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ZEN AND THE ART OF VOTER CYCLE MAINTENANCE

Violence, domestic and abroad, seeps through stories tinged with glories of our time, the crimes thrust at us obscured by status and the speed such cycles command. Protests war with contests and fame's a game played brightly nightly, despite our dimming sense of celebration. Madness summons sadness, appearing while appealing to our common senses to amend the rife offenses causing strife. We seek a life less amplified, a return to something simplified, a nullity to the policy, some sanity in humanity, an inquiry into the center of morals, and values, a gleaning of some meaning within the mania.

We would start with Sartre, but his Being is now Nothingness to modern minds. So proceed to Pirsig who two score past rode fast into our psyches. His Phaedrus made us question quality, finding Zen when the chatter and clatter of modernity matters less, lest we fail to address the stress we impart to what's of import. Thus could we comport our self with id and ego on the shelf and bring the knife edge to our thought to pare away to nearly naught the noise of things we never sought, as Mr. P and Occam taught.

Mysticism mixes with cynicism, which Wilde says won't venerate value. The fate of what we're fighting for won't await the final score as more war and hack attacks tax our stores of knowledge being confused with wisdom, a course colleges do not essay. Phaedrus stumped his students with questions absent answers. Rhetorically asking for solutions to ill- defined problems, precipitating panic among those patterned to praise archaic paeans to formulaic response. But immigration and health, the migration of wealth and the stealth of the tech sector require we inquire into new vectors of valuation.

What is it that we need, and will our words or deeds hold sway when the mourning dawn gives way to hopes of light for night. The cycle throttles on across the country roads which spawn memories of times less traveled, the professor professing faith in the spirit through the wraith of reason haunting, taunting from the past which cast his course corrections.

Business books have clever hooks but rarely merit second looks deserved by those that teach not preach. We dream to go against the stream, borne of consciousness that watered down polemics pollute when we need be resolute in our awareness. So when Zen rejects posed absolutes it subjects models of behavior to objective review, and in Pirsig's Frosty view the split makes all the difference. It is the road which beckons best.

Quality. Value. Morality. All factored into Pirsig's pursuit, which continues forty years hence. What we all miss, he notes, is what is right before us. Here on Christmas day I watch my two year old great granddaughter maneuver colored pens across paper (and the table and her sweater sleeves), a determined look crossing that uncreased face. She shoots me a glance, trying to copy what I'm doing, her squiggles containing some interior meaning, I'm sure, which, given what I've written, may convey more reason than my rhymes. Then she sweeps all the pencils on the floor and applauds.

A simple solution to a complex task.

The caged bird sings of freedom
With a fearful trill
Of things unknown
But longed for still
And his tune is heard
On the distant hill
For the caged bird
Sings of freedom

I know why the caged bird sings
Maya Angelou, d. 2014

Whatever happens. Whatever
What is is is what
I want. Only that. But that.

Prayer
Galway Kinnell, d. 2014

Metaphysics is a restaurant where they give you a 30,000 page menu and no food
Robert Pirsig

FEDERAL FUMBLING

We English are good at forgiving our enemies – it releases us from the obligation of liking our friends – PD James, d. 2014

What right does Congress have to go around making laws just because they deem it necessary
Marion Berry – d. 2014

When the history of the world is written this won't be in it
Ben Bradlee – d. 2014

The Statue of Liberty is no longer saying "give me your tired your poor, your huddled masses!'
She's got a baseball bat and yelling 'you want a piece of me?'
Robin Williams (never gone)

The ruble turns to rubble as Putin's power bubble
Bursts with news that shale has oiled hopes that OPEC's specs are spoiled
Britain keeps its Sea Scot free shifting power sans Saudi
Dear Leader scores an Interview, hacked off Reds who read reviews
Un-hinge screens with revenge scenes taking over machines
In a Chorean fit of comic pique

Build a wall or let it fall, let some in or simply all
To reform flights of freedom. Shall they go or will we come
To our census from our slumber, because we still encumber
Liberty while cops attack, now we have them shooting back
Breaking through the net's domain, up Wall Street and downtown Main
Corporate suite's power sours at havoc's wreak

Chirstie's smeared in traffic jam, Cruzing, Webbed by tough exam
Bush is hidin in the weeds, Joe's Biden time – and his deeds
Ryan Expresses desire, will Walker Scotch his empire
Rand's strands may pall, Mitt might call, money may Bayou Jindal
Clinton keeps hinting to see if we'll mount St. Hillary
On the presidential pedestal they seek

How heavy weighs ACA as a means to light the way
When it changes every day and the GOP holds sway
Keeping Democrats at bay, leaping costs into the fray
Of safety net washed aweigh will our anchor be okay
Or anger re Play or Pay cause it all to go away
When for once we passed a law that was unique

CUBA moves from missiles to missives of moderation, religious toleration rends the Middle East. Putin reclaims Russian roots, committing Crimean crimes, as Ukraine boots its future on the steppes. Isis creates crisis but terror finds Ferguson a home, while New York puts a chokehold on the poem that promised freedom from the fear that forced the huddled masses here – and the killings continue.

The Secret's out about the Service, making the President nervous with threats secreting themselves in fluid situations. Homeland security should begin in our backyard, as porous defense makes pickets tense with protests giving offense to those who serve to protect, who can't Garner support in New York and toy with guns in Santa Rosa and Show Me the policy state of preparedness in Missouri. Nor is local law the flaw as Feinstein opines in a tortuous report about the CIA and the way they flay foreign felons. Then there's retaliation as the nation watches wordlessly as innocence is lost and the carnage cost with lives of innocents at schools and on the beat, the street less safe than when we started mourning those departed in public and concealed, the power that we wield may yet and finally yield to demands that sanity return.

Politics (a Greek word meaning "many blood sucking insects" are more polarized, the ACA gives way to practical pressures poorly practiced, Republicans are enriched without Tea Party favors and Democrats hope to retake the hill while wedded to the White House.

The agenda tolled is mixed, with so much to be fixed, the drama plagues Obama to the end. Amid domestic strife, a new leader may give life to hope and change and the knife of rational thought, cutting through partisanship in favor of new citizenship, for émigrés and ways to serve each other. But if the Hill and House are split there may be no end to it, as reform keeps reforming in the eyes of those performing, but who can say what play is being staged? In the end as marchers seethe, we all think that "I Can't Breathe" and suffocate on righteousness that's aired in hallowed halls.

The Republicans are getting Koched up…speeding down denial river

Ads against the Affordable Care Act, many sponsored by the Koch-fueled Americans for Prosperity group, have been labeled untrue by Senate Majority Leader Harry Reid – "despite all the good news, there's plenty of horror stories being told. All of them are untrue, but they're being told all over America. Those tales turned out to be just that – tales, stories, made up from whole cloth"

Distance from that which used to appeal, but they want to appeal it now – "Obamacare"

At first the President was pleased. Now he is not. Even House Minority Leader Nancy Pelosi recently corrected a reporter who called the health care law "Obamacare" "First of all, it's called "the Affordable Care Act' – so now Democrats seek to remove it from the political lexicon

The Elections, New Selections and Directions

Theories now abound, about what was lost, why, who will care and who will not and what this will portend for the 2016 Presidential race. President Obama lost a majority in the House in the last mid terms, and now he has lost a majority in the Senate, but not a super majority (which would be required to overturn the Affordable Care Act). Republicans are now in what should be a happy spot, but it is also a rough one. Now it is not enough to just criticize what comes from the White House – they must make proposals of their own, and they must be substantive. So will we see a radical change on immigration policy, health care, and other hot button issues? Not likely, but then there is always the strategy of "death by a thousand cuts" – and it is likely that Republicans will do what they can to weaken the ACA at the very least. It's the least they can do.

What Might They Do – Congress Progress or Regress or Simply Recess the ACA

Revisit the employer mandate – not likely
Revisit the individual mandate – less likely than that
Repeal the medical device tax (now 2.3% of the cost of devices
Revisit what constitutes "full time" employment
Repeal federal reimbursements for companies who lose money on the ACA
Eliminate the Independent Payment Advisory Board (once known as the death panels)
Lower the subsidies being offered for "affordable" individual health coverage
Creation of a new copper plan (we don't have enough metals now)
Provide alternatives (since they are in a leadership position)

Mitch McConnell: "these are the kinds of things that I believe there is a bipartisan majo4rity in the Senate to approve"

Senator John Thune: "and if the president wants to veto that approach (replacement of the ACA) then I think we'll probably look at some areas…of the law that we think are harmful"

President Obama made his position clear: "on health care, there are certainly some lines I'm going to draw. Repeal of the law I won't sign. The individual mandate is a line I can't cross. What I will remind Republicans is that despite all the contention, we now know that the law works"

Ben Cardin: "Democrats will work with Republicans if it's in a constructive manner to improve the ACA, including problems of where you draw lines on coverage and mandates"

You look at where you're going and where you are and it never makes sense, but then you look back at where you've been and a pattern seems to emerge. And if you project forward from that pattern then sometimes you can come up with something

Robert Pirsig

Health Care Humbling

We have to pass the bill so that you can find out what is in it
Nancy Pelosi, March 2010

Not just us. In any event, it was too much to grasp, and that was then. Since 2010, tens of thousands of pages of regulations have come to pass, and obfuscation ha trumped clarification and the creators will pass along as well. Bureaucrats argue power shifts, the states have and haven't taken on the burden and markets, of course, have adapted. There is the law, of course – and then there is the Law of Unintended Consequences.

