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MANAGING HEALTH REFORM

FLORIDA: ROUND 1

State-Level Field Network Study
of the Implementation of the
Affordable Care Act

August 2014

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Contents

- Part 1 – Setting the State Context 1
 - 1.1 Decisions to Date 1
 - 1.2 Goal Alignment 10
- Part 2 – Implementation Tasks 12
 - 2.1 Exchange Priorities 12
 - 2.2 Leadership – Who Governs? 13
 - 2.3 Staffing 13
 - 2.4 Outreach and Consumer Education. 13
 - 2.5 Navigational Assistance 14
 - 2.6 Interagency and Intergovernmental Relations. 15
 - 2.7 QHP Availability and Program Articulation. 16
 - 2.8 Data Systems and Reporting. 18
- Part 3 – Supplement on Small Business Exchanges 18
 - 3.1 Organization of Small Business Exchanges 18
- Part 4 – Summary Analysis 19
 - 4.1 Policy Implications 19
- Endnotes 19

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MANAGING HEALTH REFORM

FLORIDA: ROUND 1

State-Level Field Network Study of the Implementation of the Affordable Care Act

Part 1 – Setting the State Context

1.1 Decisions to Date

Health Insurance Exchange: Florida's governor and legislative leadership declined to participate in setting up an Affordable Care Act (ACA) exchange and, indeed, refused or returned federal grants awarded to facilitate exchange planning. Instead, the state provided funding for an existing state-funded exchange for small business and individuals unrelated to the ACA that opened with limited services in spring 2014.

Florida led the way in opposition to the ACA. Its then attorney general, Republican Bill McCollum, filed suit against the Obama administration aiming to have the law blocked as unconstitutional in both its individual mandate and its requirement for Medicaid expansion. The suit was filed in a Republican-friendly court in Pensacola, where the federal judge ruled the entire law unconstitutional. Twenty-five other states joined with Florida in filing the case. Similar cases in other states led to decisions upholding the law's constitutionality, which brought the issue to the U.S. Supreme Court in an expedited manner.

To the surprise of many, the Court ruled that insurance is not commerce and the mandate represented an unconstitutional application of the commerce clause. But the chief justice avoided putting his Court in the position of striking down the Obama administration's signal accomplishment. His vote formed a majority ruling that the law was nonetheless constitutional because it was a tax – and as a tax was within the power of the federal government to enact and collect it, as the federal taxing power is essentially unlimited. Regarding Medicaid expansion, again breaking with a long history of contrary precedents, the Court ruled that

states did not have to comply with the federal expansion order since the penalty for noncompliance was so severe — losing all Medicaid funds — as to leave the states no real choice in the matter. This would make the expansion order an unconstitutional takeover of state sovereignty.

Florida officials were counting on the Court to invalidate the ACA. There was no support in the legislature to act on either the exchange or Medicaid expansion pending outcome of the court case. Nor did the Republican governor, Rick Scott, elected in 2010 after leaving his role as founder and CEO of Health Care Corporation of America (HCA), see any reason to begin ACA implementation planning. He had launched his political career by forming and financing a political action committee (PAC) to fight Obamacare in Congress. He expected the ACA to be overturned and President Obama to be defeated for reelection. Once they had been disappointed on both counts, the governor and legislature found it no longer feasible to simply hope the law would go away. They would have to take a stand.

The stand they took was conflicted. The governor was quick to say “no.” On Fox News shortly after the U.S. Supreme Court ruling upholding the law, Scott said that his state would not set up an Obamacare exchange. But the Senate president and House speaker sent a joint letter to U.S. Department of Health and Human Services (HHS) Secretary Kathleen Sebelius soon after the governor’s comments. The letter said that Florida had not made a decision on how to proceed and indeed would not be able to provide a declaration letter under the time frame set forth by HHS because the legislature would not come into session until after the deadline had passed. If some observers thought that the joint letter signaled the promise of federal-state cooperation, others thought the real point of the letter was to assert legislative authority over lawmaking, letting the governor know that this legislature did not intend to be as deferential to the new governor as the old one had been to Scott’s predecessor, Governor Jeb Bush.

Nonetheless, the letter sounded thoughtful. It cited two factors preventing state action: 1) The legislature had not authorized the governor or any state agency to develop and operate an exchange and would not do so until it convened; and 2) the state lacked sufficient information to fully evaluate the potential impact of choosing one model of exchange over another. The letter indicated three goals legislators would use in evaluating options: mitigation of costs for health insurance, assuring a robust health insurance market for individuals and small groups, and meaningful consumer protections.¹

While Florida’s legislative session begins late — not until early March — it has an active interim session when committees meet monthly and craft bills to be considered by the Senate and House when they formally convene. The importance of this interim session cannot be overestimated with respect to agenda-setting for the legislative session that follows. Thus, in fall 2013, legislative

leaders named two select committees on the ACA. The Senate committee was headed by a longtime, knowledgeable member who was widely known and respected by legislators and lobbyists alike (Republican Joe Negron of West Palm Beach, chair of the Senate Appropriations Committee). The House committee was headed by a recently elected legislator who was not well known – some said unknown – among the health lobbying community (Richard Corcoran of Land O’Lakes, chair of the Health and Human Services Committee). The select committees were tasked with assessing the impact of the ACA on Florida, evaluating the state’s options under the act and making recommendations to lawmakers. Of special concern were protecting individual choice, limiting regulatory burdens, and promoting better value in health care purchasing.²

