



Policy Brief

How the Governor can protect Alaskans from federal overreach on health care

What's the problem?	How can the state stop the federal government from imposing penalties on private businesses, health plans, churches, and religious groups for refusing to pay for services that violate their conscience?
What to do?	Governor Parnell should protect all Alaskans by refusing to set up what is called a Health Insurance Exchange.

1. Any rule from the federal government (e.g. including one that would force private individuals to cover contraceptives) is useless if there is no way to enforce it. By law, imposing financial penalties on violators can only be accomplished through something called a Health Insurance Exchange which the federal health care law requires the State of Alaska to set up.

•The mechanism that was intended to enforce any and all rules created by Secretary Sebelius is something called a Health Insurance Exchange.

•The Health Insurance Exchange was sold as a “free market” idea where consumers could “connect” with an insurer that was willing to cover them but in reality, it is a regulatory bureaucracy that would pass out federal subsidies, enforce federal rules, and pressure businesses into providing health benefits (as defined by Secretary Sebelius).

•If Alaska would like to rejuvenate its health insurance market, it needs to repeal some of the mandates that state government places on health insurance, not create another federal bureaucracy to regulate it.

2. But, according to the federal health care law, the federal government can only impose penalties on someone for not following Sebelius’ rules (e.g., providing contraceptives in their health plan) if the following two conditions are met:

- a) An employee must receive a federal subsidy through the health care law
 - the federal health care law provides subsidies based on income requirements to purchase health insurance.*

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b) The employee receives the subsidy through an **exchange set up by the State of Alaska**.

3. If Alaska doesn't set up its own exchange, the federal health care law says the federal government can step in and establish one, but no funding was appropriated for the federal government to set up Health Insurance Exchanges for States. Not only is the federal government broke, the U.S. House will never authorize money to be appropriated for this purpose. If there are no Exchanges, there can be no subsidies. If there are no subsidies, there can be no penalties. Therefore, if the State of Alaska does nothing, it is unlikely that the federal government will be able to step in and create its enforcing mechanism. **If the State of Alaska does nothing to establish an Obamacare Exchange, it will protect private health plans, churches, and businesses that have moral objections to providing contraceptive services.**

4. Even if the federal government manages to set up an Exchange for Alaska, the federal health care law **does not allow** for subsidies to be given out through a federal exchange. Subsidies are available only through State-run exchanges. Again, if there are no subsidies, there can be no penalties.

5. **Alaska is not alone; more than 30 states are having second thoughts.** Several states have outright refused to set up their Exchange, and some states are talking about forbidding the establishment of Exchanges. Experts estimate that only about 17 states have taken steps to establish an Exchange through legislation. There are a lot of states that are dragging their feet.

6. **Even if the U.S. Supreme Court fails to strike down this law as unconstitutional, Governor Parnell should not implement a law that would invite more federal regulation from unelected bureaucracies that have a track record of discriminating against the private convictions of Alaskans.**

•The State of Alaska has sued the federal government to stop the provision in the federal health care law to force individuals to purchase health insurance or sign up for subsidies. This is a noble goal, but if the court does not rule the entire law unconstitutional (instead only a piece of it), the Governor has a duty to protect his citizens from these forms of religious discrimination.

•The Governor has hired a consultant from Boston to advise the state on how to set up an Exchangeⁱ. The administration may try to excuse itself by saying it is only preparing for the possibility that the law will not be struck down by the U.S. Supreme Court. Whether the court strikes down or upholds the law is immaterial. Governor Parnell should refuse to advance this regardless of the Court's decision. It is a risky policy decision for Alaska.

7. Governor Parnell may not need the legislature to pass a law to authorize him to do this. The Alaska Commissioner of Health and Social Services by Alaska law has broad powers explicitly granted to do what he or she thinks needs to be done. The Division of Insurance also collects premium tax revenue to pay for its operations. There is usually a surplus, which could be used for setting up an Obamacare Exchange.

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ⁱ <http://www.kaiserhealthnews.org/Stories/2012/February/14/alaska-exchange.aspx>