



Customized Briefing for Kimberly Barry-Curley



July 28, 2014



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Leading the News



ACA Architect Once Signaled Belief That Only State-Run Exchanges Could Disburse Subsidies.

Several outlets over the weekend reported on comments made by MIT economics professor and ACA-author Jonathan Gruber which seem to suggest he once believed that the law was written so that only state-run health exchanges could disburse subsidies. This, the [New York Times](#)   (7/26, Pear, Baker, Subscription Publication) reported, “contradict[s] the argument now made in court by the administration, which says that Congress always intended for the subsidies to be available nationwide, in all states, regardless of whether they had a federal or state-run exchange.” Mr. Gruber “backed away from his comments on Friday,” calling them a “mistake,” but the White House was “embarrassed” and some fear that they could bolster cases against the subsidies.

The [Boston Globe](#)   (7/25, Freyer) reported that Gruber “twice made comments in 2012 that seem to support legal arguments advanced by opponents who are challenging the federal health insurance law in court.” The remarks “were captured in two separate recordings, one video and one audio, which bounced around social media Friday after surfacing on conservative websites.”

[Politico](#)   (7/28, Cunningham) calls this an “Obamacare gotcha moment.” [The Hill](#)   (7/28, Al-Faruque) called it “fodder” for opponents of the law.

Also reporting were the [New Republic](#)   (7/25, Cohn), the [Daily Caller](#)   (7/25, Hurtubise), a second [Daily Caller](#)   (7/25, Hurtubise) piece, a third [Daily Caller](#)   (7/25, Hurtubise) piece, [Fox News](#)   (7/25), [MSNBC](#)   (7/28), [Vox](#)   (7/25, McIntyre), a second piece from [Vox](#)   (7/25, McIntyre), and [MSNBC's Up with Steve Kornacki](#) (7/27, 9:46 a.m. EDT).

WSJournal: Gruber Comments Support Recent ACA Challenges. An editorial in the [Wall Street Journal](#)   (7/28, Subscription Publication) notes that MIT economist Jonathan Gruber, who helped write the ACA, has made at least two comments which seem to support recent legal challenges to the law, telling two groups that states which did not create their own exchanges will not get tax credits. The Journal uses this to forward its belief that incentives were deliberately written into the ACA because liberals were concerned that some states would not create exchanges.

Additional commentary on Gruber’s remarks were offered by the [Washington Examiner](#)   (7/28), the [Wall Street Journal](#)   (7/25, Subscription Publication), the [Washington Post](#)   (7/26), [USA Today](#)   (7/25), [Bloomberg View](#)   (7/25), the [Chicago Tribune](#)   (7/28), [Forbes](#)   (7/27), a second piece from [Forbes](#)   (7/25), a third piece from [Forbes](#)   (7/25), a fourth piece from [Forbes](#)   (7/25), [Vox](#)   (7/28), and the [Chicago Sun-Times](#)   (7/28).

From NAHU

NEW Membership Campaign!

NAHU is excited to announce our new [membership campaign](#)! The campaign will run from June 1 – December 31, 2014. For EVERY four members you recruit you will receive a \$250 American Express Gift

Make sure your new recruits list you as the sponsor on their membership application and we will take care of the rest.



For recruitment tips and a listing of our members who have recruited four new members, visit our [membership campaign](#) webpage.

Good luck to everyone!





NAHU in the News



NAHU CEO Says Agents Can Help Consumers Understand ACA, Insurance.



Janet Trautwein, executive vice president and CEO of the National Association of Health Underwriters, writes in a letter to the [St. Louis Post-Dispatch](#)   (7/27), in response to an article on insurance enrollees under the Affordable Care Act, that “licensed insurance agents and brokers are perfectly equipped to serve as resources and advocates for consumers baffled by the choices available to them.” She notes that a Kaiser Family Foundation found that “83 percent of insurance agents report that they are knowledgeable about new health care reform law.” In addition, these agents act as “advocate[s] on behalf of their clients after the sale is made.”

Legislation and Policy



States Scramble To Address Uncertainty Surrounding Conflicting ACA Subsidy Rulings.

Referring to the uncertainty surrounding two conflicting Federal appeals court rulings issued this week on Affordable Care Act subsidies, the [Wall Street Journal](#)   (7/26, Radnofsky, Subscription Publication) reported that some of the 36 states that rely on the Federal exchange are moving to establish their own state-based exchanges. Other states are claiming that they have state exchanges, regardless of the role the Federal government has played. Still others are looking to take over their exchange in order to avoid the impact of any court decision on the matter.