Had they not delayed, postponed and redefined so many things due to political considerations we might be more forgiving or at least less confused. As it stands now, there's little doubt the ACA is here to stay. We're now too tired to say otherwise. But wiser souls say change will continue, now that Congressional power has consolidated. It will be tempered, however, by the possibility of even greater control of the process, should the Republicans take the White House. If Hillary Clinton succeeds, little change is foreseen unless, as some suspect, she moves things further left and satisfies the snide observers who thought "Single Payer" was the long term Democratic objective. It's early, though, and we have two years to weary of the whole thing. Hillary was supposed to beat a barely known Obama, too.

If you read our 2010 report on the Affordable Care Act (you three know who you are) you'd find that many of our predictions about withdrawals, reconfigurations and the expected reactions and results have come true. They were easy calls. What we did not see coming were the many accommodations to local and national business backlash, and even then we would have expected more de3efinitive and decisive movement. Instead much of it remains a muddle, as attempts to explain have mostly rendered the more troubled sections more complicated. We've read it all anyway – even the judicial record of the Supreme Court hearing on the individual mandate (spoiler alert – Justice Ginsburg thinks Chief Justice Roberts is a putz)

In all the speeches we have made and presentations given, we have striven to impress upon our listeners that we are of a practical, not political, bent. It's not easy to stay objective, but fortunately the nonsense is bipartisan. The politicians had noble aims, perhaps too lofty, and so did similarly hopeful generations before them – only this time, they actually passed it.

So we look ahead, and a little behind, to find our sense of direction and impart some to you as well. Divided into sections it eases close inspection, as we repeat our earlier tweets and what we logged on our website's blog. To this we add formal reviews, which lay out rules and reflect our views.

A Year of Delays

No we really mean it…wait, there's another delay…will we ever agree on this law?

Just in time for the mid term elections, President Obama saw his way clear to allowing an extension of those plans that did not meet the standards of his signature health insurance law for another two years. The main idea was to ensure that plans meet certain minimum standards and include "essential health benefits" That was a good idea…but the plans that did not meet those standards cost less than those that do…and there was a major media fallout regarding the difference between quality of coverage and quantity of money. So the President caved…in response to political pressures. So now there is a two year extension to the cancellation of those policies. The problem is that carriers, at least in California, that have already dropped those policies and started newer ones at the Administration's behest are loathe to go back.

More ACA Delays…but the train may have left the station

Now that the states and the carriers have made all the changes required under the Affordable Care Act, the President has responded to public pressure and said that quality is no longer a priority and he did not mean what he said about cancelling the individual policies. First he extended the deadline for changes to individual plans to March 31, but now he will extend it another three years. That avoids both mid term election fallout and goes into the next Presidential election as well. That's nice…but the changes have already been made. Who is going to follow this mandate when the carriers have already announced and made the changes? Under the proposed rule, consumers may continue to purchase the previously disallowed "skimpy plans" until October 2016 and can keep them until September 2017 Representative Fred Upton said "the administration cannot run fast enough away from its broken promises" and House Oversight Chairman Darrell Issa said "this move is a cynical ploy that delays thousands of insurance policy cancellations under after the elections"

Another Delay – But the ACA is on Schedule?

This one makes sense because no one knows how to make sense of what was sensed about discrimination in health insurance. IRC Section 89 did not do the job in 1989, there have been no plans since, the ACA put it in the law but no one knew how to interpret what was already in the code…so there is yet another delay in what some thought would be a core piece of the legislation but instead has been its most overlooked…until they announce another delay. So discrimination is allowed to continue running rampant, though the problem is not really as severe as is feared. Why not just abandon the charade altogether?

Identify yourself…unless of course you can't figure out how to do it – HIPD suspended

It seemed like a good idea at the time…have all plans of a certain size set up a Health Plan Identification Number. But then, the day before it was to go into effect, the federal government suspended action. It appears even the sharpest business people who tried to simply register a number had too much difficulty in doing so. A report was made to the DOL saying that it should be set up for additional consideration.

Another Delay in Pay or Play – when will they stop tinkering – after four years

Employers with 50 to 99 employees will NOT have to comply with Pay or Play in 2015, a delay of an additional year on top of the original delay for all groups that put off compliance until January 1, 2015. While these groups will be required to report on those who are covered, they do not have to comply with the rules until 2016. In addition, groups of over 100 employees are being given a graduated schedule for compliance – employers will need to offer coverage to 70% of full time employees in 2015 and 95% in 2016 and later years or they will, as is always threatened, be subject to penalties. There are, of course, conditions:

1) The employer has on average at least 50 full time employee equivalents but fewer than 100 on business days during 2014

2) From February 9 to December 31, the employer does not reduce the size of its workforce or overall hours of service in order to avoid complying with the Pay or Play mandate in 2015

3) Any health care benefits offered by the employer on February 9 must not be eliminated or materially reduced. The employer must continue to offer coverage during this coverage maintenance period at nearly the same cost sharing levels through the last day of the plan year beginning on or after January 1, 2015

4) Employers who are eligible for the one year delay will need to complete a form certifying that they meet the transitional relief requirements. This form will be included with IRC Section 6056 health insurance reporting once they are published

No date on the mandate or womandate or whatever date you want – another ACA amendment

Millions of people may be exempt from the individual mandate – the CMS issued guidance on December 19, 2013 "indicating that individuals whose policies are canceled because the coverage is not compliant with the Affordable Care Act qualify for a hardship exemption if they find other options to be more expensive, and are able to purchase catastrophic coverage. This hardship exemption will continue to be available until October 1, 2016 to those individuals whose non-compliant coverage is canceled and who meet the requirements specified in the guidance" – in other words, the Act is supposed to be "affordable" but if it is not because the policy was changed, though the change was supposed to be about quality, we can overlook it, because we were kidding about forcing quality on people despite its potential unaffordability?

One more change…one more time – a change in the ACA dealing with deductibles

Just when we were all set and the mid terms seem ready to go…they made one more change. President Obama signed the "Protecting Access to Medicare Act of 2014" which immediately repeals the deductible limits imposed under the ACA for non-grandfathered plans purchased in the small group insurance market (and what does this have to do with Medicare?) Thus small employers can purchase higher deductibles than the limits which had been allowed of $2,000 – the funny thing, of course, is that carriers have already done this, citing the actuarial studies that "value" plans in terms of the overall liability limit and not the deductible

Buy the Insurance…or else…unless we change the rules and make it easier to avoid

The penalty is the greater of 1% of family income or $95 per year (but they reduced that to $47.50 for children) if you do not have health insurance this year. But now, federal officials have decided to cap the potential liability to $2,448 per person, based on the national average annual premium for a bronze level health plan. So you're in trouble if you do not buy…just not as much trouble as you may have feared.

John Boehner responded, of course – "Once again, the president is giving a break to corporations while individuals and families are still stuck under the mandates of his health care law. And, once again, the president is rewriting law on a whim" "Another day, another lawless exemption" said the Wall Street Journal. J. Mark Iwry, deputy assistant Treasury secretary for health policy (now there's a title), defended the administration and said they have broad authority to grant transition relief under a section of the Internal Revenue Code that directs the Treasury Secretary to prescribe all needful rules and regulations for the enforcement of tax obligations…which has often been used to postpone the application of new laws that would cause unreasonable administrative burdens or costs to taxpayers (oh)

Supporters Begin to Betray

Gruber stake is Uber mistake…Obamacare architect shares and ACA does not fare well

A series of videos have been released of various conferences and conversations involving Jonathan Gruber, who was one of the writers of the original ACA legislation, and they are not flattering…to anyone involved. A sampling:

"Lack of transparency is a huge political advantage. Basically, call it the stupidity of the American voter of whatever, but basically that was really, really critical to getting things to pass"

"This bill was written in a tortured way to make sure the Congressional Budget Office did not score the mandate as taxes (because) if CBO scored the mandate as taxes, the bill dies" (even though President Obama kept insisting the mandate was not a tax)

"If you had a law which…made explicit that healthy people pay in and sick people get money, it would not have passed"

"If you're a state and you don't set up an exchange, that means your citizens don't get tax credits" (which is enlightening given that the Supreme Court is hearing on this issue right now, while the Obama administration is insisting that the Federal Exchange can offer subsidies)

"It turns out politically (the employer subsidy) is really hard to get rid of…and the only way we could get rid of it was first by mislabeling it, calling it a tax on insurance plans (referring to the nascent Cadillac tax) rather than a tax on people when we all know it's a tax on people who hold those insurance plans" "What that means is the tax that starts out hitting only 8% of the insurance plans essentially amounts over the next 20 years essentially getting rid of the exclusion for employer sponsored plans…this was the only political way we were ever going to take on one of the worst public policies in America"

Of course, Mr. Gruber was forced to recant, in public testimony to Congress, denying who he was, what he did and why he did it.

"I did not draft Governor Romney's health care plan, and I was not the "architect" of President Obama's health care plan"

"I am not an expert on politics and my tone implied that I was, which is wrong"

"Let me be very clear: I do not think that the ACA was passed in a non-transparent fashion"

"My own inexcusable arrogance is not a flaw in the Affordable Care Act"

It was not well suited to their needs – so they are filing suit against it – GOP vs. Obama

They didn't like the bill, now they don't like the fact that it is not happening fast enough. Accusing President Obama of "making up his own laws" (John Boehner) by delaying the employer mandate, the Republicans are also considering filing a suit over the recent decision to provide deportation relief. They're not related, except as it concerns the Chief Executive. House Minority Leader Nancy Pelosi was a bit upset: "the fact is, this lawsuit is a bald faced attempt to achieve what Republicans have been unable to achieve through the political process. The legislative branch cannot sue simply because they disagree with the way a law passed by a different Congress has been implemented…the lawsuit is an embarrassing loser."

