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Now is the winter of our discontent
Made glorious summer by this son of York
And all the clouds that low'r'd upon our house
In the deep bosom of the ocean buried
(Richard III)

Eloquence. Rhetoric. Dr. King sees dreams come true. Lincoln hears the "better angels of our nature" come through. Cool like Kennedy. Reassuring as Roosevelt. Fireworks or fireside, the orators of the past beckon like beacons, Gatsby's green light on the shore winking to the travelers seeking safe passage, borne back ceaselessly into the past as we rally to work, together, for what was promised and yet to be delivered.

What commentary can suffice in troubled times, whipped between the shrill notes of hysteria and the dulcet tones of pedantic pundits, prophets at a loss, the perspective perpetuated by past performance no longer acting in accord with lines learned and parts played. Unemployment rolls are rising, bred by confusion in credit and those who said it would soon be over and we'd be rolling in dough. Now we know it won't, but hope springs eternal from fall's victor, with a cadence moving us to march, the distant drumbeats marking time, time for a change. So much was not supposed to happen, so much was impossible – so much for so much.

All we know is that we don't know, and only now seeing that we never did, the assumptions and presumptions and the delivery of preconceived notions smashed against market motions and the prevailing winds of errant emotions.

We start with Shakespeare because the year was such a mix of masterful comedy, tragedy, farce and history – hopefully not prophecy, as Richard's ambition dwarfed his promise. Crowned heads were downed and candidates written off came back to scoff and then reclaim the vanquished. What remains remains to be seen, as the opening scene of the "One Hundred Days War" won't be a bed of roses, with budget woes, distant foes, and the thicket of sidelong thorns left by dethroned leaders. Good things may come to those who wait, but who has patience for health care reform, the soldiers' safe return and room to nurse recovery from the trauma wreaked? We were warned but would not listen, we were told but could not hear, so will our hearts and minds be open to the solutions we secretly fear? Hope. Change. Words with the power to produce what they promise, the premise dependent on desire. What will be our theme, of what dare we dream, and the possibility of prosperity is spoken of by Prospero in *The Tempest*

Our revels now are ended. These our actors,
As I foretold you, were all spirits, and
Are melted into air, into thin air:
And like the baseless fabric of this vision,
The cloud-capp'd tow'rs, the gorgeous palaces,
The solemn temples, the great globe itself,
Yea, all which it inherit, shall dissolve,
And, like this insubstantial pageant faded,
Leave not a rack behind. We are such stuff
As dreams are made on; and our little life
Is rounded with a sleep.

FEDERAL FUMBLING

So people are ready. I feel hopeful in that sense
(Studs Terkel, d. 2008)

Whatever the criticisms and the after action report may be about, what was right and what was wrong looking back, what would be a horrible tragedy would be to distract ourselves from avoiding further problems because we're spending time talking about problems that have already occurred
(Tim Russert, d. 2008)

Every revolutionary idea seems to evoke three stages of reaction: 1) It's completely impossible; 2) It's possible but it's not worth doing; 3) I said it was a good idea all along
(Arthur C. Clarke, d. 2008)

Idealism is fine, but as it approaches reality the costs become prohibitive
(William F. Buckley, d. 2008)

McCain stalked his prey, above the field's fray
Moving from maverick to middle
But wasted his chance to lead at the dance
Stumped by economy's riddle

Washington worries amid snow flurries
Let the Obama drama unfold
Failing hearts beat along Wall and Main Street
Where pavement poured once led with gold

"Yes We Can" succeed, hope and change his creed
We don't grow sick of Illinoise
Lincoln was able, Barak's rise a fable
Rivaling that lawyer for poise

The team he'll create can help legislate
Soon as he Ovals the Office
But which crisis first depends on what's worst
Puling wool over eyes to what's missed

Some musical chairs, Congressional dares
To see whose agendas are pushed
So much needs reform before seats are warm
The President soon will be Bushed

What's left, what is right, what change is in sight
Depends on delays we can't see
Despite what is lost, we'll find that the cost
Envisioned wasn't bound to be free

Like a Phoenix rising from the Arizona ashes, McCain is able to slay his rivals, until he jawbones like an ass to buttress his campaign and picks the most obscure cure for his malaise. Sarah was Palin comparison to Mrs. Clinton but met the general gender requirements. Was she qualified ("I don't know – Alaska"). Fresh as new fallen snow, lost in a political wilderness and a one woman symbol for family values, freedom of expression, the military and the NRA. But the novelty wore off and we were left with a hero whose courage could not translate into political victory, a pater familias paired with the Thrilla from Wasila, another desert storm whose rage against the machine ended with the mechanical mouthings of platitudes from plateaus lost in the hazy heights that witnessed our decline.

Enter Lincoln's legatee, whose oratory rose with orotund assurance, overcoming appearances of inexperience and whispers of wishful thinking, taking down the ordained front runner with organization and obdurate obedience to a vision, a story, and a winning way to make us think he was with us. The thought we needed most of all when the market tanked this fall. His "Team of Rivals" pales in scale, his fireside chats may require a more telegenic approach, his recall of the Kennedy call of "what you can do for your country" needing more than memory…but still, poised on a precipice, as we wait…

Modern mingling with Dingell jingling for change in pockets of power, waning while Waxman soars in his chair, but taking charge of the health issue, not in Stark relief to a re-Pete performance in the subcommittee that can Daschle Tom's dreams hopes for Obama's trope trooping through Congress. On the senior side, Kennedy Teds political hay to find someone to say the Senate bill should light the way in matching his vision with a plan a far sight better than its predecessors.

