JORDAN'S JOURNAL 2011
The Reformation

Martin Luther was a crank, but no one had the nerve to yank his Theses from the door. Few could fathom what they're for, but they started a religious war that still creates debate from many floors. He spoke to abuses in the system, and while we couldn't list them now, they created quite a row when tossed with ever higher costs incurred to what occurred when peoples' lives were saved. On a less religious note, we're still concerned with what we note to be the hymns of praise in days of prices raised to the saviors still among us. We don't say doctors make too much or that compassion's touch should be missing from the mercy angels minister in our time of need. But carriers' clear greed has forced us to accede to having changes made in the way that they are paid so that more of us can benefit from plans. Thus the reformation to the way in which our nation offers care and where we share the total burden.

History. We thought we had our fill of prescriptions that former leaders followed. FDR did not go far, settling for Social Security. Truman had no room to pay when bombs were dropped in parallel with police actions. Ike didn't like it, Kennedy couldn't spike it when he volleyed balls in his short campaign. In the reign of LBJ we only got part way as Medicare gave docs a scare then sent costs through the roof. As proof became apparent, a Republican tried to parent a bill to bend us to government's will. But others put a Nix on that, and even Clinton fell flat, though some alterations were tailored. By then we were too Bushed to bear the weight of any overhaul. It was not until the call was heard and greater price pain was incurred that we knew the time so long deferred for reform was now upon us. The ACA was DOA but Obama had the final say.

Ballots were eventually cast, the referendum had not passed, and whether this new law will last is in the "right" hands. Though left to know what others do, will the new Congressional crew be able to disable what was wrought? The thought is that they'll take a stand but there is still too much demand to take a liberal view of what we need. Indeed it shouldn't come to pass that the law is totaled and en masse, as parts of what we have are worth protecting. But those electing to forget must reason it ain't over yet and so the stage is likely set for a battle for two years. What is kept and what is dropped depends on where the drama's stopped, and how Obama's hope has flopped when the curtain's raised on costs.

Just as any religious tide, we know that what will mark this ride is anger, fears and tears of those who lose. It's more a matter of what we choose and whose interests will be best protected before we know who's best elected to govern the speed at which we change.

Anyway, I keep picturing all these little kids playing some game in this big field of rye and all. Thousands of little kids, and nobody's around – nobody big, I mean – except me. And I'm standing on the edge of some crazy cliff. What I have to do, I have to catch everybody. If they start to go over the cliff – I mean if they're running and they don't look where they're going I have to come out from somewhere and catch them. That's all I'd do all day. I'd just be the catcher in the rye, and all. I know it's crazy, but that's the only thing I'd really like to be. I know it's crazy. (J.D. Salinger, d. 2010 – Catcher in the Rye)

FEDERAL FUMBLING

I believe there is something out there watching over us. Unfortunately, it's the government (Woody Allen)

I am not the problem. I am a Republican (Dan Quayle)

(on the CBO health care projections) – That's right. It will reduce the deficit by significantly increasing federal spending (Peter Pitts)

Contrary to the mythology, believe it or not, it turns out that I would love to eliminate programs that don't work (President Obama)

The ACA was DOA
Before Blue Cross' resurrection
Our Anthem sung and change was wrung
In a healthy insurrection.
Obama's call has care for all
With a promise of lower cost
But projections met objections
And budget's battle moves are lost.

The backroom deals lost on appeals
Charles Rangeled with Bronx cheer
While Tom Delayed the mess he'd made
Until to prison Texans steer.

The summer spill which costs us still
Made the Brits look none too slick
While distant beach showed rivals reach
For some principals that would stick.

Were lessons learned when voters turned
Away from Democrats' mission?
With Pelosi put out and Republican clout
Will Boehner deign her permission
To sit at the table and further enable
A host of party platforming,
Or sit in a corner where few folks may mourn her
While the Congress is reforming
And true factions stay split while they pare to outfit
A Presidential garrison
Do we have contenders or Sarah's pretenders
Who will pale in comparison?

Sarah Palin drones on, boring back and forth between the poles of political unity and the opportunity to make us pay for her success, crossing the Palin nation, our eyes on the Tea party with no sympathy left for liberal labors and the details which bedevil us. Reform is still warm but the swarm of protest foretold leaves us divided, unable to cope with the promise of hope as fears multiply and anger lets fly in the face of financial failures. Wall Street's paved with good intentions, the rich rewarded with tax extensions, and now we look with apprehension on what it will take to make progress in a Congress where different majorities rule. That's odd because across the pond old enemies have formed a bond, where David's Cameron the finish line but Clegg Nicked him and so the time has come for compromise and a ruling Lib-Lab coalition. So the battle brews between taxation and representation and resentments harbored far too long may make the revolution strong, but there are steep impediments. Obama is inclined to reach…across the aisle, but any smile may belie the truth of the consequences of this election. The stage is set for two years hence, and no one stands astride the fence as positions are defined, refined and confined to thoughts of fuller victory. Solutions for stimulus will be proposed, what precipitates for health care will be opposed and a Republican strategy must be supposed from the pundits and prophets at a loss to find a formal framework. New party leaders may emerge and campaign promises will converge as the beauty contest convenes, creating scenes as we find the means to end this well.

From the global to domestic the problems faced by any political body are daunting. Now at mid term we see key aide defections, an aftermath of elections and many corrections still needed. Many major bills were passed but review will not be passed over as Republicans seek redress and will address much of what got by the first time. It's a question of how much they can do that upon review will reflect on them favorably. Financial and health reform are under fire while new leaders aspire to show their mettle and steel for 2012.

Affordable Care Act

Part of the ACA relied on offsetting costs with cuts but we lack political guts on:

1) 1099 Repeal: The ACA expanded reporting of independent income to include services *and* goods worth over $600 to a business provided by an individual *or* a business. The President wants this onerous administrative burden repealed, as does the Chairman of the Senate Finance Committee, but the Senate won't change course until a new revenue source can be found to replace what gains they believe this rule will reap.

