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THE AFFORDABLE CARE ACT (ACA) AND ITS IMPLICATIONS

BACKGROUND BRIEFING

FOR

ADELPHI UNIVERSITY CENTER FOR HEALTH INNOVATION

KEY POINTS

- ❖ The Affordable Care Act is the most significant health care legislation since Medicare and Medicaid were created in 1965. It promises to be a turning point in access, coverage, quality, and cost of health care in our nation.
- ❖ In 2013, we are going to see more of the front edge of ACA, a lot of discussion, and how the law will effect the lives of people. October, 2013, is the date for the Exchanges to go live in marketing plans, where people who lack insurance can go get it through websites beginning on January 1, 2014.
- ❖ In 2013, there is a ton of work to be done by insurance companies, by the software developers that have to get the exchange websites ready, by the state insurance commissioners and Federal Government who have to oversee and regulate how all this gets done.
- ❖ ACA is a fundamental change agent with two themes: The first is the theme of coverage—you can think of it as “justice” in American health care—the previously elusive and majestic task of helping realize health care as a right in our nation, denied to no American because of

their wealth status. The second theme is insurance reform. ACA prevents insurance companies from discriminating against people with pre-existing conditions and protect consumers from the worst insurance company abuses.

- ❖ The law is so complex and huge, 2700 pages. Yet the Obama Administration during the second half of its first term (2010-2012) failed to make a special effort to explain the law to the public. This allowed opponents to exploit its imperfections.
- ❖ Law is very controversial. But following the Supreme Court ruling polls show a majority of the American people want to put the fight over ACA behind them. For example, 56% now believe opponents of the law should stop trying to block its implementation and move on to other national problems.
- ❖ The U.S. Department of Health & Human Services is working like mad to get the law ready in time for 2014 despite the opposition from 24 Republican states.
- ❖ Creating health insurance exchanges tops the priority list for states, according to the most recent Kaiser Family Foundation survey. This kind of public support for creation of exchanges (55% named exchanges as top priority) is exciting.
- ❖ The opposition of governors to the Medicaid expansion is baffling since the Federal Government will pay full coverage of newly eligible adults in 2014, 2015, and 2016. In 2017, the rates drop gradually, reaching 90% in 2020 and staying there indefinitely. This is the most generous matching rate applied to any coverage group in Medicaid history. What is worse, the governors are denying health coverage for the poorest families in their states.
- ❖ Nearly 3 years since its implementation, over half of the American people are still confused about ACA; 56%, according to Kaiser's April poll, said they were trying to figure out what CA meant for themselves and their family-still struggling to do just that.
- ❖ The Obama team needs to place a priority on getting the facts out so that he will garner more public support for ACA.

- ❖ The House Republicans are still trying to repeal ACA and to use the budgetary process to squeeze funding for ACA implementation. But House speaker Boehner at the end of 2012 announced ACA is now the law of the land. Meanwhile, the Democrats are standing firm in opposition to Republican efforts to bar implementation .
- ❖ **Essential Health Benefits**: Employers, insurers and health providers are lobbying aggressively against the ACA required expansive coverage in policies to be sold in health exchanges alleging it make insurance unaffordable.

CHANGE

- ❖ The past three years have witnessed a number of far-reaching shifts in Washington:
 1. The big economic downturn of 2008;
 2. Scary levels of joblessness;
 3. Nagging questions about America's competitiveness; and landmark health reform through the Affordable Care Act in 2010.
 4. An ever-increasing political climate in Congress of ideological extremism.
- ❖ Health care reform is a metaphor for all the dramatic changes in American health care. And no issue has transfixed the country like the health care overhaul in 2010.

FACTS

- ❖ Our beleaguered and fragmented health care system is the most costly in the world. Health expenditures in the U.S. neared \$2.6 trillion in 2010, over ten times the \$256 billion spent in 1980.
- ❖ Health spending accounts for 16% of the nation's gross domestic product (GDP), the highest among the world's industrialized nations. Strikingly, the U.S. spends \$526 billion more on health care than peer OECD countries after adjusting for wealth.

