

Update on Obamacare

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December 2012

Not many laws have generated as much controversy as the Patient Protection and Affordable Care Act of 2009 (PPACA), the official name for Obamacare. Here I list many of the law's provisions and discuss some of the controversies.

The Patient Protection and Affordable Care Act of 2009 (PPACA, a.k.a. Obamacare) survived Supreme Court scrutiny, but continues to endure public pummeling. There have been so many outright lies (e.g., death panels) and distortions (e.g., belief that you must change your insurance), that it is no wonder that people are confused.

Socialized Medicine it's not. The law uses the existing health insurance industry to provide most of the expanded insurance coverage. This is the reason that the insurance companies' big money lobbyists didn't oppose the act after hard negotiations produced a plan that benefitted them. Sure, they might actually have to pay for more healthcare, but they will also have much more money coming in, from more covered individuals. Government coverage only expands to coverage for poor and sick people, those that the insurance industry really doesn't want.

One of the major debates is the individual mandate, originally proposed by a conservative Republican think-tank, the Heritage Foundation, in 1989. They championed it as a preferable, market-based alternative to universal, government-run insurance proposed by some Democrats. Twenty Republicans, including Newt Gingrich, introduced it as an alternative to President Clinton's healthcare overhaul. Governor Romney revived it in Massachusetts' 2006 "universal" healthcare.

The individual mandate assumes that we all, as owners of a fallible human body, will at some time need healthcare. Even perfectly healthy people incur accidental injuries, random infections and eventually end-of-life ailments. Supreme Court Justice Antonin Scalia said that people can wait until they are sick, then buy insurance, suggesting that he really doesn't understand the whole concept of insurance.

Fortunately, five of the nine Supreme Court Justices, led by Chief Justice John Roberts, did understand. The mandate was declared a tax, to cover inevitable government expenses involved in healthcare coverage. Taxation and providing for the "general welfare of the United States" are specifically allowed by the Constitution, Article 1, Section 8.

The Act is heavy on Prevention. State-based consumer assistance programs and disease prevention programs will gain momentum, ideally resulting in more *health* and less healthcare, and hopefully lower costs.

The PPACA also attempts **to reform healthcare delivery, promoting "medical homes" and primary care.** Theoretically, catching and treating early disease would reduce expensive treatment necessary for later-stage severe disease. Give a person a primary care doctor to treat high blood pressure and you may prevent the stroke. Fewer ER visits for minor problems will save us all money, since the public ends up paying for those costs. Fewer people waiting to get help until they are critically ill may lessen the exposure the rest of us have to infectious disease.

Unfortunately, we don't have enough primary care doctors to fill the need. The PPACA provides funding to funnel more medical students into primary care, but that will take time. In the meantime, we'll probably see more "mid-level" practitioners, like physician assistants, taking care of first-line care. For 50 million people it will be better than what the void they've had lately.

True to good entrepreneurial gouging form, **the health insurance industry is working hard to not lose any money** with the Affordable Care Act. They hope to utilize imaginative number-crunching to circumvent the provision that they spend at least 80% of premiums on patient care (a novel concept!). Somehow they believe that administrative cost, like dealing with claim denial appeals, is patient care. They continue to deny new plans to anyone remotely likely to become ill and their exorbitant rates are not controlled with the new law. (Exhibit A – Antheims' attempt to raise premium rates 39% earlier this year, when the CEO's salary had increased from 2008's \$8.1 million to \$13.1 million in

2009). They've jacked up rates on relatively healthy people even *before* most of the law has kicked in.

It will take time to get it right. Medicare met vehement opposition when it passed in 1965. It has since required a lot of tweaking to get it reasonably 'right'. It may have been imperfect at the start, but just try to take away a senior's Medicare now. We have a start with the ACA, now we need to work out the bugs.

This law, as well as Medicare Part D passed under President G.W. Bush, does not authorize Medicare (and the American people who pay for it) to **negotiate drug prices with pharmaceutical companies**. That is a huge give-away to the industry – Pass a mandate increasing demand and coverage for drugs, but allow for no price negotiation. We just pay whatever they charge. Private insurance companies and even the CA prison system negotiate drug prices – why not the Federal government? The President has said that amending the law to allow drug price negotiation is one of his goals in the next four years.

For more information, including provision timeline, go to www.healthcare.gov.

Insurance coverage change kicks in slowly:

2010-Adults with pre-existing conditions can obtain coverage through a high-risk pool in each state, if they can prove they were denied for that reason. Not many people have taken advantage of this opportunity, possibly because of lack of advertisement and also because they have to prove they were denied coverage, not just offered coverage at a price they can't afford.

2010- Insurers can no longer cut off benefits for essential services (like hospitalization) after a lifetime dollar limit has been exceeded.

2010-Any child can stay covered by a parent's insurance policy up to age 26, even if (s)he is no longer a dependent or living with the parent(s). 2.5 million young adults have regained insurance because of this statute.