Financial fortunes may foretell the groundswell for health reform, the wealth lost causing the collective cost to exact too great a toll at precisely the time this island of welfare thinking must be reclaimed. Hilary stated her intentions earlier, Summers springs back and Joe Biden his time to widen influence with the confluence of events we are tracking.

So much on his plate, with 100 days to understand China, the Middle East and the beast of balance sheets that continue trending toward deficit spending. The prongs of war skewer the songs of peace, with eruptions in Greece, corruption without surcease and mum the byword elsewhere. Obama can't rest on his laurels as he flings the floral wreath at the many "stans" beneath which our Treasury may be buried.

It will be less a matter of party line calls, but be cheery, the O's have it:

Composed – The Democratic Party Health Care Platform

I suppose since they are in the majority, one might parse a farce of this fiction. If Pelosi and Reid have agreed, however, they may be freed to carry the ball from the time of the inaugural. Of course, a filibuster can be mustered and the roster of others who seek to leak their own plans, or their opposition, to others, is very long already. Still, they said:

1) Modernize the health care system (the perennial cry for IT)
2) Stop cost shifting from the uninsured (which they can do if the government stops it)
3) Stop insurance discrimination
4) Help eliminate health care disparities
5) Achieve savings through competition, choice, innovation and quality care
6) Promote prevention and wellness

They did NOT propose an individual mandate, which exists in Massachusetts and is the cornerstone of many proposals. The platform is sturdy indeed, but a base does not a structure make…so some architecture may be needed before they have succeeded

Proposed – Legislation to be Considered this Session

There will be bills making their way through the legislative thicket almost immediately, with big and experienced names behind them. Here is a recap of what was outlined in the last legislative session, some of which were holdovers…and all may come again. Think Obama and McCain had the only proposals?

HSA: requirement for documentation of all claims (HR 5719) – defeated
Health Partnership Act: combination of arrangements using state grants
Medicare for All (Kennedy and Dingell)
AmeriCare Health Care Act (Stark)
Healthy Workforce Act – uses tax incentives and credits
Every American Insured Health Act – replace employer tax deduction with a credit
Universal Health Coverage Act – individual mandate
American Health Benefit Program of 2008

Small Business Health Options Program (bi partisan) – small business and self employed health insurance pool using annual tax credit

Ten Steps to Transform Health Care in America Act (Enzi)

1) individual mandate
2) requires insurers to offer core plan (community)
3) state enforcement
4) eliminate employer, self employed and medical expense deduction
5) community rating
6) 5 other things

Healthy Americans Act:

1) individual mandate
2) establishment of state “health help” agencies to run it
3) Medicaid and SCHIP eliminated
4) plan to cover all except those on Medicare and TriCare
5) Government subsidies to 4 x Federal Poverty Level (family of four is $85,000)
6) financing is premiums plus new employer tax
7) employer deduction replaced by individual health care deduction (to $125,000)

Imposed – Legislative Year in Review

FMLA:	final regulations after a hiatus of only 23 years (see Legal Section)
Cafeteria:	close but they have held over final regulations until 2009
Mental Health:	parity finally achieved after 6 years of sunsetting (see Legal Section)
Michelle's Law:	amends ERISA to define medical necessity for overage dependents
Bicycle Commuting:	yes – it was attached to the bank bailout bill (really)

Supposed – What Will Obama Do?

It seems not to be a question of IF so much as WHEN, but that is assuming the President learns the lessons from the Clinton administration (and look, he has a visual reminder at his Cabinet meetings), a number of other crises don't suddenly cause him to lose sight of one of his top 3 campaign promises that he can overcome the desire of some senior politicians to leave it as their legacy (Stark, Dingell, Kennedy), bad planning, cold feet, heavy opposition by the vested interests…the list goes on. But even if a bill passes, how strong, how long, and at what cost? What we know now is what has been outlined, but even that may be undermined by what his HHS designee may have in mind. In his campaign Obama said:

1) Quality, Affordable and Portable coverage for all: new national health plan for all Americans to buy affordable coverage that is similar to the Federal Employee Health Benefits Plan (FEHBP):

    a) Guaranteed eligibility
    b) Comprehensive benefits – similar to FEHBP
    c) Affordable premiums, co pays and deductibles
    d) Subsidies for individuals and families who do not qualify for Medicaid
    e) Simplified paperwork and reined in health costs
    f) Portability and choice

2) National Health Insurance Exchange – equity in the individual market – will be for those who do not qualify for Medicaid or SCHIP and do not have employer coverage. Self employed and some small businesses can purchase here also. This will also be a consumer watchdog and create new rules and standards for the purchase of health insurance.

