Healthcare Reform: Overview and Impact on Dentistry

Strengthening Oral Health in Ohio Summit
Friday, May 10, 2013
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Executive Director
Ohio Dental Association
Health Care Review

- Overview
  - Legislation
  - Supreme Court
  - Individual Mandate
  - Medicaid Expansion
  - Implementation
  - Other Provisions – Taxes, Insurance Reforms, etc.
  - Impact on Dentistry
  - Questions
Health Care Reform

- Patient Protection and Affordable Care Act
- Enacted in 2010
- Implementation on-going
Hundreds of Provisions

- Universal coverage as primary goal
- Individual mandate
- Insurance exchanges
- Patient protection (e.g., no discrimination on preexisting conditions, no annual and lifetime limits on benefits, etc.)
- Medicaid expansion
- 26 year olds
- Work force issues
- Taxes & Penalties (mandate enforcement, Medical Device Tax, etc.)
- Many others
Health Care Reform

- Hundreds of provisions remaking health care in America
- Dentistry is only a very small part
- Dentists impacted as health insurance and health care consumers, health care providers and employers
- Dental benefits and dental care delivery impacted
• Require insurance plans to include pediatric oral health services for children up to 21 years of age
• Require an essential health benefits package to include ambulatory patient services, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorders, prescription drugs, rehabilitative and habilitative services and devices, laboratory services, prevention and wellness services and chronic disease management, and pediatric services, including oral and vision care
• Expand Medicaid eligibility for adults and children
• Increase federal support to states to pay for expanded Medicaid coverage
• Extend the Children’s Health Insurance Program for five years
• Establish an oral health prevention program and fund states to develop oral health leadership
• Enhance oral health data systems
• Improve the delivery of oral health
• Implement dental sealants, water fluoridation, and preventive programs
• Establish a five-year national public education campaign focused on oral health care prevention and education and targeted to certain populations, including children, the elderly, and pregnant women
• Award demonstration grants in consultation with professional oral health organizations to eligible entities to demonstrate the effectiveness of research-based dental caries disease management activities
• Authorize the Medicaid and CHIP Payment and Access Commission (MACPAC) to review payments for dental services in Medicaid and CHIP
• Establish a process for updating payments to dental health professionals
• Reaffirm that dentists will be members of the MACPAC
• Establish a separate dental section and funding line of $30 million for training in general, pediatric, and public health dentistry
• Increase eligibility for new grant programs in the Title VII Health Professions Programs to train dental and allied dental health professionals
• Make dental schools eligible for federal grants for predoctoral training, faculty development, dental faculty loan repayment, and academic administrative units (grants currently available only to medical schools)
• Modify current law to allow hospitals to count dental and medical resident time spent in didactic (scholarly) activities toward Indirect Medical Education (IME) costs in hospital settings and toward Direct Graduate Medical Education (D-GME) in non-hospital settings (dental school clinics)
• Extend the National Health Service Corps (NHSC) and increase funding for its scholarship and loan repayment program by $2.7 billion over five years
• Reauthorize the Indian Health Service (HIS) and allow for the election by Indian tribes and tribal organizations in a state to employ dental health aide therapists when authorized under state law
• Authorize grants to establish training programs for alternative dental health care providers to increase access to dental health care services in rural, tribal, and underserved communities
• Reauthorize the Centers of Excellence (COE) program (which develops a minority applicant pool to enhance recruitment, training, academic performance and other support for minorities interested in careers in health) and fund it at $50 million
• Increase funding from $37 million to $51 million over five years for Health Professions Training for Diversity, which provides scholarships for disadvantaged students who commit to work in medically underserved areas as primary care providers and expands loan repayments for individuals who will serve as faculty in eligible institutions
Legal Challenges Filed

- 26 states
- National Federation of Independent Businesses
- Lower courts split
- 3 days of oral arguments
Constitutionality of Affordable Care Act

- “Are you serious?” - Speaker Pelosi in 2010
Constitutionality of Affordable Care Act

- “The powers delegated by the proposed Constitution to the Federal Government, are few and defined.” - James Madison in 1788
Individual Mandate

- Federal government – enumerated powers
- 10th Amendment – powers not delegated to federal government by Constitution are reserved for the states or the people
- Congress to regulate commerce among the several states
- Congress – power to tax
Individual Mandate

- Commerce clause
- 1789 to New Deal – limited federal government power
- After New Deal – extensive federal government power
- Roscoe Filburn
Roscoe Filburn
Individual Mandate

- Since *Wickard v. Filburn (1942)*
- Massive expansion of federal authority
Individual Mandate - Obama Administration

- Free riders – young and healthy
- Emergency rooms
- Everyone needs health care
- Regulating commerce
- And a tax too!
Individual Mandate - Opponents

- Inactivity – no commerce
- Not regulating commerce
- Forcing into commerce
Can Congress require purchase of insurance?

