

**LEGISLATIVE BRIEF:**

**NEWS RELATED TO THE PATIENT PROTECTION AND AFFORDABLE CARE ACT  
STATE INNOVATION AND IMPLICATIONS FOR EMPLOYERS**

President Obama recently has signaled willingness to work with Congress on a handful of changes to the Patient Protection and Affordable Care Act signed into law last year. One relates to the ability of states to opt out of certain health reform requirements and instead implement their own state-based health reform programs.

The President has indicated he would support a bill introduced by U.S. Senators Ron Wyden, a Democrat, and Scott Brown, a Republican that would move up the timeline on state innovation. Under current law, states can seek waivers to adopt their own health reform measures in 2017, but the bipartisan legislation would give states that option in 2014. Furthermore, the U.S. Department of Health and Human Services has already introduced a proposed rule governing the state waiver process. This [fact sheet](#) describes the broad parameters states must meet to submit a waiver. If granted, the waiver would allow states to use federal money otherwise spent on exchange subsidies to develop their own programs.

**Self-funded employers may be impacted by this issue in the following ways:**

- » **State innovation may intensify a patchwork of regulation for multi-state employer health plans.** States currently have the authority to regulate insurance plans, but the Employee Retirement and Income Security Act (ERISA) preempts a number of state regulations in relation to non-government health plans. If states have the ability and incentive to redesign their insurance market, it could lead to additional administrative regulations on employer plans, especially since significant reporting on benefit plans is a requirement of the waiver process.
- » **States could adopt plans that challenge the ERISA preemption and spark court debates.** Alliance members may recall a few years ago when the Wisconsin state legislature considered the Healthy Wisconsin bill, which would have taxed employers to finance a single payer health plan. Since the tax and the provision of the benefits were separate requirements, some legal scholars believed that the plan could have survived an ERISA challenge if passed into law.
- » **States could pressure Congress to amend ERISA.** Self-funded health plans cover a significant percentage of the U.S. population, which can frustrate states that want to adopt universal health care plans to include the entire population in one plan. States are extremely influential when it comes to health policy change at the federal level.

The Alliance will continue to monitor this issue and alert members if the legislation to hasten the timeline for state innovation advances. In the meantime, employers have an opportunity to comment on the proposed regulations governing state innovation waivers until May 13, 2011. To do so, visit [regulations.gov](http://regulations.gov) at [this link](#) and click the "Submit a Comment" tab.