Who has joined the fray

When is a medical plan not a medical plan? When it is a dental plan…Exchange counts off

The Department of Health and Human Services has admitted that it made a mistake in counting the total enrollment under the Affordable Care Act by 380,000…because it counted dental plans as medical plans. This allowed them to hit the "magic number" extolled by the administration of 7 million enrollees, thus hitting their target and claiming enrollment a success. Secretary Burwell apologized, saying "this mistake was unacceptable (but) the fact that we have quickly corrected the numbers should give people confidence"

Commitment now starts to stray

We ignored it…and then it was too late…Medi-Cal cuts finally go into effect

As if doctors were not getting paid enough already, the Affordable Care Act promised a boost to their earnings, but with a deadline, at which time it would not only be taken away but further cuts would be applied. Just at the time when millions more people are enrolling in Medi-Cal, a recent study by the Urban Institute estimated fee reductions will average about 40% nationwide. In large states like California, New York, New Jersey and Illinois, the cuts could exceed 50% The original temporary program increased fees for 2013 and 2014 but that has now been removed, and attempts to get Congress to extend it have been rebuffed. So what happens now? Doctors might not drop their current Medi-Cal load, but what are the expectations (and what is appropriate from a revenue standpoint) for their accepting new Medi-Cal patients?

Will the Exchange go astray – Subsidies that may not stay

SHOP until you drop…it…sales are not what were expected on Exchange group plan

The attention was all paid to the individual plans that suddenly made health care "affordable" – if you received a subsidy (from which the federal government is backpedaling furiously). But alongside the individual plans the government decided that doing group insurance was a necessity…and it is the only vehicle that allows for the receipt of the small group health insurance tax credit. This was supposed to help sales, even though the first two years of the program qualification was open for any plan, and barely taken (especially in California). So now there is no surprise to find that the sale of the SHOP plan has not met expectations. Difficulty in service, the lack of flexibility in choice, narrow networks and other problems do not make it palatable in the market, and thus less than 12,000 businesses signed up in the first 8 months.

The SHOP Flop – what if they wrote a group plan and nobody cared?

Incentives are low, some of the states only have one carrier, rates are not necessarily all that low, networks are being cut, and the small group tax incentive is seldom used – much as it has been seldom used since it was first allowed in 2010 with the passage of the ACA. "even if the process was automated on the website, it still wouldn't be appealing because of the portfolio" says a spokesperson from the National Association of Health Underwriters

The Exchange will work no matter the cost…so if you spend it they will come?

The proposed budget asks for another $600 million to help run the federal marketplace, call centers and other outreach efforts. The Health and Human Services Department is not concerned about budget passage, however…if they don't get the money they have already said they have the authority to transfer funds from existing accounts or tap the agency's non recurring expense fund, which allows the agency to take money from expired accounts and use it for information technology and other capital investments. Of course, it is important that they spend money on the marketplace…since the budget also contains a reduction of $402 billion for Medicare, Medicaid and other federal health programs. The budget was at $77.1 billion

Expenses roll out, come what may – The CBO doesn't know what to say

CBO can't make it a go and now throw in the towel on scoring Obamacare

There has always been a lot of credence (and a lot of press) devoted to the true value, or true cost of the Affordable Care Act. Now, the objective CBO, the one on which many rely to give the "facts" about the cost of various pieces of legislation, has said that "scoring" Obamacare has become impossible. "The provisions that expand insurance coverage established entirely new programs or components of programs that can be isolated and reassessed. In contrast, other provisions of the ACA significantly modified existing federal programs and made changes to the Internal Revenue Code" This came in a footnote at the end of the CBO April report.

When the Costs Come Rolling In…What the ACA Costs is now becoming clear

In 1965, after passage of the national Medicare Act, health care expenses increased dramatically, as pent up demand among seniors was slaked and they began to use services that were previously denied them due to inability to afford. The same was anticipated to happen with the Affordable Care Act. Despite the increase in the "insured pool" the problem was that those joining the pool were those who had delayed medical care. Early reports show this is the case, as several sources have reported skyrocketing costs in the health care industry. The good news is that this helps the economy…but at what cost, as these charges will come back to the carriers that sponsor coverage, and thus to the companies and consumers who pay premiums. The Washington Examiner expressed its alarm by saying the acceleration comes after years of "Obama and his allies…crediting a showdown in the rate of growth for health care to payment reforms imposed by the law" Yes that was true in the beginning, but now we are seeing the true expansion…and the true costs. As reported in the Huffington Post (OK, they're not objective) "Who could have predicted that a recovering economy, higher incomes and a rise in the number of people with health coverage brought about by Obamacare would increase how much Americans are spending on medical care? Well, pretty much

What's in a number? Senate Budget Committee updates Senator Dirksen's maxim on ACA

Senator Everett Dirksen said in the Sixties "a billion here, a billion there, pretty soon you're talking about real money" Such has been the confounding and conflicting analyses surrounding the Affordable Care Act. The last review by the Congressional Budget Office predicted that the ACA would reduce the federal deficit by $100 billion. Now the Senate Budget Committee has projected that the ACA will *increase* the federal deficit by $130 billion. Of course, that was according to the Republican members of that committee…

Too many people came to play

Surprise! With more people being covered, more are using insurance…for emergencies

The law of unintended consequences…always the most dangerous legal game. This time we are happy that the Affordable Care Act has caused an increase in the number of insured individuals, who have promptly taken advantage of their new found coverage, and caused a major increase in the use of emergency rooms. While this is a nationwide trend (The American College of Emergency Physicians said nearly half of those ER docs queried showed a rise in the number of ER visits this year and 86% expect an increase over the next three years), there are also more detailed local results. In Orange County the ER patient load has risen by an average 4.4% since January 2014, while it had been flat the previous 4 years. UC Irvine is up 10.9%, Kaiser Orange County up 11% and Fountain Valley 7.6%. Many of these are Medi Cal, many are with private insurance, but it is all up, all over…One temporizing thought came from Marc Futernick, president elect of the California Chapter of the American College of Emergency Physicians. "Some of this may be a temporary phenomenon and could change as people begin to use their coverage better…but to the extent that the health plans and networks are sending people to the ER it's not going to change"

We Knew it, the Carriers Knew it (did anyone else know it?) Sicker people enrolled in ACA

So when you offer new, affordable coverage on a guaranteed basis is it possible that those who have been waiting for the opportunity to get such coverage and use it will actually enroll? As suspected, the answer is yes. The New York Times reports that two new studies using prescription drug data found that exchange policies cover older people with more chronic illnesses than employer policies. As Prime Therapeutics Chief Marketing Officer Michael Showalter said "We originally suggested this may be a sicker population. What I can tell you officially today is that this really is a sicker population"

Now you see it – Now you don't – what about my subsidy? Many to lose them

It is estimated by CMS (which runs Medicare and MediCal) that nearly half a million people could lose subsidies or health insurance coverage they obtained through the ACA. Of this round number, 363,000 could lose the subsidy due to an inability to verify qualifying income and 115,000 could have their policies cancelled because they could not prove immigration status

What more can we give away

Show me the money – is it a bailout, a fallout or a sellout? Money to carriers for support

Humana and Wellpoint (Anthem Blue Cross) each stand to gain $5.5 billion next year to cover losses from Obamacare due to the risk corridors they have "supported" by taking on more risk than others in an effort to "balance the budget" when it comes to providing coverage under the new ACA rules. Yes, they complained about the new law…but why? Senator Marco Rubio, who has made a one man campaign (besides his own for President) against the Affordable Care Act said "the risk of a bailout has always been high…as many of us predicted, these exchanges have not attracted enough young and healthy people to sign up"

It's a Success! But at what cost? The Affordable Care Act in the final days

There was a huge push, and in the end the final enrollment exceeded projections in both California and nationally, but the national toll polled well for our state. But…we still don't know how many "new enrollees" were found, and what they found. Many of the newly enfranchised enrolled in Medicaid, which will cost us. Many enrolled in the individual exchanges, at a cost of $10 billion in tax credits, an average of $2,890 for each of the 3.5 million people who qualified for a subsidy *as of March 1* So the final results are still to be counted, and more subsidies may be coming our way. How long will they be sustained, and what of the newly enfranchised?

Measures that are met halfway

You'll Never Get Away with it – the Republicans saw this one coming

Employers who thought they would be able to cut their financial exposure by reducing the number of hours below the required 30 hour minimum may be surprised by the fact that the House is not surprised by this maneuver. House Majority Leader Eric Cantor said the House will soon consider legislation aimed at lowering the minimum.

Drafting opposition for Obamacare due to Drafting error in legislation

So one court said "no" and the other said "yes" and in the end it will be up to the Supreme Court…again. Remember when the President could do what he wished? Well, that was back in the days of Washington and Adams…when things were hectic (which explains why we are still going through this four years later) Congress wrote the ACA to say that subsidies would be provided through "an exchange established by the State" – so when the Feds moved in, the opposition was also on the move. The problem, of course, is that the law was drafted to give the states incentives to set up the exchanges (money!), but when 36 did not take them up on the offer something had to be done. They did the right thing…but without permission.

The US Court of Appeals for the District of Columbia, meanwhile, said the IRS went too far in extending subsidies to those buying insurance from the federal exchange. Subsidies are therefore no longer allowed to be provided through these exchanges (for the record, California would be exempt here, as we have a state based exchange). The case is *Halbig v. Burwell* but in it, the court said "we reach this conclusion, frankly, with reluctance. At least until states that wish to can set up Exchanges (note – there aren't any now) our ruling will likely have significant consequences both for the millions of individuals receiving tax credits through federal Exchanges and for health insurance markets more broadly" In the dissent, it was stated that "this case is about Appellants' not so veiled attempt to gut the Patient Protection and Affordable Care Act (ACA)" (duh) The White House demurs (of course) saying that 'while this ruling is interesting to legal theorists, it has no practical impact" on individuals' ability to currently receive tax credits for their health care. The Press Secretary said "you don't need a fancy legal degree to understand Congress intended" for qualified individuals to receive tax credits regardless of who was administering the exchange.