3) Employer Contribution: payroll percentage contribution will be required
4) Mandatory Coverage of Children – to age 25
5) Expansion of Medicaid and SCHIP
6) Flexibility for State Plans
7) Portability so people can move from job to job without losing coverage
8) Require full transparency about quality and costs (plan administration)
9) Cost Containment:

    a) Reimburse employer plans for part of catastrophic costs they incur
    b) Support Disease State Management programs
    c) Investment in Electronic Health Information Tech Systems
    d) Increase competition in the insurance and drug markets
    e) Expand, support and rewards employer health and wellness measures
    f) Pay for subsidies by repealing tax cuts (should cover half of subsidies)
    g) Allow purchase of medicines from other developed countries if safe

10) Fight for new initiatives:

    a) advance the bio medical research field
    b) fight AIDS worldwide
    c) support Americans with Disabilities Act
    d) improve mental health care
    e) protect children from lead poisoning
    f) reduce risks form mercury pollution
    g) support Americans with autism

11) Ensuring Providers deliver quality care

    a) promote patient safety
    b) align incentives for excellence
    c) comparative effectiveness research
    d) tackle disparities in health care
    e) insurance reform – strengthen antitrust laws to prevent insurers from overcharging physicians for their malpractice insurance

Here's a surprise – there has already been substantial criticism and conjecture about the effects of such a plan and ways in which it may disappoint, not make its point or be pointedly wrong (culled from various magazines and a Congressional Budget Office Report)

1) "does not address the core economic incentives that drive health care spending – this omission, along with the very substantial short term savings claimed raise serious questions about its fiscal sustainability"

2) "Heavy regulations and national fallback plan and pay or play raise questions about future of employer based market. It is likened to FEHBP but base costs for that plan may be too high, so subsidies will be tapped – and families can't buy cheaper coverage because the National Health Plan defaults to a base required level." If he reduces the subsidy to low cost plans, the current FEHBP option is $5,080 per year but has $1000 deductible and 80/20 (note – FEHBP just increased its premiums 9%)

3) Health Insurance Exchange – Similar to FEHBP and Massachusetts Connector but much more heavily regulated. Problem is still that it has a floor requirement of FEHBP equivalent "when the choice of benefits become a political discussion rather than an individual one, it is difficult to reduce benefit mandates or loosen other regulations that can reduce cost"

4) Reinsurance – problem is catastrophic coverage is already included in insurance – he proposes a subsidy to employers who have catastrophic exposure (but they don't) – so costs will just shift, or increase cost, or invite greater federal scrutiny of employer plans

5) Mandates (Pay or play) – if not offering meaningful coverage, employer must pay into a national plan. Exempts small employers who get 50% of premium tax credit "an employer mandate is a political experiment that conceals who actually pays for the required benefit" – since it is always a matter of total compensation, and thus a shift

6) Savings – IT and DSM (disease state management) promotion won't save much
"any major expansion of coverage will be costly and the Obama promise of affordability would requires new, large and rapidly growing federal subsidies that are unlikely to be sustainable, fiscally or politically"

Mr. Obama did counter some of the early charges, saying the subsidies would be handled by eliminating the Bush tax cuts for those making over $250,000. In his speeches, he said he will cut premiums for most families by $2500, would save money in the system by holding drug and insurance companies "accountable for the prices they charge and the harm they cause" and outlaw "insurance company discrimination against people with pre-existing conditions" –

A lot to offer, a lot to do – where do you start, and where does it end?

Posed – What Did Tom Daschle Say?

Mr. Daschle is the former Senate Majority Leader and was one of the point persons to shepherd the Clinton Health Security Act through the Senate. His 2008 book Critical covers the history of health reform and the pronounced failures of the Clinton plan, in addition to making suggestions of his own for reform 15 years later. He is being put up for the head of Health and Human Services and will be expected to take the lead on bringing the Obama Health Plan to the public and Congress. Main points are:

1) Skeptics say we cannot afford to cover everyone – he says we can't afford NOT TO

    a) To be competitive (employer costs of health care highest in the world)
    b) Because so many go without needed care due to lack of affordable access

2) We need to better coordinate care, which can only be done with a national system

    a) 30% adults have coordination of care problems – 15% get incorrect results
    b) Preventable errors cost as much as $19 billion annually
    c) Paper recordkeeping leads to waste, poor coordination and errors
    d) 98,000 Americans die each year due to medical errors
    e) Why are long term care and mental health given such short shrift?

3) What went wrong with the Clinton plan

    a) Though supported overwhelmingly, it came a bit late in the first year
    b) Secrecy of committee, then a huge and complicated bill presented
    c) Did not get support of Congressional leaders early
    d) Distractions of other world crises just as they were to launch campaign
    e) In the time lost, the opposition had time to muster support
    f) Bill was so complicated that everyone could find something to hate
    g) Opponents spent $100 million to defeat it while supporters spent $15 million

    Starr Report Conclusions: "Because we had failed to edit the plan down to its essentials and find familiar ways to convey it, many people couldn't understand what we were proposing. There were too many parts, too many new ideas, even for many policy experts to keep straight. The problem was not so much that the opponents had more resources, but that the supporters could not mobilize theirs"

Daschle Conclusion: "Everybody was in favor of health care reform. Everybody agreed that the system had to change. But when it came down to the details, few groups were willing to tolerate provisions that might harm them, to swallow new regulations, or to sacrifice some profits for the greater good. Instead of seeing the broad picture, each stakeholder focused on its own narrow interests and dug in for battle"

We reprint these excerpts to see what comparisons can be drawn next year, when we look back on what President Obama proposed and how it fared.