The first meeting of the Senate select committee was a raucous affair after a group of smaller-government activists pleaded with lawmakers to *NOT* carry out the law. Representatives from Americans for Prosperity and the Florida Tenth Amendment Center called the Supreme Court a “monarchy” and said its ruling was an unconstitutional encroachment of states’ rights. The audience jeered Democratic committee member and African American Senate Minority Leader Chris Smith of Fort Lauderdale after he defended the role of the federal government.³

The Senate committee, in particular, seemed determined to get comprehensive information from both sides of the ideological spectrum, evidenced by an early committee hearing featuring liberal and well-known health researcher Jonathan Gruber from MIT (via Skype) and Michael Cannon of the Cato Institute (appearing in person). Negron made a point that the session wasn’t a “forum for (*sic*) a pep rally either for or against the Affordable Care Act,” but rather was fulfilling the committee’s responsibility to find out what makes sense in Florida on implementing the law.⁴

As the first notification deadline passed for states to opt to run their own federally financed exchange or work with the federal government to develop a state-federal hybrid model, Florida officials sent no notice to HHS, thereby allowing the extended deadline for signaling cooperation to pass.⁵

In mid-January 2013, Negron told reporters that while the state had missed the deadline, it could still enter a partnership with the federal government to run an exchange or could operate its own exchange in later years.⁶ Nothing even close to positive emanated from the House. On the contrary, both leaders and members made it clear that they wanted nothing to do with Obamacare or its dangled federal lucre.

As weeks of the session continued, the health exchange seemed to fall off the agenda in favor of debate over Medicaid expansion. In the end, deadlines for signing up for an exchange simply passed without state action.

Such reluctance to participate in the federal exchange option might have come as a surprise to some since the Florida

legislature had actually been an early leader in formulating the idea of a health exchange to promote competition in health insurance sales. Led by then-Speaker Marco Rubio, now a Republican U.S. senator from Florida, it adopted a small business exchange and funded it with state dollars. The plan was Rubio's own creation. He offered it as Idea 87 in a book of ideas for making Florida a better place to live, a product of his legislative campaign efforts before becoming speaker. The book was called *100 Innovative Ideas for Florida's Future*. The exchange idea was called "Florida Health Choices", which he offered in a chapter entitled "Quality Healthcare at an Affordable Price."⁷

Rubio shepherded the idea into law and five years later, in 2013, as the legislature was rejecting the federal health exchange idea, Florida Health Choices was given additional funding to provide limited health insurance.

Given this record of favorable disposition toward exchanges (of his idea, Rubio said, "It's about competition, it's about choice, and it's about the marketplace."),⁸ a welcoming attitude might have been expected toward the opportunity to set up a state exchange with federal money. But that was not to be. Scott may have summed up the feelings of other policy leaders in an explanation given by his spokesman: "It's one thing to set up an exchange, but when you set it up under the rules that Obamacare requires, there is no way it reduces the cost of insurance."⁹

Yet the new federal law could not be ignored whether Florida liked it or not. The pressing issue of federal sovereignty meant that Florida's insurance laws had put the state's insurance industry into an awkward position. Firms were required to set rates and file them with the state, showing that they were in conformity with state insurance regulations. But those regulations were now in conflict with federal law, which also applied to these same insurance vendors.

These conflicts had been noted earlier by the state's insurance regulation agency, the Office of Insurance Regulation (OIR). OIR duties include reviewing contracts, consumer protections, and rate review for all but large groups, which in this state are thought to be sufficiently competitive as to obviate the need for regulation. OIR staff had closely monitored progress of the ACA through its legislative history and had a list of changes to recommend to the state legislature once the ACA passed. They would have brought Florida law into compliance with the insurance regulations in the federal statute. But with the attorney general's suit to overturn the law, the state went into a holding pattern. There were no interagency task forces, no commissions to consider state participation in the exchange. In the end, there were only two legislative select committees — which could not themselves legislate — to consider options.

The legislature finally addressed these conflicts with a single bill, SB 1842, which became law effective May 31, 2013, well after the annual February deadline for state rate filing. One aspect of the bill suspended state rate reviews for 2014 and 2015. The

suspension was supported by the OIR, which argued it could not conduct a legitimate review of rates under Obamacare during its first two years of operation because the state must have two years of “credible data” on costs to provide a rationale for rate review. Without credible data, reviews would be subjective and review findings would not stand up to a court challenge.

Yet it was also true that this suspension avoided conflicts between existing state rate-setting laws and the ACA. For example, Florida law allows rates to differ among age groups by wide margins: an older person’s rates could be as high as a dozen times higher than a young person’s rates. The ACA permits age-related rate differences of no more than 3:1. Other regulatory differences included the definition of small groups, rules on pooling populations for risk assessment, premium notices, and other features. With the suspension of state rate review for two years, insurance companies were able to avoid having to resolve conflicts between state and federal law.

