FLORIDA CENTER FOR FISCAL AND ECONOMIC POLICY

**Issue Brief** **November 2011**

# Already A Lap Behind:
# A Closer Look at Florida's Refusal to Implement the Affordable Care Act


**Summary:**

In March 2010, Congress enacted the Affordable Care Act (ACA), sweeping legislation tackling the long-pressing crisis of inadequate and continuously eroding access to affordable, quality health coverage. Despite the measured, compromise-driven approach taken in crafting the legislation and the benefit it will provide to virtually all Americans, partisan opposition to the ACA has been unrelenting. Nowhere has that opposition been more visibly strident than at the Florida Capitol.

With key components of the ACA taking effect by January 2014, however, refusal by Florida's elected leadership to move forward with any aspect of ACA implementation has already left the state "a lap behind" with respect to completion of the basic tasks. Indeed, only 26 of the original 45 months of the implementation "race" remain, and Florida has yet to start its engine. The governor's and legislature's continued resistance to the ACA and the resulting delays have dimmed Florida's prospects for successfully crossing the finish line.

Leaders' actions aim to thwart access by Florida's families and small businesses to billions in Florida's rightful share of federal tax dollars that would provide affordable, meaningful coverage for many who lack it, while strengthening and protecting coverage for those who already have it. Most efforts to evade the ACA would ultimately fail, as federal safeguards would kick in, but Florida would still lose significant resources and jobs while relinquishing the very state control leaders have insisted they lack.


**Background:**

The Affordable Care Act[1] was enacted by Congress in March 2010. The law contains ten main sections[2] that include a broad array of provisions intended to improve health insurance coverage and the American health care system overall.

Implementation of the law began almost immediately and will continue throughout the decade. Because of the complexity of the health care system, implementation activities must take place at many different levels, ranging from the federal government down to individual health care providers.

Launching the ACA's key components require simultaneous federal and state activity, including joint

efforts and state options. State engagement is particularly critical because, contrary to popular belief, the ACA continues the current employment-based system of providing health coverage through insurance companies in the private sector. States will not only retain their central role in the regulation of health insurance, but also expand it as a result of their oversight of the new Health Insurance Exchanges (see below). Each state will also continue to administer its own Medicaid program with some federal oversight and an even greater overall share of federal funding.

For its part, Florida has refused to take any active steps to implement the ACA. Florida's attorney general has led a legal challenge to the constitutionality of the ACA joined by 26 states, and the majority controlled legislature has maintained a continuously hostile stance toward the law, for instance, placing a proposed constitutional amendment intended to invalidate a pivotal ACA provision on the ballot.[3] Nevertheless, the ACA remains in full force and effect in Florida,[4] and the leadership in the legislature continues to translate its ideological opposition into resistance to and moving forward on preparing for full implementation of the law.

**Florida's ACA Implementation Challenge:**

The crux of the ACA is its intent to provide most Americans with sustained, affordable, quality health coverage. This goal is to be met primarily through the implementation of three complex, interrelated parts of the law by 2014:

**1. Establishment of One or More Health Insurance Exchanges**

A "Health Insurance Exchange" is a "competitive marketplace" that is "set up to create a more organized and competitive market for buying and selling private health insurance coverage. Exchanges will initially serve individuals buying coverage on their own as well as smaller businesses with up to 100 employees. Exchanges must offer customers a choice among different health plans and different levels of coverage, as well as certify plans, work with insurers, and assist consumers.

Through the exchanges, individuals with family incomes between 133 percent[5] and 400 percent of the federal poverty level ($89,400 for a family of four) can apply for and receive tax credits (paid in advance) that will make premiums affordable as well as subsidies to lower out-of-pocket costs.

**2. Medicaid Expansion**

The ACA will significantly expand Medicaid coverage through an increase in the income limit for the program to 133 percent of the poverty level ($22,350 for a family of four). By contrast, the current eligibility limit for parents[6] in Florida is 20 percent of poverty, while non-elderly adults without children are currently not eligible for Medicaid regardless of income level.