4) Models and Reasons:

   a) Congress lacks the expertise or trustworthiness necessary to handle
   b) Base Realignment and Closure Committee (BRAC) a good model to follow
   c) FDA is example of using panel of experts to make policy recommendations
   d) Doctors find it impossible to keep up with the latest findings
   e) Britain uses a National Institute for Health and Clinical Excellence
   f) Other examples include Germany and Switzerland, all with points to follow

5) Recommendations:

   a) Federal Health Board: A panel of experts that are politically appointed but not beholden to political parties, with ten year terms modeled after the Federal Reserve System. There would be regional directors who could coordinate care on a local level, create correct provider incentives, promote high value medical care, improve transparency, and help with infrastructure

   b) Everyone must be covered – employer, public program, purchasing pool
   c) Preventive care must be aggressively promoted
   d) Mental health care should be provided (note parity law passed later)
   e) Long Term Care must be addressed (no cost considerations given here)
   f) Guarantee that every American has access to affordable dental care
   g) Increase the number of community health centers
   h) Focus on the Information Technology to avoid waste and improve outcomes
   i) Great emphasis on the treatment and care of chronic conditions

Note – The Association of Health Plans, the trade group representing carriers, has already publicly stated that they will support a national mandate of guaranteed issue coverage with no pre existing condition limitations IF medical coverage is mandatory

Opposed – What Will Obama do Elsewhere – and is this what we wanted?

1) Expand Family Medical Leave Act (and rule clarification just completed)
2) Higher taxes (may return to pre-Bush rates) and may add Value Added Tax
3) Expand Medicare and cap employer based subsidy
4) May mandate enrollment in retirement plans

STATE STUMBLING

Not only do I not know what is going on, I wouldn't know what to do about it if I did
(George Carlin, d. 2008)

We're missing arguments, we're missing debate, we're missing colloquy. We're missing all sorts of things. Instead, we're accepting
(Studs Terkel, d. 2008)

This is a wonderful party we're having. One could say it is a consciousness expanding experience without LSD
(Albert Hoffman, discoverer of LSD, d. 2008)

The coffers are deficient and sin tax insufficient
So programs will be hacked and compromised
The number's always changing and charges they're exchanging
Their bombshell leaves a hole not realized

We've retreated from reform with less patience to perform
Arnold must build up the body politic
Giving a business a way so that in due course it stays
And avoid a state that makes us really sick

Single payer was assailed and the options put soon bailed
The Governor leaned left to make it right
Plan simplicity skipped town harsher measures were run down
And tax relief not pushed with budgets tight

Seats for sale in other states least prevail when quoted rates
Are ill conceived and blind eyes can't be turned
Mr. Spitzer had some tricks, sparing Rod his spoils won't fix
The grating sense of lessons never learned

Massachusetts chooses health to amass the common wealth
The plan it launched stars universal care
Obama likes the layout and wants to see it play out
Along those lines and stage it everywhere

Such mandates are in fashion addressing proponents passion
For flaring debates and skirting the law
But nowhere are suits raging and freedom's fights engaging
Than where wedded here with a common flaw

“Eight is Enough” for family values, but is the third time the charm as alarm over our conformity with the comity coming from other states? Our parting was not amicable as parties state their desire to wed practicality with political reality rather than engage with those who have mormoney.

Early forays into ways to combat the weapons of mass restriction caused the first major skirmish of the season. Arnold wasn’t Kuehl with Sheila’s shot but struck himself when Peralta hides the passage prior to entry and compromise comes too late to adit to our political framework. The Governor had it pictured differently and when Dems deemed it diffidently he found a dose of his own medicine for a health care cure hard to swallow. Too much asked for too little, squaring off in a circle against too much for too much unknown. The seeds of a standoff were sown with sides aligning in odd patterns and any hope of progress checked. Simplification and standardization were complicated by unusually unreasonable demands by those not amenable. The claim of “competitive advantage” staked by those with a beef against any amendment to the status quo thought they should know better. Ballot props won’t stop, and the ballet to play may flay our former notions about the motions that will dominate the domestic dance.

Who was minding the store with markets roiled and agendas foiled, little in reserve with which to preserve our golden reputation, raisin the specter of the Governor’s scepter having to divine which programs live, die or lie crippled by political exigency. Emergency care is required, especially with deep cuts made to Medi-Cal and our failure to learn from past mistakes when the ax falls on education – so hew will keep their funding? And can they even function over formal compunction to chop even where fat has formerly fallen?

By the bay, we Newsom strange laws would give us pause but now we’re dogged by the tired pet concept spoken about employers’ needing to spend their dough to keep the rolls of the uninsured from rising. Surcharges are asserted without surcease, consumers pick up a piece, and businesses find release by letting go their lease or at least staff. Poorly conceived but clearly perceived as a way to weave the threads of a safety net with threats of a bigger bet on mandates and the dates on which an expanded form will be the norm. The courts support the law while they purport to forget the flaws, doctoring the doctrines along the way. Is pay the same as paving the way to universal care in such a small corner of the planet? If they’d plan it better, it could be emulated or risk becoming an endangered species of specious spending to end unwanted want.