Nonetheless, OIR’s lack of participation in implementation of the ACA became evident during legislative hearings. OIR officials were forced to admit under Democratic questioning that the office had been ordered to do nothing to prepare for the ACA. They reported that the House speaker-designate (a month before he took over as speaker) sent a letter to OIR, telling staff they had no legislative authority to work on ACA implementation. So the draft bill already prepared by OIR staff, designed to conform Florida law to the ACA, was dropped. “There was no appetite” for it within the legislature, one observer said.¹⁰

SB 1842 did require OIR to set aside its concerns for “credible data” in one respect: The law “requires insurers to provide a notice to individual and small group policyholders of nongrandfathered [new ACA-offered] health plans that describes or illustrates the estimated impact of PPACA (*Editor’s Note: Patient Protection and Affordable Care Act*) on monthly premiums”¹¹ due to provisions such as guaranteed issue, the ban on excluding applicants with preexisting conditions. Some saw this provision as a deliberate scare tactic intended to show (or exaggerate) that the ACA would radically raise insurance premiums.

Though the legislature wanted no part of the ACA’s health exchange, another provision of SB 1842 related to health insurance navigators. It requires them to be licensed by the state Department of Financial Services (DFS).

To be registered as a navigator under the bill, an individual must certify completion of federally-required training, submit fingerprints for a criminal background check, and pay a \$50 application fee (currently, there is a \$50.30 fingerprint processing fee for agents, so the total cost for a navigator would be \$100.30). Certain crimes would either permanently bar an individual from registration or disqualify an applicant for specified periods. A navigator will be prohibited from:

- Recommending the purchase of a particular health plan or represent that one health plan is preferable over any other;
- Recommending or assisting with the cancellation of insurance coverage purchased outside the Exchange;
- Receiving compensation or anything of value from an insurer, health plan, business, or consumer in connection with performing activities as a navigator, other than from the Exchange or an entity or individual who has received a navigator grant under the PPACA.

Specifies grounds for suspension or revocation of registration and authorizes DFS to impose an administrative fine in lieu of, or in addition to suspension or revocation. Any person who acts as a navigator without registration is subject to an administrative penalty not to exceed \$1,500.¹²

Just days before the federal health exchange was to open, that department had received only forty applications for licensure from the roughly 150 expected to need a license, and it had approved exactly one.¹³ This, too, might have struck some as at odds with the state's history, since Florida health care advocacy and consumer support organizations had been employing people for at least five years to help needy individuals sign up for health care and other benefits offered through a variety of programs. They even called them navigators, and the principal group employing them was one of those that won a federal contract to supply navigators for the ACA health exchange.¹⁴ Yet in 2013, Scott and the legislature said they wanted them licensed and subjected to background checks as a guard against potential for fraud and identity theft.

Scott and Attorney General Pam Bondi, an early and vociferous opponent of the ACA, repeatedly blasted the navigator program, saying the outreach workers had unreasonable access to private information. Scott capitalized on a mistake in releasing Social Security numbers to a navigator in Minnesota and petitioned Congress to review whether privacy rules and safeguards were in place to protect personal information from exploitation. He wrote to U.S. Senate Majority Leader Harry Reid (D-NV) and U.S. Speaker of the House John Boehner (R-OH) about the dangers such mistakes would cause. The letter was released to the public. These actions were taken in spite of the adoption by Florida of the law requiring navigators to undergo background checks and enabling state officials to establish rules and dismiss navigators who violated them. Supporters of the ACA cited these laws and claimed that Scott and his allies were creating a "false sense of alarm."¹⁵

Scott also directed the state Department of Health to ban navigators from county health departments, citing privacy concerns. Pinellas, Broward, and Miami-Dade counties defied the order, with the Pinellas County Commission chair saying, “it reminds me of the ‘60s with the governor standing at the door and federal marshals having to come in.”¹⁶ These county leaders, Democrats all, noted that the counties owned the county health department buildings, not the governor or Florida Department of Health.

On October 1, Fox News erroneously reported that the United Way and Enroll America in Coral Gables had navigators going door-to-door, helping the uninsured navigate through the different plans available on the exchange. That report led the Republican chair of the U.S. House Energy and Commerce Committee to post an item on the committee website, claiming this was taking place less than two weeks after the “Obamacare Czar” assured the committee they would not. In fact, neither Enroll America nor United Way were navigators, and their officers had testified to that effect.

The fabulously wealthy, arch conservative, and politically active Koch brothers used their money, donated to the National News Bureau and to the Franklin Center for Government and Public Integrity and then on to Cause for Action, to generate an IRS complaint against Enroll America. It alleged that the directors of the organization were using income or assets for personal gain and were engaged in commercial, for-profit business activities. And the Florida chapter of Americans for Prosperity, a conservative organization promoting limited government, lower taxes, and more freedom, organized street protests against Enroll America in Tampa, Orlando, Winter Park, Ft. Myers, Naples, and West Palm Beach.¹⁷

Senator Rubio introduced legislation to suspend the ACA after the Obama administration delayed opening the act’s Spanish language sign-up website because of technical difficulties with the site. Rubio wanted the Affordable Care Act halted until the Government Accountability Office (GAO) certified the website’s functionality. While Rubio had opposed the use of the GAO as a certifying agency for immigration reform measures, he was willing to employ the agency in his efforts to repeal and replace the program.¹⁸

Medicaid Expansion: For the ACA legislative special committees, Medicaid expansion was the 800-pound gorilla in the room — in part because of possible costs of the program and in part due to unvarnished politics.