2) Medicare: It can't be fixed. Even the CMS, which runs it, acknowledges $47 billion in annual questionable claims (10% of its total budget). But balancing Medicare expenses was a centerpiece of the Act – and yet Congress declined to enforce cuts of 21% on physician reimbursement (perhaps because they'd lose their own physicians). Thus they win the support of doctors and their patients – but at what cost? ($19 billion it is said)

As they fight to get it right the fight goes on to delay, repeal or rework particular passages, all of which will require Republican attention. Some restraint has already been practiced:

1) W-2 Reporting rules on the value of health coverage have been pushed to 2012
2) Grandfathering rules allow an employer to change carriers
3) Non grandfathering will, for now, NOT trigger a discrimination test

OK, that's 3 out of 300, and regulators have also adopted at least 18 new rules since the ACA was enacted. Here's our view on some of the other parts we see as problematic. Note that these could have been included in our "business" section as most of them affect the cost of coverage in the short and long term (and no, not as a potential decrease):

1) Grandfathering: Even the relaxation of the rules (#2 above) does not fully help, as some carriers are refusing to recognize their takeover as being exempt, owing to the minor provisions and plan differences which, collectively, could constitute sufficient change. This combines with the prevailing opinion that most plans will not be grandfathered. This has two potential consequences:

    a) The additional cost to add full preventive care

    b) Perils of discrimination testing – fortunately the Department of Labor and Internal Revenue Service have realized that they did not have their regulations well formed for purposes of testing on fully insured plans and have postponed this requirement until they receive comments (set to expire March 2011) – we know that it can present problems but for now we do not know their full potential extent. What we do know is that the previously allowed split of contribution and eligibility for different classes of employees can be presumed to end, particularly since the "class" of those considered to be "highly compensated" (and thus subject to penalty) has been widened to include the top 25% of all paid employees in an organization

2) Annual and Lifetime Limits: These are being eliminated, some voluntarily by carriers, but they are technically only applied to "essential health benefits" which have not yet been defined. Thus some of the limits Congress sought to eliminate may still be allowed to exist for those services that are not considered "essential" Carriers, meanwhile, are caught in the middle as the change is supposed to exist for all plans renewing October 1, 2010 and forward but we still lack specificity.

3) Pre Existing Conditions – Children: these may no longer be applied on either group or individual plans. This will cause the cost of group plans to increase when combined with the enfranchisement of dependents to age 26 (which in itself will cause some increase in cost) and has already caused some carriers to drop out of the individual market, and may see some increased costs by allowing some conditions to be covered where they would not be previously.

4) Rate Increases: The Health and Human Services Department is developing guidelines for how they will view rate increases charged by carriers and what can be constituted as reasonable. The problem, as seen in some states where rate increases have been challenged (California and Massachusetts primarily)

5) Health and Human Services Web Site: this was created (www.healthcare.gov) on July 1, 2010, but the review of many brokers and carriers is that there are certain half truths and misperceptions posted here. These concern the overall cost of care, the effect that the Obama health care plan will have on costs, and how the market operates in general. All general health and comparative information is a good thing, and the creation of this site a good idea – but not if intended to provide a continuous stream of government propaganda.

6) The Uninsured: a new pool was created to enfranchise the uninsured, but the amount set aside was too little ($5 billion) but even that amount was not tapped. In California only 2% of the amount allocated was taken – maybe the new web site should have been devoted to pushing this possibility on an uninformed public.

7) Medicaid (Medi-Cal in California): There have been some waivers and accommodations allowed (California notably, with an additional conditional grant of $10 billion) but there is still the lingering issue of what will happen to state budgets without sufficient funds to continue with the increased demands posed by the new law.

The lame duck session proved more than it was quacked up to be (sorry) with bills flying fast and many votes cast eider up or down for some things to last:

1) State Rights: Wyden and Brown proposed "Empowering States to Innovate Act" – representatives of the two more progressive states on health care reform want states to continue as the incubators of change. Another, similar bill by Rep. Rep. Roger Wheeler would allow state officials to challenge any federal regulations before they go into effect.

2) Year End Tax Bill (HR 4589)

   a) Extends current income tax, capital gains and estate tax rates for two years
   b) Dividends are still to be taxed as capital gains
   c) Added bonus depreciation for investments in new capital equipment
   d) Extends Section 179 Depreciation with full deduction up to $125,000 to 1/1/12
   e) ONLY for 2011 – cuts FICA from 6.2% to 4.2% (self employed 12.4% to 10.4%)
   f) Extends Coverdell Education Savings Account through 20912
   g) Extends unemployment insurance for up to 99 weeks

How this bill reflected our will is unknown but we were shown what Republicans want when they don't ask but tell in loud overtures, though overturned with the military spurned in their bans on gay rights and the fights giving fits to the START treaty. Now Joe's Biden his time to make

Senators climb the walls erected by the House which elected enough of those with sterner stuff to oppose those who pledged so much money – now it's all on the table, which has turned.

