Effects of the Election on Future Implementation of the ACA
Thursday January 17, 2013

American Society of Law, Medicine & Ethics
Network for Public Health Law
Public Health Law Research Program

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  - Public Health Law Association
  - Public Health Law Network
  - Public Health Law Research Program

- Next webinar is Thursday, February 21 – Paid Sick Leave Laws
Effects of the Election on Future Implementation of the ACA

PRESENTERS

Susan Polan,
Associate Executive Director, Public Affairs and Advocacy, American Public Health Association (APHA)

Jina Dhillion,
Staff Attorney, National Health Law Program

Eli Briggs,
Director of Government Affairs, National Association of County and City Health Officials (NACCHO)
What the ACA means for Public Health -
Looking forward

For the Public Health Law Webinar Series
Susan L. Polan, PhD
Associate Executive Director,
Public Affairs and Advocacy
January 17, 2013
Patient Protection and Affordable Care Act (ACA)

- Major health policy achievement
- Achieves 94% health coverage
- Major insurance reforms
- Promotes prevention & wellness
- Promotes primary care
- Increase value & quality for health dollar
- Increases affordability for many
- Supports modern HIT system
Affordable Care Act Overview
Selected Provisions
August 2012

This chart provides a broad overview of the structure of the Affordable Care Act (ACA), the health reform law enacted in 2010. It does not address all provisions in the law. See next page for brief explanations of these provisions. Visit www.healthcare.gov for a full list of provisions and more detailed explanations. Visit http://www.apha.org/advocacy/Health-Reform/ for more ACA resources.

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Insurance Reform

More people covered
Medicaid expansion
Insurance exchanges
Guaranteed issue
Kids under 26 covered
Min cov’g provision

More benefits & protections
Essential benefits
Preventive services cov’g
Rate restrictions
No lifetime annual limits
Uniform summaries

Lower costs (consumers & government)
Exchange subsidies
Medical loss ratio (MLR)
Premium rate review
Medicare Advantage
Prescription drug rebates

Health System Reform

Improved quality & efficiency
Accountable Care Orgs. (ACOs)
Medical homes pilots
Quality measure devel. & use
Incentive payments
Dual eligibles care coord.

Stronger workforce & infrastructure
Comm.- & school-based health centers
Medical provider payments
Medicare provider payments
NHSC loan repayment program
Public health workforce devel.

Greater focus on public health & prevention
Prevention & Public Health Fund
Community Transform. Grants
Public education campaigns
Community health needs assessments
Nutritional labeling

Adapted from Dr. Donald Berwick’s presentation “The Triple Aim: Health, Care, and Cost: Public Health and the Health Care Transition,” given June 2012 at APHA’s mid-year meeting. Find this document at http://www.apha.org/advocacy/Health-Reform/ACAbasics/.
### ACA’s major coverage provisions

<table>
<thead>
<tr>
<th>Provision</th>
<th>Effective</th>
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<tr>
<td>Medicaid expansion</td>
<td>2014 or earlier</td>
</tr>
<tr>
<td>Health insurance exchanges and subsidies</td>
<td>2014</td>
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<tr>
<td>(individual and small business)</td>
<td></td>
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<tr>
<td>Minimum coverage provision</td>
<td>2014</td>
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<tr>
<td>(individual and employer “mandate”)</td>
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<tr>
<td>Private insurance reforms</td>
<td>2010-2014</td>
</tr>
<tr>
<td>Medicare reforms</td>
<td>2011</td>
</tr>
</tbody>
</table>
Expanding Medicaid Eligibility

- Medicaid eligibility: The ACA creates a new eligible group - all adults not already eligible. This especially means that adults without dependent children will no longer be excluded from the program.

- The ACA expands the minimum income eligibility threshold to 133 percent FPL (effectively 138 percent FPL) for everyone except the elderly and disabled. This is a floor, not a ceiling: if states already had higher thresholds for certain populations, or want to set higher thresholds, that's fine.