However, the [Washington Times](#)   (7/28, Howell) reports that states beholden to the Federal exchange remain “confident their consumers can get government subsidies to help them pay for health coverage, even if the courts uphold a ruling that restricts the tax credits to insurance exchanges established by a state.”



[Modern Healthcare](#)   (7/25, Demko, Subscription Publication) also reported, noting that many states that rely on the Federal exchange “will face pressure to keep subsidies jeopardized by [the] ruling.” Sunday night, [Fox News’ Cavuto on Business](#) (7/27, 8:00 p.m. EDT) carried a segment on the Halbig v. Burwell ruling.



Though ongoing coverage of the lawsuits has slowed drastically, commentary continues to pour in. Among the outlets carrying opinion pieces on the ACA subsidy cases are the [Los Angeles Times](#)   (7/25), the [Orange County \(CA\) Register](#)   (7/25), [Forbes](#)   (7/27), [US News & World Report](#)   (7/25), the [Wall Street Journal](#)   (7/25), the [Clark County \(WA\) Columbian](#)   (7/27), the [Wilmington \(DE\) News Journal](#)   (7/27), the [Arizona Republic](#)   (7/25), the [Deseret \(UT\) News](#)   (7/28), the [Tampa \(FL\) Tribune](#)   (7/27), [CNN](#)   (7/25), the [New York Post](#)   (7/28), the [Columbia \(MO\) Daily Tribune](#)   (7/28), and [Bloomberg View](#)   (7/25).



Some States Want More Time To Spend ACA Exchange Grants. [Politico](#)   (7/25, Cheney, Wheaton) reported that, although “states running their own” Affordable Care Act “exchanges were supposed to wean themselves off federal funding by the end of this year,” some “want to be able to spend their federal exchange grants into 2015 as they grapple with core components of the insurance portals that are balky, unfinished or in disrepair.” The article noted that “a Politico survey of the 15 state-run exchanges (including Washington, D.C.) found that 11 are thinking about using federal dollars in 2015 — and four of those states have already applied.”







Experts, Stakeholders Disagree About Implications Of ACA Subsidy Rulings.

Three days after two circuit courts offered contradictory rulings on similar ACA subsidy lawsuits, coverage of the fallout is lighter but still significant.



From a political angle, the [Kaiser Health News](#)   (7/25, Carey, Rovner) reports that “political analysts say this week’s court decisions on the legality of tax subsidies for those obtaining coverage under the Affordable Care Act may not have a broad impact on this fall’s midterm elections.”



From a more practical angle, [CNBC](#)   (7/25, Mangan) reports that the “vague” language that may jeopardize the subsidies offered under Federally-run exchanges may also “allow states that want to get those subsidies back for residents to adopt solutions that cost just several hundred dollars—or even less—instead of spending tens of millions of dollars to build their own online exchange.” According to several experts, “possible workarounds include formally contracting with the federal government to do Obamacare enrollment for the states, buying a dirt-cheap version of HealthCare.gov’s software or setting up an inexpensive website that does nothing much beyond directing visitors to HealthCare.gov for sign-ups.”





The [Wall Street Journal](#)   (7/25, Armour, Subscription Publication) profiles South Carolina attorney Thomas Christina, who in 2010 discovered wording in the Affordable Care Act that led to numerous legal challenges to the law. According to the article, Christina found that the text of the act only allowed health insurance subsidies to be provided through state exchanges, and this finding led to conflicting appeals court rulings this week that will probably lead to further Supreme Court review of the law.





The [Huffington Post](#)   (7/24) and [Vox](#)   (7/25) embed video of Jon Stewart’s Wednesday night segment on the rulings. Additional coverage of various implications of Tuesday’s rulings is offered by the [Congressional Quarterly](#)   (7/25, Reichard, Subscription Publication) and [MSNBC’s All In with Chris Hayes](#) (7/24, 8:42 p.m. EDT).

Commentary Considers Implications Of ACA Subsidy Cases. In addition to ongoing coverage, the lawsuits questioning the legality of Federally-disbursed subsidies under the ACA generate extensive commentary for the third day in a row. As with Wednesday and Thursday, the pieces run the gamut from left to right, prescriptive to reactionary.

In her column for the [Washington Post](#)   (7/25), Ruth Marcus writes that the dispute “involves perhaps the most consequential case of sloppy drafting in congressional history,” because the section of the law “outlining how subsidies are calculated refers specifically to an exchange ‘established by the state,’” but “doesn’t mention subsidies for the federal exchanges set up in those states (now 36) that chose not to establish their own.” Marcus argues that barring Federal exchanges from offering subsidies “would cripple the law, driving up premiums as healthy enrollees drop coverage and sicker ones remain,” and that it is “implausible to think that the Congress that created federal exchanges as a backup alternative to state marketplaces also intended them to fail,” yet the “legislative language, taken alone, implies that outcome.” Marcus adds that the “stronger legal argument is with the government,” but notes that “the stronger legal argument doesn’t always win at this Supreme Court.”