Bi-coastal play is under way in the Bay State, where the Coverage Connector has expanded the ranks of general coverage. Too late to reverse, too soon to immerse the nation in an explanation of how well it would work for everyone, the new “Massachusetts Miracle” is touted by President Obama and his designee Daschle as the track to follow for their run at health care repair. Plan purchase is required, pay schedules wired and employers have been inspired to increase the covered numbers in this bet on better benefits.

Exasperation

Even someone who hasn’t been in the business a long time knows that the number of plans competing for medical coverage in California has dropped considerably over the last 20 years or so. We now have 6 major carriers, but even at this reduced level, they continue to scrap over some long discredited concept of “competitive advantage” They don’t provide much quality (and the carrier “pay for performance” idea with providers has

not been proven to do much for patients), don't help with coordination of care, don't upgrade systems rapidly and can, justly, be accused of basically trying to negotiate tougher and tougher contracts with the medical community while continuing to raise rates. So, even as Federal sights are set on making carriers conform to some standards of behavior, they insist on fighting even the basic reforms proposed in California. The biggest measures, which were contained in various bills, were:

1) Developing a standard individual insurance application
2) Limiting individual carriers to just 5 basic designs
3) Maximum limit of 10 years for consideration of pre existing conditions
4) Limiting the amount that may be spent on administration to 85% of premium

Standard applications not only make sense but will save money – the cost of form preparation, mailing, processing, disposal (of old forms which were good just one year ago) and the elimination of who knows how many lawyers to parse sentences.

Standard plan designs also makes sense. Perhaps more than 5 are needed, but more than 10? Some carriers now have as many as 30 designs – and that is **per carrier.** How many of these are perused on line, understood, or even proposed by agents? Everyone picks a favorite, or one that seems to have appeal (or possibly the least confusing, even where it may be the least beneficial).

This opposition was limited to just the individual health care market – there was discussion of group plans to be held similarly accountable, but this did not gain much traction. What hope do we have of bringing some normalcy to the market when carriers can't even agree to support such simple propositions? Perhaps if future bills don't try to do too much at once and just focus on each of these items they will have a better chance of passage, but legislators can't resist including other parts of their agenda.

What did not pass also included:

1) Mandated HPV test
2) Banning emergency rooms from balance billing
3) Bills reducing amount of individual rescissions (despite many penalties this year)

What passed? Not much, and what did was a watered down version of what failed

Administration:

Arnold ran with a plan, designed to let him flex his political muscles while pulling support away from the Single Payer initiative, which is pumped up every year by Sheila Kuehl and her school of thought. It bogged down in endless debate, with compromises and promises made and no one played a big enough part to get the whole thing passed. What's interesting is that you had a Republican Governor offering something that had a lot of elements of Democratic proposals not able to get it by a Democratic Assembly or Senate. So in the beginning there is deadlock, and in the end there is nothing. The Governor says he "will be back" with another proposal, but right now he has more pressing matters as he tries to iron out the difficulties of a massive budget deficit. And in this environment, any reform that needs to spend more money will be…terminated.

1) The 85% administration rule could have easily been "gamed" by the carriers
2) Guaranteed issue and community rating would greatly increase premiums
3) Subsidies proposed would be difficult to support even with the budget *then*
4) Costs and requirements all predicated on a base plan with a **$5,000** deductible
5) MRMIB challenged to find plan for $250/month – with current averages $374
6) Cost shifting would have been offset by increased payment to Medi-Cal (which, in a budget cutting move, he has now already reduced), providing broader access to preventive care (and who would use it without incentives?), addressing choice and universal access (which is one step short of mandates)

Like the Clinton plan (and like the Obama plan to follow) there was enough for everyone to hate, and Assembly members tried to cull out pieces they liked and incorporate it in their own bills. In the end, no one got what they wanted, but it was clear that the spirit of cooperation was sorely lacking in Sacramento.

The Single Payer bill did pass both the Assembly and the Senate, so we are getting close to a universal, state run system. The Governor, as expected, vetoed it, but the primary reason he gave was the fact that what he proposed went a long way to meeting the Single Payer objectives – and if he lost on his, why should they succeed on theirs? ("this bill represents exactly what I did not want to see this year – one sided, piecemeal approach to health care reform" – funny, that's what they said about **his** bill earlier)

Interpretation

The insurance world was rocked a bit by charges of plan rescission decisions. Fines followed, bills were proposed to limit abuse, and stories were printed to paint the carriers as the purveyors of profit and acting against the interests of plan holders everywhere. Of course, no one asked if anyone had actually lied on their applications, making the revocations of coverage legitimate – but the way the carriers did it (and the time that often elapsed) did not help their case any.

