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Health Care Reform 2015: Where are we now?

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Did You Know?.....

- We spend \$2.8 Trillion per year (2012) (\$9,000 per person)
- We waste over a Billion a year annually through:
 - Unnecessary services (\$210 billion)
 - Inefficient delivery of care (\$130 billion)
 - Excess administrative costs (\$190 billion)
 - Inflated prices (\$105 billion)
 - Prevention failures (\$55 billion) and
 - Fraud (\$75 billion)
- For 31 of past 40 years, health care costs have increased at a greater rate than economy as a whole
- Health care is 18% of US GNP

Did You Know.....?

- 1% of patients account for 21% of those costs in 2010?
 - That equals \$88,000 per person
- 5% of patients account for 50% of U.S. health care costs?
 - That equals \$41,000 per person

AHRQ, Medical Expenditure Panel Survey

Health Care System Problems

- Quality of Care
- Cost
- Growth
 - Aging population
 - Life expectancy
 - Cost of technology
 - Level of care
 - Mental/behavioral health



Recommendations to fix the system

- Better use of clinical & financial data;
- Reimbursement that rewards quality and value;
- EHRs and mobile technologies; and
- Transparency about costs and outcomes of care.
- More enforcement against fraud

IOM Report: *“Best Care at Lower Cost”* (Sept. 7, 2012)

Health Care Reform (2010)

- Patient Protection and Affordable Care Act and Health Care and Education Reconciliation Act (ACA) or “Obamacare”
- Attempts to:
 - Provide access to affordable insurance coverage (Titles I – II)
 - Medicaid Expansion
 - Individual Mandate
 - Exchanges
 - Subsidies
 - Improve quality and efficiency of care (Titles III – VIII)
 - Curb cost growth
 - 2002 9.7%
 - 2009-2012 3.7%

The logo for Snell & Wilmer is located in the top right corner of the slide. It consists of a dark red rectangular background. On the left side of this rectangle is a smaller, solid dark grey square. To the right of the grey square, the letters 'S&W' are written in a large, white, serif font, with the ampersand being particularly prominent.

Supreme Court Review (2012)

The Supreme Court decided two key issues:

- Whether the individual mandate is constitutional.
- Whether Congress may revoke all Medicaid funding if a state does not agree to Medicaid expansion.

Individual Mandate

- The individual mandate requires most Americans to maintain a “minimum essential” level of health care beginning in 2014 or face a penalty or “tax.”
- The Supreme Court found that the individual mandate is not a valid exercise of Congress’ power under the commerce clause.
- But the individual mandate is constitutional under Congress’ taxing power.
- Subsidies between 139% - 200% FPL

Medicaid Expansion

- The Supreme Court held that Medicaid expansion is constitutional, but the federal government cannot withhold or revoke existing Medicaid funding if the state elects not to participate in the expansion.
- All adults with incomes at or below 138% of the federal poverty level will be eligible for insurance coverage under Medicaid.
- FPL \$32,913 for family of 4

Medicaid Expansion *(Cont'd.)*

- Goal
 - Reduction in number of uninsured
 - Covers the gap between those who qualify for Medicaid and those who qualify for subsidies through the Marketplace (139% - 200% FPL)
 - Estimates that with full expansion about ½ of the uninsured would be covered (17 Million)
 - Many states have concluded that expanding Medicaid saves and/or raises money for the state

Medicaid Expansion *(Cont'd.)*

- CBO: state “optional” expansion drops new insureds from 17 million to 11 million (assuming 70% in states that expand by 2020).
 - Feds will pick up 100% of Medicaid expansion for 2014 – 2016 and no less than 90% on a permanent basis
 - Urban Institute, Lewis Group estimated state savings between \$26 - \$101 billion

Medicaid Expansion *(Cont'd.)*

- Arizona and 28 other states and D.C. have expanded Medicaid (3/16/15)
- Governor Brewer noted the following:
 - No cost to Arizona – Hospital provider reimbursable self-assessment fee (\$256M a year)
 - Will inject \$8 Billion into the economy over the first 4 years (\$2M a year)
 - Protects rural and safety net hospitals for uninsured (uncompensated) care

