



Customized Briefing for Kimberly Barry-Curley

November 16, 2011

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Leading the News

Congressional Democrats Worried About Fate Of Healthcare Reform.

In the wake of Monday's announcement that the Supreme Court will take up the constitutionality of the new healthcare law, media analysis has begun to focus on the legal arguments against the law, as well as the political implications of a court ruling for or against the law.

[The Hill](#) (11/15, Pecquet) reports in its "Healthwatch" blog that congressional Democrats "are worried that the Supreme Court will rule against President Obama's healthcare reform law. While the lawmakers are not second-guessing the administration's legal strategy, some are clearly bracing for defeat." According to the Hill, "The comments underscore the gamble the White House took when it opted not to seek to delay the high court's review until after the 2012 election."

[Politico](#) (11/16, Thrush) puts the Obama Administration's gamble over healthcare this way: "If the conservative Roberts court upholds the Affordable Care Act, it validates a titanic two-year legislative struggle. If the law is struck down, it would put the issue to bed four months before Election Day, fire up the Democratic base and energize angry party donors who'd see the decision as a second Bush v. Gore, a wallet-widening rallying cry." But Politico notes, "A decision striking down the individual mandate could galvanize the opposition in what's expected to be a neck-and-neck presidential race, reviving a tea party movement that has lost some momentum."

The [AP](#) (11/16) reports that the division caused by the healthcare reform law "seems unlikely to change no matter how the Supreme Court rules on its constitutionality," as it "may take another decade to find the balance between private and public responsibility for health care in America, a nation disdainful of big government yet historically unable to guarantee affordable basic coverage to its citizens." The piece notes, "The immediate impact of a Supreme Court decision in 2012 is likely to be political."

Individual Mandate Could Be Law's Undoing. The [New York Times](#) (11/16, Stolberg, Subscription Publication) notes that at the heart of the legal challenge to healthcare reform "is 'the mandate' -- a provision requiring nearly all Americans to buy coverage or pay a penalty -- that" President Obama "vigorously opposed as a candidate. If it is struck down, much of his signature legislative achievement could fall with it in a decision that would undoubtedly be construed as a rebuke to the president." The Times adds, "Polls show the mandate is by far the most unpopular provision of the 2010 bill, and now Mr. Obama, who ultimately embraced the idea, is in the

awkward position of defending something he once rejected."

Writers Argue Drafting Mistake Could Derail Law. In an op-ed for the [Wall Street Journal](#) (11/16, Subscription Publication), Jonathan H. Adler, professor of law and director of the Center for Business Law and Regulation at Case Western Reserve University, and Michael F. Cannon, director of health policy studies at the Cato Institute, write that a legal mistake in the drafting of the law could threaten a core function. Noting that the law offers tax credits and subsidies to households that purchase coverage through health insurance exchanges, Adler and Cannon note that only 17 states have approved the creation of such exchanges. The law authorizes Congress to create exchanges in the absence of state action, but the law authorizes premium assistance in state-operated exchanges, but not federal exchanges. Adler and Cannon argue that states can refuse to create exchanges, thus blocking much of the law's spending authorization and forcing congressional revision.

Professor Argues Medicare Is Precedent For Mandate. In an op-ed for the [New York Times](#) (11/16, Subscription Publication), Harvard law professor Einer Elhauge, who is the founding director of the Petrie-Flom Center in Health Law Policy, writes, "The crux of the constitutional complaint against the mandate is that Congress's ability to regulate commerce has never been understood to give it the power to force Americans to buy insurance, or anything else." However, Elhauge argues, "not only is there a precedent for this, there is also clear support for it in the Constitution. For decades, Americans have been subject to a mandate to buy a health insurance plan -- Medicare."