- ❖ And yet, despite the fact that health consumes 16% of the GDP, independent research confirms we don't know what we are getting for our money from our volume-based and fragmented health care system and now must move to a system based on attaining value for patients and providers through the conceptual framework championed by former CMS Administrator Dr. Donald Berwick: better care, better health, and lower cost.
- ❖ Dartmouth Research led by John Wennberg looking at hospital care raises worrisome questions about value. Using Medicare claims data, investigations have found:
 - ❖ Where people live, who treats them, and in what hospital (not illness) determines how much care is given and how much money is spent.
 - ❖ Hospitals providing more care for one condition have similar pattern for other conditions, and level of intensity likely to apply to commercially insured patients
 - ❖ Then, there is the troubling evidence that nearly one-half of physicians care is not based on "best practices. "This means that only 55% of patients receive care in accordance with best practices.
 - ❖ One in six (6) Americans did not carry health insurance. And yet, the nation was spending 1 in 6 dollars on health care.
 - ❖ Universal consensus was something that had to be done. Still there is a lot of confusion in the country about what ACA means and exactly how it should be implemented.

HEALTH CARE REFORM (ACA) AS A NEWS STORY IN 2009-2010 WAS COMPELLING

- ❖ Social policy
- ❖ Health economics
- ❖ Political narrative
- ❖ Medicine (assessing how medical practice may change as a result of this reform law)

ACA- PRESIDENT OBAMA’S NOTABLE ACHIEVEMENT--HISTORICAL PLACE

- ❖ President Obama has accomplished what no president has in almost a hundred years.
- ❖ Regardless of personal ideology or stance, ACA is a remarkable achievement, a historical landmark.
- ❖ Whether you are a student of the actuarial sciences, economics, political science, American Government, psychology, or just a political junkie, you cannot deny that ACA is a hallmark in American legislative history.
- ❖ In pursuing the ACA legislation, it was striking to watch President Obama. First, as the Washington Post noted, he was clearly a quick read-constantly learning and constantly tweaking the way in which he operated.
- ❖ Second, his initial strategy was not to make the mistakes the Clinton’s made in 1993-1994 (or perhaps he over-learned that). For the plan was almost dead last July of 2009.
- ❖ Indeed, in July-August health policy experts believed he had lost the battle. To jump start the thing, he adjusted by writing his own plan, which he had studiously avoided.
- ❖ Throughout, President Obama and his team constantly re-adjusted their plans
- ❖ Unfortunately, as we have seen over the nearly past 3 years, implementation was only the beginning of the process.

HISTORY WILL SHOW THAT ACA WAS ALSO A NOTABLE ACHIEVEMENT FOR, THEN, HOUSE SPEAKER NANCY PELOSI TOO

- ❖ As the media, such as the Washington Post and New York Times have chronicled, House Speaker Nancy Pelosi was the co-star in this drama that produced ACA, largely because of the ways she operated levers In the House of Representatives
- ❖ In this drama, Speaker Pelosi had to let down her abortion-rights pals. She was forced to cut a deal with the Catholic Bishops so she could move that bill through the House.
- ❖ To me, it was striking in the way in which she used her power to cut a controversial deal and then sell it to her allies.
- ❖ Imagine the skill it took to let down friends and get them to accept it.

BRIEF SUMMARY OF ACA

- ❖ The law is extremely complex
- ❖ Very moderate
- ❖ Very controversial and contentious in some quarters
- ❖ Very incremental

ACA IS SIMPLY A MODERATE PIECE OF LEGISLATION

- ❖ The legislation is first of all a bill that took a market-based approach
- ❖ The size of the 2,700 page bill basically represents its complexity, which is directly related to its moderate market-based approach
- ❖ In sum, ACA aimed to preserve the foundations of our existing system that requires a lot of tweaking here and there
- ❖ In other words, you are not starting over with a new system and that required a lot of Federal rules and regulations to write
- ❖ Consider this: as the Washington Post said: "if President Obama and Congress had reached a consensus on a government-run single payer system, we would have had a smaller bill and fewer rules to write. Obviously, we were not going to do that."

MODERATE-INCREMENTAL LEGISLATION-PROOF IN THE PUDDING

- ❖ Just look at its main elements-not really complicated!
- ❖ First, the law preserves the private health insurance system, which is based on the 2006 plan of former Republican Governor Mitt Romney of Massachusetts.
- ❖ In other words, it was modeled on the Republican alternative to the Clinton Plan of 1994 and modeled on former President Nixon's plan of the 1970's.
- ❖ Further, it was modeled on ideas put forward by the Heritage Foundation early in the last decade, though they attempted to distance themselves during the debate on the draft bill.
- ❖ Some critics may call the legislation "messy" but it is because it was an attempt to build on the system we have now.
- ❖ Second, the best way to think about the new law is to think of a 3-legged stool.

A THREE (3) LEGGED STOOL

1. ACA is expanding coverage by requiring that everyone get coverage.
2. The law is telling insurance companies that they must provide coverage to everyone who ask for it-in this way; you get the healthy people in the pool and that allows the insurance companies to take sick people as well.
3. ACA provide subsidies for those people forced to get coverage but who cannot afford to pay for it.