**3. Health Insurance Regulatory Reform**

Finally, the ACA will significantly change the way health insurance coverage works. This includes both protections for consumers and new requirements of insurers, whether providing coverage inside or outside of an exchange. Insurers will no longer be permitted to deny coverage for any reason, including health status, or charge higher premiums based on health status or gender. All new health plans must

provide comprehensive coverage that includes at least "essential" benefits, must cap annual out-of-pocket spending, must not require copayments for preventive services, and must not impose annual or lifetime limits on most coverage.

Compounding the challenge of ACA implementation is the fact that, these components are interconnected, as illustrated by Figure A. For example, the eligibility and enrollment systems for the exchanges and Medicaid (and CHIP, the Children's Health Insurance Program[7]) must be linked. This includes the use of a single application form for all programs as well as electronic data-sharing.

**ACA Implementation - No Small Feat:**

Implementation of all three components will require significant policy-making, planning, resource allocation and infrastructure development on the part of the state. States regulate most aspects of health insurance coverage sold to individuals and small businesses. States administer their own Medicaid programs, subject to federal laws and regulations that ensure minimum standards are met. States are charged with establishing and operating their own health insurance exchange, although they may turn that down.

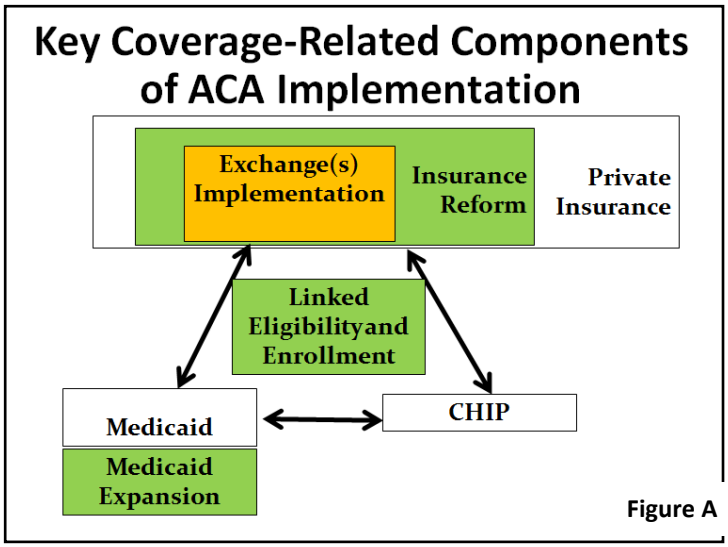


Figure A

Some provisions of the ACA that pertain to these three components, particularly the addition of new consumer protections that apply to private insurance, have already taken effect. However, by far the biggest changes will be effective January 1, 2014.

This leaves 45 months – less than four years – for states to complete this work. For that reason, many states began implementation almost immediately. Although the form and pace of implementation differs from state to state, Florida is by all accounts one of only two states[8] taking no action whatsoever to implement the key components of the ACA.

**Challenge Heightened by Missed Opportunities:**

Not only are no state-sanctioned implementation activities occurring in Florida[9], but the state also has rejected, refused to accept, or declined to seek a slew of federal funding opportunities other states are using to facilitate ACA-related efforts.[10]

Florida's resistance has already cost the state tens of millions in federal funding (with little or no state matching requirement). That total will quickly spiral into hundreds of millions if the state continues to ignore additional opportunities as they come on-line – not only funding for ACA implementation *per se*, but also for ACA initiatives that directly improve the health care system. Table 1 contains a partial list of the resources (those directly related to ACA implementation) that Florida has declined.

