

Healthcare Reform in the United States; Facts, Fiction and Drama:Act II

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Claiming historic triumph, that has defined his presidency ever since, President Barak Obama signed the \$ 1 trillion Patient Protection and Affordable Care Act (in short called as ACA) in a highly visible white house ceremony on Tuesday March 23, 2010 (using 20 different pens) thereby establishing health care as a 'right' of every American for the first time. It took all the legislative and political skills from him to get the bill passed through both houses of Congress as was suggested on these pages previously.¹

Soon after President Obama signed the landmark legislation, 26 States filed law suit contesting that the health care legislation, which earned the nickname of "Obamacare" from its opponents, was unconstitutional for several reasons. The legal challenge created significant uncertainty about the viability and future implementation of the legislation. There was also growing concern about the law's impact on the national debt that became, and continues to be, an extremely divisive issue between the Democrats and the Republicans in the US Congress.

The law suit finally, as expected, made its way to the Supreme Court of the United States. The Court was looking at the legislation from three angles. First, at the core of the legislation, was the requirement that nearly all Americans obtain health insurance by 2014 or face a financial penalty- a provision that came to be known as the 'individual mandate'. The penalty would be recycled into "health exchanges" providing alternate options to low income Americans and small businesses for purchase of health care. The 'individual mandate' was the backbone of the legislation that would cover millions of uninsured Americans, majority of whom would be healthy young individuals. And, if this 'individual mandate' were to be struck down by the Court (as was expected by many), then the second question would be what happens to the rest of the ACA as insurance industry was supporting the legislation since it would provide them with tens of millions of new healthy 'customers'. If such healthy individuals were left out, the pool would have mostly sicker individuals compromising the profitability, and perhaps the very viability, of the insurance industry. The third issue related to the mandate for the states to accept a large number of individuals into Medicaid program

that provides health care for the poor and those with income of up to 133 % of the federal poverty level.²

The Supreme Court, mercifully for President Obama, upheld virtually the entire legislation in its historic decision on June 28, 2012. The four 'liberal justices' (Justices Stephen Breyer, Ruth Ginsburg, Elena Kagan and Sonia Sotomayor) were joined by the conservative Chief Justice John Roberts in upholding the 'individual mandate'. In what many observers of the court called a surprising twist, the justices held that the mandate was not constitutional under the 'interstate commerce clause', as argued by the administration, but was constitutional under Congress' power of taxation. The other four dissenting conservative justices (Justices Samuel Alito, Anthony Kennedy, Antonin Scalia and Clarence Thomas) held that the Congress had exceeded its authority on several levels.

The reaction to the ruling was prompt and mixed. Dr. Jeremy A. Lazarus, President American Medical Association said "The AMA has long supported health insurance coverage for all, and we are pleased that this decision means millions of Americans can look forward to the coverage they need to get healthy and stay healthy". The President and CEO of American Hospital Association, Mr Rich Umbdenstock, said "The decision means that hospitals now have much-needed clarity to continue on their path toward transformation". Perhaps the President of the American College of Physicians stated it best "We hope that a day will come when the debate will no longer be polarized between repeal on one hand, or keeping the law exactly as it is on the other, but on preserving all of the good things that it does while making needed improvements."

The President of the U.S. Chamber of Commerce, Thomas J. Donohue, lamented that "While we respect the court's decision, today's Supreme Court ruling does not change the reality that the health care law is fundamentally flawed. It will cost many Americans their employer-based health insurance, undermine job creation and raise health care costs for all." And in a scathing statement, the President of National Federation of Independent Business, Dan Danner, echoing the sentiments of a growing number of small businesses said "Under [the ACA], small-business owners are going to face an onslaught of taxes and mandates, resulting in job loss and closed businesses. We

will continue to fight for the repeal of [the ACA] in the halls of Congress; only with [the ACA's] full repeal will Congress have the ability to go back to the drawing board to craft real reform that makes reducing costs a No. 1 priority.”³

This line of argument, apart from bringing some uncertainty, provided politicians fodder as they move closer to the Presidential elections. And as expected, the Republicans (who control the House of Representatives) passed legislation repealing the law but the bill died in the US Senate (controlled by Democrats). And the Republican Presidential candidate, Gov. Mitt Romney, framed the decision as a political call to arms. “What the Court did not do on its last day in session, I will do on my first day if elected President of the United States. And that is I will act to repeal Obamacare.” While both President Obama and Gov. Romney agree that Medicare costs have to be reined in but there is fundamental difference in their approach to cost cutting. President Obama’s plan relies on a powerful board to reduce payments to service providers and gradually changing how hospital and doctors are paid in order to eliminate fee for service and establish pay for performance (pay for the quality, not quantity). Gov. Romney would limit the amount future retirees would receive from the federal government to approximately \$ 7000 (also called as Voucher System) and relying on the private industry to find an efficient solution.

It is clear that Gov. Romney, who previously implemented ‘Obamacare’ type of legislation as the governor of Massachusetts, flipped his position to appease extreme right wing of the Republican Party. As usual politics trumps policy. This drama continues to play out as we get closer to the election on November 6, 2012.