Then, in an unprecedented event, a Circuit Court in Virginia made a decision the same day…saying the exact opposite.

The Supreme Court is now making the final decision in the case *Halbig v. Burwell*

Can the IRS really police all the penalties? Not without funding…though they disagree

The IRS Commissioner John Koskinen said the IRS is not getting the funding they need to deal with the new filing requirements regarding compliance with the individual mandate. They have asked for $430 million which includes $300 million to build out needed systems. Regardless, they will plow ahead (given that they have no choice)

Future Tripping – Spring and Fall and Forward

What Might They Do – Congress Progress or Regress or Simply Recess the ACA

Revisit the employer mandate – not likely
Revisit the individual mandate – less likely than that
Repeal the medical device tax (now 2.3% of the cost of devices
Revisit what constitutes "full time" employment
Repeal federal reimbursements for companies who lose money on the ACA
Eliminate the Independent Payment Advisory Board (once known as the death panels)
Lower the subsidies being offered for "affordable" individual health coverage
Creation of a new copper plan (we don't have enough metals now)
Provide alternatives (since they are in a leadership position)

New Numbers make us number with what we have to pay

The individual mandate threshold is raised from 8 to 8.05% of pay before exempt
The definition of "affordability" is now 9.56% of premium (from previous 9.5%)
The transitional reinsurance fee for 2015 is $44 and for 2016 should be $27

Discrimination Intimation

Still no. The ACA discussed discrimination provisions but, when they looked to see what they had cited, they were not that excited, and snuck away silently hoping no one would notice. The threat still looms, but for now employers may vary contributions and premium payment amounts among employees and stratify what they will until it comes time to follow new rules.

It's all Relative – do you choose your Grandmother, Grandfather or a New Family?

In California choices stratified as companies in the fourth quarter were given a choice of keeping the plan they had (as the President promised) or moving to one of the new ACA compatible plan designs. Still others, who had not changed in a while, are able to keep even older plan designs (called "grandfathering") but the question is whether those pools will deteriorate to an extent necessitating change or if the new ACA pools created were too optimistic. No word yet on whether those lucky enough to "grandmother" may do so in 2015.

Choices Narrow – you'll need an arrow to hit your target physician and medication

This came up in the 2014 enrollments and legislation is being considered in some states to force carriers to expand their provider networks, but with pressure put on those same carriers to stabilize their costs (state governments have a role here) they don't have much room to maneuver. Similar legislation is not hitting the drug "formulary" lists, but maybe it should, as consumers are finding drugs which used to be covered are not, or not at the same level..

W-2 Rules will require new tracking tools – but not quite yet

Organizations with more than 250 W-2 statements are required to post the amount paid for medical insurance (by employer and employee) this year. There has been a delay in bringing this requirement down to smaller employers – and it has been delayed indefinitely.

What's Small is Large and Large is Small

In 2016, the definition of "small group health insurance" moves from 2 to 49 employees to 2 to 99 employees. Unless legislation shows otherwise, this means that groups that have previously been able to use the simpler "composite rate" will now be subject to not only "age rates" but the NEW age rates which divide by region, exact age, and all dependent ages.

Don't buy that Cadillac yet

The one remaining aspect of the ACA that they put off until 2018 is the so called Cadillac tax, designed to punish organizations that have "rich" plans. The threatened discrimination rules were apparently not enough, and it was viewed that some groups stuff more benefits for some than others into their group configuration. The problem is that the dollar amounts being used do not respect regional or age differences, and thus even lower paid employees who happen to live in a high cost area (e.g. San Francisco) and are at a higher age bracket can, if they are working for an organization with less than 100 employees, pay a tax on top of whatever contributions they have to make to the cost of their insurance. It is expected that Congress or some government agency will address this, but…

PAY OR PLAY REPORTING

Due Date

February 1 of year following year of responsibility for form 1095 (February 29 electronic)
February 28 of year following year of responsibility for form 1094 (March 31 if electronic)

Forms

6055: showing proof that the employee or dependent has coverage
6056: showing who is covered, listed by each individual employee

1094-B: cover form with copies of 1095-B
1095-B: form the employee needs to verify they have qualifying coverage for the mandate
1094-C: transmittal form for reporting the entire list of full time qualifying individuals
1095-C: transmittal form for reporting to employees the coverage they have

Filing Summary

	Fully Insured Under 50 FTE	**Fully Insured 50+ FTE**	**Self Funded Under 50 FTE**	**Self Funded 50+ FTE**
Forms to Employee	1095B	1095B 1095C I and II	1095B	1095C All Parts
Filed by	Insurer	Insurer or Employer	Plan Sponsor	Plan Sponsor
Forms to IRS	1094B	1094B with copies of all 1095Bs 1095C with copies of all 1095Cs	1094C with copies of all 1095Cs	1094Cs with copies of all 1095Cs
Filed by	Insurer	Insurer or Employer	Plan Sponsor	Plan Sponsor

<u>Transitional Relief (2015 only)</u>

1) Employer may use any 6 month consecutive period in 2014 to measure group size rather than the full 12 months of the 2014 calendar year
2) Was coverage offered to at least 33% of employees at the most recent open enrollment period before 12/27/13 (applies to all employees, not just those who are full time) OR
3) Did the plan cover at least 25% of all employees (can use any date between 10/31/13 and 12/27/13)

Who is Counted – What Employees are Eligible

Basis is 30 or more hours per week (or 130 hours per month):

1) Employer must establish a 12 month measurement period (begin no later than 7/1/13)
2) First measurement period must be in 2013 (may be shorter than 12 months)
3) An administrative period may be set up following the measurement period
4) Employer is treated as offering coverage to FTE for a month if it offers coverage for that month to all but 5% or, if greater, 5 of its FTE
5) The corresponding stability period must be in 2014 (end no later than 90 days before the first day of the first plan year beginning on or after 1/1/14

What to Count:

1) Each hour for which an employee is paid, or entitled to payment;
2) Includes vacation, holiday, illness, incapacity, layoff, jury or military duty or LOA

If employees are **NOT** paid by the hour, calculation may use one of three methods (and may use different methods for different classes of employees):

1) Count the actual hours worked and any hours for which the employee is entitled to pay
2) Days worked equivalency method (all credited for 8 hours of service for each day they would be credited with at least 1 hour of service)
3) Weeks worked equivalency (automatically credited for 40 hours of service for each week that they are credited with at least 1 hour of service)

Employer may not use a method that would substantially understate true hours of service
Hours worked for services performed outside the United States do not count

(Employment Breaks Allowed) – For employees treated as continuing employees that have employment breaks of at least 4 consecutive weeks, the employer must either determine the average hours of service per week for the employee during the measurement period (excluding the employment break) and use that average as the average for the entire measurement period, or treat employees as credited with hours of service for the employment break period at a rate equal to the average weekly rate at which the employee was credited with hours of service during the weeks in the measurement period that are not part of an employment break period (but not more than 501 hours of service for any employment break period)

Contents

Form 1095B (and Transmittal Form 1094B) – reporting those with minimum essential coverage

1) Name, address and Social Security number of the responsible individual
2) Name and Social Security number (or date of birth) of each covered dependent
3) Calendar months each employee or dependent was covered
4) Origin of the policy (sponsor – e.g. employer, government, individual coverage)
5) Name, address and Employer Identification Number of employer sponsoring plan
6) If SHOP plan, the Marketplace unique identifier

Form 1095C Parts I and II

1) Name, address and Social Security number of the employee

2) Name, address, Federal Employer Identification number and employer phone number

3) Information on coverage using a series of codes

    a) Different codes for partial or full year
    b) Reporting done on a calendar year basis, even if plan is off calendar
    c) Coverage measured from first or last day of the month

    Codes are for:

    a) Offering minimum value coverage on an affordable basis for self only
    b) Offering minimum value coverage to the employee only
    c) Offering minimum value to employee and to dependent children
    d) Offering minimum value to employee and spouse
    e) Offering minimum value to employee and spouse and children
    f) Offering minimum essential coverage but not minimum value to employee
    g) No medical coverage offered at all, or not minimum essential value
    h) Offering self funded coverage to an employee working less than full time

    Codes are also for employee status:

    a) Employee was not employed during the month
    b) Employee was not a full time employee
    c) Employee was enrolled in the coverage offered
    d) Employee was in a limited non assessment period (waiting period)
    e) Coverage is affordable using the W-2 safe harbor (9.56% threshold)
    f) Coverage is affordable using the Federal Poverty Limit safe harbor
    g) Coverage is affordable using the rate of pay safe harbor

4) If offering coverage meeting minimum value, employee share of the lowest cost monthly premium for self only minimum value coverage for which the employee is eligible (not the premium for the coverage the employee actually elected)

Each full time employee receives Form 1095-C and the employer must file Form 1094 C transmittal form, with the following information needed:

1) Employer name, address, EIN and name and phone number of contact person
2) Total number of 1095 C forms submitted with that transmittal form

The Form 1094 C must indicate whether the employer is part of a controlled or affiliated service group with 50 or more FTE, and whether the employer is exempt from any reporting rules due to size, 2015 transition rules or offering coverage to a very high percentage of individuals. Must also show on a month to month basis, if minimum coverage offered to at least 95% of employees and total number of FTE (excluding those in waiting period). Must also show total employee count, including part time employees.

