What is Happening with Healthcare Reform?

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Obamacare: A 30 Second Recap

• Three goals
  – Expand coverage to 70% of the uninsured
  – Cap rising Medicare costs
  – Encourage innovations in healthcare delivery

• Maintain existing private health insurance market

• New taxes to subsidize health insurance for low income Americans
What is Happening For Sure?

• Insurance Market Regulations
  – No pre-ex exclusions for children
  – No copays for an array of preventive services for Medicare enrollees; likewise for new plans in under-65 market
  – No insurance rescission
  – No lifetime caps
  – Children up to age 26 covered by parents’ plan
  – Individual and small group insurers must spend 80%+ of premiums on medical expenses

• None of these require funding and all are popular with Democrats and Independents
What’s Happening (continued)

• High risk pool for uninsured
  – Temporary “fix” until 2014 roll-out of insurance exchanges
  – Large subsidies, but individuals must still contribute $000s
  – Mimic state risk pools that have failed to attract substantial enrollees and often succumbed to adverse selection
  – Few enrollees thus far
What’s Happening (continued)

• 50% discount on Rx in Medicare Donut hole
  – Donut hole in original Medicare Part D legislation largely as a budgetary maneuver
  – Seniors usually paid higher prices than others who obtained drugs through PBMs
  – Rx companies have agreed to discount Rx to seniors in exchange for political considerations

• End of life counseling
  – Medicare will pay for an annual consultation on end-of-life issues (e.g., advice on preparing a living will)

• Bonus payments for primary care under Medicare
What Seems to Be Happening?

- Health Insurance Exchanges
  - Centerpiece of reforms
  - National rules, state implementation
  - Carrot and stick to encourage enrollments
  - Risk adjusted payments to insurers to encourage participation
  - Several states (including Massachusetts and Utah) have or are organizing exchanges, even though federal rules/subsidies will not begin until 2014
  - Remains to be seen if exchanges can succeed without subsidies
What Seems to be Happening (cont’d)

• National Integrated Electronic Health Records
  – Long a goal of health policy wonks
    – Work began under President Bush and has bipartisan support
  – Many hospitals and nearly all other providers do not currently use EHR; those that do have minimal interoperability
  – National standards are finally being finalized
    • Standards established by providers; will EHR also benefit management?
    • Will Congress authorize $15 billion in subsidies? Even this is not enough for widespread adoption
What Seems to be Happening (cont’d)

- Accountable Care Organizations for Medicare (and the private sector?)
  - HMOs for the 21st century
    - Asymmetric risk bearing by providers
    - Likely to lead to the types of access and service restrictions that led to the HMO backlash
  - Providers are vertically integrating in anticipation of competing for Medicare ACO dollars
    - Consolidation raising substantial antitrust risk
    - Providers are seeking antitrust safe harbors
    - These also seem to have bipartisan support
- Medicare payroll tax increase for high earners
  - Slated to begin in 2013, pending 2012 election
- Medicare Managed Care is being marginalized
  - Republicans will try to refund these plans
What Remains In Doubt

• Constitutional Challenge to Purchase Mandate
  – Law requires individuals to purchase insurance or pay a fine
  – Does this run afoul of the Commerce Clause?
    • Commerce Clause allows Congress to regulate business with a substantial interstate component
    • Does it cover mandates to purchase?
    • Does health insurance have substantial interstate component?

• Will Congress release funds for insurance purchase subsidies?
What’s In Doubt (continued)

• Comparative Effectiveness Institute
  – Aims to reduce costly practice variations and overutilization
  – Establish treatment guidelines based on CEA
  – Decried as “death panels”
  – Will Congress authorize funding?

• Provider payments
  – Reductions in planned Medicare fees were the major element of cost containment
  – Political football and impossible to predict
What’s Next

• Antitrust “reform”
  – Congress will not rewrite antitrust laws
  – Decisions to pursue specific cases are political
    • AG (in DoJ) and Commissioners (in FTC) must approve action
    • Expect some “trial balloon” cases against insurers (e.g., Michigan Blue Cross) and large provider systems

• Payment reform
  – More pay for performance under Medicare, with associated quality metrics filtering into private practice
What’s Next (continued)

• Continued demise of employer-sponsored insurance
  – New law has rules limiting ability of employers to drop existing coverage in favor of exchange
  – New firms will have little reason to offer insurance and existing firms may reincorporate, etc., in order to skirt the law
  – If exchanges work, employer sponsored insurance will wane
  – Will this prompt a reexamination of exchanges?