

Congress of the United States

House of Representatives

Washington, DC 20515-2802

March 26, 2010

The Honorable Catherine Cortez Masto
Attorney General, State of Nevada
100 North Carson Street
Carson City, NV 89701-4717

Dear Attorney General Masto,

Thank you for your prompt reply to my letter of March 23. I am very pleased that your office is currently reviewing the Patient Protection and Affordable Care Act ("the Act," H.R. 3590, P.L.#111-148), as it is of paramount importance to our State and nation.

I agree that we must be careful not to overly politicize issues of this magnitude. As elected officials we have an obligation to take action on items that are in the best interest of our State regardless of political party perspectives and philosophies. I believe this is an issue where both Democrats and Republicans should come together to ensure Nevada does not fall victim to questionable provisions that may harm our great State in the long term. As I wrote in my previous letter, I am asking you to perform a thorough review of this law.

Per your request in your recent correspondence, I am happy to provide the following references to aid your office in the process of reviewing modifications the Act made to Federal law. The following is not intended to be exhaustive, nor does it include the considerable issues regarding Medicaid and unfunded mandates that other States have already highlighted. However, I hope it provides some helpful guideposts for your office's consideration of the Act.

Individual Mandate

The Act mandates that all United States citizens and legal residents have qualifying health coverage (Internal Revenue Service [IRS] Code, Subtitle D, Chapter 48, Section 5000A(a)).

The Act prescribes penalties for individuals who fail to obtain bureaucrat-approved health insurance. In 2016, these penalties will be \$750 per year for an individual and up to \$2,250 per family, or 2 percent of household income, whichever is greater (IRS Code, Subtitle D, Chapter 48, Section 5000A(b)(c)). After 2016, the penalty will increase annually based on a formula (IRS Code, Subtitle D, Chapter 48, Section 5000A(c)(3)(D)).

Exemptions to the tax penalty only apply for individuals with certain religious objections (IRS Code, Subtitle D, Chapter 48, Section 5000A(d)(2)), illegal immigrants (IRS Code, Subtitle D, Chapter 48, Section 5000A(d)(3)), incarcerated individuals (IRS Code, Subtitle D, Chapter 48, Section 5000A(d)(4)), some individuals with financial hardships (IRS Code, Subtitle D, Chapter 48, Section 5000A(e)(1)), and members of Indian tribes (IRS Code, Subtitle D, Chapter 48, Section 5000A(e)(3)).

The Constitution nowhere authorizes Congress to mandate that individuals enter into a contract with a private party, either directly or under threat of penalty. By imposing this mandate, the Act may exceed the authority of Congress under Article I of the Constitution and violate the Tenth Amendment to the U.S. Constitution.

State Exchanges

Also worth noting is the Act's requirement that States create health insurance exchanges (P.L.#111-148, Section 1311(b)). The Federal Government will provide some funding for this purpose, but will cease doing so after 2015 (P.L.#111-148, Section 1311(a)(4)(B)). States will have sole responsibility for operating the exchanges Congress created through the Act (P.L.#111-148, Section 1311(d)(5)(A)).

Congress' creation and regulation of exchanges that will be operated within the bounds of each individual State raise serious questions of jurisdiction. As you know, Congress has the authority to regulate interstate commerce. By their very nature, State exchanges appear to lack qualities that would qualify them for congressional regulation. Courts have recognized important limits to congressional authority under the Commerce Clause, and those limits should be respected by every piece of Federal law.

State-Specific Provisions

I am further concerned about State-specific provisions in the Act. The first three subsections of 42 U.S.C. 1396d(z) provide increased Federal match rates for certain costs to the States of Vermont, Massachusetts, and Nebraska. This law is further amended by Section 1201 of H.R. 4872, which has passed both the House and Senate and is expected to be signed by President Obama shortly. Section 1201 deletes the subsections granting increased Federal funding to Massachusetts and Nebraska, and reduces from 5 years to 2 years the increase in Federal funding for Vermont's Medicaid program.

The Act also provides different match rates for certain Medicaid costs in "expansion States," which I understand will include Arizona, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Minnesota, New York, Vermont, and Wisconsin. The District of Columbia will also be eligible for this extra funding (P.L.#111-148, Section 2001(a)). As I mentioned in my last letter, the final product of this healthcare effort will result in Nevada taxpayers offsetting other States' costs while our State is forced to cut back to meet new Federal requirements. Some have expressed concerns that provisions of the Act designed to benefit specific States violate the equal protection clause of the Fourteenth Amendment.

I hope this information is helpful as your office reviews P.L.#111-148.

Sincerely,

A handwritten signature in black ink, appearing to read "Dean Heller". The signature is fluid and cursive, with a large initial "D" and "H".

DEAN HELLER
Member of Congress