San Francisco remains determined to find new ways to drive businesses away, and the mandate that employers pay a portion of employee's salary to a health plan, whether they sponsor it or not, seemed like just the ticket – out of town. We have discussed the requirements of the law, and yes, it is being upheld currently through the latest Court of Appeals ruling, but further action is vowed by the Golden Gate Restaurant Association. Current criticism and concern centers on the following:

1) The original law was supposed to help offset municipal responsibilities for the care of the uninsured, who were using clinics and San Francisco General for primary care, or, where they never obtained it, for medical needs that could have been alleviated earlier. The City simply did not have enough money, so passed it on to the employers. The problem is that the law was so poorly conceived it does not do much to meet the original objective

2) Where will employers find the money? Higher prices for everyone else (witness the additional surcharge for your meals at many finer eating establishments)

3) If the law had a chance to die a decent death, that was forestalled when the unions took it up as an important bargaining issue (they have cost pressures of their own) – now, as the Grateful Dead have often sung, it "Will Not Fade Away"

4) Gaps in the law include exemptions for small employers (under 20), the fact that employers can shift employees or processes to other firms, the statute can be met with a combination of limited medical, dental and other health care benefits, and the fact that the City "default" plan is not insurance but a series of discounts, a Health Reimbursement Account and the promotion of new community clinics

5) Another gap, still not corrected, is the inability of an employer to force an employee to sign a waiver for coverage when they have protection elsewhere.

6) A loophole, allowing a default to the City HRA, is created when an employer can still require part time employees to pay into a limited medical plan, so long as the cost of that plan exceeds the hourly minimum contribution

7) A problem created by the use of an 8 hour minimum is that California health carriers have not yet amended their plans to permit coverage to these employees. They have to file applications for updated coverage in California to do so – and thus far have not. Thus employees (or employers) must seek other coverage.

The larger implication, of course, is that if San Francisco is permitted to keep this law, it can easily be emulated by cities and states across the country. If it continues in its present form, with the many holes it contains, we risk undermining the basic concept of protection, insurance in general and even some of the state programs that do exist. The courts are still debating the various issues involved. Highlights of the arguments thus far:

1) Originally, the court stayed the law because:

    a) it was preempted by ERISA (federal law governing health plans) because the statue creates a connection with employee benefit plans

    b) "by maintaining employee health benefit structures and administration, those requirements interfere with preserving (employer autonomy) over whether and how to provide employee health coverage"

    c) "Since it requires employers to either modify their existing plans or structure payments…with reference to amounts paid"

    d) ERISA contemplates uniform structures and administration, which are subverted with the many machinations an employer can undergo to comply

2) The law was upheld and the stay removed because:

    a) without specific ERISA requirements, the options available and since standards of review would result in the law being upheld permit its retention

    b) Balance of hardships (dropping the law deprives the uninsured of coverage)

    c) Increased financial burden on the City of San Francisco

    d) Employers are not required to have ERISA plans, thus ERISA should not be an issue under discussion (and therefore cannot be allowed to preempt the imposition of the San Francisco law)

3) The Court of Appeals concurred, though in a somewhat less specious manner:

    a) Key argument is that there is no ERISA connection because no specific plan or design is mentioned or required. The ordinance merely imposes "an unavoidable obligation to make a payment at a certain level"

    b) There is no financial or administrative burden or "plan administration" directly imposed on the employer (but what about that hourly payment requirement?)

    c) Not ERISA because based on hours worked and not a benefit design or value

4) The Golden Gate Restaurant Association disagreed (at length):

    a) The Fourth Circuit "Fair Share" ruling (Maryland law) should apply

    b) Said the ordinance referenced ERISA plans because it measured employer's obligations by expressly referencing their contributions in such plans

And so the battle continues, with the Department of Labor and 3 major industry groups now filing "friend of the court" briefs on behalf of the Golden Gate Restaurant Association requesting a full review by the Court of Appeals (ruling cited above was *en banque* by a panel of three of the jurists)

Anticipation

The Massachusetts Connector plan has been in existence for two years. It is a mandate and has resulted in 439,000 new people covered – uninsured levels are down from 8.4% originally to 5.3% currently. The driver for this is the mandate ("pay or play") but predictions that employers would drop their own group coverage proved unfounded (it actually rose from 70% participation to 72%) and, as individual coverage increased, the safety net paid to hospitals and community medical centers was able to drop 41%.

The law now has certified minimum coverage standards and some employer exemptions (if they don't meet creditable coverage standards they may offer a plan equivalent to the Connector "Bronze Plan")

The Massachusetts model is what President Obama has been reviewing carefully, and we may see it, in some form, come out as part of his final proposal package.

Resignation

Elliott makes the wrong call, girl…and steps down in favor of someone who was blind to his faults. So his career now amounts to no more than a cold bucket of…Spitzer.

BUSINESS BUMBLING

I am certain there is too much certainty in the world
(Michael Crichton, d. 2008)

It is useless to put on your brakes when you are upside down
(Paul Newman, d. 2008)

Just cause you got the monkey off your back doesn't mean the circus has left town
(George Carlin, d. 2008)

I opened the door for a lot of people and they just ran through and left me holding the knob
(Bo Diddley, d. 2008)

Stocks and bonds stumbled, housing was humbled
Precipitating a reign of rancor
Fannie and Freddie were not quite ready
Moor title waives with no mortgage anchor

Fuld failed and was felled then auctions were held
Merrill's peril had a very Stearn bearing
From WAMU to Yahoo it's business "who's who"
And what new name some old firms are wearing

The Fed was Reserved but then they preserved
Their interest in saving society
Their manner brought shock as crudely sought stock
Impinged on the fringe of propriety

With margins erased new orders are placed
Yet the attitude's on the same plane
Big Three may touch down but can't score in town
Car goals and missed polls, are they insane?