- Supreme Court decision left expansion to the states although Administration clarified that expansion is required to receive 100% match.
A closer look at the exchanges: Increasing consumers’ buying power

- Why they are important
  - **Strength in numbers**: more transparency, lower costs for individuals and small businesses
  - **Subsidies** for individuals and small businesses

- About the exchanges
  - States or regions set them up (with federal assistance)
  - Website and other ways for consumers to determine eligibility (for exchange subsidies or public programs), and compare and buy plans

- Plans in the exchange (“Qualified Health Plans”)
  - Must cover “Essential Health Benefits”
  - Must include “Essential Community Providers,” where available, in their networks
Maintaining minimum coverage

- Affordable Care Act requires large employers to pay a shared responsibility fee only if they don’t provide affordable coverage. Firms with < 50 employees are exempted.

- The Affordable Care Act includes a requirement that many people be insured or pay a penalty.
A closer look at insurance reforms: Protecting access, controlling costs

**Insurers MAY NOT:**
- Deny coverage due to pre-existing conditions
- Rescind coverage over simple paperwork mistakes
- Set lifetime caps on coverage
- Charge women more than men (gender rating)

**Insurers MUST:**
- Cover “essential health benefits”
- Cover young adults on their parents’ plan through age 26
- Spend more on services, less on profits
- Justify double-digit rate increases
Medicare coverage reforms

- Many no-cost preventive services
  - Related to the preventive services coverage provision for private insurance

- Discounts on drugs for those in the “donut hole”
  - Donut hole will be closed in 2020

- Incentives and support for quality improvement and care coordination activities
  - Efforts to improve care for Medicare/Medicaid dual eligibles
Prevention and Wellness

- Prevention Services
- National Prevention Strategy
- Menu Labeling
- Workforce
- Public Health Research
- Reducing Health Inequities
Clinical Preventive Services -- No-cost

- No deductibles, copayments, etc, for....
  - Cancer screenings such as mammograms and colonoscopies
  - Vaccinations such as flu, mumps, and measles
  - Blood pressure and cholesterol screenings
  - Tobacco cessation counseling and interventions
  - Women’s preventive health services such as pap smears, birth control, and more
  - And more!
Prevention and Public Health Fund

- The Fund is intended “to provide for expanded and sustained national investment in prevention and public health programs to improve health and help restrain the rate of growth in private and public health care costs.”
- Supplement not supplant
- Started in 2010
2012 cut to the Prevention Fund

Funding levels appropriated through the ACA (enacted March 2010)

Funding levels amended by P.L. 112-96 (enacted February 2012): $6.25 billion in cuts, FY 2013-21

CUT TO THE CORE

The budget of the US Centers for Disease Control and Prevention (CDC) is increasingly floating on funds that may not materialize.

- Prevention and Public Health Fund
- Transfers from other agencies (requires approval by Congress)
- Core programme funding

*President’s FY2013 budget request*
The Prevention and Public Health Fund: Four major funding goals

- Clinical prevention activities
- Community prevention activities
- Workforce and infrastructure
- Research and tracking
The Department of Health and Human Services announced the allocations for the 2012 Prevention and Public Health Fund in February 2012.

- $1 billion available for FY2012 will be used for a variety of public health efforts, including supporting the work of the Centers for Disease Control and Prevention and the Health Resources and Services Administration:
  - Community Prevention: Funds are being used to enhance community-based preventive health programs at the local level through Community Transformation Grants including tobacco cessation, obesity prevention, and disease-specific efforts.
  - Clinical Prevention: Funds are being used to expand awareness of clinical preventive services and benefits.
  - Public Health Infrastructure and Training: Funds are being used to bolster public health infrastructure at the state and local level, increase training capacity for the health care workforce, and expand public health officials’ ability to prevent and respond to infectious disease outbreaks.
  - Research and Tracking: Funds are being used to increase and expand data collection on public health services nationwide.

**Prevention Fund Details**
Community Transformation Grants overview

- Improve where Americans live, work, learn and play to reduce chronic disease.
- Invests in evidence-based and practice-based community strategies and programs.
Community Transformation Grants

- Funding for community based programs that promote:
  - tobacco-free lifestyles
  - active living and healthy eating
  - high-impact quality clinical and other preventive services
  - creation of healthy and safe physical environments

- Other areas of focus (partial list):
  - Cancer; diabetes; educational and community-based services; environmental health; HIV; injury and violence prevention; maternal, infant, and child health; mental health and mental disorders; health of older adults; oral health; and sexually transmitted diseases.