Form 1095 C Part III

Applies to self funded employers – employer will need name and Social Security number (or date of birth if not available) of each covered person, and the calendar months each person was covered

Form 1095 C – Part IV

Must be completed by companies that are part of a controlled or affiliated service group

Alternatives

Instead of the general reporting, employers may use an alternate, simplified reporting method

1) If employer makes a qualifying offer for each month of the calendar year, it can provide a code instead of the cost of coverage information on line 15 of 1095 C. A qualifying offer is one where coverage of minimum value is offered to employee, spouse and dependent children and has an employee contribution for single coverage below 9.56% of FPL. Must show employer name, address, EIN, contract name and phone number and have a statement indicating that for all 12 months a qualifying offer was made

2) If employer offers affordable, minimum value coverage to at least 98% of its total employees (part or full time) it does not need to report whether employee is full time nor does it need to provide a count of its full time employees. Employer will still need to provide a Form 1095 C to each of its employees (which has all the required information)

3) 2015 ONLY: may use transitional relief method if it provides a qualifying offer to 95% of its FTE, their spouses and dependents during 2015. Instead of reporting the cost of coverage a code will be used to indicate a qualifying offer was made. Instead of providing completed form 1095 C to the employee the employer may provide a statement that includes the employer's name, address, EIN and contact name and phone number. In addition, a statement must be provided showing either that the employee was not eligible for a tax credit under the Exchange (due to the coverage being offered being affordable)

Where to File

Department of the Treasury, Internal Revenue Service Center, Kansas City, MO 64999

Notes

1) The 1095 C must be provided to any employee who worked full time for the employer during the year, even if they were not eligible for coverage, retired, etc.

2) For controlled groups, employer must file Form 1094C, and each of the groups muste file their own forms 1095-C and 1094-C

3) Social Security Numbers must be included on the forms – the employer must make three attempts to obtain the Social Security Number of the individual if they do not have available

4) Seasonal employees who work 6 months days or less are not counted for determination (changed from original 120 days under final Treasury Regulation 54.4980H.1(a)(38) This is not consecutive time but the total amount incurred during the plan year

5) FTE equivalency for PTE is to take total number of hours in a month and divide by 120

6) Rehired employees considered new employees if break at least 26 consecutive months

7) May use administration of up to 90 days following the measurement period and apply a 3 month grace period for new employees, but 90 days cannot extend the time beyond a year from the date of hire to enroll FTE

8) Employer is permitted not to treat the employee as a FTE during the stability period that follows the initial measurement period. The stability period must not be more than one month longer than the initial measurement period and must not exceed the remainder of the standard measurement period (plus any associated administrative period) in which the initial measurement period ends

9) Special rule says if an employer's workforce exceeds 50 FTE for 120 days or fewer during a calendar year, and the employees in excess of 50 who were employed during that period of no more than 120 days were seasonal workers the employer is not an applicable large employer

10) A rehire may be treated as new with a break of at least 4 weeks and that is longer than their original period of employment

11) Non payment: if an employee enrolls in coverage but fails to pay their contribution on a timely basis, the employer is not required to provide coverage for the period for which the contribution is not timely paid, and that employer is treated as having offered that employee coverage for the remainder of the coverage period (typically the remainder of the plan year)

ALLOWED AND DISALLOWED

What works and what doesn't work Post ACA – and all the other things

Despite the promises made by politicians, health care (and thus health insurance) prices continue to rise in the aftermath of the Affordable Care Act's passage. Employers need ways to cope with rising prices while still providing appropriate access and coverage to their employees. While there are still some measures that can be used to spread risk across the spectrum, there are also measures that have been either disallowed or made more needlessly complicated.

Strategies that Work

Employee contributions to the cost of coverage have long been favored, but their application is often rather indiscriminate. An organized, and easily explicable, method, may be more appropriate:

1) Base contributions on objective standards such as tenure or FLSA status
2) Peg contributions to a particular plan and employees pay the difference for a better plan
3) Define the contribution as a flat dollar amount or percentage of a particular plan

One method not used too often, but which is gaining favor of those employers wishing a more egalitarian flavor to their plans is to employ "reverse discrimination" It makes little sense to pay 100% of premium for highly compensated employees but only 50% for those who can least afford it. Think of the message it sends when you reverse the order and base contributions on employee earnings.

Another way to look at coverage is in the context of value. Ask what sense it makes to have an employer pay the full premium for a rich plan that is appreciated by everyone but used by few. Instead, think of the coverage in terms of its original purpose – to indemnify against the risk of a catastrophic loss. From there, build something else, using Health Savings Accounts, Flexible Spending Accounts, Health Reimbursement Accounts, supplemental voluntary benefits, or redirect the money saved to other meaningful benefits such as the 401kl. This will take some thought and must be communicated thoroughly in the context of employee support, but may be a more efficient, and possibly less costly, method of proceeding.

Strategies that Need Work

As soon as one clever administrator or company comes up with an idea to beat the carriers at their own game, the political or economic framework is reshaped, and this accelerated post ACA

Similar to the approach of "value appraisal" above, some employers sought to either self fund or partially self fund some of the insurance "risk"

1) All carriers have now either discontinued or severely curtailed the ability of companies to create a "wrap plan" where the employer buys a less expensive plan but pays employees the difference between that and a richer plan.

2) Those that wanted to create a Health Reimbursement Account as an open ended invitation to pay for any medical expenses now have it restricted to those approved by the carrier.

3) Larger organizations that could see using the idea of traditional self insurance (where a very high deductible plan, called “stop loss” is purchased by the employer and funding is provided for expenses below it) have had its attractiveness constrained by a new state law that requires the minimum deductible to be $35,000. This practically limits the size of companies that can undertake such a risk sharing arrangement to at least 100 employees.

There has been a great deal of controversy, but not much awareness, over the ruling issued by the Internal Revenue Service last September saying that, as of January 1, 2014, an individual plan could not be paid on a tax free basis through a Cafeteria Plan, a Health Reimbursement Account nor directly by an employer (the last of which had been allowed since 1961). The Department of Labor surprisingly weighed in on this in November 2014, adding that if an employer was found to be indirectly or directly providing payment for an employee’s coverage on an individual plan, they would assess an excise tax as well.

This ruling was designed to eliminate employers dropping group coverage and then helping employees pay their subsidized coverage under the Covered California (and other) exchange. As with all laws, there is also the “law of unintended consequences” and it has curtailed the ability of employers to provide tax free coverage to part time employees, those that do not want what the employer is offering, or to those who may be out of state and not eligible for the employer sponsored plans.

New solutions are posed all the time, but no matter what is used, communication and compliance support are key. Modern brokers have all these tools in their arsenal, and should be discussing them with all their clients to ensure that the health plans supported continue to thrive and derive appreciation from these they are designed to benefit – your employees.

STATE STUMBLING

Outside of the killings, Washington has one of the lowest crime rates in the country
Marion Berry, d. 2014

A low voter turnout is an indication of fewer people going to the polls
Dan Quayle (still alive but brain dead somewhere)

Democrats' plurality not super majority stymies singularity
Of purpose – on the surface. Jerry nearly rigs surplus, will it be enough for us
And the effort is taxing, businesses waning, waxing, movies can't be relaxing
It's too real to stage returns, tech rates lays with cash it burns, dramatic change in who earns
Wages war with laws in motions entertaining

The Federal exchanges with states which state their changes and setting rates in ranges
Have new Supremely Courted review of laws they've thwarted while failures are reported
In western territories and Massachusetts glories no longer front page stories
As debits mount they've lost count scaling climes they can't surmount losses liable amount
To depths of debt past draining without spending restraining

Carriers cause dis-ease, it's no accident their fees won't freeze despite frequent pleas
From agents and agencies who thanklessly try to please consumers feeling the squeeze
Rate relief is beaten back malpractice costs miss attack reserves preserve Shields' big stack
So non profits profits thrive, Health Nets more to just survive, the Blues bellow Anthems live
Without dancing under clouds of madness reigning

Californians get their props but support for new roles drops the polls tolls repealing stops
But as Fed gives way to state, so the locals legislate, dishing restaurants their fate
Tipping toward higher pay base, commuting penalties pace health's ill defined disgrace
With Diners' cards Discovered to charge but leave uncovered the missing bills recovered
Under mandate's sealing fate the law is feigning

Napa whines about its quake but the Grapes of Wrath will not for sake the areas where tremors pulse and writhe beneath the surface calm ensured to bring assurance to those nervous in insurance. Experiments hypothesize that states were of sufficient size to locally economize and run things for DC. But ACA can save the day, too afraid of Medicaid, subsidizing funds away and soon exchanges have to pay the nation for their foundation. Some have now begun to founder, a search won't show any sounder, with rules creating disincentives with politicians inattentive to how savings come at considerable cost. Lost amid the to and fro are echoes of "I told you so" but no one listens to that type within the resounding hype and so when all the bills come due the only one to pay is – you.

We proposition to save dough, but bread comes from the crusty foe who paid a premium commercial price with money we've now given twice while claiming claims can't be reduced so new tables must be introduced and consumers don't have a leg to stand on. With other states, the fates resemble a similar need to dissemble as governors have run the table, GOP ties make them able to dismantle the mantle of Obama's coat tails, and ensure locally his health law fails.

San Francisco's HCSO was determined years ago but undeterred we mined loopholes and roundly proclaimed discovered doles that no one knew were in plain view until they shot them down. Now the city claims it all, they've raised the ceiling and a wall but in their efforts to forestall exceptions they forgot the purpose of the plan. So uninsured may stay that way, but don't forget to raise their pay as businesses are scared away along with jobs – wait, is this working?

Exchange Change in Tune as Budget not in Tune nor attuned to reality – Covered California

Covered California projects it will lose $78 million in the 2015-16 budget, and it is not clear how the Exchange plans to close that gap and become financially self sustaining once the federal grants run dry (per report in the San Diego Union Tribune) Yes, they say they will increase revenue (how?) and trim expenses (what?) and then don't define the methodology. The problem, of course, is that projections are being made when the enrollment has only begun.