In his speech on opening day of Florida’s 2013 legislative session, Speaker of the House Will Weatherford (R-Wesley Chapel) stated his opposition to expansion of the state’s Medicaid program because “I believe it crosses the line of the proper role of government.” Weatherford told a story about his brother’s losing battle with cancer and his family’s reliance on safety net and charity services like the Ronald McDonald House. He neglected to say

what safety net services the family received. When asked about the nature of this safety net program, Weatherford's father, Bill Weatherford, said it was the Medicaid program. Responding to reporters' subsequent questioning, the speaker suggested that his father was mistaken and that Medicaid did not cover his brother's hospital bills. On the following day, he admitted that Medicaid had indeed provided his brother with more than \$100,000 in care through Medicaid's Medically Needy provision. Corrected, but apparently unpersuaded, he continued to oppose expansion.¹⁹

While the speaker's opposition to Medicaid expansion has been stalwart and consistent, Scott's views have, in the assessment of *PolitiFact*, "fully flopped."²⁰ After the Supreme Court decision upholding the law, he said in a Fox News interview that Florida would not expand Medicaid, adding that it "just doesn't make any sense" and that it was too costly.

Scott did agree to meet on the issue with Sebelius. Scott was seeking her approval of a Florida Medicaid managed care pilot program waiver that had been pending for some months. Following the meeting on January 7, 2013, the HHS secretary approved the waiver, but Scott still did not agree to support expansion of the program. Although some critics suggested that Scott backed out of a quid pro quo here, there is little evidence this was the case. The conditions on the pending waiver had been under consideration for some time, and the federal government included conditions that were favorable to its own position, which Florida accepted.

In February 2013, he announced that he still opposed a state exchange, but supported a three-year Medicaid expansion that would allow the state to judge if it was working before deciding to reauthorize it. Scott cited the recent death of his mother for the new perspective. The governor made little effort to push his three-year trial in the legislature, and it went nowhere. Although the governor in February 2014 said he still supported Medicaid expansion, it was a nonstarter in the 2014 legislative session.

Hospital groups testified in favor of Medicaid expansion, saying it would reduce the amount of uncompensated care they have to provide. But the House committee chair was unsatisfied, telling the press that the hospital executives lacked data to show how their hospitals would be affected.²¹

The cost issue took up weeks in the key debates over what the state should do. In early January 2013, Scott announced that expanding Medicaid would cost the state an estimated \$26 billion over ten years. After state budget analysts questioned that estimate, the state's Medicaid agency (Agency for Health Care Administration) revised it to as low as \$3 billion.²²

Rep. Matt Hudson (R-Naples), vice chair of the House select ACA committee, complained that the federal government was requiring an "all or nothing" option for the states — not allowing Florida to partially expand Medicaid with the general federal match.²³ Weatherford and Senate President Don Gaetz (R-Niceville) also argued that the state — not Washington — should be allowed

to determine who could become newly eligible for the program. Gaetz pointed to the distinction between a low-income working family that needed health insurance and someone who chooses “to sit on the couch” and not work. But Weatherford insisted that “It will be a decision based on principle and not on politics.”²⁴

Weatherford seemed to edge more to the politics side of the continuum a few weeks later when, speaking before an Americans for Prosperity gathering in March, he said, “I believe we are less free than we were four years ago, and unfortunately, with the occupant at the White House, that trend will probably continue for the next few years.” He went on to call the Medicaid expansion, “cartel federalism” where the federal government can buy off states with “so-called free money” to make us more entitled.”²⁵

In mid-April, only a few weeks before the end of the session, it appeared that the state might expand Medicaid. The Senate select committee proposed accepting the federal dollars and using them to fund vouchers that people could use to purchase private health insurance. This proposal, called Healthy Florida, would accept the federal dollars but use them to subsidize private coverage for more than one million uninsured citizens, with the entity that operates the state’s Children’s Health Insurance Program (CHIP) in charge of the expansion. The governor, too, indicated support for this proposal (generally copied from one offered to HHS by the state of Arkansas and ultimately approved.)

The problem was that the House didn’t agree. Members were adamantly opposed to accepting federal funds, even though legislative analysts estimated the amounts to the state at around \$50 billion over the decade for coverage of one million uninsured. The House proposal instead relied on Florida Health Choices — its own state-funded health exchange. This plan would cost the state \$237 million and would cover around 115,000 people earning below 100 percent of poverty. Participants in the plan would be provided \$2,000 to purchase insurance. They would be required to contribute \$25 a month, and adults would have to work at least twenty hours a week. The legislature’s own economists concluded that it would cost taxpayers less if the state instead adopted ACA Medicaid expansion covering one million uninsured with the generous federal funding; less than it would cost the state to simply leave those individuals uninsured; and less than the more limited Florida Health Choices option.²⁶

House Republicans again said “no deal.” They were willing to sacrifice billions in Medicaid dollars because they worried that the state would accept the expansion and then find itself holding the fiscal bag if the federal government reneged on the deal. “Maybe it’s the \$16 trillion deficit that gives me pause,” said Weatherford. “The federal government is more interested in expanding a flawed program.... I don’t think we should be relying, long term, on a federal solution to our health care needs in the state of Florida.”²⁷ The House plan, using only state dollars, was also introduced in the Senate in a more reduced form (covering an

estimated 60,000 people and providing participants \$10 a month toward purchasing insurance).