More Commentary. In her column for the [Washington Post](#) (11/16), Ruth Marcus writes, "The justices ordered arguments on an obscure but important procedural matter: Does the challenge to the requirement that individuals purchase health insurance come too early, not only before the law has taken effect but before any individual has had to pay the penalty for failing to obtain coverage? The specific question involves the 1867 Anti-Injunction Act, which bars courts from hearing any challenge to tax collection efforts prior to assessment." Marcus notes that the argument contends that because the law authorizes the IRS to collect fines for the failure to purchase coverage, the Anti-Injunction Act prohibits hearing the case now. "If that interpretation is correct, the constitutionality of the individual mandate could not be decided until 2015 -- after states have devoted enormous effort and expense to setting up new health-care exchanges and the 'shared responsibility payment' for those without insurance is due."

The [Los Angeles Times](#) (11/16) editorializes, "The court is scheduled to hear arguments in March, with a decision likely in late June or early July -- in the midst of an intensifying presidential campaign. That's unfortunate, considering the sharply partisan lines that have been drawn around the issue," but the Times adds, "As awkward as the timing is, it makes sense to end this debate before the election, not after."

The [Financial Times](#) (11/16, Subscription Publication) editorializes that it is better that the conflict caused by the healthcare reform law is resolved sooner rather than later. The Times urges the justices to practice restraint and approve the law to avoid a showdown between the government branches.

In the [Washington Post](#) (11/16) "Right Turn" blog, Jennifer Rubin writes that the decision "shouldn't signal that conservatives' work is done. To the contrary, the task of educating the public, devising an alternative scheme and creating a mandate from which to govern after the 2012 election is just beginning."

From NAHU

work, especially this year. Both the 2012 presidential and congressional elections are looming, and top consideration is being paid to our political leaders' response to health reform. Agents and brokers have a distinctive knowledge of the health insurance marketplace, and it's important to meet with your elected officials to share NAHU's message.

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Legislation and Policy

Senators Urge Health Insurance Tax Repeal.

In an op-ed in [Politico](#) (11/16), Sen. John Barrasso (R-WY) and Sen. Orrin Hatch (R-UT) call for the repeal of President Obama's healthcare law, which they say will "help our economy, reduce our staggering debt and give Americans the health care they deserve." Specifically, they argue that the tax on health insurance "will likely have a devastating impact on job creation and the cost of health insurance," and is "a particularly insidious element of this massive law." Barrasso and Hatch conclude that repealing the health insurance tax is "the type of initiative the American people have been calling for."

Republicans Say Small Business Tax Credit "Complex."

[CQ](#) (11/16, Reichard, Subscription Publication) reports, "Republicans and some witnesses at a House subcommittee hearing Tuesday emphasized the complexity of a new and so far relatively little-used tax credit to lower health coverage costs for small businesses, saying either that it is extraordinarily complex, a failure or both." But "Democrats emphasized that the IRS must step up efforts to increase the use of the tax credit; the tax collection agency has requested \$25 million for next year to upgrade its efforts. But with proposed cuts on the table, that funding is uncertain."

In [BusinessWeek](#) (11/16), Karen E. Klein writes, "Since the disappointing figures were released, charges have been flying among small business advocacy groups, accounting organizations, and the government officials who conceived the credit as a way to encourage small business owners to provide insurance for their employees." A recent study "shows that employees of small businesses are far less likely to be insured than those working for midsized and larger companies and that coverage costs small employers and their employees more."

Panel Supports CLASS Act Repeal.

[CQ](#) (11/16, Attias, Subscription Publication) reports that the House Energy and Commerce Subcommittee on Health "advanced legislation on Tuesday to repeal" the CLASS Act. Subcommittee Chairman Joe Pitts (R-PA) remarked, "There are many of us who want to tackle the long-term care situation that our country faces, but we realize that CLASS is not the way to do it."

The [Washington Times](#) (11/16, Cunningham) reports, "Republicans in both chambers are trying to drive a stake through the program after Secretary of Health and Human Services Kathleen Sebelius concluded she couldn't find a way to make it pay for itself."