- Programs must be evidence-based, have broad population impacts, help address health disparities

http://www.cdc.gov/communitytransformation/index.htm
Looking forward

- Coverage expansions in 2014
- System and delivery reform
- Attacks on Prevention and Public Health Fund
- NRA restrictions on provider inquiries
- Ongoing litigation against ACA provisions moving up from the states
- Obstacles to implementation at the state level
- Workforce and infrastructure needs
- Outstanding rulemaking and guidance
Resources

- Health reform information and resources
  [www.apha.org/advocacy/health+reform](http://www.apha.org/advocacy/health+reform)

  - Issue briefs, fact sheets, and webinars
    [http://www.apha.org/advocacy/reports/](http://www.apha.org/advocacy/reports/)
    - Prevention Provisions in the Affordable Care Act (2010)
    - Implications of the Affordable Care Act for the Public Health Workforce (2011)
    - Prevention and Public Fund (June 2012)

- Public health law and policy resources
Thank you!

Susan L. Polan, PhD
Associate Executive Director,
Public Affairs and Advocacy
Susan.polan@apha.org
202/777-2510
Affordable Care Act (ACA) Litigation

Overview and Current Challenges to the ACA

January 17, 2013
National Health Law Program (NHeLP)

- The National Health Law Program protects and advances the health rights of low income and underserved individuals. The oldest non-profit of its kind, NHeLP advocates, educates and litigates at the federal and state levels.
Major Topics

• **Overview of Supreme Court ruling on ACA**
  • Medicaid Expansion

• **Current Litigation**
  • Constitutional challenges
  • Contraceptive coverage requirement challenges
Supreme Court and the ACA

Four questions before the Supreme Court

- Anti-Injunction Act Bar
- Minimum essential coverage
  - Individual mandate
- Medicaid expansion
  - ~133% of FPL for non-pregnant, non-elderly, non-disabled adults
- Severability
Breaking down the Medicaid Decision

• Under ACA, “Medicaid is transformed into a program to meet the health care needs of the entire nonelderly population with income below 133 percent of the poverty level.”

• “Nothing in our opinion precludes Congress from offering funds under the Affordable Care Act to expand the availability of health care, and requiring that States accepting such funds comply with the conditions on their use.”

• “What Congress is not free to do is to penalize States that choose not to participate in that new program by taking away their existing Medicaid funding.”
Looking ahead post-SCOTUS

• States can decide Medicaid Expansion

• Questions under debate, e.g.:
  • Implications for other Medicaid ACA provisions?
    • CHIP maintenance of effort
    • Primary care rate parity provisions
    • Coverage of individuals aging out of foster system
Looking ahead post-SCOTUS, Sep 2012

Where the States Stand
What are the States Saying about ACA Medicaid Expansion?

Note: Based on literature review as of 9/12/12. All policies possible to change without notice.


Learn more about the impact of the Supreme Court ruling at advisory.com/MedicaidMap

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Looking ahead post-SCOTUS, Dec 2012

From Washington Post, 12/07/2012

To Date, 17 States Plan to Expand Medicaid Eligibility, 9 Will Not Expand, and the Remainder Are Undecided

State Commitment to Expand Medicaid Eligibility

- Undecided (17)
- Will Expand (17)
- Leaning Yes (1)
- Leaning No (7)
- Will Not Expand (9)
ACA Litigation, Round 2

• 10th Amendment/undue coercion
  • Adult maintenance of effort requirement
• 1st Amendment (religious freedom)
  • No-cost contraception coverage requirement
  • Forced funding of abortion
• Origination Clause
• Takings Clause/Substantive Due Process
  • Invasion of privacy, interference with medical autonomy
• Administrative Procedure Act
  • Employer mandate
Contraceptive Coverage Requirement

**Source:** Section 2713 of the Public Health Services Act (ACA § 1001)

**WHAT is covered***?

- Services with ‘A’ and ‘B’ ratings from the USPSTF
- Immunizations recommended by the CDC
- Preventive care and screenings for infants, children and adolescents
- **Women’s preventive services as recommended through comprehensive guidelines developed by HHS**

*All covered services must be provided with No Cost-Sharing (meaning, no deductibles, co-pays, or co-insurance)!
Contraceptive Coverage Requirement

- **WHO** is covered?
  - Anyone enrolled in:
    - Commercial plans in the group and individual markets (including most student health plans)
    - Self-insured employer plans
    - Qualified health plans in the Exchanges
    - Medicaid benchmark plans via the Medicaid Expansion
Contraceptive Coverage Requirement

