



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4717

ADAM PAUL LAXALT
Attorney General

WESLEY K. DUNCAN
Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

MEMORANDUM
Not an Attorney General's Opinion

DATE: January 14, 2016
TO: Chair and Members, Silver State Health Insurance Exchange Board
FROM: Dennis L. Belcourt, Deputy Attorney General
SUBJECT: Recent Amendments to the Patient Protection and Affordable Care Act

=====

Recent Congressional Amendments to the Affordable Care Act

Congress enacted H.R. 2029, which became law on December 18, 2015 as Public Law No. 114-113. Under the short title, "the Consolidated Appropriations Act, 2016," Public Law No. 114-113 amended three parts of the Patient Protection and Affordable Care Act (the Affordable Care Act):

1. Section 174 of Division Q of Public Law No. 114-113 places a moratorium on the medical devices tax (26 USC 4191) for 2016 and 2017. Sales occurring during those two years will not be subject to the tax, which is a 2.3 percent tax on taxable medical devices sold by manufacturers, producers, or importers in the United States. "Taxable medical devices" do not include
 - (A) eyeglasses,
 - (B) contact lenses,
 - (C) hearing aids, and
 - (D) any other medical device determined by the Secretary to be of a type which is generally purchased by the general public at retail for individual use.
2. Section 1 of Division P of Public Law No. 114-113 amends the provisions (codified in 26 USC 4980(I)) creating the "Cadillac Tax", the popular name of the 40% marginal excise tax on "High-Cost Employer-Sponsored Health Coverage," to
 - (A) delay the tax until 2020;
 - (B) make the tax a deductible expense; and

Memo to Silver State Health Insurance Exchange Board
PPACA Amendments
January 14, 2016
Page 2

(C) Require study of benchmarks concerning age and gender adjustments (current benchmark: Blue Cross/Blue Shield standard benefit option under the Federal Employees Health Benefits Plan).

3. Section 201 of Division P of Public Law No. 114-113 places a moratorium for year 2017 on the non-deductible annual premium “fee” for health insurance providers (including premiums for policies on ACA exchanges) pursuant to section 9010 of the Affordable Care Act.

These three changes affect three revenue provisions of the Affordable Care Act, none of which are specifically earmarked for implementation of the non-revenue provisions of that ACA. ACA funding comes from appropriations legislation. See *United States House of Representatives v. Burwell* 2015 WL 529476 (USDC District of Columbia 2015)(concerning cost-sharing reduction appropriation).