**Table 1**

**Selected Federal ACA Implementation Funding Opportunities Refused or Rejected by Florida**

| ACA Grant or Funding Opportunity | Purpose of Grant or Funding | Action Taken by Florida | Amount Refused or Rejected (in millions)[11] |
|---|---|---|---|
| Exchange Planning Grant | Support initial planning, research, stakeholder engagement effort, decision-making in preparation for exchange development. | Applied, awarded, not used | $1 |
| Rate Review Grant (Cycle 1) | Strengthen and increase transparency in process of state review of proposed insurer premium increases. | Applied, awarded, returned | $1 |
| Consumer Assistance Program Grant | Increase capacity to help consumers with enrollment in coverage, appeal of insurer decisions, and awareness of their rights. | Did not apply | $2 |
| Exchange Establishment Grant (Level 1) | Support activity and creation of infrastructure necessary to meet all exchange certification standards. | Have not yet applied | $10-$15 |
| Rate Review Grant (Cycle 2) | Support further efforts to strengthen review of insurers' proposed premium increases. | Did not apply | $4 |
| Enhanced Medicaid Funding for Development and Operation of IT Systems | Provide 90% federal match rate for efforts to design, develop or upgrade Medicaid information systems, 75% match for operation/maintenance. (The usual match rate for these types of activities is 50%). | Have not yet applied | TBD |

Meanwhile, even other states that participated in the legal challenge to the ACA recognize that the likelihood that the entire law will be struck down by the courts is low,[12] and that their inaction therefore threatens access to much-needed ACA benefits for resident families and businesses for which their federal tax dollars are paying. See Figure B, for example, showing Florida as one of a handful of states that have yet to accept any federal funding whatsoever for the planning and establishment of an exchange.[13]

