The Affordable Care Act
(AKA Obamacare)

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The Historical Context

100 Years of Health Reform

http://www.marketplace.publicradio.org/display/web/2010/03/30/pm-spirit-of-1912/100

First calls for universal coverage: Teddy Roosevelt and the Progressive Movement

• Bull Moose Party platform – 1912
• State-based initiatives – 1915 - 1919

http://www.synthstuff.com/mt/archives/teddy-roosevelt.jpg

Impassioned response

http://www.bestcyrano.org/?p=3860

http://www.marketplace.publicradio.org/display/web/2010/03/30/pm-spirit-of-1912/100

Agenda

• Historical context
• Affordable Care Act – mechanics
• Public attitudes
• Actions in Congress
• Legal challenges
• Lessons from the past
• Predictions
I am not the first President to take up this cause, but I am determined to be the last.

Barak Obama, health care speech, Sept. 9, 2009
Public Attitudes

Divided but Stable

[Links to web pages for further reading]

Views on Health Reform Remain Divided, "Don’t Know" Ticks Up

Majority Would Like to See Health Care Law Kept As Is or Expanded

Still Divided as to "What Next" for Health Reform

Confusion Remains High

[Charts and graphs illustrating public attitudes and policy opinions]
General observation

The public always wants changes in health care

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Efforts so far

- House passed repeal
  - Senate rejected it
  - Continuing resolution – small funding cuts
- Efforts to defund pieces
  - Some enacted in House – exchanges, school health centers, prevention
  - One vote a week
  - Tax reporting provision – technical correction
- Efforts to defund in 2012 budget
- Ryan plan
  - Would keep some elements of the law
- All Republican presidential candidates support repeal
Public reactions
- Most are against full repeal or defunding
- Support in Republican base

Business reactions
- Constituencies supporting key elements of reform
  - Insurance companies
  - Pharmaceutical companies
  - Hospitals
  - Primary care physicians

Lobbying
Legal Challenges

Individual Mandate

- Interstate Commerce Clause
  - Congress can regulate commerce between the states
  - Supreme Court has said that insurance involves interstate commerce
  - Activity vs. inactivity
- Liberty/privacy
  - Interference with personal decisions (14th Amendment)
  - Massachusetts has a mandate

Is health insurance like broccoli?

Individual Mandate

- Tax
  - Congress has broad power to raise taxes
  - Mandate penalty can be seen as a tax
  - Direct tax must be apportioned among the states
- State laws barring mandates
  - Direct conflict with supremacy clause
  - Article VI, section 2
    - This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby: any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Medicaid

Severability

- Can defective provision be “severed” from the rest of the statute?
  - What did Congress intend?
- Alternatives to mandate
  - Default opt-in
  - Late-enrollment penalty
  - Late-enrollment waiting period
  - Post a bond for health care expenses

- Spending power
  - Congress can spend money and attach strings
  - When do strings become too prescriptive?
  - Conditions on funding can impinge on state sovereignty (10th Amendment)
  - States can always decline to participate in Medicaid

Medicaid

- Can defective provision be “severed” from the rest of the statute?
  - What did Congress intend?
- Alternatives to mandate
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  - Post a bond for health care expenses
Legal Challenges to Date: Outcomes

• All decisions so far have followed the political party of the judge

Legal Challenges

• Successful in district court
  – State of Florida (and 25 other states), National Federal of Independent Business, and two individuals
    • Ruling: Mandate is unconstitutional, Medicaid expansion is allowed, but entire statute must be invalidated
  – Commonwealth of Virginia
    • Ruling: Mandate is unconstitutional, but rest of the statute is valid

Legal Challenges

• Unsuccessful in district court: entire law is constitutional
  – Liberty University
  – Thomas Moore Law Center
  – American Center for Law and Justice

Legal Challenges: Current Status

• Arguments before 4th Circuit Court of Appeals
  – Conflict between Liberty University and Commonwealth of Virginia rulings
    – 3-judge panel, all appointed by Democrats
    – Judges seemed positive toward the law
    – Decision expected in a few weeks

• Other appeals courts will hear other appeals
  – Scheduled appeals – 3rd, 6th, 11th Circuits
  – Appeals pending – 8th, 9th, DC Circuits

Legal Challenges

• Supreme Court will hear case, possibly as early as next fall
  • Key issue: scope of the Constitution’s commerce clause
  • Key point to watch: breadth of the decision, severability
  • Will politics determine the outcome?

Lessons from the Past


http://www.miwd.uscourts.gov/JUDGES/NORTHERN/Judge%20Bell%27s%20courtroom.htm

http://www.benzinga.com/general/205566/playing-true-or-false-with-health-care-reform
Massachusetts Experience

- 97%-98% insurance coverage
- Pressure on costs
- Surging demand for primary care
- High approval
  - Overall
    - 61%-2006
    - 67%-2007
    - 69%-2008
  - Individual mandate
    - 52%-2007
    - 58%-2008
  - Physician support
    - 76%-2005
    - 7% support repeal


Medicare Catastrophic Coverage

- Passed in 1988
- Repealed one year later
- Never went into effect
- Many confused over provisions

Medicare Modernization Act:
Part D Implementation

- Complex law, difficult implementation
- Poll
  - Had difficulty understanding how Part D works and what savings it would provide
    - Enrolled in Part D - 52%
    - Not enrolled in Part D - 62.1%
  - Think Part D program was well designed - 30.3%
  - Think Part D program is a major benefit - 57.9%
  - Satisfied with your own drug plan - 76%

(Kear, Lee 2006)

Medicare Part D’s Rocky Road

Future of Health Reform

- Supreme Court will uphold law or invalidate mandate only
- Law will not be repealed
  - Benefits have begun
  - Full repeal could create chaos
  - The longer the law is in effect, the harder it is to repeal
  - Revision possible after the 2012 elections
- Implementation will be rocky but ultimately successful
- Gradual public approval
  - Key is implementation
  - New norm

Predictions
Future of Health Reform

Overall expansion of the health care sector