Before November, though, Congress did remember to show some moves with major laws and minor clause to update what they'd thought to state in previous sessions:

Financial Reform

It was a big deal, like those they sought to prevent happening, the event of a meltdown enough to grab attention and create enough tension to avoid the pretension of "consumer rights" and full disclosure and reach closure on the financial mess, at least until the next one:

1) Lenders practices went into blenders and conflicts may no longer be mixed into the equation
2) The FDIC limit was raised to $250,000 and made permanent (but who had that much left?)
3) More transparency to derivatives, derivative of what the original laws were made to protect
4) Monitor, register, narrow investment ranges, require more capital to asset ratio
5) And, of course, a new Federal agency (Stability Oversight Council) was created

FMLA

Department of Labor Guidance reduces the conditions an employee must meet to take FMLA leave to care for a child with whom the employee lacks a legal or biological relationship, acting in loco parentis. Under the old rule, FMLA said only allowed if a worker is acting in place of a parent for a non biological child AND is responsible for day to day care and financial support of a child. Under new law, such entitlement is allowed if the worker is responsible for day to day care or financial support of the child – so they removed the initial qualifying clause

GINA

1) Prohibit use of genetic information in employment decisions, including those concerning hiring, firing, compensation, and terms and conditions of employment

2) Generally bars employers from requesting, requiring, or purchasing genetic information, other than to comply with the FMLA or similar laws, for use in genetic monitoring related to toxic substances in the workplace, or for DNA analysis for law enforcement purposes

3) Permit employers to request genetic information in connection with a wellness program, provided, among other things, that an employee consents to receive such request, and any financial inducement for providing such information is also available to employees participating in the program who do not do so

4) Require that genetic information be maintained as a confidential medical record, strictly limiting its disclosure

5) Provide broad remedies for individuals whose genetic information is acquired, used or disclosed in violation of GINA and protect employees from retaliation for exercising rights under GINA

HITECH

1) Changes “Business Associate” to explicitly include additional entities, PHI to provide that the privacy and security rules do not protect the individually identifiable health information of persons who have been deceased for more than 50 yearsand “workforce” to make clear that this term includes employees, volunteers, trainees and other persons who are under the direct control of business associates

2) Extends direct applicability of many of HIPAA Security rules to business associates – the proposed rules make clear that the law’s safeguards apply to business associates in the same manner as they apply to covered entities

3) Business associates may disclose PHI only as permitted or required by HIPAA privacy or enforcement rules, their BA contracts or other arrangements as required by law

4) Broad expansion of requirements to subcontractors of BA: named as BA also

5) Covered entities now liable for a violation by a BA even when they have a compliant BA contract in place, knew of no pattern or practice of violation and took appropriate steps upon discovery of the violation
6) HHS considers the proposed modifications to be material changes that would require covered entities to promptly revise and distribute their Notice of Privacy Practices

7) Effective date is 2/18/10 though HHS acknowledges that it is difficult to comply until after HHS has finalized its changes to the rules – thus there is a 180 day window to be in compliance with an additional one year transition period proposed for modification of certain BA contracts

Small Business Jobs Bill

1) One year rule that allows SE individuals to exclude the cost of their health insurance when calculating the amount of compensation on which they must pay Social Security and Medicare

2) A partial annuitization rule that makes it clear annuity payments made from partial annuitizations are subject to current law IRC 72 exclusion ratio rules

3) Allows taxpayers to convert certain retirement savings amounts to Roth 401k accounts as well as to Roth IRA

4) Creation of Roth 457 plans

5) Extends 50% bonus depreciation for one year

6) Allows for the exclusion of gains from the sale of small business tock acquired after the bills date of enactment and held for more than five years

7) Increases IRC 179 expensing limits for 2010 and 2011. Was due to be $250,000 for 2010 and $25,000 for 2011 but is now $500,000 (reduced if capital expenditures exceed $2,000,000)

8) Allows for a five year carry back of general business credits for small business

STATE STUMBLING

This is about saying we're going to fight this every step of the way and use every option possible (South Carolina Governor Elect Nikki Halley)

More Californians now have the security of health insurance – and lower health care costs for better benefits (Secretary of Health and Human Services Kathleen Sebelius)

California calls Code Brown, Meg was nuts to chase the crown
When the race was rigged in Jerry's favor
A barbaric yawp sounded, the flakes were finally grounded
As Moonbeams came to fruition's flavor

Arnold's reign has terminated and no gain was legislated
As we lay in a Golden State of decay
With the Democrats now in charge how soon until we're living large
Or will they weigh the value of delay?

Dave Jones didn't monkee around, aping gestures reformers found
Well done when he won the Commissioner's seat
Gavin knew some winsome charm would fail to raise an alarm
When the polls tolled his opponent's defeat

Some miracles will dissipate when Massed in a confounding state
Romney's omnibus Mitts handed health care obits
A premature death of their own
Obama used them as example before they had time to sample
The wears on their system (and how we can list them)
And the seeds of destruction they've sown

Jerry meandered in district, a sense that Whitman was only half right, blurring lines as she bayed in defense of voting records played, dismayed by the display of poor housekeeping in setting domestic policy. We gave Meg a byte at the Apple but her message did not compute and the repute she had for connections went rotten as she'd forgotten you couldn't Pay Pals or mere acquaintances to vote. Arnold's out, his clout diminished as he finished with a whimper after a career filled with shouts, shots and bangs (Maria's heir notwithstanding). We did embrace the case for care Obama dared, Exchanging legislation for a $10 billion donation to Medi-Cal, but still not credit for HSAs or other ways to cut costs and taxes. They tried to invalidate Prop 8 but it was stayed in place of opposition, while the position of the City's recognition of the uninsured was assured when the Supremes can't hurry love for this mission. So this mandate ends debate while the weight of AG's in other states is brought to bear on Obamacare.

Of course health care is off course in other regions, as legions of the disenfranchised surprised those who prized efforts to effect change, only to find coffers up in smoke, so the joke may be on us, as the US states that the nation should pursue state emulation. MASS confusion will reign, as Maine rode Dirigo to a needed stop and the Commonwealth finds its financial health in a-bay-ance. A glance at Obama's model warrants more a toddle than a race to embrace principles that are principally flawed, or arrest its development entirely.

Affordable Care Act: California Dreamin

So the left coast writes a new chapter in reform after Blue Cross' lack of tact forced Washington to act and quell the riot with quiet resolution. While revolting in its final form, it will keep the coals of debate quite warm, especially as California jumps ahead and shoulders the burden of getting first word in the Exchange.