Weeks passed with no resolution. Competing proposals were refined, estimates were recalculated, rhetoric was expressed, and in early May the legislature went home without taking action on expansion or any other proposal to cover the state's one million uninsured. The House and Senate simply couldn't agree — in large part because of the intransigence of House leadership. In mid-April, when the battle lines were clear, Weatherford drew a line in the sand, saying that since the beginning, the House membership "felt very strongly that we should not accept federal funds. That's been the position of the House from the very beginning. It's going to be the position of the House till the very end. There's been no equivocation on that whatsoever."²⁸

One small step was taken — the legislature agreed to spend \$900,000 in nonrecurring funding on the Florida Health Choices program, the state-funded health small business exchange originally adopted in 2008.

There was considerable talk of a special session to deal with Medicaid, but there seemed little rationale for it since positions had not changed. Key business groups, including the Florida Chamber of Commerce and Associated Industries of Florida as well as hospital groups, supported the Medicaid expansion, but were not enthusiastic about revisiting it after the session. There was some evidence that the issue was still alive — particularly if state leaders could get some flexibility from the federal government. Gaetz, the Senate president, wrote to Sebelius in July, urging flexibility from Washington in the expansion, both in coverage and cost-sharing by participants.²⁹

One might wonder where the Democrats and interest groups representing the poor were during the 2013 debate. They were there — but not very effective. Democratic members did urge adoption of the Medicaid expansion and raised the obvious arguments that Florida is at the top or near it in the percentage of residents uninsured, and that Florida should be doing more to help its poorest and sickest residents and to create health care jobs federal dollars. But Republicans occupy all the statewide offices and roughly two-thirds of the House and Senate, constituting a supermajority that makes Democrats unneeded for legislative action or inaction. So while Democrats could and occasionally did raise objections and offer ideas, it remains their fate to be largely ignored. Interest groups for the poor fared little better.

Finally, it is noteworthy that 2014 is an election year for the House and half of the Senate — not generally a time conducive to compromise on either principle or politics.

1.2. Goal Alignment

Florida's zeal in obstructing implementation of the ACA is best understood in light of the multifaceted nature of the state's opposition. Barriers to the law included:

- Leading the nation in filing suit against the law;
- Quick gubernatorial denunciation of the law and announcement that “We are not going to implement Obamacare in Florida. We are not going to expand Medicaid”;
- House speaker-elect issued a memo to the state Office of Insurance Regulation ordering it to stop working on any aspect of ACA implementation;
- Weatherford, the new House speaker, denounced the law and denied that his family had ever been on Medicaid, despite facts demonstrating the contrary;
- The 2013 legislature formed special committees to consider Florida’s options, but never considered any bill that would open the door to cooperating in setting up an exchange or expanding Medicaid. Instead, lawmakers added money to a state-funded exchange for small business that would operate in competition with the federal exchange;
- As the session drew to a close without action on the health exchange or Medicaid expansion, the speaker said that his House colleagues “felt very strongly that we should not accept federal funds. That’s been the position of the house from the very beginning. It’s going to be the position of the house till the very end. There’s been no equivocation on that whatsoever.”³⁰
- At the behest of the governor and legislative leadership, Florida agencies turned back funds they had already won and rejected others. The *New York Times* compiled a list of forsaken federal ACA funds showing that the state had turned down \$25 million in grants, not to mention the perhaps \$50 billion it would forgo in Medicaid matching funds. The rejected or returned grant funds list included:
 - \$8.3 million – Osceola County community health center.
 - \$4.2 million – Move patients from nursing homes (total would be \$35.7 million over five years).
 - \$3.4 million – Child and maternal home visits (\$31.5 million over five years).
 - \$2.8 million – Teen pregnancy and sexually transmitted disease (STD) prevention (\$11.1 million over four years).
 - \$2 million – Enrolling eligible Medicare recipients.
 - \$2 million – Medicaid reimbursement for pediatric hospice care.
 - \$1 million – Strengthen state review of insurance premium increases.

- \$1 million — Health insurance exchange planning.
- \$500,000 — Long-term care resource centers.³¹
- Florida's Department of Health announced that navigators were to be barred from Florida's sixty-seven county health departments. County staff would be permitted to distribute ACA pamphlets, but only if a client requested the material.
- The legislature passed a law suspending insurance premium rate review by its state insurance regulator on the grounds that it lacked sufficient data. But the same legislation required the same state agency to send letters to prospective insurance purchasers estimating the impact of Obamacare on their monthly premiums.
- The same law required navigators to be licensed, including paying more than \$100 for the privilege and being subjected to criminal background checks. Details of the provision restricted navigators' speech as related to advice they might give to clients.
- The governor announced an estimate of state costs of Medicaid expansion that exceeded \$26 billion over ten years. After questioning, that figure was very quickly revised to less than \$3 billion.

