099s
    - Receiving Form 1099s
    - Fiscal Year issues



# Tax Issues

- Form W-2 Reporting
  - For wages paid after Dec. 31, 2010, employers must report the aggregate cost of applicable employer-sponsored coverage on each employees annual Form W-2
  - Reporting on the 2011 Form W-2
  - Includes aggregate value of all health coverage excluding the value of a FSA



# Tax Issues

- Limits on FSAs
  - Maximum Annual Limit is \$2,500
    - Applies to employee elections
    - Effective in 2013
    - Indexed for inflation
  - No Over-the-Counter Reimbursements
    - Exception if under a prescription or for insulin
    - This provision effective beginning 2011



# Tax Issues

- Premium Tax Credit for Small Employers
  - No more than 25 full-time equivalents for the taxable year and the average annual wages of its employees must be less than \$50,000 per FTE
  - Employer must contribute at least 50% of uniform coverage
  - No deduction allowed if the credit taken
  - Credit phases out for FTE over 10 to 25 or if average wages exceed \$25,000



# Tax Issues

- Premium Tax Credit for Small Employers
  - Maximum credit for 2010-2013 is 35% of non-elective contributions for insured coverage
  - For 2014-2016, available only if coverage is offered through an exchange and limited to 50%
  - Leased employees are eligible employees
  - Self-employed owners, and dependents of owners are not eligible



# Tax Issues

- Economic Substance Doctrine
  - Codifies the economic substance doctrine effective after the enactment date.
  - Requires transactions to have the taxpayer's economic position changed other than for federal tax purposes.
  - If the transaction lacks economic substance, a 20% penalty applies and increases to 40% if the position was not disclosed.



# Tax Issues

- Tanning Tax
  - Provides a 10% tax on qualified indoor tanning services after July 1, 2010.



# Tax Issues

## Internet Web Site

[www.aicpa.org/Research/HCR/Pages/  
HealthCareReform.aspx](http://www.aicpa.org/Research/HCR/Pages/HealthCareReform.aspx)



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