

BOARD OF REGENTS  
BRIEFING PAPER

**Agenda Item Title:** Board Handbook Policy for the Patient Protection and Affordable Care Act

**Meeting Date:** June 11-12, 2015

**2. BACKGROUND & POLICY CONTEXT OF ISSUE:**

The federal legislation for The Patient Protection and Affordable Care Act passed in 2010. The Board of Regents needs to adopt policy for Nevada System of Higher Education to ensure NSHE will comply with the federal employer shared responsibility requirements. The request is for the Board to adopt a policy directing the Chancellor to adopt the appropriate compliance guidelines in the NSHE Procedures and Guidelines Manual to ensure compliance and avoid potential significant financial penalties.

**3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:**

To adopt a new Board Handbook policy as follows:

**Title 4 Chapter 3 New Section 51:**

*The Patient Protection and Affordable Care Act (the “Affordable Care Act”) is federal legislation passed in 2010 that impacts health benefit coverage for employers and employees. NSHE shall comply with the employer shared responsibility requirements included in the Affordable Care Act. The Chancellor is directed to establish procedures and guidelines to comply with the employer shared responsibility requirements of the Affordable Care Act.*

**4. IMPETUS (WHY NOW?):**

For 2015 and after, employers employing at least a certain number of employees (generally 50 full-time employees) will be subject to the [Employer Shared Responsibility](#) provisions under section 4980H of the Internal Revenue Code (added to the Code by the Affordable Care Act). As defined by the statute, a full-time employee is an employed individual that provides on average at least 30 hours of service per week to the employer.

To ensure NSHE complies with the federal employer mandate the Board of Regents should direct the Chancellor to develop appropriate procedures and guidelines to effectively comply with the employer shared responsibility requirements included in the Patient Protection and Affordable Care Act, the Health Care and Education Reconciliation Act, and associated federal regulations and state laws (collectively the “Affordable Care Act”) and avoid significant potential financial penalties associated with non-compliance.

**5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:**

- The Chancellor will work with all institutions to develop technical guidelines to comply with federal requirements.
- The guidelines may be immediately implemented by the Chancellor and any changes in federal requirements can be quickly incorporated into the guidelines.
- Significant NSHE employer-based fines are associated with lack of compliance at the NSHE system, campus, and department levels.
- NSHE must offer coverage to at least 95% of FTE's (full time employees as defined by the ACA) in calendar year 2016.
- If NSHE does not offer coverage in accordance with the employer shared responsibility requirements, NSHE may be liable for an employer shared responsibility payment.
- Estimates of the maximum payment for non-compliance vary but, if based on employee FTE, the liability could exceed \$15 million.
- NSHE institutions need to begin tracking employees not reasonably expected to be full-time in FY 2016, based on initial and standard measurement periods that need to be established now in order to effectively comply with the federal requirements.
- Directing the Chancellor to develop procedures and guidelines will assist NSHE in consistently, efficiently and effectively managing compliance for each NSHE institution.
- NSHE is responsible for federal reporting of ACA data effective January 1, 2016.

**6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:**

None.

**7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:**

- Do not direct the Chancellor to develop ACA compliance guidelines.
- Require Board approval of compliance guidelines.

**8. COMPLIANCE WITH BOARD POLICY:**

- Consistent With Current Board Policy: Title #\_\_\_\_\_ Chapter #\_\_\_\_\_ Section #\_\_\_\_\_
- Amends Current Board Policy: Title #\_\_\_ Chapter #\_\_\_ Section #\_\_\_
- Amends Current Procedures & Guidelines Manual: Chapter #\_\_\_\_\_ Section #\_\_\_\_\_
- Other: \_\_\_\_\_
- Fiscal Impact: Yes\_\_\_\_\_ No\_\_\_\_\_ Explain: \_\_\_\_\_

**POLICY PROPOSAL**

**TITLE 4, CHAPTER 3, new SECTION 51**

***Patient Protection and Affordable Care Act Compliance***

Additions appear in ***boldface italics***; deletions are [~~stricken~~ and bracketed]

**Title 4, Chapter 3, New Section 51:**

***Section 51. Patient Protection and Affordable Care Act Compliance.***

***The Patient Protection and Affordable Care Act (the “Affordable Care Act”) is federal legislation passed in 2010 that impacts health benefit coverage for employers and employees. NSHE shall comply with the employer shared responsibility requirements included in the Affordable Care Act. The Chancellor is directed to establish procedures and guidelines to comply with the employer shared responsibility requirements in the Affordable Care Act.***