

Clarification of Section 9010 of the Affordable Care Act as Relates to the Territories

The Affordable Care Act (“ACA”) comprehensively reformed the health insurance markets of the States, but excluded the territories. Consequently, applicability of ACA Section 9010’s tax on health insurers should not apply.

Application of ACA Section 9010 to the Territories is Incompatible with Title I’s Territorial Exclusion

- Notwithstanding ACA Title I’s exclusion of territories, plans in the territories are treated as taxable covered entities under Section 9010 of the ACA and the Department of Treasury’s current rules. This imposed a cost of \$180 million on health plans, the Puerto Rican government and consumers in 2016, and that number is expected to grow in future years.
- Puerto Rico is suffering from a health care economic crisis increasingly compounded by Federal funding disparities.
- Application of the 9010 fee imposes perilous additional economic hardship on Puerto Rico’s multiple compounded disparate funding problems under Medicaid and Medicare.
- This proposal clarifies that that the Sec. 9010 fee is inapplicable to the territories and, beginning in 2018, reduces total collections under Sec. 9010 by a level corresponding with estimated collections attributable to the Territories.