

HEALTH LAW UPDATE

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National Co-Leaders

Thomas W. Kahle
tkahle@bakerlaw.com
513.929.3414

Christopher J. Swift
cswift@bakerlaw.com
216.861.7461

Editor

Kathleen P. Rubinstein, MPA
Policy Analyst
krubinstein@bakerlaw.com
713.276.1650

HEALTH REFORM -- LET THE RULEMAKING BEGIN ... !

A [new report issued by the Congressional Research Service](#) (CRS) describes PPACA as a "particularly noteworthy example of congressional delegation of rulemaking authority to federal agencies," and identifies more than 40 provisions "that require, permit, or contemplate rulemaking by federal agencies to implement the legislation." Entitled "Regulations Pursuant to the Patient Protection and Affordable Care Act (P.L. 111-148)," the CRS report identifies and distinguishes provisions under the new law that must be implemented via the rulemaking process ("mandatory regulations") and those in PPACA that permit, but do not require, federal agencies to issue rules ("discretionary regulations"). It also discusses other provisions in PPACA where the statutory language "appears to contemplate the use of regulations to fulfill the underlying policy requirement, but the language does not specifically require or permit federal agencies to issue new regulations." Examples of each category are discussed in the report and a table listing PPACA's regulatory provisions and corresponding deadlines appears in the appendix. Stating that "it seems likely there will be a great deal of regulatory activity relating to the many provisions in PPACA for years, or even decades to come," the CRS report notes that many of these regulations likely will "provoke controversy" as they are administered, clarified, reviewed and revised and as agencies gain experience in implementing PPACA.

It is becoming increasingly clear that the more immediate provisions of PPACA will be implemented through informal guidance. Providers, health plans and businesses should engage in the regulatory process to assure that unintended consequences that might cause an adverse impact can be addressed proactively.

For more information, please contact Susan Feigin Harris, sharris@bakerlaw.com or 713.646.1307 or Kathleen P. Rubinstein, MPA, Policy Analyst, krubinstein@bakerlaw.com or 713.276.1650.