2010-Insurers are prohibited from excluding pre-existing medical conditions in children.

2010-All new insurance plans must cover preventive care and medical screenings without charging co-pays or deductibles to the patient. In 2012 this extended to mammograms & colonoscopies.

2010-Your insurance can't drop you if you are sick.

2010-Increased transparency concerning insurance expenses and improved appeals process to contest insurance companies' decisions.

2010-Businesses are eligible for **reduced premiums for early retirees'** health insurance.

2011-Insurers must spend at least a certain % of premium dollars on health benefits to their insured (subject to certain waivers and exemptions, aka loopholes) or issue rebates to policy holders.

BIG changes come in 2014.

***Insurers can no longer discriminate against or charge higher rates based on gender or pre-existing medical conditions.**

***Everyone must acquire some type of health insurance coverage or pay a penalty, via the IRS, unless the least expensive policy exceeds 8% of their income.** Some call this a mandate. The Supreme Court declared it a tax.

***Insurers can't limit your annual benefits.**

*Employers of more than 50 people pay a penalty if they do not offer insurance to full-time employees. This may lead to millions of people given work for only 29 hours per week. This could be a problem unless they make so little that they qualify for the new Medicaid limits, or work two 29 hour jobs, making enough to buy insurance through the state's exchange.

*Medicaid (MediCal in CA) expansion to all individuals with income up to 133% of the poverty line (no longer requires disability or dependent children to qualify).

***Two years of tax credits, up to 50% of insurance premium value, for qualified small businesses.**

*Set maximum deductible at \$2000 per year per individual for employer-sponsored plans.

***Establish health insurance exchanges in each state, to enhance individual access to and competition among insurance plans**, with low-income subsidies.

***Members of Congress and their staff will have to go through the health insurance exchanges** to get insurance, rather than use the "Cadillac" plan now given exclusively to them. Finally, Congress-people will have

to experience healthcare coverage in the same way their constituents do.

MEDICARE:

2010-Enhanced fraud detection, particularly related to Medicare. The ACA provisions have enabled the Obama administration Health Care Fraud team to recover over \$4 billion per year for the last 2 years, and to impose stiffer criminal penalties.

2010- Medicare Part D beneficiaries get a yearly **\$250 rebate** of their donut-hole drug expenses.

2010-**Coverage expanded to small, rural facilities** for better access.

2010-Requires regular monitoring (every 3 months) of patients on medications for chronic illnesses.

2011-The Center for Medicare and Medicaid must improve payment and service delivery innovation.

2015-Physicians get paid based on quality of care, not volume. The details of determining quality and pay are being worked out.

Medications:

2010 - Increased incentive to develop biologic medications for unusual diseases (e.g., antibodies to bad things causing disease or molecules that mimic good things that the body stopped making).

2010-A temporary credit program to encourage private investment in new therapies.

2011-Prohibits use of flexible spending accounts for over-the-counter drugs without a prescription.

Prevention:

2009-Created a non-profit Patient-Centered Outcomes Research Institute to study which medical treatments and approaches work best.

2009-Created a task force to develop recommendations for clinical and community prevention services.

2009-Reauthorized and updated the Indian Health Care Improvement Act

2010-A new service within the Health and Human Services to develop a national prevention and health promotion strategy.

2012-Women's preventive services provided without co-pay or deductible.

2013-Chain restaurants and food vendors must display caloric content of their food

States' rights

2014 -States devise their own Health Insurance Exchange.

States can choose to opt out of the Medicaid expansion. This puts the working poor into a position of having to pay the opt-out tax if they can't afford insurance. The Federal government then picks up the responsibility for insuring them.

If states come up with a better plan to affordably insure all their residents, they may apply for a waiver from the Medicaid expansion, individual mandate (tax) and employer penalty for not insuring employees and health insurance exchange clauses.

Funding:

The Office of Management and Budget's analysis is that Obamacare will SAVE money, not increase the deficit.

2009 - Increased rebate paid by drug manufacturers to states for Medicaid.

Since 2009 – Identify and prosecute Medicare fraud and abuse aggressively. This has recovered about \$4 billion per year since 2009.

2010 - 10% sales tax on indoor tanning facilities.

2012 - Employers must report on the employees' Form W2 the value of his/her health insurance coverage.

2013 - A 0.9% increase in self-employment or wage tax for those making more than \$200,000 (\$250,000 for married couples), and an additional 3.8% Medicare tax on **unearned** income (interest and dividends).

2014 - Excise taxes on pharmaceutical, medical device and insurance companies.

2014 - Change qualification for income tax deduction for medical expenses equal to more than 10% of income.

2014 - Medicare savings: No longer paying private Medicare Advantage insurance companies' higher dollar amounts than is spent in traditional Medicare. Various cuts in pay to hospitals, doctors and medical device

providers, by paying through Accountable Care Organizations. NO cuts in care to Seniors.

2014 - Limit flex account contributions to \$2500.