Health Exchange – this time it's different:

The referent is the Health Insurance Plan of California (HIPC) which accompanied the first set of comprehensive rules in the country governing rate rules and issuance tools. We still have the tightest cost controls (rate bands ranging from .9 to 1.1), a robust market (7 major health insurance carriers), an existing exchange (California Choice), some MEWAs and trusts, etc. Interestingly, despite the size of the rate increases here, California has a lower cost per employee than the national average. Still there are some in Sacramento who view the sum as less than the whole of its parts, wanting to see if an alternate market with rules subject more to state control will provide a meaningful and cost effect means to end health care inflation. Unlikely…but here is where we are:

1) Most states have fewer active carriers than California, so what value does another "market," which, coincidentally, will use the same carriers in their exchange, provide?

2) Kaiser is a major and unique option in California, particularly in the north. How will they play in or out of the exchange, and can an employer have one plan inside and another plan like Kaiser, outside?

3) There is a tortuous route to find the values of the plans which have yet to be fully determined. How much will or can they vary from what the carriers currently offer?

4) It is rumored that the Exchange will not let carriers set rates differently for similar plans outside the Exchange – but how similar (and different?)

5) We could have different carriers choose to offer plans at the various levels – so could those not chosen write similar plans outside the Exchange, which rejected them, at a lower rate?

6) There are some design parameters which point to the allowance of an HSA, but no clearly defined rules that indicate they are indeed HSA plans

7) How will carriers react to employers who want to offer plans both within and outside the Exchange? Will employers be forced to choose?

8) What happens to those in the Federal Employee Health Benefits Plan (FEHBP)?

9) How much full or partial self funding will be written to avoid the Exchange altogether?

10) Will brokers be involved and to what extent? California's first Exchange experiment failed when brokers were belatedly invited to join, just as rates began to climb above the regular market

Of course, the Exchange could just be viewed as an alternative to the standard market and embraced or ignored were it not for the fact that the federal law says that the premium subsidies (which begin in 2014) are only available to those who participate in the Exchange. Thus an employer may not be able to keep a sufficient number of employees in their sponsored group plan, which could imperil its existence. And there are other concerns:

1) "Navigators" in the Exchange to help people choose from only five basic plans
2) Multi state plans must exist (at least two per Exchange)
3) A non profit association can set up an Exchange
4) Individual and group risk pools are combined (is that good or bad?)
5) Plan networks must include a base of Essential Community Providers (which themselves are not required to participate in the network)
6) Federal HHS is to establish broker participation standards – not the state
7) Plan designs are altered for lower income participants

And those are just the ones we know now

Rate Regulation: because each state should do its own

The Department of Insurance got involved when Blue Cross announced a 39% increase for individual plans, though no formal statute empowered any reaction. Now the Federal Health and Human Services (HHS) Department lays claim to rate oversight, while California tried to pass AB 2578 (introduced by now Insurance Commissioner David Jones), a law to do the same

High Risk Pool: giving a party to which no one came

Not every state created one, deferring to the Feds, but California did, adding to rules on extended COBRA, the Major Risk Medical Insurance Plan (MR MIP) and the large individual market which does not allow cancellations (except for fraud or non payment) after issuance and allows a great deal of latitude on medical conditions and consequent rate determination. The high risk pool was created for those both uninsured and uninsurable. What's interesting is that California had room for 20,000 applications – and received 450

Medi-Cal Miracle

New Federal rules put a burden on states to pay more for those who qualify for Medicaid (Medi-Cal here). California successfully applied for federal aid (federal money to protect us from a federal law) in the amount of $10 billion. In return, we agree to cut costs in the system. So we get money to save money – and what of cuts to care, or is this supposedly simply streamlining? And does that mean required movement of qualified individuals to managed care plans (you can bet it will – but who are those plans, who are they taking, and when will they tell everyone?)

Unique – What California is NOT Doing (no bandwagon jumping here)

1) Suing the federal government to block the individual mandate
2) Launching a bill for "Medical Reform Self Determination"
3) Changing its existing small group and malpractice reforms
4) Setting up a Single Payer system (yet)
5) Using a ballot proposition to invalidate federal health care reform

And when it's not about Federal Integration

1) HSA: California again failed to pass conforming legislation that would allow HSA plan contributions to be exempt from state taxation

2) Simplicity: A bill was introduced to both standardize and simplify plan offerings to just five designs. Carriers protested, citing a need to breed confusion (called "Competitive Advantage") while also offering low cost options which save money on the front end but can cost a considerable amount if someone actually needs to use the insurance

3) Extension: a bill to prolong premium payment grace periods to 50 days is defeated

4) Individual Rate Change: bill would have prohibited carriers from changing rates more than once per year (and so all of them did just that – man, there outta be a law)

And when it's not about us

As goes Maine, so goes Massachusetts? (what happened to Vermont?)

1) Maine's Dirigo plan is a "costly failure" according to Governor Paul LePage, who claims they have spent $160 million to cover 3,400 uninsured (the former Governor said that it was 32,000 covered without hitting the general fund at all)

2) The "Massachusetts Medical Miracle" faces empirical evidence of problems:

    a) 20% of the uninsured were initially exempted
    b) Premiums are unaffordable for many
    c) Provider shortages have been exacerbated
    d) No new carriers attracted to a stagnant market
    e) Governor Patrick is talking not just about cost controls but about state controls

3) Several carriers are withdrawing from state markets for special children policies
4) States are investigating carrier rate increases even without federal guidelines
5) Missouri Noncompromise: approved a November ballot measure to nullify the ACA
6) Arizona and Oklahoma passed “Health Freedom” ballot measures
7) All but 3 states (now 4, with California) are expected to lose money on Medicaid

And finally, at a time when there is growing uncertainty about the future role of the agent, the government has sought to address this by allowing states to apply for grants (starting in 2011) to create health insurance consumer assistance or ombudsman programs. Funny, we thought that was what we were supposed to do…

BUSINESS BUMBLING

What is a danger is that we stay stuck in a new normal (President Obama)
It's clearly a budget. It's got a lot of numbers in it (former President Bush)
Let them march all they want, as long as they continue to pay their taxes
(Alexander Haig, d. 2010)

Everyone's in recovery, despite distilled discovery
That the spirit of greed moves us still.
Sachs of Gold lined behind walls, the street picks up after falls
But where are the jobs we need to fill?