As identified by an independent nonpartisan educational institute based in Washington, The Centre for American Progress (CAP), some of the popular provisions of the law are⁴:

- The law provides for young adults to stay on their parents’ insurance to age 26 enabling 2.5 million young Americans to enrol on their parents policies (73 % of young adults now have coverage as a result of this provision);
- For seniors living on fixed income (Medicare patient population), one of the immediate benefits of the ACA was the closure of prescription drug coverage gap (known as the ‘donut hole’) saving 4 million seniors about \$ 2 billion on prescription drugs or approximately \$604 per person, in 2011 alone;
- The law provides \$11 billion to support and expand community health centres nationwide. More than 350 new community health centres were established in 2011 serving 50 million Americans in medically underserved areas;
- Starting in 2014, the law prohibits health insurance carriers from excluding and/or denying coverage or charging higher premiums and limiting benefits to those with pre-existing medical conditions (as happens currently in too many cases);

- 50,000 Americans have already enrolled in the Pre-existing Condition Insurance Plan (PCIP) that ensures medical services including prescription drugs for those with pre-existing conditions as soon as possible ;
- Provision of \$200 million to expand school-based health centres for primary care, dental care, behavioural health services and substance abuse counselling;
- In 2011 alone, 85 million Americans benefitted from preventive services included in the legislation. Many more will benefit since a major provision of the preventive services for women took effect in August 2012;

However, several components of the legislation remain unclear and their impact rather unknown. As an example the Obama administration fought hard for formation of the Independent Payment Advisory Board (IPAB) to address the inordinate influence of stakeholders in Congressional decisions over Medicare. This group of 15 nonpartisan experts is responsible for developing payment and related Medicare policy changes to assure that Medicare spending does not exceed budget targets tied to economic growth. Although now the law, the IPAB may never be formed because the Senate is unlikely to find 60 votes required to confirm IPAB members (unless the election brings unforeseen changes in the makeup of the Senate). Politics may again triumph policy. The payment approaches that need to evolve from “volume” to “value,” remain vexing. The Centre for Medicare & Medicaid Innovation charged with developing the pilot programs that may result in a reformed delivery system, have no pilots that focus on developing alternative models to reimburse physicians services.^{5,6}

And the “invisible problem” of physician shortage! While there is growing bipartisan appreciation that the primary care workforce is insufficient to handle increasing demand for primary care services, the problem has not been fully addressed. The Association of American Medical Colleges estimates that in 2015 the country will have 62,900 fewer doctors than needed and those numbers will more than double by 2025.^{7,8}

In coming months the States may become the battleground for implementing the “health exchanges”. By 2014 States are required to establish American Health Benefits exchanges and small business health operations program (SHOP) exchanges. These exchanges called in short, “health exchanges”, are basically subsidized market places with tax credits for consumers to shop for their health insurance at very competitive rates. Individuals who will not be eligible for Medicaid and with income of up to 400% of the Federal poverty level will have access to these health exchanges to purchase insurance. Such subsidies and tax credits will also be available to businesses with less than 100 employees.⁹

It is also becoming apparent that the financial burden of the legislation will be significantly higher than initially estimated. For example the non-partisan Congressional Budget Office (CBO) estimates that 80 % of Americans who will face penalty

for lack of health insurance under the 'individual mandate' would be those with yearly income of \$ 55, 250 (for individuals) and \$ 115, 250 (for couples). This is in contrast to the statements of President Obama who continues to pledge that he will not raise taxes on individuals making less than \$ 200,000 and couples making less than \$ 250, 000. And the Republican side of the Senate Budget Committee estimates that Obamacare will cost \$2.6 trillion dollars in its first real decade since the bill does not fully go into effect until 2014.¹⁰

Fortunately for President Obama, the prestigious Institute of Medicine released a report, last month on September 6, confirming what has been suggested by him and others, that the US health care system wastes almost 30 % (\$750 Billion) each year on unnecessary procedures, fraud and waste. Therefore, the administration has redoubled its efforts to check the waste and fraud in order to pay for the cost of ACA. However, the real battle will begin as soon as the Congress reconvenes in January 2013. They are immediately faced with dealing with "Sequestration". Originally a legal term referring to the act of valuable property being locked away for safe keeping by an agent of the court, the term has been adapted by Congress in 1985 for fiscal discipline. Under this rule, an amount of money equal to the difference between the cap set in the Budget Resolution and the amount actually appropriated is "sequestered" by the department of Treasury and not handed over to the departments it may have been appropriated originally by the Congress. The balanced budget act of 2011 established a Congressional task force (called 'Super Committee') that was charged to make recommendations to cut the US Budget deficit by \$ 1.5 trillion by November 23, 2011. Failure to do so would automatically trigger "Sequestration". On November 21, 2011, the committee issued a statement that it had failed to reach agreement. This failure is viewed by most as a triumph of political ideology over genuine leadership. But the prospect of 'sequestration' has come to be seen so catastrophic that key members of Congress and the President are expected to abandon brinkmanship and come to an agreement in early 2012.

So, as the drama and the debate continue vigorously in the days leading up to the November 6 elections, it is clear that "Obamacare" will continue to divide the US congress and the country. Irrespective of the party that will control the Congress and who becomes the next President of the US, "Obamacare" is here to stay. And, no matter how hard the Republican Party may try, they will face a monumental task in reversing the course of the history. There will be bickering, name calling,

finger pointing and horse trading. But, the warring factions will realize that the escalating costs and complexities of the health care system demand that the legislators and the President come together to find real solutions to keep the American health care system as the best in the world. The real challenges will remain the same no matter who is elected as President: to stem the unsustainable tide of national health expenditure as percentage of the gross national product (rising from 7.2 % in 1970 to over 17 % in 2010), rapidly increasing number of Americans without health insurance (approaching almost 50 million), exploding national debt and, more immediately, the looming threats from sequestration.

Competing Interests

None

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