That's it—all 3 legs of the stool that are essential.

That is why you must have **the individual mandate**. That's it.

ACA---MEANING OF FINE POINTS

- ❖ This complex legislation does contain many fine points for which there are no simple answers-That is because the legislation is tremendously intricate.

- ❖ Because of this, many experts have not been able to come to a consensus on some fine points.
- ❖ Clearly, it is going to take a long time to sort-out and know what ACA really means as past history shows with Medicare and Medicaid implementation in the mid-1960s.
- ❖ Regulation writing is helping a lot; we will also get better meaning through people filing law suits because they do not like the legislation. Or groups pushing for provisions they favor. Example of which is regarding essential health benefits, which employers and insurance companies are fighting now to undercut to reduce benefits envisioned by ACA.
- ❖ The key to what ACA means is falling to Federal officials in the Federal Departments of Health & Human Services (CMS and Center for Consumer Information and insurance oversight), Department of Labor, and the Department of Treasury because they are writing the rules and regulations.
- ❖ **Question is:** will all this translate this legislation into more specific provisions.
- ❖ In the end, how all this plays out will be long and slow.
- ❖ Expect the Federal courts to play a continuing role in this drama just as it did in the early days of Medicare and Medicaid implementation.

COVERAGE-WHY OBAMA PUT A CENTRALITY ON GETTING PEOPLE COVERED

- ❖ In health care, it is generally understood that health care and treatment follow coverage. In other words, it is widely understood that coverage is a pre-cursor to having health care.
- ❖ There is a lot of evidence that over a period of time that people who lack health insurance have worst health outcomes for all kinds of things, but particularly when they have chronic and serious diseases.
- ❖ Insurance does not nail you to the right doctor nearly all the time, but it is an essential start.

- ❖ Yet, keep in mind that ACA does not set out to do completely universal coverage. But this is the closest government ever aspired.
- ❖ If this works, and especially if opposing governors come onboard, by 2014 some 95% of legal residents of this country are anticipated to have health insurance.
- ❖ That is an extra 32 million people; that is a lot of people.

WHAT IS THE OUTLOOK ON HOW WELL ACA WILL WORK?

- ❖ This is one of the unknown questions. Others are:
- ❖ Will people actually get covered? Well, the law says you have to do it and there are penalties if you do not do it.
- ❖ The big worry is about small businesses. There is a lot of speculation and fear that small employers lacking huge payrolls or a having a lot of money are finding the ACA requirements too onerous and might collapse the health plans they have or pay the penalty and leave their employees to go seeking care in the exchanges. That is a risk.
- ❖ Also, GOP lawmakers have bi-partisan support to repeal the Independent Payment Advisory Board, which is the key cost containment element designed to control Medicare spending.
- ❖ Few exceptions in law but for the most part people will do it.
- ❖ Are the penalties big enough to motivate people who do not like the idea of the government telling them they have to have insurance, who think they are healthy, who think it is a waste of their money to get covered?
- ❖ Will the penalties motivate them to follow the law? Only time will tell.

FEDERAL SUBSIDIES FOR PRIVATE HEALTH INSURANCE IS A NEW CONCEPT

- ❖ ACA is the first piece of legislation that subsidizes private health insurance.

- ❖ Historically, there is a long tradition of the Federal Government subsidizing public insurance. But ACA is the first huge investment in private insurance.
- ❖ Despite this large investment, no one knows for sure how the subsidies will play out.
- ❖ What is unknowable is: Are the subsidies large enough? Will medical inflation over time mitigate against the subsidies keeping pace with inflation or whether it will fall behind over time?

TWO BIG QUESTIONS

1. Will people follow the law and get insurance?
2. Will subsidies be enough to substantially help them do it?

ACA AND PREVENTIVE MEASURES-QUESTIONS POSED

- ❖ Whether people can obtain preventative services and screenings for diseases such as cancer without any out-of-pocket expenses, with no copayment?
- ❖ Will the promise to extend to all plans, employer sponsored plans, and grand-fathered plans be kept? These are important questions.

GRANDFATHERED PLANS

1. What happens when health plans lose their grandfathered status?
2. When do they begin to comply with this new legislation?
3. Which ones will have to comply with which rules?

POPULAR PROVISION-DEPENDENTS ABLE TO STAY ON PARENTS HEALTH INSURANCE UNTIL AGE 26

- ❖ One of the most popular provisions in the law. This provision was effective as of September 23, 2010. It expanded coverage between 200,000 and 400,000 enrollees.