Yes: Constitutional precedent gives such authority to lawmakers

The Supreme Court soon will decide whether the minimum-coverage provision of the Patient Protection and Affordable Care Act, cleverly called the “individual mandate” by critics, is constitutional. Under longstanding constitutional precedent, this requirement that everyone maintain a minimum amount of health insurance is a valid exercise of congressional authority.

The Constitution gives Congress complete power to regulate interstate commerce. From the start, this has been interpreted broadly. Chief Justice John Marshall, who was well acquainted with the framers of our

No: Mandate is an unreasonable expansion of Commerce Clause

Next month, the U.S. Supreme Court will hear oral arguments in the legal challenge to the 2010 federal health-care reform law. While the court will consider several issues related to the Patient Protection and Affordable Care Act, the main challenge is to the individual mandate, which requires virtually every American to purchase health insurance by 2014.

It is sometimes forgotten in today’s era of ever-expanding federal power that the federal government’s authority is limited to those powers specifically enumerated in the Constitution. More than 220 years ago, James Madison, the “father of
Individual Mandate

- Majority of Court
  - Conservative block – Chief Justice John Roberts and Justice Anthony Kennedy said individual mandate is not authorized by Commerce Clause

- But...
Individual Mandate

- Chief Justice Roberts and liberal block of justices – upheld mandate as valid exercise of the taxing power

  “…power to lay and collect taxes, duties, impacts, and excises, to pay debts and provide for the common defense and general welfare of the United States.”

- Regulatory purpose vs. defense, general welfare purpose
Anti-Injunction Act

- 150 years old
- Bars lawsuit challenging taxes until payment due
- Mandate – 2014
- Penalty – 2015
- Dissent = “verbal wizardry”
Individual Mandate

- End result – individual mandate remains intact – effective in 2014
Medicaid Expansion

- Question of spending power – conditions and voluntary participation
- Chief Justice Roberts – ACA crosses line from encouragement to coercive
- States may not lose existing Medicaid funds if they do not participate in expansion.
Medicaid Expansion - Impact on Ohio

- Governor Kasich’s Medicaid budget proposal FY 2014-15
  - Retains dental coverage for adults for existing population – Ohio only one of about 10 states
  - Expands Medicaid eligibility to 138% of federal poverty level consistent with Affordable Care Act – no dental
- Currently
  - Parents – 90%
  - Disabled
  - Childless adults – none
Medicaid Expansion

- Eligible at or below 138% poverty level
- Federal government pays 100% for first 2 years
- Reduced to 90% by 2020

### Paying for New Medicaid Enrollees under Obamacare

<table>
<thead>
<tr>
<th>Year</th>
<th>U.S. Government</th>
<th>Each State Pays:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014 to 2016</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>2017</td>
<td>95%</td>
<td>5%</td>
</tr>
<tr>
<td>2018</td>
<td>94%</td>
<td>6%</td>
</tr>
<tr>
<td>2019</td>
<td>93%</td>
<td>7%</td>
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<tr>
<td>2020</td>
<td>90%</td>
<td>10%</td>
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</tbody>
</table>
Medicaid Expansion - Impact on Ohio

- Kasich administration – 320,000 to 400,000 Ohioans currently eligible but not enrolled
- Cost: $940 million for 2014-15
- “Woodwork effect”
- Expansion – 275,000 - 600,000 more Ohioans Medicaid eligible
Medicaid Expansion - Impact on Ohio

- Woodwork 400,000 + Expanded Eligibility 600,000 = 1 million new Medicaid enrollees
- Medicaid Dental Fees – Below 50%
- What is Ohio’s dental capacity?
- What is Ohio’s Primary Care Capacity?
Medicaid Expansion

- Ohio House of Representatives passed 2014-15 budget without Medicaid expansion
- Adopted amendment for General Assembly and Administration to further study Medicaid expansion
- Ohio Senate - Medicaid “reform” separate from budget
- Ballot issue?
Health Care Reform Implementation

- President Obama on health care reform implementation “Still a big complicated piece of business.”
- Sen. Max Baucus (D-Montana) called implementation “a train wreck.”
HEALTH CARE / NEXT STEP
Even supporters not sure insurance exchanges work

Health care
Insurance exchange a mystery
Health Care Reform Implementation

- Health insurance exchange – Ohio vs. federal government
- Federal government operates exchange for Ohio
- Ohio Department of Insurance to regulate health plans operating within and outside of the exchange
Health Care Reform Implementation

- Practically everyone must purchase health insurance
- Essential health benefits
- Insurance Exchanges – to simplify purchasing
- Individual Mandate + Subsidies (138% to 400%) + Medicaid expansion (138%) = Universal Coverage
## Individual Mandate

