

IMPACT'S STATEMENT REGARDING ACA COMPLIANCE FOR HEALTHCARE SHARING ORGANIZATIONS

In most ways, the question of ACA compliance is now academic, since Congress passed the Tax Cut and Jobs Act of 2017 ("TCJA") which went into effect January 1, 2019. Under the TCJA, the penalty for individuals and families not complying with the ACA's individual mandate was reduced to \$0. So even though the individual mandate is technically still on the books, it is a law without an enforcement penalty, and IRS applies it as such. Therefore, with no enforcement penalty, the ACA exemption has no practical effect with respect any individual or family from a federal law standpoint.

However, a few states still rely on the federal ACA exemption definition for state law purposes. Internal Revenue Code §5000A(d)(2)(B)(ii) defines a health care sharing ministry as an organization:

- (1) Which is described in section 501(c)(3) and is exempt from taxation under section 501(a);
- (2) members of which share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the State in which a member resides or is employed;
- (3) members of which retain membership even after they develop a medical condition;
- (4) which (or a predecessor of which) has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999; and
- (5) which conducts an annual audit which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.

Impact, a faith-based healthcare sharing organization, meets all of the above elements of an ACA exempt healthcare sharing ministry except (4), above, the ministry "or a predecessor has been in existence at all times since Dec. 31, 1999." Impact has been advised by legal counsel that the "1999" requirement is unconstitutional, since it favors a small group of faith-based organizations over all others, in violation of the First Amendment's Establishment Clause.

In 1999, only three national healthcare sharing ministries existed. But 97 small Mennonite Christian ministries also practiced healthcare sharing, on a localized basis as of 1999, and thereby qualified for CMS certification as a healthshare ministry, although none of these local ministries had nationwide reach. After the ACA was passed in 2010, some of the CMS ministry certification letters issued to the 97 qualified Mennonite groups were put up for "sale," so that a new Christian healthcare sharing ministry, *for a fee*, could merge with the older Mennonite group, to demonstrate "continuous sharing since 1999" for the ACA exemption. This was not the intent of how the ACA exemption should operate.

Impact has pushed back on the 1999 requirement in every state in which the question has arisen, for the above reasons. We have prevailed in every case. We will continue to address this issue as it may arise, and are confident we will continue to prevail.