



INSURANCE SERVICES, INC.
PROTECTING YOUR HEALTH & WEALTH

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Mid-Year Greetings to Our Clients and Friends

As the second quarter comes to a close, those of us interested in learning the fate of the Patient Protection and Affordable Care Act (PPACA) await a U.S. Supreme Court ruling that is expected to be issued this week. I'm fully expecting to see PPACA's "individual mandate" struck down as part of the High Court's decision; and based on a number of surveys I can see I'm among the majority of people who find this mandate to be unconstitutional.

While I may or may not be right about the imminent demise of PPACA's requirement to own a health insurance plan or pay a penalty, it's even less clear if other pieces of the landmark 2010 health care reform legislation will hold up under the Supreme Court's ruling. Intertwined with the mandate, and receiving the next greatest degree of attention, is PPACA's guarantee of individual access to health insurance. If this provision stands, beginning on 01/01/2014 health insurers will no longer be allowed to deny or restrict coverage due to an applicant's pre-existing conditions.

In the spirit of a free press, this quarter's eNewsletter features a guest article, "Differing Views on Obamacare", written by Jessica Goodman (daughter of my valued clients Jeffrey and Sharon Goodman). I'm confident that everyone will appreciate Jessica's viewpoint and eloquent writing style. While it's still in the realm of possibilities that Jessica will pursue an insurance career - and I do lobby for that - it seems doubtful at the moment. Currently, Jessica is attending the University of South Florida and working towards her double major in Biblical Archaeology and Interdisciplinary Classical Civilizations. I didn't even know that college degrees are offered in these subjects, but then again I'm just an insurance guy.

Following the guest article by Jessica, please read on for my response and for my take on what's likely to be coming down the pike from the High Court.

Until next quarter,

Andrew Herman, President
AH Insurance Services, Inc.