A surge tide is bound to not make a sound
Holding companies being held captive
TARP covers the field and reigns often yield
To shelters that stay more adaptive

Health care is changing, delivery's ranging
From clinics in stores to flat pricing
Insurers despair of federal repair
And seek ways to make then enticing

It's a bailout. It's a rescue. It's an investment. Taxpayer dollars beget taxpayer dolors, but we'd better be getting better returns or no more deposits. Some defaults spawn a dawning of realization of estate escapes and a Countrywide collapse ensues, though homeowners have too little left to follow suit. Banks batten down and the buttoned down mentality dismantles home and hearth, with poker played no more with mortgages. The bear market rips system to Stearns which Morgan chases on the cheap. Merrill is Lynched before cinched by B of A, and AIG stretches loss from C(DO) to C(DS), only to be administered by Fed ministrations despite not resurrecting Lehman. Fannie Mae not make it, Freddie was smacked and couldn't take it and they are quasi-governmental no longer. Goldman was Buffeted by clouds of speculation but a silver lining Warrented $5 billion to Omaharty steak in their future.

How big is the TARP and what does it cover? What's in a name, as former financial institutions are now holding their own, insurers are asked to buy thrifts below premium, banks take stock of their prospects and curb their competitors. The Fed presided over a Green span during Alan's tenure, but his successor is steeped in depression so tees up unprecedented swings at the mood of capitalists. If it weren't for the irony we wood be shocked, but then…yes, the cynicism propagates further sins, as hordes seek shelter while trying to keep what they have. The Big Three flew in on hands and knees to propose the government engage them as partners, but they auto know better than to bring their toys. More noise from Hartford, bonuses they can't afford, and forgotten virtue is its own reward as they honor stock stuffers.

At least we're not alone, as the loans float across the pond where Britain nationalizes Barclays and Bingley and Fortis gets a deluxe rescue from Benelux countries. Trading was halted, raiding assaulted companies with batteries of corporate cash, short selling discredited as credit markets everywhere disappeared.

Back home Bernie Madoff with $50 billion, a Ponzi poised to bring whole towns down, a capper to a giant caper of pliant paper and an over compliant SEC, drawing complaints from A to Z as the blame game is begun in earnest.

Who saw it coming? Who saw it going, or even ending? Pundits reverse positions apologetically after investors apoplectically respond, then put their posts to pasture (manure may help the crops) and our false prophets remain at a loss to determine where the money went and why.

Crash

Not much of a boon after we went to the moon and saw a swoon in markets that everyone thought would go up and up…but there is a basic law of physics here and we are feeling the physical manifestations of it. There are lots of opinions, and perhaps some of them are right, but the lessons of the past won't lessen the lasting impression made by the recent financial crisis. Even those not involved were affected, as the recession, depression or the whole mess will stress the system, with no knowledge of how much flexibility it retains to bounce back from what remains. Not intended as an analysis but just a compendium of notes that are worth about as much as any opinion:

1) Economic studies now show that we are “predictably irrational” – when faced with certain options we will consistently make the wrong choice

2) The rich may get richer, given the buyouts made by Bank of America, Wells Fargo, etc.

3) Insurance carriers, hurt but not bleeding badly, were applying for assistance

4) The Congressional bailout was approved but then the money was spent in different ways from what was promised. After stalling, some banks were going to use the money received for acquisitions (e.g. PNC Financial and National CityCorp) and insurance carriers would qualify if they bought ailing banks (notable is Hartford, which has been severely hit in the fallout), dividends may still be paid

5) Goldman, JP Morgan and AMEX have all become bank holding companies to qualify for some of the financial largesse shared by the government

6) Washington kept manipulating the data on both the war and the bailout, so we not only never know what the true cost of our obligations are, but even the extent of damage

7) Unemployment is going over 8% and the number of uninsured has increased

8) Recovery: now is the time to refinance as the mortgage industry is taking off again and we can all travel to the bank given the low price of gas (if there is any money there)

9) Irony of Republicans nationalizing the US banking system – from laissez faire to whatever’s fair as we create a shadow banking system and provide corporate collateral, banking on Americans as investors in themselves

10) How will the government run or have a say in their new investments, and will they run them any better than the management which has been discredited?

11) Was it mark to market that caused a shortfall due to writedowns or actual cash losses?

In the more mundane world of insurance companies and their own troubles:

1) UICI investigation – MEGA Health, Midwest National and Health Markets were all tagged as being involved with misleading sales and administrative practices

2) United, et al (16 plans) are being investigated by the New York Attorney General regarding their practice of payments on out of network medical expenses

3) California Department of Insurance filed suit against PacifiCare for numerous violations

4) Wellpoint will withhold payment for certain medical errors (but can the doctors charge the difference?) – the Blues in Texas, Illinois, and Kansas City will charge hospitals or refuse to pay for any medical errors

5) Health Net lost a class action on underpayment of out of network services

6) Blue Cross and Blue Shield of California were both fined for individual health policy rescissions

Flash

While Washington decides what to do, others are already doing it:

1) Walmart is pushing to have all employee medical records on line using a program called Dossia (rivals include Microsoft and Google) – reduces redundancy, errors and unnecessary tests

