The Affordable Care Act (ACA)

Separating Fact from Fiction

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Roadmap

• Context for Health Reform—Why the ACA?

• ACA Reforms
  • General Reforms
  • State-based Exchanges
  • Medicaid Expansion

• ACA Challenges
  • Supreme Court Decision
  • State Implementation
Why was the ACA created?

• To improve our health?
  • Health insurance is the difference between whether and when people get needed medical care, where they get it, and as a result, how healthy they are. Being uninsured often means preventable hospitalizations, poor overall health, disability, and premature death, and medical bankruptcy.
  • 2011: approximately 48 million nonelderly Americans were uninsured.
  • Most of these people are in working families with low incomes; being uninsured is often linked to a struggling economy and weak job market.
So will the ACA improve our health?

- Yes.

- By making health insurance coverage better, more available, and more affordable, implementation of the ACA will indeed improve our health.
Why was the ACA created?

- **To Control Costs?**
  - 2010: U.S. spent $8,402/person and 18% of economy is devoted to health care ($2.6 trillion).
  - U.S. spends more on health care than other developed countries—in 2009, health spending was about 90% higher than many industrialized countries.
  - 2009: half of all health care spending used to treat 5% of population.
  - Families often cut back on care and face financial consequences due to health care costs. Premiums increase faster than inflation and growth in workers’ earnings—eligibility for public programs does not keep up.
So will the ACA control costs?

• Presumably, yes.

• Many of the major reforms of the ACA have yet to be implemented.

• The ACA invests in new and expanding technologies to reduce growth in health care costs, emphasizes preventive health, early detection and intervention, and affordable options to meet health needs. These are long-term strategies with the goal of reducing costs and ultimately saving money. For now, the achievement of this goal is uncertain.
ACA 101

Overview of Major Reforms Created by the ACA
General Reforms

• **Minimizing Hikes in Insurance Premiums**: states must create a process by which insurers have to justify unreasonable premium increases—$46 million given to 45 states to review premiums. (§ 1003)

• **Effectiveness Research**: establishes research entity to help people make informed health care decisions and improve delivery and outcomes by producing and promoting high integrity, evidence-based information to guide patients, caregivers, and the broader health community. (§ 6302)

• **Prevention and Public Health**: Fund will allocate approximately $13.5 billion* from fiscal years 2012-2022 to improve health and wellness through disease prevention.

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*originally allocated $20 billion, amended by Pub. L. No. 112-96
General Reforms

- **Small business tax credits**: tax credits to small employers (<25 employees and average wages less than $50,000) that provide health insurance for employees. (§ 1421)

- **Requirements for Non-profit Hospitals**: must conduct a community needs assessment and create a financial assistance policy or face a tax of $50,000 per year for failure to adhere. (§ 9007)

- **Pre-existing Condition Insurance Plan**: temporary program to provide coverage for individuals with a pre-existing condition who have been uninsured for 6 months or more. (§ 1101).

- **Consumer website**: must be created to help residents and consumers identify health coverage options—www.healthcare.gov.
General Reforms

- **Adult Dependent Coverage to Age 26**: for new and existing individual and group coverage policies—applies even if the young adult does not live with parents, is not a dependent on parent’s tax return, or is no longer a student. Both married and unmarried young adults can qualify, but it does not extend to their spouse or children. (§ 1001)

- **Consumer Protections**: insurers cannot impose lifetime limits on the dollar value of coverage, deny coverage due to pre-existing conditions (children, 2010; adults, 2014), and there can be no annual limits on dollar value of coverage (2014). (§§1001, 1201)
General Reforms

- **Preventive Services**: new health plans must cover, without cost-sharing, preventive services as rated A or B by the US Preventive Services Task Force (includes immunizations, preventive care for infants, children, and adolescents, contraceptive services and supplies, screenings for breast and cervical cancer, STI screenings). (§ 1001)

- **Minimum Medical Loss Ratio for Insurers**: Health plans must spend no less than 80% of premium dollars on clinical services and quality or else issue rebates to consumers (85% for plans in large group market). (§ 1001)
General Reforms

• **Medicare Drug Coverage Gap and Discount Program**: pharmaceutical companies must provide 50% discount on brand-name prescriptions in Medicare Part D coverage gap (beginning 2011); subsidies for generic prescription. (§ 3301)

• **Nutrition Labeling**: chain restaurants and food sold from vending machines must display nutritional content. (§ 4205)

• **Health Disparities**: requires enhanced data collection and reporting on race, ethnicity, sex, primary language, disability status, and for underserved rural and frontier populations. (§ 4302)
General Reforms

- **Nondiscrimination**: Applies existing federal civil rights laws to programs and activities administered, funded, or created by the ACA. (§ 1557).