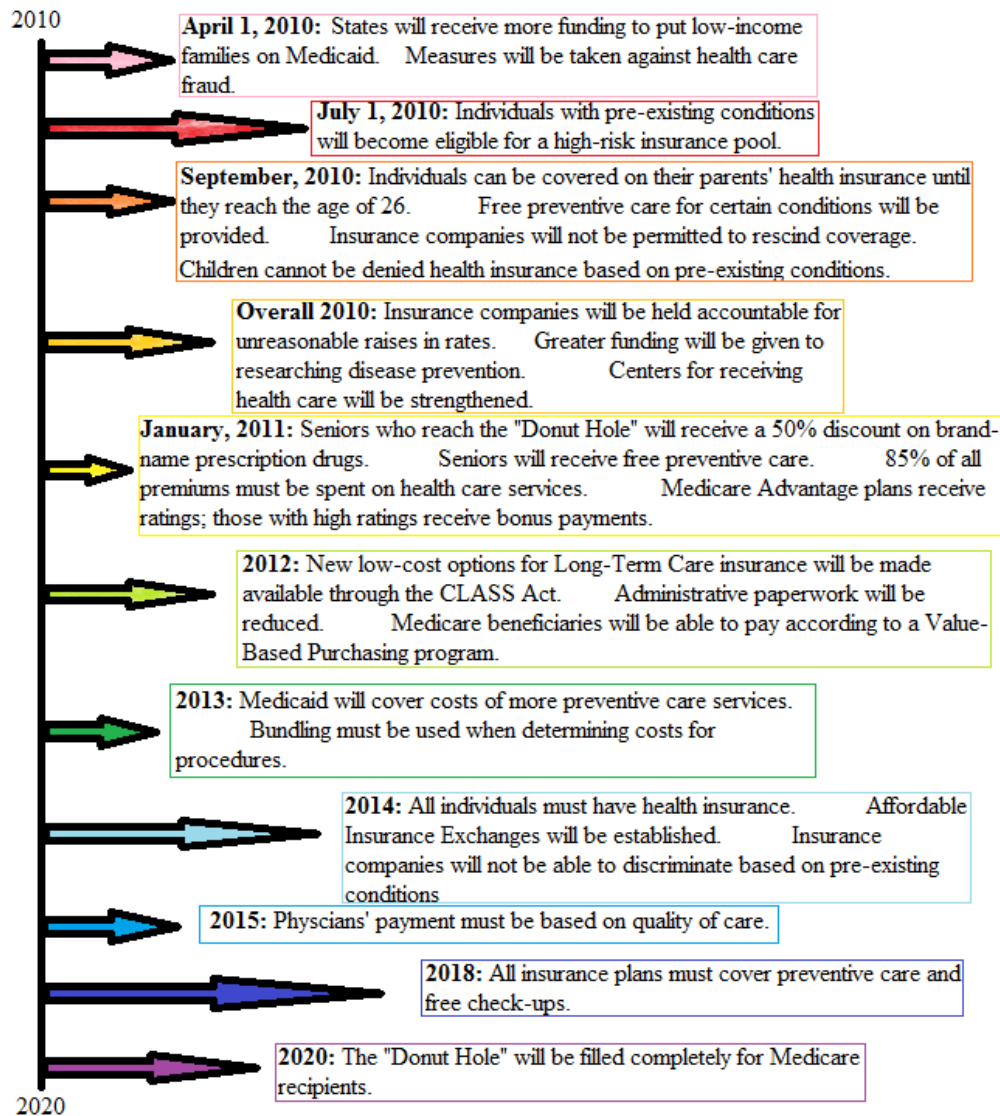
Quote of the Month

"At the Supreme Court, those who know don't talk. And those who talk don't know."

- Supreme Court Justice Ruth Bader Ginsburg, speaking this year at a conference hosted by the American Constitutional Society

Guest Article - By Jessica Goodman
Differing Views on Obamacare

Highlights of the Patient Protection and Affordable Care Act:



Everyone has a different opinion on the new Patient Protection and Affordable Care Act (PPACA), often called "Obamacare". In my opinion, a lot of the negative opinion about the new health care implementations is brought about by ignorance; however, it is certainly apparent that this legislation is starting to and will continue to impact different groups of people in different ways. In this newsletter, I will examine the impacts it has on different groups of individuals.

Who Receives The Most Benefit?

The majority of those who benefit from the PPACA are those who are underprivileged or do not work: children, low-income families who qualify for Medicaid, and seniors. Hence, this really is a good plan for those individuals. On the other hand, the burden of the new legislation falls on the other individuals: the wealthy, and the working class.

Those Who Benefit

As is aforementioned, there are a few groups of people who do benefit. First, there are children, particularly those with pre-existing conditions. Very early on in the implementation phase of the PPACA (September, 2010), children with pre-existing conditions could not be denied health care. Also, children can remain on their parents' health insurance until they turn 26, unless they have insurance provided by an employer.

Second, are those who receive Medicaid. Federal grants to Medicaid programs have increased as part of the PPACA. Furthermore, it is being changed in order to cover

more preventive care services for its recipients.

Third, are those who have pre-existing conditions. By 2014, health insurance companies will not be permitted to discriminate based on pre-existing conditions when providing health care. Furthermore, those with pre-existing conditions are able (but not required) to get insurance before 2014 through a federal high-risk insurance pool.

Fourth and finally, are those who receive Medicare. Medicare recipients, who are primarily seniors, will obtain more benefits than any other individuals. The "Donut Hole" for drugs in Medicare Part D programs will gradually be closed; the 50% discount on prescription drugs in the "Donut Hole" has already started being implemented. Seniors now receive free preventive care. Their premiums will be based on the quality of care received, and may in some areas become lower. Highly-rated Medicare Advantage programs will also get more funding from the federal government. Furthermore, Medicare programs and benefits will be modified to become more economically efficient. Reduced costs are meant to increase the percentage of funds that go directly to Medicare benefits.

There are some aspects of the PPACA that benefit everyone. For example, measures are being taken to make preventive care and check-ups free (starting 2018) for all citizens. Also, funds are going to research for disease prevention. The entire medical world will also be modified; insurance fraud is supposed to be reduced, insurance companies will be unable to rescind coverage, 85% of all premiums will have to go to medical coverage, and medical rates are to be set based on the quality of care, rather than its quantity.