We won't trip on a double dip, this "spin" will strip us of our grip
On the formal measures which defeat our dance
The normal pleasures we knew we'd chance
When market faith that we'd employed saw prayers of hope and homes destroyed
But we plunge back in with baptismal trance
Washing a ton of past sins and enhance
Our capital position, to get in good condition
And regain our preapocalyptic stance.

Wiki Leaks, Facebook streaks past Google in past weeks
The net's broad cast for phishing's last attempt
Oracle sues when played the SAP, Groupon mustered a market cap
As the Abacus funds some Fab exempt
From care that where the money went is not where it should be spent
When cloud computing will reign contempt
On Micro earnings which go soft while web interests are held aloft
Until bubbles form and again we tempt
Fresh fate from forgotten failures.

Savings are being held in check as we continue to survey the wreck wreaked by forces misunderstood. Everything is bouncing back but we haven't started to attack the longer lines of unemployed. We've deployed the weapons the Fed Reserves for such occasions but we cannot budget further. Voters registered their disgust but it doesn't seem to be discussed as parties throw their favors to the same sides as before. Financial reform was still warm but still we did our business, and the last Tax Act confirms the fact the richer are no poorer. Inflation does not get a rise from the population, but has no relation to the cost of coverage, so the continuation of our estimation of ever higher numbers is unabated, though more freighted with political consequence. The truth is the numbers never lie, and despite assurance that insurance prices would be pushed, we're ambushed by prior policies and the ring of freedom that surrounds the sounds of politicians chiming in with their bull that bear little relation to reality. So there is no doubt that carriers are getting out and the clout that DC has will dissipate when they find the rates will rise at a premium.

Affordable Care Act

It may not apply to anyone, it may be the best tax credit that no one ever saw, but there it is anyway, ripe for the taking but not easy to obtain, the elusive fruit of labor's labors, a classic example of temptation, but one that may take more than one bite at the apple to get it to fall:

1) Only for groups of under 25 employees
2) Only when the average salary is under $50,000
3) Even at these levels, there is a phase out until you reach 10 or $25,000
4) There is a limit to the premiums counted ($4,628 single and $10,957 family)
5) Owners are excluded from the calculation (good) and the credit (not good)
6) Only count the amount paid by the employer
7) If take the credit, lose part or all of the deduction of the premium as a business expense
8) Can be complicated figuring out the average wages and full time employees
9) And THEN the credit is only 35% of the final amount (25% if non profit)

Another business bonus is the ability to take deductions for wellness programs. Like many programs, however, it needs to be "sold" and its value must be perceived past the most immediate rewards (e.g. premium reduction) which are generally not forthcoming. Instead, there must be a desire to help employees even if insufficient return on the cost of the program can be determined (and that's assuming you can determine the means of return at all) Of course, if you are eager to proceed, the government will be giving grants to small employers who want to set up a comprehensive program (2011 through 2015) – and as we approach the first year in which such grants are possible, no guidelines have been published

There is the possibility of avoiding discrimination testing on Flexible Benefit/Cafeteria Plans, but the cost of compliance may exceed the cost for failure to comply with the original rules. Patterned on the SIMPLE pension plans passed a few years ago, there is a base contribution that must be made on behalf of employees – 2% of annual compensation OR an amount that is not less than the lesser of 6% of each employee's compensation or twice the amount of salary reduction of each qualified employee (say what?)

While these may be given, there are also parts in the law where things are taken away:

1) Over the Counter Medications: first they weren't covered, then they were, now they aren't but maybe they are depending on the category. Overall, a good benefit made more confusing and how amusing it can be to figure out what is covered and how.

2) While this has been postponed until 2012, the implications are still clear – the government wants to know how much they have given away since they first allowed employers to deduct the entire cost of health insurance premiums as a business expense. Starting with the 2011 payroll, employers must report the entire gross value of health insurance, adding together both their and the employee portion. Seemingly innocuous, and, despite a Web rumor to the contrary, not a subterfuge to tax. No – just a subterfuge to tax at a later date.

3) Flexible Benefit Plans will have an annual limit (imposed in 2013) of $2,500 for the miscellaneous medical expenses (referred to as a Flexible Spending Account)

And of course we have both the law and then the law of unintended consequences:

1099 Reporting: There is suspicion among politicians that someone is getting away with something and this has to stop. That "someone" must be the unscrupulous business or individual who provides goods on an independent basis, or a business that provides services the same way. Catching these nefarious no gooders is supposed to reap $19 billion in recovered taxes. Wow. So when President Obama realized what he'd done (after receiving a huge amount of letters from employers wanting to know why they would have to be reporting what they pay in rent and utilities, among many other needs, on a 1099 basis) he asked for repeal. So did the chair of the Senate Finance Committee. Both were rebuffed – twice – when the Senate asked from where the foregone projected savings would come. What savings?

Minimum Loss Ratios: Carriers are required to refund money to plan participants when the amount that is spent on claims is less than 80% (small group and individual plans) or 85% (large group = 50+ employees). There was considerable debate on how the rate was to be determined, and the only exemption allowed the carriers was their tax payments. All administrative services, including commissions paid to brokers, are counted against them. This has caused some carriers to cut their individual commission base already, and in the large group area, one carrier (Aetna) said they will stop commissions altogether. We expect to see some cuts in the small group area as well, but this is trickling in nationally.