Part 2 — Implementation Tasks

2.1. Exchange Priorities

Florida will have no role in setting exchange priorities since it is one of the many states that has chosen not to cooperate in setting up an exchange. No interagency task forces have been established; no commissions formed to consider state cooperation with the exchange; and, in the end, only two legislative select committees were formed to consider options. State rate review was suspended pending acquisition of two years of "credible data" on which to base rates. The state law which suspended rate review, SB 1842, did direct the state insurance regulator to make certain changes in state policy to conform to the ACA and orders the consumer protection agency to continue doing its job:

- "Authorizes the Office of Insurance Regulation (OIR) to assist HHS in enforcing the provisions of the PPACA by reviewing policy forms and performing market-conduct examinations or investigations for compliance with PPACA. OIR must first notify the insurer of any noncompliance and then notify HHS if the insurer does not take corrective action."
- "Authorizes the Division of Consumer Services within the Department of Financial Services (DFS) to respond to complaints by consumers relating to requirements of PPACA, by performing its current statutory responsibilities to pre-

pare and disseminate information to consumers as it deems appropriate, provide direct assistance and advocacy to consumers, and require insurers to respond, in writing, to a complaint, and further authorizes the division to report apparent or potential violations to OIR and to HHS.”

The consumer protection agency told field interviewers that it expects to hire as many as eight temporary workers to help out with increased call volume as ACA enrollment efforts expand. Callers will be referred to the federal government’s website, HealthCare.gov.

2.2 Leadership – Who Governs?

Since Florida utilizes the federal health care exchange, the leadership lies in HHS in Washington, D.C.

Florida Health Choices, the state’s version of a health coverage buying website, was under construction over the time period 2008-14. It finally opened on March 4, 2014. The CEO of this organization is Rose Neff, who came from Florida KidCare, the state’s low-cost insurance plan for low-income children, supported by Title XXI of the Social Security Act. The state-based exchange offers discount cards and prepaid plans for services like dental and vision. Florida Health Choices is governed by a board of directors whose officers include a former Republican state senator, the president of a real estate company, and an attorney with the Gray/Robinson law firm.

2.3 Staffing

The federal exchange staff is located in Washington, D.C.

Florida Health Choices has hired a staff and appointed two steering committees to advise the board.

2.4 Outreach and Consumer Education

In the absence of participation by the state of Florida in the ACA, outreach and consumer education about the law is provided primarily by three organizations: Progress Florida, Florida CHAIN (Community Health Action Information Network), and KidsWell.

Progress Florida is a nonprofit organization promoting progressive values through online organizing, media outreach, and networking with Florida’s leading progressive organizations. To support the ACA, it joined with Florida CHAIN to create a website, Health Care for Florida Now, to educate Floridians about new health coverage opportunities.

Florida CHAIN and KidsWell are advocacy organizations focused on health care. Florida CHAIN was launched in 1999. It investigates and reports on government health care programs, communicates on health care issues, supports initiatives for vulnerable populations, holds community forums, lobbies for programs that provide health insurance and access to health care, and

provides expert testimony on issues related to health care in Florida. During the legislative debate regarding the implementation of the ACA, Florida CHAIN organized town hall and community forums in Miami, Palm Beach, and Orlando and secured a 9,000-signature petition demanding a federally facilitated exchange for Florida. It also participated with Hispanic Health Initiatives to place fifty Spanish language public service announcements and to produce a video in Spanish featuring a Hispanic small business owner who received health care coverage under the ACA's Pre-Existing Condition Insurance Plan.

KidsWell is a national advocacy campaign focused on "successful health care reform implementation on behalf of children." Initiated in 2012, it collaborated with Florida CHAIN to host a series of regional summits in eight cities where over sixty organizations participated in discussions about how to improve children's health across Florida. The organization also produced a report on the state of children's health care in Florida. The report outlines steps to overcome barriers to enrolling in Florida's KidCare program and highlights opportunities to expand coverage under the ACA.

Florida's Hispanics are a group that insurers want in their plans. They are younger and healthier than the rest of the population, and may pay into the system more than they use in services. Thus, a large group of advocates worked on the grassroots level to educate and enroll Hispanic families. Florida Blue, the largest insurer in the state, made an effort to reach the group with a mix of old and new media. It developed a mobile phone app, partnered with Spanish language bloggers, and formed a partnership with Navarro, a Hispanic drug store. It also worked with community health centers where Latinos go to the doctor.

Churches, health centers, and advocacy groups from within the Hispanic community worked at the grassroots level, and Spanish language television played a large role. Univision worked with rival Telemundo, and Univision embedded messages about health care in programming such as *Sabado Gigante* and *Despierta America*. Finally, Florida residents were reached by federally funded radio, television, and digital advertising. The Centers for Medicare and Medicaid Services spent about \$52 million in Florida and the other twenty-eight states utilizing the federal marketplace, although no state-by-state breakdown of the distribution of these dollars is available.³²

2.5 Navigational Assistance

As we discussed in Section 2.1 above, the absence of state involvement in the ACA put an independent federal contractor in control of outreach efforts in the state. On July 10, 2013, Enroll America, a Washington, D.C.-based nonprofit organization, came to Florida and began training organizers who would subsequently recruit and train volunteers, attract local partner organizations, and begin knocking on doors in order to help Floridians understand the new medical insurance marketplace created by the

ACA. Ultimately these organizations hired and put into place 320 individuals to serve as navigators in the state.³³ Many of these individuals came from the infrastructure created by Democrats during the previous presidential elections.³⁴

Other Enroll America outreach efforts included dissemination of information through a Miami Haitian radio show; passing out information at school events, community colleges, and house parties; and talking to consumers at grocery stores, farmers markets, community centers, and churches. Key targets were young people, specific minority communities, and women. Radio ads were broadcast in English, Spanish, and Creole.