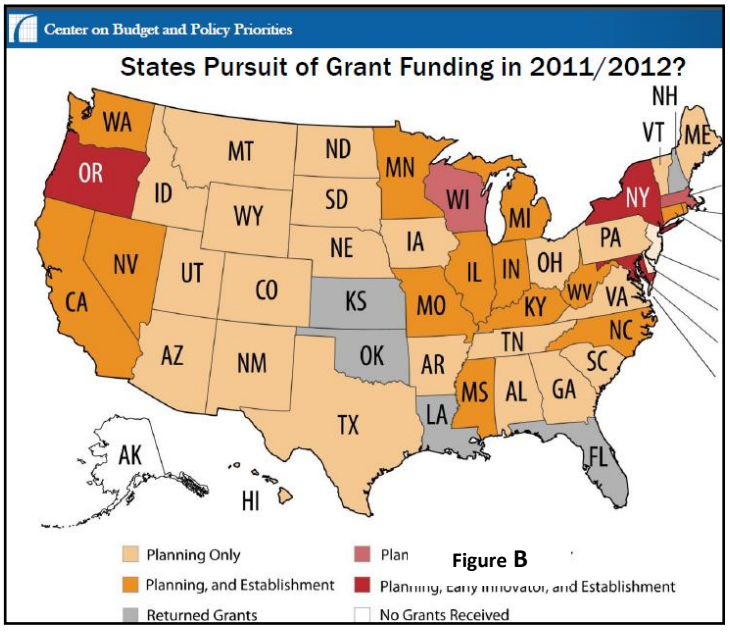


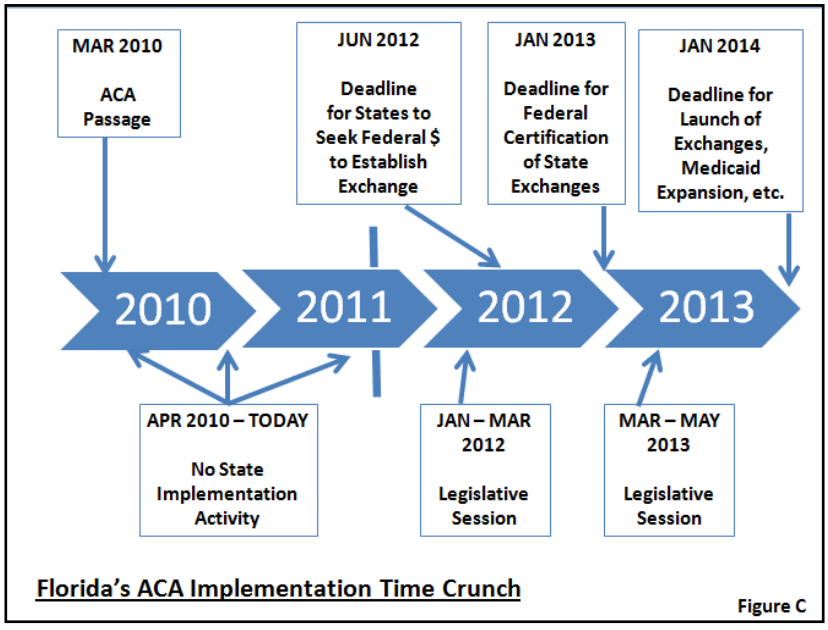
**Figure B**

As of November 1, 2011, only 26 of the 45 months available to prepare for launch remain, making an

already difficult process even more challenging. The list of tasks to be completed for implementation is extensive, including overall policy direction-setting by the legislature, detailed program analysis and planning among multiple state agencies, development of new infrastructure, selection of vendors and insurers, adoption of new laws, rules and forms, and testing and launch of the new system. See Figure C.

**Already A Lap Behind, Can Florida Catch Up?**

Yet before Florida can even begin work on some of the key aspects of ACA implementation, the governor and legislature must make some fundamental policy decisions. Focusing on the exchange component alone, most basic of all is the decision of whether or not to establish a state-based exchange. Under the ACA, states are expected to establish exchanges. If Florida elects not to do so, however, Floridians would have access to a federally administered exchange. Other basic questions: Will Florida have separate exchanges for individuals and small businesses, or operate one exchange that serves both? What entity will operate the exchange(s)? What process and structure will the state use to oversee and coordinate implementation? These questions must all be asked and answered before the necessary work can begin in earnest.




**Florida's ACA Implementation Time Crunch** Figure C

Although the 26 months that remain should be sufficient for Florida to complete the tasks associated with implementation, the challenges will compound as time continues to slip away. Meanwhile, both the governor and the legislature have yet to signal any receptivity to the ACA whatsoever.

In order to ensure that the coverage, subsidies, etc., go on-line by 2014, Florida's exchange(s) must be federally certified by January 1, 2013. States may apply for federal funding for the establishment of their exchanges, but the final deadline for doing so is July 2012.[14]

In addition, a number of additional factors could delay or derail implementation once there is willingness to move forward. In particular, the legislature would almost certainly need to pass legislation authorizing the necessary coordinated interagency planning and groundwork-laying, as well as to appropriate funding to that end.

Once the planning phase is complete, implementing legislation would also be needed to make specific changes to policies, programs, services, rights and responsibilities.

Absent calling a special session, the legislature's only remaining opportunities to take such significant action are the 2012 regular session, which runs from this January through early March, and the 2013 regular session, which runs from March to May of next year. The intensity of the "time crunch" is illustrated in Figure D.