- **Requirement to Maintain Minimum Essential Coverage**: Based on Congressional findings (incl. that maintaining health insurance coverage is an economic and commercial decision), beginning in 2014, individuals and their dependents must maintain minimum essential coverage, and failure to do so results in a financial penalty.
New Programs for Women and Adolescents

- Medicaid expansion: LGBTQ individuals, single women of all ages, women with HIV (§ 2001)
- Coverage for freestanding birth center services (§ 2301)
- State eligibility option for family planning services (§ 2303)
- Maternal, infant and early childhood home visiting programs $1.5b over 5 yrs (§ 2951)
- Postpartum depression services (§ 2952)
- Personal Responsibility Education: evidence-based sexuality education $75m x 5 yrs (§ 2953)
- Abstinence only education $50m x 5 yrs (§2954)
- Oral health – prevention (§ 4102)
- Reasonable break time for nursing mothers (§ 4207)
- Coverage of tobacco cessation services for pregnant women in Medicaid (§ 4107)
Access to Coverage Reforms: State-based Exchanges

• The ACA creates state-based health insurance Exchanges (starting 2014)
  • Exchanges will insure 16 million by 2019
  • Health plans must cover “essential health benefits”

• Exchanges include strong protections for the purchase of insurance coverage
  • Example: No pre-existing condition exclusions!

• Premium subsidies will be available to individuals between 133 - 400% FPL
  • About 80% of Exchange enrollees will have some kind of premium subsidy

• There is an ‘individual mandate’ which phases in a penalty for individuals who don’t get insurance
Access to Coverage Reforms: Essential Health Benefits

- Ambulatory patient services
- Emergency services
- Hospitalization
- Maternity and newborn care
- Mental health, substance abuse, behavioral health
- Prescription drugs
- Rehabilitative & habilitative services & devices
- Laboratory Services
- Preventive and wellness services, chronic disease management
- Pediatric, including oral & vision care
Access to Coverage Reforms: Medicaid Expansion

- Medicaid is the largest public health insurance program in the country; federal-state partnership

- Currently, Medicaid eligibility is based on 2 key factors:
  - Fitting into a “category” (example: disability)
  - Meeting an income limit and an asset test

- With reform there will be a catch-all category for everyone up to 133% FPL* starting in 2014. This Medicaid Expansion will insure 16 million new individuals by 2019.

* Plus an additional 5% standard disregard
Access to Coverage Reforms: Medicaid Expansion

• 2014 Medicaid Expansion will use modified adjusted gross income (MAGI) income test and no asset test

• Benefits package for most of the expansion population will be “benchmark benefits”
  • Benefits must also include “essential health benefits”

• States get dramatically increased Federal matching funds for the newly eligible population in 2014
ACA CHALLENGES

Status of ACA Implementation and the Road Ahead
Litigation Against ACA

- Over two dozen lawsuits were filed against the ACA from the day it was signed into law.

- Even after Supreme Court decision, ACA is still seeing new legal challenges targeting various parts of the law.
Litigation Against ACA

- Supreme Court Issues Considered:
  - **Minimum essential coverage** (2014): Requires individuals to have minimum essential coverage or pay a penalty (a.k.a. individual mandate or individual responsibility).  
    - Constitutional?
      - Yes, under Congress’ authority to lay and collect taxes.

- **Medicaid Expansion** (2014): Extends coverage to individuals with incomes below 133%* of federal poverty level.
  - Constitutional?
    - Yes, BUT enforcement of this provision is coercive, so Congress may not withhold all of a state’s Medicaid funding for failure to comply.

*Plus an additional 5% standard disregard
Medicaid Expansion

- Supreme Court decision means states that do not expand Medicaid will not be penalized.
  - Many states are weighing the costs and benefits of the Medicaid Expansion as a result.
  - Stakeholders are awaiting decisions (post-election in most cases), with advocates weighing in on behalf of their constituents.
  - NHeLP is also weighing in on the Medicaid Expansion, visit www.healthlaw.org for more information.
2012 Election

• Many states are waiting until after election to move forward with any ACA implementation

• Meanwhile, deadlines to stay on track for implementation are looming.

• Advocates and policy makers are struggling to plan and move forward in the midst of political posturing, a lack of clear Federal regulatory guidance, and uncertainty around budget cuts and public programs like Medicaid (at the state and federal levels).
THANK YOU!

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