### EXCHANGE PLANS

<table>
<thead>
<tr>
<th>Plan Name</th>
<th>Out-of-Pocket Limits</th>
<th>Covers “Essential Health Benefits”</th>
<th>Percent of Costs Covered by Plan</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Individuals</td>
<td>Families</td>
<td></td>
</tr>
<tr>
<td>Bronze</td>
<td>$5,950</td>
<td>$11,900</td>
<td>Yes</td>
</tr>
<tr>
<td>Silver</td>
<td>$5,950</td>
<td>$11,900</td>
<td>Yes</td>
</tr>
<tr>
<td>Gold</td>
<td>$5,950</td>
<td>$11,900</td>
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</tr>
<tr>
<td>Platinum</td>
<td>$5,950</td>
<td>$11,900</td>
<td>Yes</td>
</tr>
<tr>
<td>Year</td>
<td>Flat Fee: Amount</td>
<td>Flat Fee: Amount</td>
<td>Percent of Income: Level</td>
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<tr>
<td>-------</td>
<td>------------------</td>
<td>------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>2014</td>
<td>$95 or 1.0%</td>
<td>$285</td>
<td>$28,500</td>
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<tr>
<td>2015</td>
<td>$325 or 2.0%</td>
<td>$975</td>
<td>$48,750</td>
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<tr>
<td>2016</td>
<td>$695 or 2.5%</td>
<td>$2,085</td>
<td>$83,400</td>
</tr>
<tr>
<td>After 2016</td>
<td>Adjusted for Cost of Living</td>
<td></td>
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</table>
Employer Mandate

- Applies only to employers with 50 or more employees – would not apply to most dental offices
# Employer Mandate

## Penalty for Employers with 50+ Employees Who Have an Employee Who Gets Government Financial Assistance on a Health Exchange

<table>
<thead>
<tr>
<th>Type of Employer:</th>
<th>Employer Does Not Offer Coverage</th>
<th>Employer Does Offer Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penalty Applies to:</td>
<td>Only for Employees #31 and over</td>
<td>All Employees</td>
</tr>
<tr>
<td>Penalty Per Full-Time Employee</td>
<td>$2,000</td>
<td>$2,000</td>
</tr>
<tr>
<td>Penalty Per Employee Who Gets Tax Credit on Exchange</td>
<td>NA</td>
<td>$3,000</td>
</tr>
</tbody>
</table>

The lesser of…

- Penalty Per Full-Time Employee: $2,000
- Penalty Per Employee Who Gets Tax Credit on Exchange: $3,000
Employer Mandate

- 51 employees – no employer health care offered
  - 21 X $2,000 = $42,000

- 51 employees – employer health care is offered but 10 employees get subsidized insurance through exchanges –
  - either:
    - 51 X $2,000 = $102,000
    - or
    - 10 X $3,000 = $30,000
Health Care Reform - Impact on Dentistry

- Pediatric oral health benefit – essential benefit package through health exchange
- Dental benefit package consistent with typical employer-sponsored plans
- Federal employees dental and vision insurance program
- Stand alone dental plans permitted
Impact on Dentistry

- Mandatory purchase vs. mandatory offer – HHS Rules
- Pediatric coverage vs. individual vs. family
- Annual and Lifetime limits
- Floor vs. ceiling
Paying for Health Care Reform
Paying for Health Care Reform

- Mandates + no pre-existing discrimination, etc. = healthy and unhealthy
- Medicare provider payment cuts & IPAB
- Increased Medicare Hospital Tax – high income - >$200K - 1.45% to 2.35%
- Medicare Tax on investment income
  > $200K – 3.8%
- New Fees on Pharmaceutical and Health Insurance Industries - 30 million more customers
Paying for Health Care Reform

- Individual Mandate Penalty
- Employer Mandate Penalty
- 40% excise tax on Cadillac plans ($10,200 premium for individual, $27,500 for family)
- 2.3% excise tax on medical devices
- Raise medical expense deduction threshold from 7.5% to 10%
- 10% tax on tanning salons
Paying for Health Care Reform - Impact on Dentistry

- Taxes
  - 1099 form for vendors of $600 or more – repealed
  - Medical Device Tax - $150 million in additional taxes for dental
  - Tax on “Cadillac” plans – dental not included – 2018
  - $2,500 cap on FSAs – dental impact - 2013
Impact on Ohio and Dentistry

- Spending & Miscellany
  - $11 billion for community health centers
  - National Oral Health Surveillance System
  - Grants for oral health infrastructure and general, pediatric and public health dentistry
  - Demonstration projects for alternative dental health care providers, consistent with state laws
  - Public awareness campaign – oral health
  - Center for Medicare and Medicaid Innovation – P4P & other payment reform experiments
  - Accountable Care Organizations
Health Care Reform’s Future?
Health Care Reform - Impact on Dentistry

- Questions?

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