[The Hill](#) (11/16, Pecquet) reports in its "Healthwatch" blog that Rep. Frank Pallone (D-NJ) remarked, "I'm kind of tired of wasting Congress's valuable time with haphazard repeal bills. Repeal at this point accomplishes nothing other than to send a very negative message to the disabled community." Noting that CLASS Act is a "starting point," other Democrats "lambasted Republicans for failing to offer any alternatives at a time when fewer than 9 million Americans have private long-term care insurance and are having to rely instead on the cash-strapped Medicaid program for low-income people."

Maryland Advocacy Group Proposes Healthcare Plan.

The [Baltimore Sun](#) (11/16, Cohn) reports in its "Picture of Health" blog that Maryland Citizens' Health Initiative officials "have presented something of a road map to the state leaders at the Maryland Health Exchange Board, whose members are working to implement the national health care reform law." The plan is said to "make health care more affordable" and "help get the state officials new legal authority to implement some of the suggestions." The Sun notes, "The proposal was supported by documents prepared by the Johns Hopkins Bloomberg School of Public Health, the Center for Medical Technology Policy, and America's Agenda."

Public Health and Private Healthcare Systems

Sebelius Announces Programs To Address Medicare Waste.

[ABC](#) (11/16) reports in its "Political Punch" blog, "President Obama's campaign against wasteful government spending has saved taxpayers nearly \$18 billion in 2011, the White House announced today." According to officials, "Medicare, which federal auditors say is the source of 40 percent of all government waste, trimmed \$7 billion in fee-for-service payment errors in 2011." The piece notes, "Health and Human Services Secretary Kathleen Sebelius said today the administration is launching four new pilot programs to further address Medicare waste, while proposals to address the issue put forth by Obama in his 2012 budget linger in Congress." She remarked, "We still need Congress to act on the President's proposal. Until Congress acts, we will continue doing everything in our power to save money on behalf of the American people."

[Healthcare IT News](#) (11/16) reports, "Sebelius said HHS would launch four additional pilots to reduce the error rate and cut Medicare and Medicaid waste and fraud." These programs include "Expanding the use of Recovery Audit Contractors" and "Working with states to improve fraud detection."

Highmark Awarded Federal Medicare Contract.

The [Pittsburgh Post-Gazette](#) (11/16, Toland) reports that Highmark's "Medicare division has won a five-year contract to process Medicare parts A and B claims for seven southern and western states," and as a result, "will add 500 jobs."

The [Pittsburgh Business Times](#) (11/16, Mamula, Subscription Publication) reports, "The Centers for Medicare and Medicaid Services awarded Highmark the five-year claims processing contract for Louisiana, Arkansas, Mississippi, Texas, Oklahoma, Colorado and New Mexico, the company announced Tuesday." Highmark "already administers payment processing for Pennsylvania, New Jersey, Maryland, Delaware and the District of Columbia." [Modern Healthcare](#) (11/15, Zigmond) and the [Pittsburgh Tribune-Review](#) (11/16, Nixon) also report this story.

Highmark To Offer "Private Exchange" Health Insurance Plans.

The [Pittsburgh Post-Gazette](#) (11/16, Toland) reports, "Health insurer Highmark Inc. says it has a solution for small companies looking to get a handle on their out-of-control health care expenses -- a 'private exchange,' through which employees can choose from a menu of health, dental and vision plans, at a price that's fixed for the employer." In this scenario, instead of a plan, an employer "gives employees a monthly stipend, allowing the employees to choose from a variety of insurance products. ... The Highmark version will have about seven health plans, two vision plans, and two dental plans from which to choose."

The [Central Penn Business Journal](#) (11/16, White) reports that Highmark "will work with Array Health Solutions Inc., a technology company specializing in insurance exchange systems. ... The exchange will be offered to small employer groups covering 10 to 99 people beginning Jan. 1. The processes of paperwork and fees will be the same as any other Highmark insurance plan, and should not create more work for employers," according to Highmark. The [Wilkes Barre \(PA\) Times-Leader](#) (11/16) also reports this story.