Some have posited that this is what carriers have been waiting for – an excuse to sell direct to consumers and companies and cut out the odious middleman, the agent. Thus we expect more direct solicitations, particularly in 2014 when the Health Exchanges begin their blitz. This, and the possible cut in commissions, will have consequences:

1) Brokers will be forced, as a business reality, to cost out the services they now provide at no charge. In some states (not California) this is already required, as the provision of free services violates anti rebate laws.

2) With services broken out by cost and value, we can expect brokers to use service contracts more frequently. This is good in that it spells out exactly what can be demanded or expected of a broker and have a standard to uphold apart from what happens with marketing or plan design.

3) There is some concern that carriers will try to supplant these services (we are seeing some of this with California "general agents" now) at no cost, building them into their administrative charges and then increasing rates to sustain them. The costs will therefore be hidden, and with the anticipated increased rates anyway, buried in the overall raise. Thus carriers may try to supplant agent services

4) The transparency will allow for more active competition in the benefit market, as clients are made more savvy about what can or should be expected, and allow them to compare brokers on service and not carrier pricing (which is how most professionals seek to conduct themselves anyway). This may cause some service fee reductions and an expansion of services offered – ideally, where the broker is part of a larger network or firm, with some volume discounts involved.

5) The bad news is that clients may be expected to pay more on top of their premium where before the services were thought to be "free"

6) Another unexpected development will be the movement toward more self funding, as carriers, VEBAs, ACOs (Accountable Health Organizations) and special trusts are created to take advantage of both the uncertainty and opportunities that changes in health care delivery always bring.

7) More brokers will decide to either get out of certain segments in the business or, if health care is not their primary focus, out of the business altogether, selling or sharing their current business with brokers who are committed to these markets full time. Such attrition is not a bad thing, per se, but all change is considered with concern.

   The Department of Health and Human Services is still considering what constitutes claims and administration services and how broker fees may be broken out, but they have a lot to do now, and should be relieved to have the first wave of regulations here behind them. Change is still possible, but we are not sure how this will help carriers or employers yet.

CLASS Act:

Put simply, this is allows employees to elect to contribute to a new national Long Term Care plan that:

1) Has not yet determined the cost
2) Has a limit of only $50 per day as a benefit
3) Will establish rates according to a 75 year actuarial projection (NOT a misprint)
4) Is available now but will not have rules set for at least two years
5) Requires payment into the program of five years before any benefit can be received
6) Will be run by the government rather than a private carrier already doing LTC

So you pay an unknown amount into a fund that does not exist for a benefit that is far lower than what you will ever need, with assurance that a 75 year cost projection has been done, administered by a government agency or sub agency that has not yet been created, and competing against a private market that is estimated to have a lower potential cost – *what's not to like about this?*

Future Facts:

We have commented on the Health Care Exchanges (see State Stumbling) because they are with us already in word if not in fact (since implementation is not until 2014). So let the debate begin, but the primary business concerns are still a few years away. There will be more said (by us if no one else) as we see markets shift and carriers drift in ways that may trim sales, but for now we will just highlight the waves of change that challenge the title of "reform":

1) Companies with more than 200 employees must automatically enroll new employees Good or bad depending on your position on simplicity vs. the perils of automation

2) There is a federal allocation of $6 billion to create and finance a Consumer Operated and Oriented Plan (CO-OP) which will provide grants and loans to create or expand qualified non profit health insurers. This would expand the market (at taxpayer expense) but just because a carrier is a non profit does not mean they lack a profit motive (Blue Shield of California and Kaiser are both non profits, but their rates increase just like everyone else)

3) There will be a tax of 3.8% on net investment income exceeding $200,000 ($250,000 for family) just to fund health care. This goes on top of a new Medicare tax (additional .9% of earnings over the above amounts). With Republicans asserting more control, is it possible that they will challenge this usurpation of the rights of those souls who are more well heeled?

4) Carrier and medical device manufacturer taxes will result in higher premiums, as both will undoubtedly pass on their costs to consumers.

5) New carrier rating rules will enfranchise more people (full guaranteed issue and absence of pre-existing condition limitations) and level out the costs (age spread may not be larger than a ratio of 3:1), but this will not only result in higher costs (which will be passed on to consumers again) but also in an unfair slant of rate increase to younger consumers.

6) Employer mandate – groups of 50 or more employees – but only for a package of "minimum essential benefits" which are yet to be defined.

7) Employer mess – there are a series of vouchers and tax credits with a variety of qualifying rules and, in the case of the credits, only available when an employee purchases coverage through the Exchange. These are complex and myriad, and could be changed by the time they are implemented, but whether they are or not they will involve additional administrative cost for all employers for both operation and communications.

Non ACA – yes there are still some things to say

Carriers get the drift and try to shift costs before the law they're waiting for comes to the fore:

1) Moving On: Principal Financial Group is leaving 840,000 policyholders without their support in 2011. Their announcements say they are transferring the business to United Health Care when in fact they lacked the tact to tell us "we sold them the list"

2) Moving Up: rates will still increase. Our study of studies shows a PO average national movement of 11.2% in 2011, with HMO at 10.3% and POS at 10.7%

3) And Up: the general projections for the costs attributable to the ACA are 1-3% - when you let more people in the pool, the levels naturally rise

4) And Up: in praising policy, the Federal government showed the fallacy of promising rate reductions. By its success, there will be an excess of spending (this is information posted on the government's new health care web site) in the early years:

    a) Elimination of pre-existing condition limitations for children – 72,000 previously uninsured can now obtain coverage and 90,000 more will avoid claim denials

    b) Elimination of rescissions – should keep 11,000 covered

    c) Elimination of lifetime limits – up to 20,000 people would have hit this annually

    d) Elimination of annual limits – should protect 35,000 per year

    e) Emergencies – up to 88,000,000 will benefit because plans can't charge more when an emergency room used is out of the provider network

5) And Away: United tried to fly with $120 million of Pacificare's dollars as a "dividend" Since the acquisition, PacifiCare has committed nearly 1 million claims violations by the State of California. At $5-10,000 a pop, the DOI put a stop to any financial transfers of this nature.

