Health Care Reform: ACOG Perspective
October 2011 Update

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I have no disclosures.

Objectives

- At the conclusion of this presentation, the goals of ACOG’s involvement and continued involvement with the health care reform movement in the past few years should be clear.
- At the conclusion of this presentation, the short and longer term outlook for implementation of health care reform may be clearer.
A year ago this week, President Obama signed the health care reform bill into law. Half the country cheered, and the other half booed and the debate has not let up. Legal attacks on the law’s constitutionality are headed to the Supreme Court. If it survives that hurdle, there is little doubt the law will be a central issue in the 2012 presidential campaign.

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What Was ACOG’s Role?

ACOG’s Dual Missions:

➢ **Women’s Health** (Try to ensure improved health care for the population we serve)

➢ **Practicing Ob-Gyns** (Protect “best practice” for Ob/Gyn’s)
ACOG’s Campaign

- 2007: Health Care for Women, Health Care for All Campaign
  - Gov’t Affairs Committee/Executive Board Approved
  - Introduced at 2008 Congressional Leadership Conference (CLC)
- ACOG’s 5 Essentials
  1. Guaranteed Maternity Coverage (from MaternaCare in 1971)
  2. End Pre-Existing Condition Exclusions
  3. End Gender Rating
  4. Develop Medical Home for Women
  5. Enact Medical Liability Reform

Uninsured Rate Among Nonelderly Women by State, 2006-2007

Uninsured Women

- 13% of pregnant women are uninsured
- 20.4% of women of childbearing age (15-44)
  - > ¼ of all the uninsured (27.2%)
  - 17.8% of all Americans under age 65
  - Clearly, women, especially those of childbearing age, carry the burden of the uninsured!
Negative Effects of No Insurance

- Increased mortality from breast cancer (30%–50% more likely to die); 36% fewer uninsured women had a mamm in the last 2 yrs.
- Women are 3 times less likely to have had a Pap test in the last 3 years, with a 60% greater risk of late-stage cervical cancer diagnosis.

Bottom line: Women without insurance have been receiving less than optimal care and Ob/Gyn’s were having fewer chances to intervene in that care.

ACOG Health Reform Principles

1. Cover everyone. regardless of citizenship or residency status.

2. Guarantee benefits.
   - Promote prevention, especially prenatal care and contraception
   - Medical home and core services for women (PAP, MMG)
   - Guarantee benefits to all women, regardless of source of coverage, income, employment, health status, or where they live.
ACOG Health Reform Principles

3. Build on our current system
   - Engage employers, individuals and government.
   - Promote private insurance market reforms.
   - The more robust our private insurance system, the less reliance on public programs.

ACOG Health Reform Principles

4. Make coverage affordable.
   - Small businesses, the self-employed and low-income families
   - Reduce administrative costs
     - Fix our broken medical liability system

ACOG Health Reform Principles

5. Enhance quality and patient safety.
   - physician-driven quality programs
   - health information technology (HIT)
   - effective evidence-based treatments
SGR and MLR

- Health Care Reform Cannot Be Built On A Broken Payment System (SGR) or a Broken Liability System (MLR)
- Repeal the Medicare SGR
- Enact Medical Liability Reform (perhaps a unique opportunity with budget cut mandates and the "super committee" in Congress; need "only" 50 votes in Senate)

ACOG Women’s Health Legislation

Resolutions introduced in 2008 and 2009 (110th and 111th Congress)

- Standard for women’s health in any health reform bill.
- Resolutions Introduced 2008 and 2009
  - Rep. Jan Schakowsky D-IL
  - Sen. Debbie Stabenow D-MI

H.R. 3200

Introduced July 14, 2009: 3 Committees

“High Water Mark” (Lucia DiVenere)
- Maternity coverage for every woman in every plan
- Medical home for women
- Ending gender rating and pre-existing condition exclusions
- Repeal the SGR
  - Eliminate the “cliff”
- No ultrasound cuts
- Voluntary participation in the public option
- Additional Payment for ob-gyn participation in Medicare, the public option and Medicaid.

What’s Missing: MLR!