Lawmakers Send Letter Seeking To Protect Medicaid Funding To Supercommittee.

The [Boston Globe](#) (11/16, Jan) reports, "Congressman Edward Markey and 23 other representatives and senators sent a letter to the deficit reduction supercommittee today in hopes of protecting Medicaid from potential cuts." According to the Globe, "A federal match for the 12 states that expanded their health insurance programs for the poor prior to the passage of health care reform is one of many items being considered for cutbacks as the bipartisan congressional super committee tries to come up with \$1.2 trillion in savings over 10 years."

Report: Restructured Medicare Benefit Design Could Be Costly For "Modest Users."

[Modern Healthcare](#) (11/16, Zigmond, Subscription Publication) reports, "A restructured Medicare benefit design with a new limit on beneficiary cost-sharing could produce savings and help some, but also could impose additional costs on a majority of program beneficiaries who are relatively healthy and 'modest users' of medical care, says a new study from the Henry J. Kaiser Family Foundation." The study indicates that "restructuring the program in a way that would have a single deductible of \$550 for both parts A and B, 20% coinsurance on most services, and a \$5,500 annual limit on cost sharing in 2013 would result in nearly three-fourths, or about 71%, of the 41 million beneficiaries in the fee-for-service Medicare program having higher out-of-pocket spending-including premiums and cost-sharing for Medicare-covered services-under the new design."

Also in the News

Study Suggests Patients, Physicians Think Care Quality Varies.

[USA Today](#) (11/16, Kennedy) reports that a study released Tuesday by the Optum Institute for Sustainable Health found that patients feel they "receive the preventive care they need" about 33 percent of the time, while doctors believe this happens about 50 percent of the time. Further, 60 percent of physicians think care quality "varies wildly," even locally. While half of hospital executives said "healthcare systems are on a path to being more cost-efficient and accountable," only 26 percent of patients felt that way. According to Institute co-chair Simon Stevens, the results suggest "pretty wide agreement that, overall, the nation is not getting a good value for the \$2.6 trillion that will be spent in healthcare this year."

Most Physicians Say US Spends Too Much Trying To Extend Lives Of Dying Patients.

[The Hill](#) (11/16, Baker) "Healthwatch" blog reports that physicians "overwhelmingly support the type of end-of-life care that sparked charges of 'death panels' in the healthcare reform bill, according to a new poll" that was "conducted by the Regence Foundation on behalf of National Journal." The poll "found that 96 percent of doctors believe it's more important to improve dying patients' quality of life [QoL] than to prolong their lives as long as possible." The poll also found that "seventy-nine percent of the doctors surveyed said the US 'spends far too much trying to extend lives,' compared with just 37 percent of the general public."

Supreme Court Asked To Televisе Healthcare Review.

[Roll Call](#) (11/16, Drucker, Subscription Publication) reports that Sen. Chuck Grassley (R-IA) has "called on the Supreme Court today to televisе its scheduled review of President Barack Obama's health care law." Grassley stated, "Cameras in federal courtrooms are at the very heart of an open and transparent government. Broadcasting the health care reform law proceedings would not only contribute to the public's understanding of America's judicial system, but provide an excellent educational opportunity on a case that has the potential to have a far reaching impact on every American." In addition, C-SPAN has requested that television cameras be permitted during the healthcare hearing. [Reuters](#) (11/16, Vicini) also reports this story.

Tuesday's Lead Stories

- [Supreme Court To Review Healthcare Reform Law In March.](#)
- [Rep. Hensarling Says Healthcare Restructuring "Duty" Of Supercommittee.](#)
- [Anthem Blue Cross Sued Over Higher Deductibles.](#)
- [Catholic Bishops Lobby For Changes To Healthcare Reform.](#)

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