Since its creation in 2010 Covered California has paid its bills with nearly $1 billion (that is not a typo) in federal grants. Starting January 1, 2015, the ACA forbids federal grants for health exchange operations, and state law prohibits dipping into California general funds to pay for operations. It all comes down to enrollment – fees are $13.95 per policy (charged to the carriers) which will either increase or decrease depending on final numbers.

Here have some more…but can you pay it back? More funding for Covered California

Now they are really covered…with $1.1 billion in federal funds alone. Let's not forget the money they got from foundations and other sources. So it keeps piling in and they keep piling on, but can they pay it back by tacking on an administration fee? Starting in 2016? With enrollment below the numbers they need? Do we sound skeptical?

The Democrats are in the House…just not as many – the supermajority is lost in CA

With some upset victories, California Democrats knew what it felt like in Congress as they lost their supermajorities in both California houses. When a series of special elections finishes next year they will be one vote short in the Senate and two in the Assembly. Then a pair of high profile corruption cases have cost Democrats their supermajority in the state Senate after little more than a year "in charge" – Senator Calderon has taken a paid leave of absence fighting federal corruption charges (we pay him while he is fighting scandal?) and Senator Wright is in the wrong (or is he?)

San Francisco Bay Delay Lays to take away more money from the ones that pay

San Francisco Supervisor David Campos is now proposing legislation to put the rebates out of reach. Under the original legislation, employers who set aside money for their employees in a Health Reimbursement Account, could take it back at the end of a plan year and start to put it back in the following year. Then they changed the rule and said employers had to retain the money in the account for up to two years following an employee's termination. That concerned the supervisors but it was moot since the Federal government disallowed stand alone HRAs. But many still exist on an integrated basis, so David Campos, who proposed the two year delay originally, is now proposing no limit, and has a good chance at having it pass and not be vetoed.

What is odd is that the original purpose of the law was to reduce the dependence of the uninsured on public health funding. Now the law has devolved not into the purchase of insurance, but in how money that is allowed to be set aside for incidental expenses, including dental and vision, should be allocated and when. What does this do to help the city?

Restaurants reach a tipping point – fraud in surcharges discovered and determined

The San Francisco attorney's office announced it has collected nearly $2 million from area restaurants as part of an investigation into discrepancies between surcharges placed on diners' bills to cover the costs of providing employee health benefits under Healthy San Francisco.

Making it easier to get there, at taxpayer expense – another San Francisco mandate

First a rule about bicycle commuting, then a rule saying groups of 20 had to offer some form of commuter ease. Now San Francisco requires groups of 50 or more employees to do what they should have done already– provide tax free commuter reimbursement to their employees. For those who work 20 hours or more per week, employers must provide the following options:

1) Pre tax benefit: employees exclude their transit or vanpool costs from taxable income
2) Employer provided subsidy for transit or vanpools, up to $75 per month
3) Employer provided transit
4) Alternate commuter benefit provided by employers

San Francisco Update – you're not going to like it

Also note that increases in the amount you must pay per employee increases in 2015. For larger employers (100 or more employees) the amount is $2.48 per hour and for smaller employers (20-99 employees) will be $1.65 per hour.

Between the subject and the object lies the value. This value is more immediate, more directly sensed than any self or any object to which it may be later assigned

Robert Pirsig

BUSINESS BUMBLING

There's nothing in the American dream about character. It's a serious flaw
Mike Nichols, d. 2014

Before you win a game you have to not lose it
Chuck Noll, d. 2014

Divorced from ethics, leadership is reduced to management and politics is mere technique
James MacGregor Burns, d. 2014

Carpe per diem – seize the check
Robin Williams (never gone)

We're passing out the cigars, and praising electric cars
Crude but slick what makes things tick is time to be politic
Not caring where we trade in or virgin spots it's made in
What's old is new, cheaper too, whiting out both red and blue
Cuba's comeback and our own, over all our flag is flown
Knowing this time it will be different

Shale is hale, more for sale, stores of stories we retail
Tech still booms as bubbles bloom busting heads talking of doom
Cromnibus leaves the station which may soon drive the nation
Down Wall Street where greed will greet us with memories of defeat
Of our future's glowing green, jaded traders stay on scene
Forgetting last disaster's referent

Dodd Frank was our protection how'd bankers earn election?
Coffers fill from smoking till (is that from shareholders still?)
Scandals do not linger long, guilty parties come back strong
Celebrating weak returns negating fears and concerns
Anyone recall collapse have we let our judgment lapse?
Or are we similarly indifferent?

Health care costs are dropping but carriers aren't stopping
Raising rates in every state despite what gates they legislate
Higher ages and wages and consumers as sages
Better tech and drugs on deck demands for a complete check
Keep savings from appearing and what we front's appearing
Back we race to face what's now inherent

In an amateur move the NCAA will let students play like pros, though what pass for plays these days might make them stay and study. Morals are muddy with replays going viral and careers spiraling out of control. Late hits aren't emerging stars and scars stain family matters even with TV dads. Bill's bills can't be ducked but is he Culpable, and everyone's confessing despite pro sports professing new rules to corner safety. Not that protection's better as bankers screen old bettors and pretend the playing field is level. Ali Baba says "open sesame" to the biggest IPO in history, and the market rise sows seeds of self destruction. Déjà vu all over again, but didn't we learn our lessons then, but now it is less if than when, unless you're more in touch with Zen, where nothing means something.

In health care politicians take the credit for curbing increased costs that fed it, but they are playing on artificial turf. When you surf you rarely beat the curl, especially when waves whirl in opposing directions. A correction to the one only lets you think you've won when gains in other areas confound. It's not sound to hear acclaim, the target's not your aim, and what you thought you saw is not the same. It's an ever changing game, and new rules don't make it tame, because it's peoples' lives at risk – and business remains brisk.

They're Rising, They're Falling and No One is Calling it the same way – medical inflation

The good news is that health costs are continuing to moderate. The bad news is that no one really knows why, but maybe that is good news. First, national health spending grew slowly for the fourth consecutive year, increasing 3.7% in 2012. Experts disagree over whether the ACA or lingering effects of the recent recession are responsible. Health spending declined slightly for the first time in decades. Economist Aaron Catlin said "the relatively low rates of growth that we've seen over the last four years are consistent with the historical trends that we've seen when we look at health spending and gross domestic product" Jeanne Lambrew, a health policy coordinator at the White House said that, despite the debate, there is no doubt that the ACA reduced Medicare spending growth, which many experts believe spills over into the private sector. An article in Health Affairs, however, said that more historical evidence is needed before a conclusion may be reached about a structural break in the historical relationship between the health sector and the overall economy. They naturally equivocated in the report by saying some provisions of the new health care law increased spending and others reduced it. Spending for doctors services and outpatient clinics have increased 4.6% (vs. 4.1% in the previous year) while prescription drugs went up just .4% vs. last year's increase of 2.5%

Inflation debate among inflated claims freighted with doubt about who's in and who's out

The rates are a guessing game. Just do a comparison between what exists and what is being touted now as part of the Affordable Care Act and you can see the gaps are too large. So it is no surprise that Wellpoint, parent of Anthem Blue Cross of California, is threatening double digit rate increases in 2015. The Consumer Watchdog Campaign has said that Wellpoint has done better than any other carrier in terms of new enrollment, and thus should not be talking about rate increases. So…we have the Insurance Rate Public Justification and Accountability Act on the November ballot in California. Great…so increasing mystery will be shrouded in greater bureaucratic misery and enigmas multiply as everyone seeks to justify their position.

What part of "Affordable" don't these people understand? Struggling to pay premiums…

A recent poll conducted by the Kaiser Family Foundation found 57% of those who purchased a plan through the exchanges (not counting new enrollees in the private market, which also had gains) were not previously insured. Despite the availability of subsidies, however, 40% of those who bought the plan and qualify for subsidies are still struggling to pay the monthly premium. Findings include 39% report premiums for their new plans were higher than before, and 46% said they probably couldn't cover the expenses required under the plan design they chose.

It's a matter of perspective – are they raising rates because they must or because they must do it now before it's too late – Anthem Blue Cross decision

Anthem and its parent company Wellpoint have given $12.9 million to defeat a California ballot initiative that would require carriers to get approval for rate hikes – while they have proposed a 25% increase in the rates of individual policies held by over 300,000 members in California.

Let Begin the Liberal Woes – against their usual predatory foes (yes, the insurance companies)

Consumer Watchdog reports major insurance carriers and their representative association (California Association of Health Plans) collectively gave $25 million of policyholder money to a campaign against the November ballot initiative to limit the amount carriers may raise their rates. The "Justify Rates" ballot measure requires carriers to get permission from the state before raising rates like auto and home insurance companies. Actually, and interestingly, it's not the rate increases, but the fact that carriers continue to raise their rates while they have excessive reserves. Consumer Watchdog cited Blue Shield, a non profit with $3.68 billion in reserves, 1,667% more than required. Then there is all the advertising, like Kaiser's "Thrive" campaign at a cost of $40-50 million per year. Also noted are "excessive" executive pay and the fines that carriers have paid due to inappropriate claims actions – and we all get to pay.

The Tail Wagging the Dog…Why does Covered California continue to get preferred treatment?

It is set up with the endorsement and cooperation of the California government. They were allowed to dictate the terms of coverage that carriers could offer. They were allowed to bully the carriers into keeping their costs down, which resulted in a "narrowing" of networks, which has caused all sorts of confusion in the market. And now…they are facing calls for a state investigation of its contracting practices, after disclosure of the release of $184 million in contracts that did NOT involve competitive bidding.