This was the only legislation regarding HCR that ACOG supported!
Christmas 2009

- House Bill: HR 3962 (passed 220-215 on 11/7/09)
- Senate Bill: HR 3590 (passed on Christmas Eve 60-39)
  w MMG amendments by Barbara Mikulski (D-MD) and Olympia Snow (R-ME)
  - Note: Both passed by narrow partisan margins
  - Note: Both "respectfully opposed" by ACOG, especially the Senate Bill

FINAL Senate Bill: H.R. 3590

"ACOG ... must oppose the bill ..."
- Good with respect to Women’s Health BUT
- No SGR Repeal
- No Meaningful MLR
- Independent Payment Advisory Board (IPAB)
- Federal Reimbursement for CPMs in Freestanding Birth Centers
- No Guaranteed Coverage of Well-Woman Visit
- Much More........

Next Chapter........

- Senator Edward Kennedy (D-MA) had passed away 8/25/09
- Seat had been a Democratic stronghold for years (Paul Kirk-D)
- On January 19, 2010: Scott Brown (R-MA) elected!
- Gone is the 60 vote filibuster proof Senate!
ACOG’s Congressional Leadership Conference—late Feb. ‘10

- Bottom Line: House Passes Senate Bill (PPACA), with no changes, signed into law March 23, 2010.

Decision Time (March 15-25th, 2010)

- House Passes Senate Bill (H.R. 3950) 3/21/10 by vote of 219-212
  - Signed into law March 23, 2010
- House also passed “fix-it” bill (H.R. 4872) 220-211
- Senate passes “fix-it” bill H.R. 4872 in “reconciliation” 56-43
- Passed in House again by 220-207 vote on 3/25/10 (because of Senate challenges that were upheld)
- Passed in Senate 53-47

9 Benefits to Ob-Gyn

1. Medicaid payment for smoking cessation counseling/treatment.
2. National direct access to ob-gyn care.
3. Easier Medicaid coverage of family planning.
4. Maternity and women’s preventive care mandated in all health plans.
5. Continued use of ultrasound without cuts.
6. Standardized HIT.
Benefits to Ob-Gyn, cont.
7. Insurance reforms:
   - no preexisting condition exclusions
   - no gender rating differences
   - no 9 month waiting periods
   - no annual lifetime limits
   - no rescissions unless for fraud.
8. Research into post partum depression

3 Problems for Ob-Gyns
1. Perhaps promotes increased integration, hospital employment, and large practices. (24% of ob-gyn practices are solo.)
2. Abortion coverage in Exchanges. (Health plans have to inform enrollees of abortion option in plans, and enrollees have to write two checks. States can bar abortion coverage in the state’s Exchange.)
3. Increased inclusion of lay midwives: In freestanding birth centers.

8 Problems for All MDs
1. IPAB, the 15 person Medicare cost-cutting body (appointed; minimal over site) with blanket authority to recommend MD cuts. Our top repeal priority!!
2. Mandatory participation in PQRI (Physician Quality Reporting Initiative---CMS program)
4. Medical homes and accountable care organizations: pro and con
Problems for All MDs (con’t)

5. “Value based payment modifier” that will reduce payments to “low quality” physicians, and give those payment to “higher quality” docs (directed by Sec. HHS with recommendations endorsed by a “consensus” organization) to be in place by 2015

6. Public Physician compare website—up and running—PQRI data

7. No tort reform

8. No SGR repeal

Side Bar Issue: SGR

- SGR Repeal: Passed by House in 2009
  - In Original House Bill (HR3200)—Remember???
  - In Second Stand-Alone Bill (apart from HR3962): ACOG Fellow Rep. Michael Burgess, MD
    - ONLY R to vote for SGR Repeal – Passed House 11/09
  - Senate considered its own version (S.1776 Stabenow D-MI) Not Passed 47-53 (10/09)
  - ACOG CLC #1 “Ask” in early March 2010
  - Both House and Senate have “kicked the can” down the road until Jan 1, 2012—30% cut scheduled!!!