Those Who Do Not Benefit

There are a few individuals who gain very little from the implementation of the PPACA. There are those with low incomes who do not qualify for Medicaid. Starting in 2014, all citizens will be required by law to have health insurance; those who cannot afford it will be required to pay penalties. From 2016 and beyond, this penalty will be \$695 per person per month. Those with small incomes will be financially stressed in order to pay either for an insurance plan or for the penalty.

However, the burden of the economic cost of the PPACA falls on those who are working, and especially those with higher incomes. Taxes are being implemented on non-essential procedures, such as tanning and other vanity procedures. Starting in 2013, higher-income individuals will have to pay an additional Medicare tax to cover some of the expenses of this new legislation.

Insurance companies and medical manufacturers will also have increased taxes to cover the extra expenses in the government. Brand-name prescription drug manufacturers have to pay an industry user fee, increasing annually until 2018. All medical device manufacturers, importers, and producers will have an extra 2.3% excise tax on such products. Starting in 2014, health insurance providers will be required to pay non-deductible fees based on premiums collected. Finally, starting in 2018, health care providers will be charged higher taxes on high-cost employer-sponsored "Cadillac" plans.

Overview

A large proportion of the burden of the PPACA falls on the health insurance industry, although the working class is also negatively-impacted a substantial amount. However, the legislation is greatly beneficial to those with pre-existing conditions and to seniors. The health care implementations of the PPACA is, as a whole, rather beneficial to all citizens, and at least is not debilitating. However, it is a very socializing piece of legislature. The PPACA requires all citizens to have health insurance by 2014. This sets a precedent of federal interference in personal financial affairs that is unwelcomed by many. If the government can do this, it may well do more to control our lives in the future. Do the benefits outweigh the loss of individual power? We all have to decide that for ourselves.

Editor's Reply

And What Can We Expect From The Supreme Court Justices This Week?

Thanks to Jessica for sharing her thoughts on Obamacare. Now, for the Editor's reply:

Clearly Jessica understands the 2010 health care reform legislation better as compared to the average American citizen. While she stated her thoughts articulately, I would like to hear more on her opinions relative to provisions within PPACA that already have gone into effect (or in the case of the CLASS Act - already terminated without any court ruling).

First, back in September of 2010 it became prohibited for insurance companies to deny health insurance to children under 19 based on pre-existing conditions. Is that good or bad? Most Americans would contend that this is a good thing; however, Obamacare made no provision for periodic enrollment periods or any other safeguard to protect insurance carriers from having to insure children only after becoming ill. Due to the unmitigated risk, health insurance companies at large discontinued sales of "children-only" health policies immediately after the new underwriting requirement went into effect. So in practice, this part of the Obamacare legislation has resulted in lesser access to health care.

While PPACA's goal of insuring children regardless of any pre-existing conditions failed in practice, the other "children" provision stipulating that individuals can be covered on their parents' health insurance until age 26 has been a success. Insurance companies view this risk as tolerable and have increased premiums by about 2% on family plans to account for potential anti-selection by these younger insureds. What's more, major carriers including Aetna, Humana and UnitedHealth Group announced this month that they will continue to allow children to piggyback on parents' policies no matter how the High Court rules. These carriers also pledged to continue the PPACA-required practice to not charge copayments for preventive care on non-Grandfathered health plans. Now that the major insurers have made their pledge, PPACA can be given credit but wouldn't even be needed to keep these popular provisions in place.

Another point that warrants further discussion is the new federal minimum MLR (Medical Loss Ratio, which is a measure of claims paid as a percentage of premiums earned) requirement imposed by Obamacare. To clarify, individual and small group health plans are subjected to an 80% minimum MLR, while large groups must meet 85%. From a consumer perspective this would appear beneficial; however the MLR minimums are squeezing insurance company margins and have resulted in substantial commission reductions to insurance agents. Many health agents essentially have been put out of business or forced to sell alternative insurance products. This does not bode well for consumers looking for reliable, independent sources of health care information. Further, most people have no idea there is rebate program in place that will result in consumers receiving about \$1 billion in total this year. Some may

get excited when they hear of it, yet actual rebate amounts are tiny as compared to annual premiums paid. Small rebates will only lend further credence to the insurance industry's position that high administrative costs and profit are *not* the main root of the nation's health care problems.