• **Who is NOT covered?**
  • Anyone enrolled in:
    • Grandfathered plans (pre- March 23, 2010)
    • *Self-funded student health plans*
    • *Some religious institutions (for contraception req’t only)*
Religious Employer Exemption & Accommodation

- **Exemption** (finalized Feb. 2012):
  - Exempts a narrow category of religious employers (“houses of worship”) from the 2713 contraceptive coverage requirement

- **Accommodation** (announced Feb. 2012, pending final regulations):
  - Broader category of religiously affiliated employers
  - BUT women still get contraceptive coverage without cost-sharing directly from insurers
Contraceptive Coverage Litigation

• 40+ pending cases challenging contraceptive coverage requirement

• Main argument by challengers is that the contraceptive coverage requirement imposes a substantial burden on the free exercise of their religious beliefs
  • Note: some challengers provided contraceptive coverage prior to this rule
Contraceptive Coverage Litigation

Outcomes as of 1/11/2013

- 18 Cases, **Pending** at District Court
- 21 Cases, **Decided** at District Court level
  - 6 Cases, **Appealed**
- 6 Cases, **Preliminary Injunction Denied**
- 8 Cases, **Dismissed**:
  - From Missouri case (*O’Brien v. HHS*): Lower court said *religious liberty claims cannot be used as a “means to force one’s religious practices upon others”* and law does not protect “against the slight burden on religious exercise that arises when one’s money circuitously flows to support the conduct of other free-exercise-wielding individuals who hold religious beliefs that differ from one’s own.”
Contraceptive Coverage Litigation

Outcomes as of 1/11/2013, cont…

- 4 Cases, Preliminary Injunction Granted
  - From Colorado case (*Newland v. Sebelius*): The Court found that “significant exemptions for small employers and grandfathered health plans” along with exemptions to “over 190 million health plan participants and beneficiaries from the preventive coverage mandate … completely undermines any compelling interest in applying the preventive care coverage mandate to Plaintiffs.”
ACA Litigation

• NHeLP is monitoring and updating litigation dockets of all past and current ACA litigation.

• Please check www.healthlaw.org to view these dockets, and continue to check the website as we will update them regularly and link to pertinent pleadings.
Where are we now and where are we headed?

Affordable Care Act

- ACA Investments
- Examples from communities
- Considerations for local health departments
- Resources
ACA Investments
## Prevention and Public Health Fund

<table>
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<tr>
<th>Agency</th>
<th>Program</th>
<th>FY11</th>
<th>FY12 Final</th>
<th>Pres FY13</th>
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<td>$30 M ($20 M)</td>
<td>$33 M ($25 M)</td>
<td>$19.6 M ($10 M)</td>
<td>$35 M ($25 M)</td>
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</table>
PPHF: CDC Workforce Funding

Public Health Infrastructure/ National Public Health Improvement Initiative

Supports state, local, and tribal public health infrastructure to advance health promotion and disease prevention through improved information technology, workforce training, and policy development.

Public Health Capacity

Assist state and local public health officials prevent, detect, and respond to infectious disease outbreaks, including Epidemiology and Laboratory Capacity Grants.
PPHF: CDC Workforce Funding

Public Health Workforce Development

Capacity Building Assistance

Funding to national organizations to strengthen public health infrastructure and performance.

Fellowship Training in Public Health

Expands existing CDC public health training fellowships in epidemiology, laboratory science, and informatics; the Epidemic Intelligence Service and other training programs that meet similar objectives.
PPHF: HRSA Workforce Funding

Preventive Medicine and Public Health Training Grants
Grants to schools, hospitals, and public health departments for preventive medicine and public health residency training and assistance to trainees.