Side Bar Issue: MLR
(proposed in HCR)

- Lawyers Spent Enormous Resources to Keep MLR out of HCR
  - House: Incentive payments to states that enact laws for alternatives to traditional medical malpractice litigation laws, as long as no limits to attorneys’ fees or caps on damages.
  - Senate: Grants for demonstration programs of alternatives that enhance patient safety and improve access to liability insurance.
  - White House: Provided $50 million for Agency for Health Care Research and Quality to provide grants for patient safety and liability alternative initiatives.
Let’s take a look at the “landscape” in Washington

112th Congress: Freshmen

- 89 freshman in the House; biggest freshman class in history
- Many ran against institutional leadership
- 73/89 (82%) are members of the very conservative Republican Study Committee (RSC), mostly Tea Party freshman
- 5 New House Doctors, with Ob-GynPAC help, including Nan Hayworth R-NY, -wife of ACOG District II Chair (Scott Hayworth)

Senate Disappearing Centrists

- About half dozen “centrists” retiring
- 3 other “aging” centrists
- 2012 Seats Up: 10R, 21 D, 1I
  - “Vulnerables”: 2R, 5D
So, Where Do We Go From Here?

- Let’s look at three possible future pathways
  - Supreme Court will declare the PPACA “unconstitutional” (or parts of it)
  - Congress will “overturn” PPACA in the 113th Congress (following the November 2012 Elections)
  - PPACA will remain law and be “modified”

PPACA in the 112th Congress

- Legislate! Appropriate! Investigate!
  - Drum beat for 2012 elections
  - House passed HR 2 (full repeal of PPACA) on Jan. 19, by 27 votes.
    - Failed in Senate Feb. 2 by 13 votes
  - House chips away: Amendments added to budget bill to ban federal funds for HCR staffing/implementation/legal defense

PPACA in the 112th Congress

- Replacement legislation introduced
  - HR 5 (MLR) Gingrey (R-GA) FACOG 134 co-sponsors; passed out of both committees of jurisdiction Judiciary Committee and Energy and Commerce, Subcommittee on Health (Lisa Hollier testified for ACOG); yet to come to House floor; expected to die in Senate
  - HR 452 (IPAB Repeal) Roe (R-TN) FACOG 205 co-sponsors; yet to move in committee (Energy and Commerce and Ways and Means) Committee; bipartisan support
  - S-668 Cornyn-R TX (IPAB Repeal) 32 co-sponsors; likely going nowhere with Democratically controlled Senate
  - Several bills to repeal funding or change mandatory funding to discretionary
IPAB Repeal

- ACOG and coalition of 16 specialty organizations
- 35,000 physicians lobbying actively for repeal
- Cut Medicare spending starting 2015
  - Only provider cuts (primarily physicians during the first 5 years - 2015-2020)
  - Primarily physicians
- 15 unelected individuals
- ACOG’s #1 reason for opposing the final health bill
- Targeting “supercommittee” members to include in deficit recommendations

Current Select Issues
(Newer Focus in D.C.)

- Supreme Court Decisions
  - PPACA challenges
  - Medicaid
- Deficit Reduction (“Supercommittee”)

Federal Court Action Aimed at Repealing PPACA

- At least 4 legal actions heard by Federal Judge Panels in appellate courts
  - Requirement that individuals obtain health insurance violates the Commerce Clause of U.S. Constitution ("individual mandate": buy coverage or incur tax penalty)
  - Some states argue that while Congress has the power to regulate activities that substantially affect interstate commerce, Congress cannot compel an individual to voluntarily enter the stream of commerce by purchasing a commodity on the private market.
Federal Court Action Aimed at Repealing PPACA (score card)

- 6th Circuit Court of Appeals (Cincinnati) upheld
- 11th Circuit Court of Appeals (Atlanta) (FL + 26 others) struck down “individual mandate”
- 4th Circuit Court of Appeals (Richmond) “threshold legal issues barred an immediate ruling” (plaintiffs lacked standing)
- Appellate Court of the District of Columbia