- ❖ HHS implemented immediately and met expectations..

THE POLITICS-OBAMA VS INSURANCE COMPANIES-IDEOLOGY AND PRAGMATISM

- ❖ Polling data suggest beating up the insurance industry is good politics
- ❖ Rightly or wrongly, the public view the insurance industry as the villain.
- ❖ Thus, since inception of ACA HHS Secretary Sebelius and the White House have stayed right on top of the insurance industry in a way we have not seen in quite some time.
- ❖ President Obama and House Speaker Pelosi, from the beginning in 2009 had made a calculation about with whom they had to be in league to pass the bill.
- ❖ What was easy to see was ideology and pragmatism at work throughout the process of passing ACA legislation.

THINGS TO WATCH FOR IN THIS NEW WORLD ORDER OF ACA

1. Who will be the innovator in the private marketplace? There is a lot of money in the American health care system. It is worth 1/6 of the US economy.
2. The ones who will get the money will be those companies that are the most creative in care design that will maximize coordination, patient-centeredness, efficiency and high quality through accountability for an episode of care. They will have to get out their quickly in a creative way.
3. In short, the really smart players are going to get out front, be creative, innovative and figure out how to succeed in the new world order.

THE LARGEST IMPONDERABLE POSED BY ACA

1. The really big question posed by ACA that remains unanswered is whether we bend the curve on health care costs.
2. The question is whether we really change the trajectory of health care spending growth in this country and that's perhaps the largest imponderable.

MEDICAL PRACTICES-SHORTAGE OF PRIMARY PHYSICIANS

1. There is a shortage of primary care docs in this country.
2. There is a trend against people going into primary care but ACA provides incentives that the government hopes will induce people to begin going into that practice.
3. Yet there is a fair amount of evidence that people in primary care and its traditional structure of small practices, fee for service, this whole model many people think will be replaced over the next 50 years with a team model, probably led by a physician, but not necessarily so.
4. Regarding incentives, one of the interesting incentives in ACA is the money for nurse practitioner led primary care clinics and operations.
5. There are specific incentives in the form of money to train more primary care physicians, have more residency slots for primary care internists and pediatricians.
6. Money for physician assistants and nurse practitioners who go into primary care
7. **Money for community health centers**, the federally qualified community health centers. This is a hugely important and largely unknown form of practice that will be where a lot of people-the 5 percent who aren't covered will get their care.
8. ACA invests \$11 billion in the 1200 community health centers to allow for a doubling of their capacity to 40 million patients by 2015.
9. According to the Community Health Care Association of New York State, up to \$122 billion in *total* health care costs would be saved between 2010 and 2015. Similarly, the Association argues that CHCs would save \$55 billion for Medicaid over that 5-year period.

WHAT IS UNKNOWN IN MEDICAL PRACTICE

- ❖ Will American medicine be reconfigured into a team-based approach in which a practitioner has responsibility for the care of a patient and they will get some kind of a bundled or capitated payment, rather than the fractured system existing now.
- ❖ Will the incentives offered by ACA be enough to drive the system toward team care? After all, incentives are carrots not sticks.
- ❖ But ACA is built on evolution not “intelligent design” as we know it, and evolution is unpredictable
- ❖ Will the incentives evolve into a transformed medical care system is unknown but we do know that we are in a post health reform era in which significant changes are underway in communities across the country.
- ❖ Efforts are underway to improve health care delivery efficiency, improve quality of care, and contain Medicare and Medicaid health care and administrative costs.

ACA AND CHANGE IN MEDICAL PRACTICE IN THE SHORT--RUN

- ❖ Some things will change over the next few years-not primary care but medical care.
- ❖ Virtually all these incentives are coming through the roof of Medicare and Medicaid
- ❖ Lots of new patients may be covered by Medicaid if the governors who are ideologically opposed come onboard. These are very large trend-setting insurance plans.
- ❖ Hospitals are being dinged for re-admission if they have very high re-admission rates or hospital acquired infections.

- ❖ The average physician practicing in a 2 or 3 person practice will not necessarily see change except perhaps more patients who will have coverage--That is not by accident because President Obama and Congress decided in ACA to take on the insurance industry and leave the providers more or less untouched.

PROVIDERS

- ❖ ACA wants to change the behavior of providers but not to aggressively bring the hammer down on their heads.
- ❖ The public option would have done that by lowering their reimbursement. But President Obama and Congress faced still opposition from the provider community: AMA, AHA, and insurers..

