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Health Care Reform 2015: Where are we now?

presented by
Paul J. Giancola
pgiancola@swlaw.com
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%
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