Federal Court Action Aimed at Repealing PPACA

- U.S. Supreme Court as Final arbiter
  - Justice Department petitioned the Court to review the decision of the three-judge panel 11th Circuit in Atlanta (9/28/11) – new term started October 3
  - Decision by June 2012 (???)
  - MA and CA filed amicus briefs in defense of ACA basically citing inability to effect health care without everyone being covered
  - At least 27 other states oppose ACA
“Supercommittee” and Deficit-Cutting

- 6 Dems and 6 Reps charged with cutting $1.5 trillion from deficit over 10 years
- Proposal faces up-or-down vote in Congress
- If fails, automatic $1.2 trillion cut—$500 billion from defense and $119 billion from Medicare providers—hospitals, docs, GME, etc.
- CBO scores big savings for liability reform

“Supercommittee” and Deficit-Cutting

- Include MLR
- Health Coalition on Liability and Access (HCLA); 30 groups
- MLR framed as integral to balancing federal debt
- CBO: comprehensive reform saves $62.4 billion over 10 yr
- $250,000 cap, etc.
- Include permanent repeal of SGR
- “Fix” in 2005 $48 billion as opposed to $300 billion today (over ten yrs)
- Include repeal IPAB
Medicaid Reimbursement and Access
- 2008: State of CA enacted a 10% Medicaid reimbursement cut
- Ninth Circuit Court of Appeals sided with beneficiaries and providers (against the State of CA) saying cuts were illegal and imposed an injunction
- Individuals vs federal gov’t (only federal gov’t can determine whether the rates paid to providers are proper under federal law)
- Federal agency makes that determination (which it did and found a violation; process now under appeal)

Medicaid Reimbursement and Access
- 22 states support CA, as does the Obama Administration and National Governors’ Association and National Conference of State Legislatures
- “Equal Access” provision not enforced since 1997; therefore, the courts become the sole “enforcer”
- 41% of births nationally are medicaid; 71% of family planning services
- In 2014, broad expansion of state Medicaid services under PPACA
- Supreme Court agreed to hear case this term; opening arguments October 3rd; decision by spring 2012 (?)

ACA Ensures Preventive Services for Women (8/1/11)
- Reflects several years of work by ACOG’s advocacy department/Gov’t Relations
- January 2011-testimony by Dr. Hal Lawrence to the IOM-as directed by HHS’ Health Resources and Services Administration (HRSA)
- Summary 2010 ACA released new insurance market rules requiring all new private health plans to cover services like MMG’s, colonoscopies, B.P. checks, PP depression counseling, childhood immunizations, etc w/o co-pay, deductible or co-insurance
ACA Ensures Preventive Services for Women (8/1/11)

- Well-woman visits
- Screening for gestational diabetes
- STI counseling
- HIV screening and counseling
- FDA-approved contraception methods and counseling
- Breastfeeding support, supplies, and counseling
- Domestic violence screening and counseling

*New private health plans will be required to cover these services without cost sharing (co-pay, co-insurance) for private plans starting 8/1/2012 (not Medicare or Medicaid)
- Opt-out: Insurance from religious institutions
- Cost sharing for branded drugs

Broad strokes” for OB/Gyns

- Very likely increase in “Accountable Care Organizations”—hospitals buying physician practices
- Very, very likely increase in number of consumers of health care/patients
- Each with some form of insurance—how basic or elaborate the coverage is yet to be determined

Concluding Slide

- 2010 Law was just the beginning of Health Reform.
- Years of Regulations, Implementation, Corrections, and Expansions ahead.
- ACOG remains engaged in all aspects as we represent your interests and the interest of our patients
Lessons Learned

- Gosh, how opinions do vary!
- Legislators can not help “you”, if they are not RE-ELECTED!
- Partisanship on the Hill is NOT over exaggerated!
- MLR and SGR repeal are essential to health care reform—We can’t stop fighting!
- ACOG’s Department of Government Affairs is superb!

PPACA in the 112th Congress (Cont.)

- HR-452 (Repeal of IPAB)
  - 135 co-sponsors, including 5 Dems
  - Questionable fate??
- S. 668 (Repeal of IPAB) – introduced early April ’11
  - Cornyn R-TX and Hatch R-UT
  - Some 9 original Republican co-sponsors
  - Likely not going anywhere