WHAT TO WATCH OUT FOR OVER THE NEXT FEW YEARS

- ❖ Lots of lobbying pressure from stakeholders to get as much as they can from the law. Already, a coalition of small business, providers, and insurers has been established to fight against expansive coverage under the essential health benefit clause of ACA.
- ❖ Hospitals are lobbying against the cuts in uncompensated payments for the uninsured.
- ❖ There are insurance benefits to be included in plans to be sold in this new health care marketplace in the exchange.
- ❖ **ISSUE:** Although implemented last year the insurance companies are against the threshold by which insurance companies have to spend 80 percent of insurance premiums towards medical care.
- ❖ **ISSUE:** What qualifies as medical expenses? Will administrative costs fall under the rubric?

BENDING OF THE CURVE UNDER ACA-IS THE CURVE BENDABLE?

- ❖ If you look at the literature on cost control, and if you review the history of health care throughout the western world, including the US over the past 70 years, the curve is not very bendable.

- ❖ Historically, it rises about 2% greater than inflation or GDP
- ❖ The root of cost escalation is intensity of care and intervention, which is doing more stuff and that cost more.
- ❖ One strategy to reduce cost, a countervailing strategy, is reconfiguring the delivery of care to gain the greatest efficiency out of the system. That is what ACA is all about!
- ❖ To reduce costs, we need to get rid of waste and we need to assure that there are not duplicative tests.
- ❖ A necessity is making sure that care is evidenced-based-paying for treatments that work.

PREVENTION AND COORDINATED CARE

- ❖ ACA is forcing us to think outside the box about how to organize for health care outside of a physician's office.
- ❖ Electronic records have given us a start with clinical prompts, reminding you when to do things.
- ❖ Using non-physicians to do essential things like following up on patients with new prescriptions making sure they are taking them right.
- ❖ Reducing re-admissions by following up on people easily re-admitted such as congestive heart failure as a classic example. For these "bounce backs" send a nurse to their homes.
- ❖ Above will not bend the curve but will slow the rise of medical cost.

WHO BENEFITS THE MOST FROM ACA

1. First, there are 1200 community health clinics that are located in urban and rural areas. \$11 billion of new funding on top of what President Bush allocated-Stimulus money in 2009.
2. The 32 million uninsured expected to get coverage.
3. We should never overstate the number of new people entering the system.

4. Many of the uninsured are getting health care but they represent the huge uncompensated care pool. They go to emergency rooms and to public clinics.
5. So you are not going to have 32 million people coming from nowhere.
6. Nationally, the health care marketplace is an intimidating place to buy insurance. For one thing, it is not place to be because it is not very transparent and you do not know what you are getting.
7. Some states have no rules such as Texas where you can charge a person 25 times more.
8. In 2014, these people can go to the new market place called “exchanges.”

EXCHANGES--- ACCESS TO CARE

- ❖ In 2014, 32 million will have access to care through state exchanges. One can go online and they can get these products listed by quality: platinum, gold, silver, bronze, different levels. You are going to know exactly what you are buying.
- ❖ **BIG ISSUE: QUESTION:** Whether these exchanges will work and whether the states and the Federal Government will set—up these new market by January 1, 2014.
- ❖ **ISSUE:** How will they work in 24 states where GOP governors think ACA is some kind of socialistic experiment Government?

ACCESS--- EXPANDING MEDICAID

- ❖ Expansion of Medicaid for low-income Americans.
- ❖ Historically, physicians have not participated as providers under Medicaid because the fees are so low.
- ❖ ACA makes an effort to solve that problem.
- ❖ But will raising the income eligibility level to 133% of the poverty level de-stigmatize the Medicaid program.

WHO IS PAYING FOR ACA?

- ❖ \$1 trillion over 10 years.
- ❖ Person who earn over \$200,000.
- ❖ Insurance companies are paying a tax.
- ❖ Pharmaceuticals put up \$100 billion over 10 years.
- ❖ So it is a combination of some taxes, some fees, and some reduced payments.
- ❖ The “Cadillac tax” was pushed back to 2018

MEDICARE IMPACT-TWO LARGE IMPACTS

- ❖ The Medicare Advantage Program
- ❖ Drug Benefits

MEDICARE PART D—by 2020, gradually the “doughnut hole” will be filled-in. 2010 began with a \$250 check if for those beneficiaries who hit that coverage gap. Then a process begins discounting 50% over next several years.

NOTES

1. John E. Wennberg and Megan Cooper, The Dartmouth Atlas of Health Care 1999
2. The Washington Post
3. Kaiser Foundation News analyses
4. Donald Berwick, former Administrator, Centers for Medicare & Medicaid
5. Centers for Medicare and Medicaid News