Covered California was given the ability to negotiate no bid contracts to meet necessary deadlines in 2010…but now it is 2014 and they are continuing to use this ability to meet "deadlines" – but what are they? Recently, Covered California awarded $184 million in no bid contracts, which coincidentally included deals worth millions to a firm with workers having strong ties to the Covered California Executive Director Peter Lee. The new no bid contracts represent 20% of the amount of money Covered California has awarded to outside agencies. According to Peter Lee, he needed to move fast and "needed experienced individuals who could go toe to toe with health plans and bring to our consumers the best possible insurance value" So he couldn't bid it? He has had four years…

Parting words of business wisdom
Excerpts from a Theodore Levitt lecture on Futurism and Management

As Mark Twain said of Wagner's music, it's not as bad as it sounds. Things are getting less worse. Materiality, selfishness, greed, envy – these are not in sudden new abundance. It's just that we've become more selectively observant

The difficult part of problem solving is anticipating the problems that the solutions create. The solution to a problem changes the problem. On the other hand, if you don't understand the problem, a successful solution is just an accident

After all is said and done, mostly all that's done is said

What I mean by the word quality cannot be broken down into subjects and predicates. This is not because quality is so mysterious but because quality is so simple, immediate and direct

Robert Pirsig

JUDICIAL JUMBLING

Education is what you get when you read the fine print. Experience is what you get when you don't
Pete Seeger, d. 2014

Crazy people are not crazy if one accepts their reasoning
Gabriel Garcia Marquez, d. 2014

I don't drink tequila any more because it makes me ski
Jon Pinette, d. 2014

The Supremes are courting dreams of Obama's care it seems inspiriting pleasant themes
Teasing the subsidies' fees from the solicitor's pleas that may engender a freeze
On suitors' interests vested in exchanges protested the law may get arrested
Or find final resting place which will R.I.P. a hole in space and time to vote to replace
A law with flaws despite applause which changed with hope

Wellness isn't doing well, EEOC runs pell mell and there's still no way to tell
Who is doing right or wrong, clarity is not that strong, weakened more with laws writ long
Contraception some believed was a statue ill conceived, Hobby Lobby was relieved
To receive the Court's reprieve, pulling tricks from other sleeve, marriages and Family Leave
Labor rules and other unions more within their scope

Golden State end debate on what props will legislate but some bills ducked public weight
Teeth are put tin PTO a dental loss ratio and lengthened how long to go
Before coverage begins. What's startling is less ins but more the outs which has been
A means to keep status quo even though opponents know Navigators are too slow
And health credits and savings save those who can't cope

Whether held in the court of public opinion or with traditional jurisprudence, it's all a trial. Feds point to the states who trickle down in theory but what goes down must come up in elections and then no one can decide nor decipher what it means. Scenes of confusion ensue, and that's just what people do when they can't get their way or no one hers what they have to say, and even when it goes away it comes back at a later day – hence our reference to voter cycle maintenance.

Rules of note didn't get a vote but agencies still wrote guides to marriage definitions, wellness conditions and contraceptive positions. Politicians pressed their pull and put in full permission to continue care and plans you care about (like Grandmother used to make), sick rules when you're out and profits bitten off by dental plans (much to our chagrin). They corrected their confusion about waiting periods for new hires, but went lower by failing to require better mapping for "navigator" standards. Because they couldn't budge it, they held tight to Brown's fiscal fight and killed three bills that would expand tax deductions for health care. All in a year's work.

Supreme Indifference…Same Sex marriage proceeds because the USSC is not wedded to the idea of a declaration of their intentions

Seven rulings from three federal circuit Courts of Appeals addressed same sex marriage in five states, and this was bundled for consideration to the United States Supreme Court. In October, just after convening for their new term, the Supreme Court declined to address these issues, and thus the original appellate rulings remain in force.

Family Medical Leave Act redefines Family to include Gender Neutral Marriages

The Department has proposed to move from a "state of residence" requirement to recognize same sex marriages to "place of celebration" which makes things quite a bit simpler, and easier The proposed definitional change means that eligible employees will be able to:

1) Take FMLA leave to care for their same sex spouse with a serious health condition
2) Take qualifying exigency leave due to their same sex spouse's covered military service
3) Take military caregiver leave for their same sex spouse

PTO as a partial no – how do employers apply the rules? New California appellate decision

In *Thea v. General Atomics* the California appellate court reaffirmed and clarified the vacation rule. In this case, the company offered exempt employees accrued PTO, and requires them to use their PTO hours when they are absent from work for partial or full days. Deductions are made from accrued PTO for partial day absences of any length. They continue to accrue PTO and their full salary during this "leave" They are not required to use PTO if their work week exceeds 40 hours, however.

The plaintiff said the rule for partial day deductions was unlawful, violating the law prohibiting forfeiture of wages (including accrued vacation or annual leave). The trial court disagreed with the plaintiff and upheld the rule for the employer. On appeal the California court agreed.

Along the lines of PTO, California did change their Sick Pay law (we sent an outline to all our clients on this in December). The effective date is July 1, 2015.

New guidelines on pregnancy discrimination – because they have not outlined this enough

It's exactly what you expected. Don't do it – in triplicate. Any evidence that an employer knew of a pregnancy (office gossip and whatever) and then made an employment decision based on it, or in advance made a decision based on stereotypes about applicants is prohibited. And don't even think about considering an applicant or employee's past pregnancy or someone's capacity to become pregnant. No kidding…but they found the EEOC found a need to repeat it. No leave policies with gender based distinctions, no accommodations different for one employee temporarily unable to perform a job than another, and all benefits and infertility insurance coverage must be the same for everyone. You knew this already, right?

Hobby Lobby Ruling Cooling ACA Ardor Contra to Initial Perception but Congressional Reception is Cooler Still (USSC – Burwell v. Hobby Lobby)

The Supreme Court ruled that "closely held (sorry General Motors) for profit companies can, on religious grounds, opt out of a federal requirement to provide certain contraception coverage. Of course, they did not define what "closely held" meant (though Justice Stewart said "I'll know it when I see it"). Publicly traded companies, of course, are not.

With a little more ambiguity, the Supreme Court gave temporary relief to Wheaton College, ruling "it does not for now have to comply with the Obama administration's requirement that it fill out a form to register religious objections to providing some types of contraceptive coverage mandated by the Affordable Care Act" What is odd about this is that the male justices tried to sneak it through, but the female justices were furious, claiming that, while they were a part of the Hobby Lobby decision, this did not mean that they were opening the door for other exemptions, especially those that had not been fully heard.

Consequences? Well other than changing employee handbooks, trying to explain moral and religious convictions to employees, the potential erosion of ACA credibility and the opening of further "religious grounds" challenges for other federal laws, not much. There are also at least four dozen similar faith based lawsuits now under consideration. But in this case…

Immediately afterward Democrats released a bill to overturn it, developed to "ensure women have access to coverage for birth control even if they work for businesses that have religious objections" In other words, they want the ACA to do what it said it would (meaning covering contraception) and they won't listen to the Supreme Court say otherwise. The bill failed.

One legal firm, commenting on the ruling, said "the Court indicated it may not provide the Administration much leeway in its implementation of the ACA where such implementation impacts and is led by other Federal rights"

Note that the ruling does not apply to state laws, which means that fully insured plans are essentially exempt from the Court ruling because they are subject to state and not federal regulations (for the most part)

Overall, the general implications, or lack of same, are:

1) The decision is limited to coverage of contraception without cost sharing under the ACA preventive care mandate

2) The Supreme Court did not address the application of the decision to publicly traded companies

3) Employees may still be able to access all FDA approved forms of contraception without cost sharing, but not without additional regulatory action

4) Plan funding may limit an employer with sincere religious objections from "carving out" certain types of contraception

California has conceived a new law – no cost contraception

Governor Brown signed into law SB 1053 which ensures access to no cost contraception services for both men and women. The Affordable Care Act already requires insurers to cover FDA approved contraception without co payments. Now the new law will require no cost coverage for vasectomies and other male contraceptive devices.

HSA, FSA get carried away over amounts carried over – new IRS guidance

The IRS issued rules allowing FSA participants to carry over unused amounts up to $500 each plan year. There are considerations with regard to simultaneous HSA participation, however, and the IRS has clarified those rules as well. Those covered by a general purpose medical FSA are ineligible to contribute to an HSA, *even if* the medical FSA balance consists solely of unused amounts carried over from the prior plan year (even if exhausted, the individual is ineligible to make *any* HSA contribution)/ The individual *may* contribute to a general purpose FSA if they have an unused balance IF

1) The individual waives or declines a carryover of unused amounts from a general purpose FSA to the subsequent plan year; or

2) The cafeteria plan offers an HSA compatible FSA (limited benefits) and the individual elects to carry over unused amounts to the HSA compatible FSA for the subsequent plan year; or

3) The cafeteria plan is designed to automatically enroll those who elect a high deductible health plan coverage for the following plan year in an HSA compatible FSA (including carryover amounts)

New Rules – Cafeteria Plan Mid Year Changes

IRS Notice 2014-55 permits a cafeteria plan to allow an employee to revoke their election under the cafeteria plan regarding medical insurance coverage at such time as they are eligible for and elect to enroll in a Marketplace (Exchange) plan

What they did not say in their notice is that someone should carefully consider whether they are getting a better deal by buying coverage with after tax dollars vs. pre tax dollars, and also what the value of any subsidy they may receive would be to offset the difference. Note that the subsidy is NOT available to those that have coverage available through their employer.