I have studied the MLR issue along with proposed remedies, as this issue hits home and impacts my earnings directly. While I appreciate the efforts made by politicians to try to increase value per dollar spent on health insurance, I doubt they gave a moment's thought to the prospect of consumers losing access to well-informed, fairly compensated insurance brokers. And I suspect that companies will end up spending more money on tracking rebates, mailing rebates, and coping with all of the associated bureaucracy as compared to the actual value of the rebates.

Are you aware of MLR rebates? Recent polling by eHealth, Inc. shows that nationwide, only about 10% of Americans are "in the know." Apparently the State of Florida, where people love to talk about health care, is the most informed with a full 36% of survey participants indicating awareness of the MLR rebate program.

A completely failed component of Obamacare is the proposed CLASS Act program, designed to provide low-cost options for Long Term Care. Last fall, the Department of Health and Human Services (HHS) concluded that changes needed to make CLASS a solvent program would risk violating the letter of the law. In an October 2011 letter, HHS Secretary Kathleen Sebelius addressed Congressional leaders as follows:

["For 19 months, experts inside and outside of government have examined how HHS might implement a financially sustainable, voluntary and self-financed long-term care insurance program under the law that meets the needs of those seeking protection for the near term and those planning for the future. But despite our best analytical efforts, I do not see a viable path forward for CLASS implementation at this time."](#)

How disappointing that nobody in the federal government had the wisdom to make this decision on CLASS *prior to spending 19 months of resources!* That includes hiring my former boss, Robert K. Yee, FSA, MAAA, moving him to Washington, D.C. and then letting him go.

So, where do we go from here?

As an initial thought, all of us should be prepared for a lengthy decision from the Supreme Court... possibly an opinion running into the hundreds of pages. It could be a fractured opinion and therefore not viewed as a "mandate" by all. But in any event, it's clearly a high-stakes ruling.

The case seems particularly significant as it will affect the future of health care and because it concerns issues affecting the powers of Congress and the power balance between the federal government and the states. Generally speaking, there are three potential outcomes of the forthcoming decision: strike the entire law, partially strike the law, or uphold it as it was passed by Congress and signed by President Obama.

And the High Court must decide on not just one, but four central issues:

- 1) The individual mandate. Is the requirement for most Americans to have insurance constitutional?
- 2) Severability. If the mandate is found to be unconstitutional, can it be severed from the rest of the law so that other parts remain intact? Or should other pieces of the law, such as guaranteed issue health coverage, be severed with it?
- 3) Timing of the case. Does the Supreme Court have jurisdiction to rule on the individual mandate, which is slated to go into effect on 1/1/2014? If the High Court finds that the penalty imposed for not buying insurance is a tax, then the Anti-Injunction Act may apply (this existing act prohibits lawsuits that would stop a tax until after the tax is assessed and paid).
- 4) Expansion of the Medicaid program. Is the law's Medicaid expansion unduly coercive to the states in that it co-opts the states' authority? Basically, states would have to choose between paying many of the extra costs of expanding the joint state-federal program or dropping out.

I feel comfortable making a call on the individual mandate - I predict it will be struck down by a 7-2 vote. This is just an educated guess, and please don't be mad if I'm all wrong! On the Severability issue, I'd wager on a ruling, perhaps by the thinnest of margins, that the mandate cannot be severed from guaranteed issue, thereby taking out that piece of the law too. Regarding proposed Medicaid expansion, I have no prediction on what the justices will do; but I'm hoping it will be struck -- or at least that each state could be given an option to remain with the status quo.

Some people are upset over new tax provisions written into PPACA. Personally, when I learned of the new 10% "tanning tax" my initial reaction was, what in the world does that have to do with making health care affordable! Upon further reflection, I've concluded that the federal government feels it is protecting all of us by placing an extra tax on potentially hazardous tanning services. But I'll share a tip with my readers -- only indoor tanning by ultraviolet radiation is subjected to the 10% tax, and not spray tan services. So anyone wanting a bit more color, feel free to spray away!

In case anyone wants proof that the myriad provisions that make up PPACA are complex and painful to administer, all you need to do is [click here](#) and take a look-see at the answers to frequently asked questions about the Excise Tax on Indoor Tanning Services. I rest my case.

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