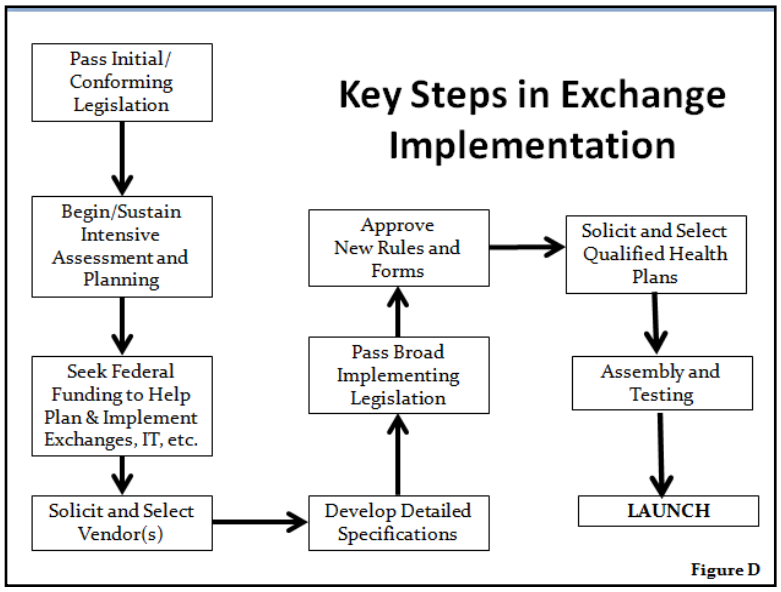


Figure D

Beyond legislation, however, the work of implementation itself will be time-consuming and in many cases not readily accelerated. For example, procurement processes are generally protracted to begin with, and administrative challenges by unsuccessful bidders can lengthen them by months. Assembling staff, technology, and other operational pieces takes time and resources as well. Figure D shows a partial list of the complex steps involved in the exchange implementation process alone.

It should be noted that achieving certification of its exchange by January 2013 is not the only way Florida can ensure timely launch of the ACA's coverage expansions. Florida can allow a federally administered exchange to serve the state initially, and establish a plan by which Florida can transition to operating its own exchange. An ongoing federal-state partnership arrangement might also be a possibility.

## Conclusion

Florida's elected leadership has left the state "a lap behind" in the race to implement the Affordable Care Act. Such inaction and resistance threatens the sustained access to affordable, quality health coverage essential to Florida's families and businesses that the ACA was specifically created to deliver. Our tax dollars will provide these benefits and the accompanying economic boost to other states at our expense if efforts to thwart ACA implementation in Florida are successful. Florida is now at risk for failing to reach the implementation finish line, but it can and should make every effort to catch up.

This report was researched and written by Greg Mellowe. The report and its findings do not necessarily reflect the views of the FCFEP Board of Directors.

## Endnotes

[1] The term "Affordable Care Act" is shorthand for the relevant provisions of the Patient Protection and Affordable Care Act(P.L. 111-148) and the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152), as amended.

[2] i.e., Titles I through X.

[3] See CS/SJR 2 (2011)

[4] In the case, *Florida et al v. United States Department of Health and Human Services*, Judge Roger Vinson of the U.S. Northern District of Florida first ruled that the ACA in effect was unconstitutional in its entirety. However, the U.S. 11th Circuit Court of Appeals stayed that decisions shortly thereafter and ultimately ruled that only the "personal responsibility" provision was problematic, leaving the ACA as a whole in effect. In particular its requirements remain binding on states. The case is currently pending before the U.S. Supreme Court.

[5] The rules for eligibility determination for the Medicaid expansion population call for the uniform application of a 5% income disregard. Accordingly, some sources cite the income limit as 138% of the federal poverty level (FPL).

[6] Specifically, parents with dependent children under age 18 in the household. The income limit for parents with earned income is higher, but cannot exceed 55% FPL under current rules.

[7] In Florida, Medicaid for children and the components of CHIP are collectively known as Florida KidCare.

[8] Louisiana is the other state.

[9] See e.g., Letter from then- Florida House Speaker-Designate Dean Cannon to then-Governor Charlie Crist, October 2010.

[10] See e.g., New York Times, *Opposing the Health Law, Florida Refuses Millions*, July 2011.

Actual amounts used when available. Estimated amounts based on grant information and awards made to other states.

[12] For example, no court at any level – not even Judge Vinson – has affirmed the assertion that the Medicaid expansion component of the ACA is unconstitutional.

[13] Center for Budget and Policy Priorities, Status of State Health Insurance Exchange Implementation, Page 4, Sept. 2011.

[14] U.S. Department of Health and Human Services, Office of Consumer Information and Insurance Oversight, Cooperative Agreement to Support Establishment of State-Operated Health Insurance Exchanges: Funding Announcement, January 2011, Page 3.