

Statement of
Senator Donald C. White
Chairman, Pennsylvania State Senate Committee on Banking and Insurance
February 13, 2012

Thank you for this opportunity to discuss the impact of the federal Patient Protection and Affordable Care Act on the individual states and employers, particularly those doing business in the Commonwealth of Pennsylvania.

As Chairman of Pennsylvania State Senate Committee on Banking and Insurance, I have had a front row seat on the development of state action in the Commonwealth of Pennsylvania to comply with this law and I have discussed this matter at length with my colleagues, business leaders, hospitals, health care providers, and consumers.

To begin with, I want to make it clear that Pennsylvania is taking the initial steps to comply with this federal mandate by January 1, 2013. The last thing that anyone in Pennsylvania wants is for the federal government to take this over and issue additional edicts over the people of my state – and I am sure that feeling is echoed by my peers from most other states.

And, yes, the Patient Protection and Affordable Care Act is yet another mandate on states, on business and individuals and families.

We recognize that this legislation may have been passed along with the best of intentions, but let's be clear that it is a mandate being passed along with little guidance, no funding for states or for the businesses that will be impacted by its requirements.

At this point, as the timeframe for compliance continues to elapse, let me make it clear that there is a tremendous amount of anxiety and trepidation at the state level and among the business community.

Yes, we are moving forward, in implementation, but this progress is tempered by a sense of pragmatic caution.

No one is comfortable with taking an aggressive approach in implementation.

We've had little to no guidance on this matter.

Nor do we have a model to work from.

It is true that Massachusetts and Utah have developed systems similar to what is being mandated by the Patient Protection and Affordable Care Act, but those systems are vastly different in structure and I don't believe that either would serve as an appropriate model for Pennsylvania.

With legislation pending in the US Supreme Court and with a presidential election set for November, there is a lack of confidence that the federal Patient Protection and Affordable Care Act will stand unscathed and

remain unchanged when all is said and done. The actions we take now may end up being superfluous and even contrary to ultimate compliance if this measure, or any part of it, it ultimately becomes effective.

This uncertainty has had a detrimental effect on Pennsylvania's economy, business growth and job creation in Pennsylvania.

At this point, no one is even certain what must be covered under the Patient Protection and Affordable Care Act. The states and employers see a requirement for "essential health benefits," but no one knows what is going to fall under the parameters of an "essential" benefit.

Granted, the federal Department of Health and Human Services is currently providing some latitude to the states in this area, but it remains an area of contention and likely a fertile ground for continued litigation.

The controversy surrounding mandated contraceptive coverage is a prime example of the controversy that will surround this provision and it certainly will not be the only area of contention. As I've seen on numerous occasions at the state level, and particularly in insurance coverage as monitored by the Committee on Banking and Insurance the broad questions of "what's in" and "what's out" and the various nuances therein are rife for dispute and contention.

As additional "essential benefits" are added, the cost that must be borne by government and employers will increase as well. We still need answers to some important actuarial value and cost-sharing questions that will truly determine whether the package is affordable.

Looking down the road, the costs of this mandate on the states are already set to increase because of the Medicaid expansion, as was clearly described by *Forbes* on January 27, 2012^{***}:

"The health reform law passed in March 2010 provides for a substantial expansion of the "must cover" population – essentially anyone from a family with income below 138% of the federal poverty line (an amount that varies based on family size). This is a major component of the health reform law: according to the Congressional Budget Office, half the uninsured who they project to become covered as a result of new law will obtain coverage because of the Medicaid expansion.

"From the states' point of view, the problem is, how will they come up with the money to cover their share of the cost of health care for these additional people? The health reform law provides a partial answer: the federal government will pay for the entire cost of coverage for those who are newly eligible – but only for the first three years, from 2014 to 2016. The federal government will reduce its contribution to 95% in 2017, then in stages, dropping to 90% in 2020 and thereafter.

"For states to pay 10% of the cost may not seem like much, though it might turn out to be quite a substantial sum of money, given the large numbers of people involved. The fact is that most state budgets are already strained, and Medicaid spending is already one of the largest items in every state budget."

I strongly concur with the author's opinion. In fact, one of the key cost drivers in the proposed 2012-13 state budget unveiled by Governor Corbett on February 7, 2012 were mandated increases of more than \$800 million in the Department of Public Welfare. The Governor responded to those mandates by proposing to shift expenditures within the Department, which ultimately could result in increased costs for counties and/or a reduction in human services available for citizens.

An increase in state Medicaid costs, even if only 10 percent of the expansion, will assuredly have an adverse impact on Pennsylvania's state budget and would lead to further reductions in support for other key services and programs and/or a broad-based tax increase on employers and/or individuals.

In particular, small business owners are going to be crushed by the federal Patient Protection and Affordable Care Act. I live in the small borough of Indiana, Pennsylvania. We have a fair-sized state university surrounded by quite a few small businesses that will never make the Fortune 500 list. Yet, these small operations are the heart of the community. They provide good jobs and important services and many are going to be hit with unnecessary costs.

As you know, the Patient Protection and Affordable Care Act adds an employer mandate for all firms with 50 or more full-time employees, regardless of their trade or line of business. These businesses are still waiting for regulatory definitions on seasonal and temporary workers and whether they count toward that arbitrary 50 worker threshold.

They are also facing the impact of the "fee" on small business health insurance plans. While this is being called a "fee," it is actually a tax on small business. The Congressional Budget Office (CBO), CMS Actuary (an independent Medicare Actuary), and the Joint Committee on Taxation (JCT) all confirm that these costs will ultimately be passed on to consumers. As a result of the Manager's Amendment to H.R. 3590, the legislation exempts self-insured businesses and select not-for-profit insurers – corporations and labor unions. These exemptions are a devastating blow to small business, because they will be forced to bear the brunt of this tax in the form of significant premium increases in the fully-insured market.

Additionally, the law includes an unprecedented increase in Medicare payroll on income over \$200,000 for individuals and \$250,000 for joint filers. Adding to the problem, wages are not indexed for inflation, meaning that more small businesses, particularly those employing 20 to 200 workers, will face this tax increase each year. Since the majority of small business owners pay their taxes at the individual level, this tax will hit the business income of many small business owners who collectively provide jobs for more than one-quarter of the American workforce.

Proponents of the Patient Protection and Affordable Care Act claim the costs and economic burdens of this mandate will be offset by a small business tax credit. However, the reality is it will do little to make purchasing insurance affordable for more small firms. Although the credit is intended to offset the cost of

insurance, these “savings” expire after five years at maximum. Only 309,000 small businesses -- out of the four million advertised by proponents -- had claimed the credit as of October 2011.

In summary, this mandate will negatively impact the Commonwealth of Pennsylvania in many ways. Without knowing what costs and mandates they will ultimately be subjected to, business owners have told me that they are hesitant to hire on new staff without know what, if any additional costs they will be subjected to if certain provisions of the Patient Protection and Affordable Care Act become effective.

Plain and simply, this law and the uncertainty that surrounds it are job killers.

Again, I thank you for this opportunity to address this panel and provide you with the facts about how this measure is impacting the Commonwealth of Pennsylvania, our businesses, our individuals and our families.

I would now be happy to answer your questions.

*** <http://www.forbes.com/sites/aroy/2012/01/27/could-the-ppacas-medicaid-expansion-be-unconstitutional/>