Medicaid Expansion *(Cont'd.)*

- Impact
 - 60,000 new applications
 - 240,000 childless adults gain coverage in existing program
 - Uncompensated care costs decrease
 - About 17% of Arizonans are currently without insurance
 - Total AHCCCS population 1.6M (03/01/15)
- Opponents
 - Failed to get on the ballot
 - Goldwater Institute lawsuit
 - Self-Assessment imposed a “tax” without a 2/3 majority vote in violation of the Arizona Constitution (“taxation with representation”)

Biggs v. Cooper (12/31/14)

- AZSCT Holding
 - House legislators who voted against expansion have standing to challenge whether law was passed in a constitutional manner

Biggs v. Cooper (12/31/14) *(Cont'd.)*

- The Issue
 - Bill includes an assessment on hospitals to fund expansion
 - AZ constitution requires certain laws that increase revenues must pass by supermajority (2/3)
 - Legislature decided by majority vote, it did not
 - Law passed by majority vote

Biggs v. Cooper (12/31/14) *(Cont'd.)*

- Court held the supermajority depends on constitution – not legislative discretion
- Exception to supermajority requirement
 - “Fees and assessments that are authorized by statute, but not prescribed by formula, amount or limit, and are set by state officer or agency” (Art 9, § 22(c)(2))
 - A.R.S. 36-2901.08, Hospital Assessment Statute
 - AHCCCS determined methodology by rule

Biggs v. Cooper (12/31/14) *(Cont'd.)*

- Other options to defeat expansion
 - Repeal law
 - Referendum



Fifth Anniversary of ACA

- John McCain

“Repeal and Replace”

“Five years after its enactment, Obamacare has been full of empty promises that have only made our nation’s health care problems worse”
- 16.5M gained coverage
- Uninsured dropped from 20.3% to 13.2% (35% drop)

Health Care Reform *(Cont'd.)*

– Insurance Exchanges

- State 17
- Federal 34
- 8.2 million enrolled (premium credits avg. \$268/mo)
- 204,000 Arizona residents (\$158/mo)



Another Constitutional Challenge

King v. Burwell

Appeal from 759 F3d 358 (4th Cir 2014)

If a state chooses not to run a health insurance exchange, can it still be provided with tax subsidies?



The 8 Words

- ACA authorizes federal tax-credit subsidies for insurance purchased through an
“exchange established by the state under Section 1311”
- IRS rule extends tax-credit subsidies to participants in states served by the federal exchange
- Circuit court split

Burwell

- Statutory construction case
 - What do the words mean?
 - What did Congress intend?
- Section 1321 – if a state does not establish its own exchange, HHS “secretary shall establish and operate such Exchange within the state...”

Plaintiffs

- Unconstitutionally coerces states to establish exchanges by imposing onerous consequences on states that decline
i.e. Congress limited subsidies to state-run exchanges to incentivize states to form their own exchanges

U.S.

- Out-of-context “misreading of a single phrase” in 1000 page law “would thwart” care reforms in the 34 states that exercised their right to allow HHS to establish exchanges for them
- Legislative intent – credits available in every state

The Score So Far

- Uphold 4
 - Ginsburg, Breyer, Sotomayor, Kagan
- Strike down 3
 - Scalia, Thomas, Alito
- On the fence 2
 - Roberts, Kennedy

Oral Argument

- Numerous questions about adverse consequences on states and people
- Kennedy “insurance market death spiral”
- Scalia “Congress would step in for the problems” [laughter]
- Alito States could establish own exchanges, with delayed effect of decision
- Scalia Congressional intent does not matter – only what they wrote

Hail Mary Options

- States could act to set up own exchanges
 - Use healthcare.gov as host
- Congress could fix [laughter]
- ACA basic health plan for people with incomes of 139% to 200% of FPL
- Case outcome limited to 4 Plaintiffs