In addition to this effort, the federal government awarded \$7.8 million in grants to eight groups that were to hire navigators to canvass neighborhoods and help people enroll. The largest of the grants, \$4.2 million, went to the Florida Covering Kids & Families program, administered by the University of South Florida College of Public Health, which subcontracted with Florida CHAIN as one component of its effort. Other recipients were Legal Aid Society of Palm Beach County (\$446,783), Pinellas County Board of Commissioners (\$600,000), Epilepsy Foundation of Florida (637,686), Advanced Patient Advocacy (\$413,152), National Hispanic Council on Aging (\$646,825), Cardon Healthcare Network (\$238,000), and Mental Health America (\$683,691).

Although it ignored and impeded the Affordable Care Act's efforts to provide assistance to individuals seeking coverage, Florida utilized outreach positions in its own Florida Health Choices legislation. In addition, Florida health care advocacy and consumer support organizations employed people for at least five years to help needy individuals sign up for health care and other benefits offered through a variety of programs. The Health Choices program even called the helpers navigators, and the principal group employing them was one of those that won a federal contract to supply navigators for the ACA health exchange.³⁵

Further, as U.S. Senator Bill Nelson, a Democrat, reminded Floridians in a *Tampa Bay Times* op-ed, "consumer helpers' have been serving the people of Florida in various ways for years — and yes, even with the current governor's full backing." These programs included the SHINE volunteers who help seniors with questions about Medicare, KidCare navigators who provide information about state health insurance for poor children, and state veteran's affairs benefits counselors.³⁶

With three weeks left in open enrollment, 442,000 Floridians had enrolled in a health plan through the federal insurance marketplace. Over 80 percent of those who enrolled received financial help in the form of tax credits.³⁷

2.6 Interagency and Intergovernmental Relations

2.6 (a) Interagency Relations. In the absence of an effort to assist residents in finding affordable health care, state agencies went about their normal duties and, according to officials at the OIR, no

regular meetings were held among agencies to facilitate the implementation of the ACA.

2.6 (b) Intergovernmental Relations. When Florida refused to create its own marketplace, HHS moved to initiate a collaborative arrangement with the state to accomplish the federal government's responsibility for direct enforcement of the Affordable Care Act. Spelled out in a letter from HHS to Kevin McCarty, the state's insurance commissioner, the agreement stipulated that Florida's Office of Insurance Commissioner would review insurance policy forms for compliance with Florida and U.S. laws and rules; review insurance policy rates for compliance with both Florida and U.S. law; and perform targeted market conduct exams and review for compliance with Florida and federal laws and regulations.

These arrangements were established under the provisions of SB 1842, enacted by the state legislature in 2013. The law also authorized the Division of Consumer Services in the Department of Financial Services to respond to complaints related to the ACA and to report violations to OIR and HHS.

The Department of Financial Services, under mandate from the Florida legislature, was also authorized to review and license ACA navigators. Designating navigators as a new category of insurance professionals, the legislature required them to be registered with the department. As indicated in section 2.5 above, this action appeared to have been motivated as much by animosity to the ACA as by concern for the professionalism of prospective navigators.

In a statement to the legislature on January 9, 2014, the deputy commissioner of OIR outlined the continuing objectives of the office in the post-ACA marketplace. The office was to maintain market stability through a collaborative arrangement with the federal government to expedite the product approval process and rate filing information, to monitor off-exchange competition, and to maintain consumer transparency in the new marketplace through premium notice requirements.

2.6 (c) Federal Coordination. There is nothing to report on this topic.

2.7 QHP Availability and Program Articulation

2.7 (a) Qualified Health Plans. When the ACA marketplace opened in October 2013, HHS announced that Florida consumers could choose from an average of 102 health plans offered by ten companies: Aetna, Florida Blue, Cigna, Coventry, Florida Health Care, Health First Health Plans, Health First Insurance, Health Options, Humana Medical, and Molina Healthcare. Not all of the companies, however, planned to sell plans in all counties. More than half of Florida's counties were to have only one or two companies selling plans. No county would have plans from all ten of the participating companies. South Florida, with the largest population in the state, would have the largest number of choices,

while rural residents the least. Seminole and Volusia counties were to have the greatest number of competing plans, six. Florida Blue was the only company to offer plans in all 67 counties. Leon County, home of the state capital, has only one plan — Florida Blue.

2.7 (b) Clearinghouse or Active Purchaser Exchange. Florida has no clearinghouse or Active Purchaser Exchange.

2.7 (c) Program Articulation. Florida has officially distanced itself from Obamacare, obviating the need for articulation.