Allysia Finley, in a column for the [Wall Street Journal](#)   (7/25, Subscription Publication), urges caution when proceeding with the case against the ACA subsidies, at least until after November’s midterm elections. If GOP governors were to cut off the subsidies, she explains, the millions of people who now receive them could react by voting against the party.



Demonstrating how contradictory the commentary can be, two major national papers offer op-eds, written by law professors, coming to exact opposite conclusions. George Mason law professor Ilya Somin argues in the [Washington Post](#)   (7/25) “Volokh Conspiracy” column that the DC Circuit’s ruling is “far from ‘absurd,’” while in the [Los Angeles Times](#)   (7/25), Jill Horwitz, law professor at UCLA School of Law, and Samuel Bagenstos, law professor at the University of Michigan, call the ruling both “nonsensical and cynical.”

And while [Forbes](#)   (7/25) carries a column claiming “Obamacare’s Architect Agreed With GOP: Exchange Subsidies Can Only Flow Through State Exchanges,” [CNBC](#)   (7/25) reckons, “Surely Congress didn’t mean to prescribe a ‘poison pill’ for ACA.”



Additional “dueling” op-eds, as one particularly meta [Los Angeles Times](#)   (7/25) terms them, are offered by the [Daily Intelligencer \(NY\)](#)   (7/25), the [US News & World Report](#)   (7/25), the [Newark \(NJ\) Star-Ledger](#)   (7/25), [CNN](#)   (7/25), another from the [Los Angeles Times](#)   (7/25), [The Economist](#)   (7/25), [Vox](#)   (7/25), the [Milwaukee Journal Sentinel](#)   (7/25), and the [Lehigh Valley \(PA\) Express Times](#)   (7/25).

Automatic Renewals May Complicate ACA Sign Up Process For Many.



The [AP](#)   (7/28, Alonso-Zaldivar) reports that “automatic renewal was supposed to make the next open-enrollment under President Barack Obama’s health care overhaul smooth for consumers,” but it could end up setting them up for “sticker shock.” The problem lies in the “fine print” of the HHS announcement of automatic renewals, which “said consumers who auto enroll will get the ‘the exact dollar amount’ of financial aid they are receiving this year.” The piece then lists several reasons this “is likely to be a problem.”

In a related piece, [Stateline](#)   (7/25, Ollove) examines other “pitfalls” emerging from automatic re-enrollment under the ACA.



Anti-ACA Ad Sponsored By For-Profit Health Insurers.



The [New York Times](#)   (7/25, Lipton, Subscription Publication) profiled a TV ad sponsored by the National Federation of Independent

Business, which “featured a small-business owner in Arkansas, frustrated at what he said are the higher bills he has seen since the” Affordable Care Act “went into effect.” Although the ad highlights ACA’s impact on small-businesses, “the largest chunk of the money donated to the nonprofit group’s advocacy came...from health insurance companies trying to repeal a health care tax.” The role of for-profit health insurers is “largely hidden” in “the increasingly confusing world of campaign finance, as nonprofit groups like” NFIB “can keep their donor lists secret, and then present their carefully crafted message, financed in large part by big business.”

The [Washington Post](#)   (7/25) “The Fix” blog examined why so many campaign ads include anti-ACA sentiments despite the fact that candidates aren’t “talking about Obamacare as much.”


Healthy Indiana Plan Halts Enrollment, Pence To Meet With Burwell On Medicaid Proposal.



The [Fort Wayne \(IN\) Journal-Gazette](#)   (7/25, Kelly) reports that on Thursday, the Indiana Family and Social Services Administration “stopped enrolling new Hoosiers” in Indiana’s Healthy Indiana Plan after reaching “its financial maximum.” The stop, was “authorized” by the Centers for Medicare and Medicaid Services, “because funding from Indiana’s tobacco tax cannot support additional enrollees.” The story notes that Gov. Mike Pence has proposed to use Medicaid funds to enroll more Indianans in the plan, and has a meeting scheduled with Health and Human Services Secretary Sylvia Burwell “in Washington on the proposal.”

[WISH-TV](#)   Indianapolis (7/25, Shella) reports that in response to recent Federal court rulings on individual subsidies under the Affordable Care Act, Gov. Mike Pence said that Congress should “reconsider health care reform on the federal level.” It also notes the scheduled meeting between Pence and Burwell scheduled for this week.