Public Health Training Centers
Funds 37 schools of public health and other programs to strengthen the technical, scientific, managerial and leadership competencies and capabilities of the current and future public health workforce.
ACA Funding Going to Communities

- Community Transformation Grants
- National Public Health Improvement Initiative (states and 7 cities)
- Community Health Centers
- Home Visiting
- Accountable Care Organizations
Community Transformation Grants

• In 2011, $103 million to 61 state and local government agencies, tribes and territories, and nonprofit organizations in 36 states

• In 2012, the CTG program was expanded to support areas with fewer than 500,000 people in neighborhoods, school districts, villages, towns, cities, and counties. Approximately $70 million was awarded to 40 communities in 27 states

• Twenty percent of CTG grants go to rural and frontier areas.
Community Transformation Grants

Tuolumne County, California

• $237,000/year (part of a $5.9 million grant for small/rural counties)

• Collect data on smoking rates

• Discussion of regulations for outdoor common areas

• Addressing physical activity: widen and extend Dragoon Gulch Trail, a 2.5 mile loop on the city’s periphery, so it connects to Sonora High School and the downtown commercial district.
Community Transformation Grants

Tuolumne County, California

Community partners:
- City of Sonora
- Community Resources Agency
- Sonora Regional Medical Center
- Me Wuk Indian Health Center
- Tuolumne County Transportation Council
- Chamber of Commerce
- Area 12 Agency on Aging
- Columbia College
- Catholic Charities
Community Transformation Grants

- Oklahoma City-County Health Dept. is receiving $716,704 to serve an estimated 718,000 people
- With one of the highest rates of smoking related-deaths in the nation, Oklahoma County is establishing smoke-free multi-housing for more than 80,000 units in the community, reducing exposure to secondhand smoke for thousands of individuals.
Community Transformation Grants

- Complete the Streets Project: Incorporate active transportation plans into neighborhoods - CTG supports a planner to focus on these efforts
- Healthy eating at workplaces by 2014
Considerations for Local Health Departments
Considerations for LHDs

Be at the table or on the table
Window of Opportunity

Private Sector

Hospitals

LHDs

FQHCs/CHCs

United Way

Public Sector

NACCHO
National Association of County & City Health Officials
Considerations for LHDs

Get out and make friends

• Non-profit hospitals
• Accountable Care Organizations
• Community Health Centers
• Major employers
• Community stakeholders
Affordable Care Act, Section 9007

Non-profit hospitals have to:

- conduct a community health needs assessment once every 3 years – first must be completed by end of tax year after March 23, 2012;
- adopt an implementation strategy;
- take into account input from community stakeholders, including those with special expertise in public health; and
- make the community health needs assessment widely available to the public.

- Failure to comply results in tax penalty of $50,000 per year
Community Health Needs Assessment

Percentage Distribution of LHDs, by Participation in Community Health Assessment

- Yes, Within the Last Three Years: 43%
- Yes, More Than Three But Less Than Five Years Ago: 15%
- Yes, Five or More Years Ago: 17%
- No, But Plan to in the Next Year: 9%
- No: 16%

n=2,091
Source: 2010 Profile of National Health Departments
Community Health Assessment
CHNAs Challenges and Opportunities

Challenges
- Conflicting motivations
- Resource intensive
- Data availability and timeliness
- Ownership of data
- Implications of assessment data
- Overlapping jurisdictions
- Aligning with existing processes

Opportunities
- Greater need to conserve resources, work together in collaborative models
- Systematically look at need across geographic areas
- Working collaboratively with many partners, opportunities for alignment, collective impact
Considerations for LHDs

Decide if you’re in or out

• Will you continue to provide primary care?
• Can you develop billing systems and other revenue sources?
• What kind of workforce and technology will you need?
• Integrate “specialty” clinical services such as SBHC’s, TB clinics, family planning, STI testing/treatment, and nurse home visiting into ACOs and medical home models
Considerations for LHDs

Educate on what you do and how you can help

- Surveillance and data analysis of both patient and population data
- Integrator and convener
- Community outreach workers
- Measurement and Evaluation
- Outreach and enrollment
- Spreading Best Practices
- Policy work
Considerations for LHDs

Be engaged

• At the state level
  • Development of exchange
  • Medicaid expansion
• At the federal level
  • Implementation regs
  • Apply for funds
  • Defend ACA investments such as PPHF
  • Defend funding for categorical programs
Resources

• NACCHO: http://www.naccho.org/advocacy/healthreform/index.cfm
• Department of Health and Human Services: http://www.healthcare.gov/
• Kaiser Family Foundation: http://healthreform.kff.org/
• GWU and RWJF’s: http://www.healthreformgps.org/
• Families USA: http://www.familiesusa.org
Contact Info:

Eli Briggs
Government Affairs Director

ebriggs@naccho.org
202-507-4194
Effects of the Election on Future Implementation of the ACA

Q&A

Type your question in the Q and A panel.