6) And We Will Pay: CMS Findings (per Chief Actuary Richard Foster) of the cost of ACA:

    a) $311 billion added cost to taxpayers (due to subsidies, vouchers, etc)
    b) 14 million will lose employer sponsored health insurance
    c) 15% of hospitals and nursing homes will be operating in the red
    d) $87 billion in fines to businesses between 2014 and 2019

In other news, we covered Financial Reform and the Year End Bill under "Federal Fumbling" which leaves us with the future and how we might plan for it (or avoid it altogether)

Human Resource Trends:

1) Increased workplace investigations – spurred by Dodd Frank reform and the Consumer Protection Act, which expand whistleblower protections

2) Focus on performance management

    a) Rising benefit costs are reaching 30% of total compensation
    b) Financial performance and return are more critical to company future
    c) Realigning organizational structures
    d) Focus on metrics – evidence based management
    e) Good performance management provides a foundation for compensation, promotion, selection and discipline decisions, critical feedback and communication, aligns expectations and improves engagement by identifying employee interests and development – you know, just like you're doing now

3) Increase in Independent Contractor Challenges (Obama administration believes an additional $7 billion in additional taxes can be collected over the next ten years with a correction in classification

4) Movement to Cloud Computing

    a) Hardware and software updates are constant and "good faith" not enough
    b) The I-9 form changed multiple times in 2010, as one example
    c) Standardized compliance system with alerts

Health Trends:

1) Next Generation management and wellness programs
2) Accountable Care Organizations on the rise (compete directly with carriers)
3) Social media crosses the healthcare barrier
4) Mobile health technology offers greater connectivity
5) Medical tourism gains ground

LEGAL GRUMBLING

I don't know exactly what I mean by that, but I mean it (Holden Caulfield)
Order doesn't come by itself (Benoit Mandelbrot, d. 2010)

If nothing rhymes with orange
What's the reason for the suit
In the heat of vested interests
With the Sunshine State's pursuit
Of justice for the segments
Who lack sufficient juice
To court Obama's players
Before they are let loose
On a system that denied them
Healthy access to some plans
Will now require that they acquire
Contracts that expand
Despite lowered demand
Using designs canned
To find some common strand
Despite how much the coverage spanned (or costs)

Virginia spits, Michigan sits and Florida fosters further fits to a nation aware that Obamacare may freeze, squeeze or please a certain section until an election can decide if the erection of a bureaucratic edifice will edify a defiant public. Whatever is decided, the state courts seem divided and the fate of federal mandate will reach the highest court. The problem is the focus on separate issues not the locus of what the law is really all about. If flaws found in one clause is enough to give us pause that's a start, but there's so much more to finish. Will one part diminish sufficiently or should this be handled more efficiently and look to striking down the whole and sparing nothing. That would bowl over the Democrats whose coming Congressional spats will find some room when the Republicans run the House. It's anybody's bet but it ain't over yet, and we will see other issues being vetted. Military gays can join into war's frays but the partnerships at home are being fought. It seems so simple but it's now as the complications knot and we need more rights than Founding Fathers thought.

Affordable Care Act

It's a horse race to see which side will win, whether Obama will be put in his place and who will show up to take credit for what's left. Handicappers say the Supremes will put this on the inside track but they still have to pick the one case that gives the best face to all the issues. With a conservative bent, and with many lower levels lent to the court through Bush appointments, it's possible they'll side with the Virginia judge who said the mandate embedded in the law was illegal:

“At its core, this dispute is not simply about regulating the business of insurance – or crafting a scheme of universal health coverage – it’s about an individual right to choose to participate”

“The minimum essential coverage provision is neither in the letter nor the spirit of the Constitution”

The Honorable Henry Hudson
(appointed by George W. Bush)

In opposition was another Virginia judge, who dismissed a suit brought against the ACA, saying the government was within their rights to mandate under the Commerce clause of the Constitution. Going further, the judge said the absence of a mandate will increase insurance costs due to cost shifting (this is true, given that the guaranteed issue rule remains, but here the judge has strayed into the territory of economists) – as confirmed by Donald Berwick, head of CMS, who said “without the insurance mandate the intention to extend coverage, especially to people with chronic illnesses, would unravel”

Importantly, the judge also deemed the charges for noncompliance with the mandate are penalties and not a tax, designed not to raise revenue but to be used to enforce a law

The Honorable Norman Moon
(appointed by William J. Clinton)

In a simpler suit in Michigan, the judge upheld the ability of the Federal government to impose a mandate under the Commerce clause, and an appeal naturally says he did not interpret the clause properly

The Honorable George Caram Streh
(appointed by William J. Clinton)

In other states, suits have been thrown out because the plaintiff lacked standing, and the Department of Justice is saying the same about the Virginia case (Hudson)

It all may depend on Florida’s decision (where have we heard that before?) where arguments are being heard on behalf of 20 state Attorneys General. This suit seeks to void the entire health care law and not just the portion limited to mandation.

The Honorable Roger Vinson
(appointed by George W. Bush)

Following the Virginia (Hudson) decision, health policy advisor Zeke Emmanuel invited shareholders to meetings with the administration, which Republicans have decried because of the obvious lack of transparency,

So what will pass among the Supremes?