Public Health and Private Healthcare Systems

Consumers Frustrated By Proliferation Of Narrow Network Plans Under ACA.



[USA Today](#)   (7/26, Appleby) carried a Kaiser Health News report on the “limited networks of” physicians “and hospitals” that some people find under their ACA plans. According to the article, across the country, “regulators and insurance agents are inundated with complaints, while lawmakers are considering rules to ensure consumers’ access to” physicians. To address this issue, “for plans being submitted for sale next year, the federal Department of Health and Human Services said it will more closely scrutinize whether networks are adequate.”

The [Denver Post](#)   (7/28, Draper) carries a regionally-focused account of the proliferation of narrow networks and how they will affect people in Colorado.



Many Taking Advantage Of ACA Provision Allowing Opt-Out For Religious Reasons.



The [San Jose \(CA\) Mercury News](#)   (7/28, Seipel) reports that across the US, “more than 300,000 Americans are taking advantage of a little-known provision in the nation’s health care law that allows them to avoid the new penalties for not having health insurance.” Promising to uphold a “biblical lifestyle,” these people “are enrolling in ‘health care sharing ministries’ that spread medical care costs among people of similar beliefs.” Participants “make monthly contributions to help cover each other’s major health care costs, but forgo coverage for most routine care.”

Corrections Officials Increasingly Enrolling Ex-Prisoners Under ACA.



The [Christian Science Monitor](#)   (7/28, Tabachnick) reports that corrections officials across the country are working “to link inmates who are leaving custody with health services in their communities,” under the ACA. The idea, the article explains, “is to enroll thousands of ex-offenders in Medicaid...thus making them eligible for treatment for mental health issues, substance abuse, and chronic medical problems that most have never before consistently received on the outside.”

Hospital Systems Cite ACA In Releasing Positive Financial Reports.



[Modern Healthcare](#)   (7/25, Kutscher, Subscription Publication) reported that the ACA “is producing positive financial benefits for publicly traded hospitals, if early Q2 earnings releases are any indication of what to expect from other systems when they report quarterly results.” The piece then pointed to several large hospital systems that have posted bright financial outlooks, citing the ACA at least in part.



The [Wall Street Journal](#)   (7/25, Weaver, Subscription Publication) offered a similar article on its website, highlighting financial data from United Health Service Inc., Lifepoint Hospitals Inc., and HCA Holdings Inc.

Under ACA, Many May Have Trouble Getting Care From Specialists.



The [Pittsburgh Post-Gazette](#)   (7/28, Hamill) reports on people who “need specialty care but are unable to get it because they don’t have insurance or have inadequate insurance.” The reason for the “gap” is that “few clinics for low-income patients have specialists on staff,” and specialists “aren’t likely to be reimbursed well for the care of such patients.” Also, those covered under the Affordable Care Act often have “deductibles that are so high they still can’t afford to see specialists.” The article says “there is no data” on the numbers in this situation, but the “roughly 35 million uninsured Americans and millions more who are underinsured or on Medicaid” may all fall into the category or those who “could have difficulty getting specialty care should they need it.”

Proposed New York Premium Increases Still Below Average Before ACA.



The [Syracuse \(NY\) Post-Standard](#)   (7/28, Mulder) reports that insurance rate requests for the state health insurance exchange offer one of the “first indications of how Obamacare is going” in New York. Those requests are for increases of “from 2 percent to 20 percent,” yet even after those, proposed premiums are “significantly less than average prices for individual coverage before Obamacare.” That is true despite enrollees being “older than expected” and with “higher medical costs.” In addition, just one of the five insurers that offered plans on the state exchange “in Central New York,” will not offer a policy this year. The story also notes that “double-digit health insurance rate increases are nothing new,” and that rates do not include subsidies available under the law.

The [Syracuse \(NY\) Post-Standard](#)   (7/28, Mulder) reports on comments submitted to the state in response to proposed premium increases. One comment submitted, said, “Fidelis claims it isn’t making enough profit,” but “I am not getting a raise to cover the increase.” Another said, “I can barely afford the out-of-pocket costs as they are now.” A third commented, “There is nothing affordable about Obamacare.”

Idaho Officials “Exasperated” By Failure Of CMS To Produce File For State Exchange.