And they stay busy…Supreme Court also weighs in on retiree health benefits

Retirees are being promised that they will be able to continue their health coverage for the rest of their lives, or until they turn 65 and qualify for Medicare…or until the employer changes their mind. In the case *M&G Polymers USA LLC vs. Tackett* the collective bargaining agreement allowing for lifetime coverage has been challenged. Rules about what must be said or what must be inferred when the agreement is otherwise silent are all under consideration here.

Premium Reimbursement under the Affordable Care Act – DOL issues FAQs about the rules

First there was no problem. Then the ACA was passed. Still no problem. Then someone realized that employers and employees may be taking advantage of existing rules that allowed a tax exemption for the payment or receipt of individual health insurance. So on September 13, 2013 the IRS and DOL issued "guidance" (interpretation) about what was going to be allowed…and what was not. The new rules basically said that an HRA could not be used to pay for individual health insurance premiums, Flexible Spending Accounts could not be used for the same reason, and any premium paid directly by an employer for an employee would be a taxable event. Not so good…but they weren't done. The DOL has issued further "guidance"

Under the newest new rules, even where employers offer cash to pay for an individual market policy, it is now in violation of ACA market reforms. Not only is it now a taxable, but is considered part of a plan and thus must meet ERISA requirements …which means that violation of the law now also means the payment of an excise tax.

The DOL also stated an employer offering an employee with high risk claims the choice between enrollment in its standard plan and cash is in violation of the Affordable Care Act, HIPAA, and ERISA…a triple threat. It is discrimination (no kidding) The discrimination rule applies whether the cash payment is pre or post tax, the employer is involved in the selection or purchase of a product or not, or even if the employee obtains any individual health insurance.

Premium Reimbursement Arrangements Redux – the closing of an old loophole

For many years, some "consultants" (and one in particular) have been telling employers that they can cancel their group policies, set up a Code Section 105 (IRC 105(h)) reimbursement plan that works with brokers to help select individual health policies and get the premium tax credits for Marketplace coverage. This is NOT permissible according to the new FAQ issued by the Department of Labor. There are several reasons given, which should finally close the door:

1) The arrangements are considered to be group health plans and thus no tax credit allowed

2) Just because an employer is not involved with plan selection/purchase does not prevent the arrangement from being a group health plan

3) Such arrangements are subject to market reform (under four separate notices) which prohibits annual limits and requires preventive care be offered without cost sharing. "Such employer health care arrangements cannot be integrated with individual market policies to satisfy the market reforms and, therefore, will violate PHS Act sections 2711 and 2713 *among other provisions* which can trigger penalties such as an excise tax.

You look at where you're going and where you are and it never makes sense, but then you look back at where you've been and a pattern seems to emerge. And if you project forward from that pattern, then sometimes you can come up with something.

Robert Pirsig

BACK PAGES
Down Through the Decades

I was so much older then, I'm younger than that now – Bob Dylan (My Back Pages)

Dylan dreams of sagacity returned through innocence learned from experience. Disraeli pondered how the many years contained the continual surprise of his growing ignorance. Personally, I don't know what I know until an event or even an unexpected phrase heard puts me in a reflective mood. At the end of the year, I watch a parade of those who've just left, marching toward a mist which rises just beyond the horizon. Some were close and some were not, but all touched something in me that I could forget was there until they summoned it. This year I see the decades roll as each has a particular place in my own history and their grasp reaches from the grave.

The Fifties – Ernie Vandeweghe

My father said he knew him, which is possible given the size of the campus. More likely, given their separate class, he floated within the wide arc of acquaintances, admirers, and those simply astonished at his gifts and grit. An All American in basketball at Colgate, our alma mater. He played pro ball for the Knicks while attending medical school, married Miss America, and spawned two generations of professional and Olympic athletes in basketball, tennis, swimming, beach volleyball and polo. My father, who had gifts of his own but unknown in a public sphere, would hold up Dr.Vandeweghe as a shining example of someone who fiercely nurtured what they were given and continued in God's grace to be given more in return. I was never jealous, nor was he, but surprised that in our own way we got what we may not have had had we not stayed aware and pushed beyond the limits inadvertently set in our imagination. A nation needs heroes, and Ernie Vandeweghe, accomplished but self effacing, now forgotten, deserves to be remembered and praised.

Fifties to Sixties – Al Feldstein

What? Me Worry? Asked the goofy face of a modern "everyman" (or boy) from the pages of Mad magazine. It was funny. It was topical. It seemed adult while being silly, lampooning our foibles and, in the Sixties, growing sense of dread, with the Cold War giving way to Vietnam and the world our parents knew skewed beyond recognition. Mad taught tame rebellion, protest with a knowing wink, and Alfred E. Neumann got his share of presidential votes. I was ten then in my teens, but the early Baby Boomers caught the zeitgeist as well, as Mr. Feldstein grew his crop of insightful writers and let us look at ourselves through a fractured prism, cracking us up all the while. Sadly, my subscription lapsed.

Sixties to Seventies – Music

Who could remain unaffected by the noise, the bluster, the wild gyrations and the symphonic struts practiced by those well trained or just poseurs, who found a talent and honed it even while distracted by drugs and politics or media exposure. This year saw the mortal coil unspooled for three J's who made an impact. Yes, I still have the records of Jack Bruce (Cream), Johnny Winter (dream) and Joe Cocker (scream)

Seventies – Words and Music

Lightning strikes in many ways and we are left forever changed by the experience. Through the remaining haze, I vividly recall the many moments which made a difference. The first time I saw "her" Patti Smith exalting "Gloria" my first AA meeting in London and the opening chords of "Sweet Jane" which grew from the radical idea of twin leads played by Steve Hunter and the recently deceased Dick Wagner. They not only cascaded stinging notes for Lou Reed, the twisted heir of Delmore Schwartz, but Alice Cooper, clown prince of macabre rock.

Odd what we'll find as touchstones, but the Seventies were my time of discovery, death and rebirth, and a companion volume with Robert Pirsig's "Zen and the Art of Motorcycle Maintenance." Still the only book I return to again and again.

There is a startling and poignant scene where his son, Chris, is crying in frustration, yelling at his father to come awake, come alive – where has he gone? – even as he sat right in front of him. So I confronted my younger self, the bright eyed child of endless questions, shouting into the void my own soul became, only a few years after reading a book that continues to shock me. I did awaken, and remain aware of where I'm going, but I keep this guidebook with me to remember.

Seventies and Beyond – Hoffman and Williams

Our opening poem was from "I Know Why the Caged Bird Sings" it speaks of freedom and despair, of love and winged flight existing even as the night consumes the spirit. We are blessed where we see talent, attracted to its flame and what it lights inside us. With artists possessed with their work, demons lurk within the shadows. Some display a raging defiance, directing the muse and the ego it demands – others fail, and flail in public and in private scenes that unfold drama while "the play's the thing"

My daughter and I thought Philip Seymour Hoffman one of the finest. His work in "Flawless" was just that, culminating in "Capote" in which he took command of another haunted figure. I read last year that he'd had his problems with drugs but overcame them and been without for twenty years – then he relapsed. So many think you're clean and sober and you're cured. But there's a reason we say "one day at a time." When you go back, your mind and body respond as if the time away never happened, and you fall further, faster, until – and it wasn't long after that I read the obituary, surprised but not stunned. Another victim to the loneliest disease.

Some saw him early, while I came late to witness his very public splash on national TV, and soon we all knew his name. I prefer “The Fisher King” and “Moscow on the Hudson” works with some restraint, even as you saw the little boy twinkle. He would get that manic look and soar, and I never saw anyone laugh harder when someone would play with him and turn the joke around. Robin sightings would spring in Marin, he’d show up unannounced at clubs, and it was hard to leave him alone, his presence always bigger than his place, while his inner space crumbled. Loving father, good neighbor, enthusiasm always spilling over and sometimes to his detriment. Even when he sought help he brought along “The Robin Williams Show” with its many voices, cutting down his choices and the prospects for some peace. May he rest so now.

For the Ages – Harold Levering Watkin

He remained anonymous to the end, but I knew him well while he knew me better. Sponsorship in AA is an unusually intimate relationship, of trust and caring, where sharing is a life or death issue and the guidance received from strangers heretofore making the difference between merely surviving and living. There is a path, which we all hopefully follow, but sometimes a guide is needed, one who has been there before, find the many ways in which one stumbles, and shows when to speed up, and when to slow. “Steve” listened to my stories and the sharing of my foibles with a gleam in his eye, knowing the punchline even when I didn’t know there was a joke, his solo chuckle reminding me that I had missed another point, one of many, as I trod the potholed road. He never walked ahead when I was with him, only beside me, and carried me once or twice. He was modest and formal, only disgorging his biggest secrets after 34 years as he saw death coming…but I knew them already, because I knew him better than myself. I miss the stories of his schizophrenic mother, who we sometimes saw on the San Francisco streets, his broken family, his loneliness and pain because he never put it that way. He was always cheerful, sometimes wistful, but always knew where he was going and who the ultimate guide would be. He is with Him now, in communion with the spirit he longed to see, and occasionally I look up and still see his smiling face, looking down at me and wondering if I will ever get the joke. Sometimes I laugh.

They all remind me of the laughter we long after, the serenity we seek, and the nullity that nears us to the silence we find necessary, to think, to dream, and to be surprised at the flashes of insight, the realizations of love and the excitations of discovery that loom just beyond our grasp until we look for them more closely. Whether its memories provoked of my late father or his surrogate, or the pleasure of seeing and hearing those who moved us once and now once more, I am humbled at year’s end, and grateful for the time I am permitted to enjoy. It’s been a weird life, but a good one.

It is not good to talk about Zen because Zen is nothingness…if you talk about it you are always lying, and if you don’t talk about it no one knows it is there

Robert Pirsig