1) The conservatives are in the majority, which leads thinking they will follow the inclinations of those judges appointed by President Bush)

2) Such a facile interpretation could be wrong because of the way the courts have split outside lib-con lines since Roberts was made Chief Justice and continuing after Sotomayor's appointment

3) Recent rulings have cut Congressional power to regulate interstate commerce

4) The Commerce clause may not be as important as the issue of "tax v. penalty" If the charges for failure to meet the mandate are seen as a tax, the Court has historically and unanimously upheld Congressional rights

As an unrelated but interesting comment on Supreme Court decisions, it should be noted how little notice was given to *Citizens United v. Federal Election Commissioner*. The court ruled that companies and unions may make unlimited expenditures advocating for the election or defeat of federal candidates right through election day. This decision was made too late in 2010 to have much impact on the November elections, but in 2012…

This pairs the left and the presumed right, but other partnerships were also considered:

Perry v. Schwarzenegger: The federal court invalidated Proposition 8, which prohibited same sex marriages, because it violated the due process and equal protection clauses under the US Constitution, with the decision citing:

1) Marriage is a fundamental right under the Constitution
2) Extension of marriage to same sex couples does not change the nature of the institution
3) No rational basis for distinguishing between same sex and opposite sex couples exists
4) California existing Domestic Partner laws are an insufficient substitute for marriage

This decision itself is already on appeal in the 9th Circuit Court and the stay has been stayed

Gill vs. Office of Personnel Management: The federal Defense of Marriage Act (DOMA) was found unconstitutional by a Massachusetts Federal Court, saying the law cannot limit federal recognition of marriage to opposite sex spouses, as it violated the equal protection clause and was also an unconstitutional exercise of Congressional power.

Outside of the courts but in the course of Congressional consideration:

Medicare

Two federal courts ruled that the Obama administration is using overly strict standards to determine whether older Americans are entitled to Medicare coverage of skilled nursing home care and home health care, and ordered them to begin making more of these payments.

Mental Health Parity

1) Aggregate lifetime and annual limits are now expanded to include substance abuse

2) Parity with respect to financial requirements and treatment limitations is determined separately for each of 6 classifications.

3) Plans providing mental health and substance abuse benefits must provide the same coverage as medical/surgical benefits, and may not apply any financial requirement or treatment limitation in any classification that is more restrictive than substantially all medical/surgical benefits in the same class. Financial requirements include deductibles, co payments, co insurance and out of pocket maximums, while treatment limitations may be quantitative (e.g. medical management standards)

4) A financial or quantitative treatment limitation applies to substantially all medical surgical benefits in a classification if it applies to at least 2/3 of all medical surgical benefits in the classification, based on the dollar amount of benefits expected to be paid for the plan year.

5) Nonquantitative Treatment limitations: medical management standards and other nonquantitative treatment limitations must apply to mental health or substance abuse benefits in a way that is comparable to and no more stringent than medical surgical benefits, unless clinically appropriate standards of care may permit a difference

And on a state level:

1) Workers Comp Notice requirements: posting and notice requirements were amended
2) Meal Breaks: exempts construction workers, commercial drivers, certain security officers and employees of electrical and gas corporations or locally publicly owned electric utilities
3) Minimum Wage – San Francisco – now $9.92 per hour
4) Health Ordinance – San Francisco – now exempts managers/supervisors earning $81,450

WHAT'S AHEAD – The SSM Group

We introduced ourselves a few months ago, but already we have made several changes:

1) Purchasing Shirrell Consulting Services, which also provides self funded dental plan administration with a full dental PPO network

2) Contracted with a South Carolina firm to coordinate all our communications, which will be both more frequent and systematic. Webinar invitations (free), bulletins on benefit changes, legal updates, etc. will all be sent at least monthly

3) The Jordan Shields web site will be stripped down and changed to mirror the new SSM website, which will be the primary resource for internet interaction

4) Our alliances with and commitment to our Strategic Partners in related fields have strengthened and we will expand their presence on our site:

    a) Property and liability insurance partnership with Don Ramatici Insurance
    b) Pension and financial planning partnership with Taddei Ludwig Associates
    c) Individual health division administered through "Only Health Insurance"

Greater involvement with United Benefit Advisors (third largest national benefits brokerage):

1) I will be the vice chairman of the national board in 2011
2) Keith McNeil heads the California contingent (17 firms)
3) We have appointed one employee to coordinate all UBA tools and services
4) We are developing private label dental and vision plans
5) We are working with a specialty firm for a "limited market" self funded medical plan
6) We are having high level discussions in California to better integrate service, response and efficiency as well as improving our clout on rate negotiations with major carriers

With these changes and several new tools and services we will be introducing during the year, we will be a fully integrated benefits firm capable of:

1) Human resource consulting and advice
2) Self funded plan administration and plan delivery
3) COBRA, FMLA and HIPAA administration and support
4) Complete written and web based communication modules
5) Plan design and company policy consulting
6) Integration of High Deductible Health Plans, expense reimbursement and mini med plans
7) Marketing, with the clout that comes both from managing 700 clients and the additional strength UBA California provides

In short, we're in it for the long haul, capable of doing it all – and well.

And as for this exercise – "I didn't have to say it. I just had to write it. It was painful enough
(Robert Parker, d. 2010)

REFORMATION – The Outline

Introduction

Federal

ACA – concerns about the law's application
Other Regulations:
- Year End Tax Bill
- Financial Reform
- FMLA, GINA and HITECH - updates
- Small Business Jobs Bill

State

ACA – focus on Health Exchanges
California changes – and doesn't
Other States

Business

ACA – focus on taxes and costs
What will MLR changes mean to business?
Health Care inflation
Human Resource and Health Care Trends

Legal

ACA – the suits against the government
Other recent laws of note

End Page

Agency changes and expansion