The [Idaho Statesman](#)   (7/26, Dutton) reports that Idaho officials responsible for the state’s exchange, which “piggybacked” on the Federal exchange for this year’s enrollment are “exasperated” because of the failure of Federal officials to fulfill promises for the state’s “independent” exchange for this year’s enrollment. Idaho officials said that there is a danger that individuals who enrolled in the state using the Federal HealthCare.gov site for 2014, may be “lost in the shuffle” when it comes to reenrollment for 2015. The reason is that while Federal officials had promised to give Idaho’s exchange “a file with detailed enrollment information” to ease reenrollment, that has not happened. While the Centers for Medicare and Medicaid Services has promised the file “is on its way,” state officials are concerned.



Hospitals Face Possible Medicare Penalties Under ACA.



The [York \(PA\) Dispatch](#)   (7/26, Durkin) reports that the Affordable Care Act’s Hospital-Acquired Condition Reduction Program “could cause local hospitals to lose 1 percent of every Medicare payment for a year starting in October.” Hospitals face the penalty if they are “among the lowest-performing 25 percent in the country regarding infections and serious complications.” One York County hospital has been identified by Kaiser Health News as “likely” to be on the list.

US Insurance Coverage For Fertility Treatments Varies.



The [New York Times](#)   (7/26, Bernard, Subscription Publication) reports that insurance and employer coverage for fertility treatments varies widely. Although 65% of companies employing at least 500 people will cover “an initial evaluation” with a specialist, only 27% cover in vitro fertilization according to a 2013 study from consulting firm Mercer. And, only 41% of large employers cover drug therapies. Currently 15 states have requirements that insurers “provide some degree of infertility coverage or offer the option of coverage to those buying plans.”

Federal Prosecutor Stepping Up Fight Against Healthcare Fraud In South Dakota.

The [AP](#)   (7/28) reports that “the top federal prosecutors from South Dakota and North Dakota say they have increased their efforts to fight health care fraud.”



The [Sioux Falls \(SD\) Argus Leader](#)   (7/26, Ellis) profiles U.S. Attorney Brendan Johnson, who “is restructuring his office to pursue more health care fraud cases, which he predicts will be among the fastest growing areas of criminal concern in South Dakota.”

Medical Device Industry Backs Probe Into Medicare Practices.



[Congressional Quarterly](#)   (7/28, Subscription Publication) reports the medical device industry lauded “a congressional request” for a probe “of a program that provides medical equipment to Medicare patients and requires suppliers to compete on prices through bids.” A

bipartisan group of House members asked the HHS inspector general to probe “how Medicare officials set prices and oversee the suppliers that are chosen to provide equipment such as wheelchairs.” The article notes that some companies “have been accused of failing to deliver products such as oxygen equipment and instead requiring patients to pick it up.” The piece notes many of the patients are elderly and aren’t able to drive.



Georgia Says 70 Percent Of Medicaid Account Transfers Have Now Been Processed.

The [Athens \(GA\) Banner-Herald](#)   (7/27, Miller) reports that in the wake of recent “federal scrutiny” from the Centers for Medicare and Medicaid Services regarding Medicaid enrollment of some found eligible through Georgia’s health insurance exchange, the Department of Community Health “says it’s working though the application backlog” saying that it has now “made decisions on eligibility for up to 70 percent of the 88,854 ‘account transfers’ from Georgia’s insurance exchange.” The rest “require additional follow-up.”

New Hampshire HHS Commissioner To Reconsider Medicaid ER Policy.

The [Nashua \(NH\) Telegraph](#)   (7/28, Landrigan) reports that New Hampshire Health and Human Services Commissioner Nick Toumpas “agreed to rethink how up to 50,000 residents who are newly eligible for Medicaid would receive care in emergency rooms after hospital executives, doctors, and advocates for the poor and mentally ill criticized the proposal.” Enrollment is scheduled to start September 1, but the Legislative Fiscal Committee decided to put off further consideration of the matter “until September.” Toumpas said that he will “consult with officials in Arkansas and Washington who have had success in reducing ER costs while expanding Medicaid.”

WellPoint Reports Net Loss, Citing Florida Medicaid Managed-Care Plan.

[Modern Healthcare](#)   (7/25, Frank, Subscription Publication) reported that insurer WellPoint “reported a net loss of \$7.5 million for its second quarter compared with net income of \$46.9 million in the same quarter last year,” citing Florida’s new Medicaid managed-care plan.

Friday's Lead Stories

- [House Panel Clears Way For Vote On ACA Employer Mandate Lawsuit.](#)
- [IRS Releases Draft ACA Employer Mandate Compliance Forms As Calls For Further Delay Mount.](#)
- [Americans To Receive \\$332 Million In Rebates Under ACA Medical-Loss Ratio.](#)
- [HIPAA’s Privacy Protections Being Used Against Patients’ Interests.](#)

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