2.7 (d) States That Did Not Expand Medicaid. By rejecting the Medicaid expansion portion of the ACA, the state's legislative estimating conference determined that Florida would lose \$51 billion in federal funds over the next ten years. By refusing to adopt this portion of the act, the state left an estimated 760,000 state residents ineligible for either subsidies or Medicaid. In a state that ranked fiftieth in the nation in the number of uninsured adults (29.5 percent) and forty-eighth in the ranking of uninsured children (11.9 percent), this decision left many observers of Florida politics perplexed, especially after several studies estimated that Medicaid expansion would add more than \$2 billion to the Florida economy annually and generate more than 55,000 new private sector jobs.

Failure to expand Medicaid also had serious implications for Florida hospitals. The ACA anticipated nearly universal coverage through Medicaid expansion and included major cuts in subsidies to hospitals that serve a large number of uninsured patients and that provide a high level of uncompensated care. In addition, hospitals are facing additional cuts through implementation of a state Medicaid Diagnosis Related Group (DRG) payment system, national cuts in the Disproportionate Share Hospital (DSH) payment program, and the termination of the Low Income Pool program (LIP).

In the early days of the 2014 Florida legislative session, ACA supporters mounted a new effort to convince the state to expand Medicaid. The new argument was that not doing so would deprive some U.S. citizens of health coverage while legal immigrants would get help to afford it. At issue was a little-noticed provision of the ACA that allows some low-income legal immigrants to qualify for subsidies to help them buy private insurance through online marketplaces. Introduced by Republican State Senator Rene Garcia of Hialeah, the bill would require the state to expand its Medicaid coverage and accept the funds involved.³⁸ Few observers expected this argument to be very successful, "but in a state that has a large foreign born population, the immigration issue injects a political wild card into a debate that has largely revolved around ideological differences," *Kaiser Health News* observed.³⁹

2.7 (e) Government and Markets. Conceived in 2008, Florida's private insurance exchange, Florida Health Choices, went live on March 4, 2014. The exchange offers discount plans for some health services, like dental services and prescription drugs. These plans

are not health insurance, and purchasing one does not protect enrollees from the individual mandate of the ACA. Serious questions about its viability remain. Jennifer Tolbert, director of state health reform for the Kaiser Family Foundation, says there was a place for such plans before the ACA, but that it is not quite clear what the need will be now for such plans.

Starkly contrasting with this government-sponsored, essentially Obamacare-defying effort, is the enthusiastic embrace of the ACA by Florida's Blue Cross and Blue Shield health insurance plan, Florida Blue. It is the only company offering ACA-compliant plans in every one of the state's sixty-seven counties, making it the only plan offered in twenty-seven counties. Its webpage and company blog clearly strive to make ACA plans both understandable and an attractive option. Its CEO, Patrick Geraghty, appears undaunted by uncertainties surrounding the ACA's rocky roll out and the potentially unfavorable risk pool that may have enrolled by the end of the plan's first open enrollment period.⁴⁰ He continues to drive the company into networking and quality improvement collaborations, including ACA-inspired Accountable Care Organizations, with leading health care provider organizations, including the Cleveland Clinic of Florida and Moffit Cancer Center. Geraghty appears poised to ride the ACA and its disruptive effects on the existing insurance market to expansion of his firm's current 30 percent share of the Florida health insurance market.⁴¹ If implementation of the ACA succeeds in Florida, it will be in no small part due to the marketing efforts and the ACA quality improvement and cost-control vision and initiatives of Florida Blue.

2.8 Data Systems and Reporting

The Florida Agency for Health Care Administration (AHCA) has managed the state Medicaid Health Information Technology Plan since it was authorized by the American Recovery and Reinvestment Act of 2009. In February 2011, the Centers for Medicare & Medicaid Services provided ACHA with approval of the initial technology plan. This plan described both the existing and future Medicaid and statewide health information technology activities in support of health information exchange and electronic health record adoption.

Part 3 – Supplement on Small Business Exchanges

3.1. Organization of Small Business Exchanges.

As is the case with the health care exchange for individuals, the federal government runs the SHOP exchange in Florida. Implementation of this exchange was delayed until November 2014.

Part 4 – Summary Analysis

4.1 Policy Implications

The debate surrounding implementation of the ACA in Florida was shaped by political ideology, especially over the extent to which government should assist citizens in finding health care for themselves and their families. The clear winners in the debate have been ideological conservatives who control the Florida state legislature and the governor's office and who believe that providing health care to less well-off Floridians is not a role the state should perform – particularly if it means cooperating with President Obama's program. Ironically, some of those who "won" the debate had families who benefited from the programs they now refuse to extend to their fellow Floridians. (For example, Weatherford, the House speaker, whose brother had over \$100,000 in medical bills subsidized by the Florida Medicaid Medically Needy program).

The clear losers are the estimated 750,000 to 1,000,000 poor citizens in Florida who cannot afford health care coverage, but make too much money to receive ACA subsidies and who are not covered because the state did not expand Medicaid. Florida's citizens have also relinquished (for better or for worse) control over the health exchange serving their state.

Other losers in Florida are the state's hospitals. They face cuts in DSH payments with no offsetting increase in Medicaid revenue that would have resulted from expanded coverage of the state's lowest-income uninsured hospital users.⁴²

The single bright spot in this otherwise gloomy Sunshine State story is Florida Blue, the state's most enthusiastically ACA-engaged health insurer, which clearly sees opportunities for expanded market share and improved provider performance in the wake of the ACA's disruptive influences in the less-than-perfect health care marketplace.

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