2) Retail Health Clinics are growing in number, to attract those without regular providers seeking treatment for simple conditions – the 1,000 in existence now are expected to grow to 6,000 by 2011. Main purveyors include Target, CVS Caremark (Minute Clinic), Aurora (QuickCare). There is now a Convenient Care Association to further developments

3) Hospitals and insurers are trying flat fees – "managed care is the best idea for financing we have" (they have said that before and look what happened) – some are also using a "risk withhold" (also a return of an old method) to pay bonuses if the quality of care can be shown to improve

Cash

Inflation continues in health care (big surprise). Random quotes and findings:

1) Chronic Conditions: an increase of 50-100% in the period 1987-2005 – mental disorders, cholesterol, blood pressure, diabetes, COPD/asthma, arthritis, back

2) Causes (various studies): cost shifting, increased demand, prescription drug costs, aging, consumerism, chronic conditions

3) Congressional Budget Office says 50% of inflation is due to improvements in medical technology – the rest is generic price increase and demand for services

4) Medical errors: 1 in 200 staying in hospital will die from error, 1 in 6 will get an infection (deaths from preventable infection exceed 100,000 – more than AIDS, breast cancer and auto accidents combined)

5) Premature births – account for 13% of all babies born (a 20% increase since 1990), mostly because we can now keep them alive due to improvements in technology

6) New pressures include autism, which costs $35 billion per year – 15 states have now passed laws to make this mandated coverage – in 10 years, it is expected that the annual cost will be $200-400 billion

7) The rate increase for the Federal Employee Health Benefits Plan (FEHBP) which is often cited as part of the potential solution for federal provision, will be 7% this year – this is moderate, however, given that the OPM (Office of Personnel Management) has used reserves this year and last to depress the size of the increase

8) The rate increase for CAL – PERS, one of the largest independent health contracts in the country, will be 0 for PPO this year but they are boosting reserves at the same time they are dipping into what they have to avoid having to impose any increases – the increase for Kaiser is 8.2% and for Blue Shield is 3.7-5.3% this year

Inflation studies (summary of surveys from 8 major benefit organizations)

PPO	Average expected increase is	9.25%
HMO	Average expected increase is	9.05%
HSA	Average expected increase is	9.5%
Drugs	Average expected increase is	9%

HOROSCOPES HUMBLING
Legal Loops and Science Scoops

There are no hard distinctions between what is real and what is unreal, nor between what is true and false
(Harold Pinter, d. 2008)

Though battles may rage on the front page
Wars and words are tempered out of view
The family and leave and what we believe
Of our rights are left more for review

The last days of Bush did not see a push
For new concepts in benefits law
But updates exist and mostly consist
Of correcting some long standing flaws

Our state was more violent but ended up silent
On the needs of the people hurt most
Prop Eight got support, food fights go to court
Liberal laurels leave little to coast

There's less reliance on claims of science
Disputed studies and the need for tech
Overprescription, HIPAA encryption
Symptom web buddies and shared bottlenecks

Advances come when no one's looking, who knows what's cooking in a lonely laboratory or what oratory will be booking in the courts. It's not all appealing and bells aren't peeling about the judicial toll taken when we awaken to test the fruits of our labor. HSAs have had their day, the Democrats may let them stay, absent improvements. FMLA fared well on the whole, making rules more fair and avoid aiming afoul of unclear lines. USERRA was distinguished from service across COBRA lines and made good for armed forces whose course of duty need not hurt family coverage. Movement was mentioned past the A's – Bicycle Commuting, Dependents in Divorce and so on to parity in mental health, which needed clarity for so long – Bush's legacy may not live long in our hearts, but someone sold him on the idea of expanded benefits.

There is a cost, of course, and we will see progress in other areas that will tag us with higher prices. While tech may check diseases and mate better solutions with problems, credit will only be forthcoming if we can cut spending by a third or more. The new President pins hopes on it, but when has it actually saved money? Speculation abounds, but that sounds like what happened on Wall Street – as one barrier lowers, we are faced, once again, with the law – of unintended consequences.

Minor Chords

Bicycle Commuting

Yes, a key part of the bailout package that is easily overlooked, while politicians backpedaled to reach some agreement that would satisfy no one, was the insertion of that major piece of highly desired legislation – bicycle commuting. This has been added to Section 132(f) of the Tax Code (which includes all the transportation and parking law)

Tax exemptions, through a plan, are allowed for bike purchase, repairs, improvements and storage. It may NOT be funded (unlike other transportation plans) by employee pre tax payments but only through employer payment. It is NOT mandatory, but optional at the discretion of the employer. When adopted, however, the employer makes payments.

Health Savings Accounts

IRS Notice 2008-59 was issued, which clarified a few remaining items for HSA:

1) Enhanced HRA: includes premium payment, vision, dental and preventive care – all of these may exist alongside an HSA

2) Mini Med or Limited Medical Plans – may NOT co exist with an HSA

3) Access to an onsite clinic with free or discounted charges if acceptable

4) For post deductible FSA or HRA plans – may only count medical expenses that would be covered by the High Deductible Health Plan to determine when the HDHP deductible has been met

Michelle's Law

Clarifies that coverage may continue for a disabled dependent – on the health insurance and keeping them a legal dependent for that purpose

Dependents in Divorce

IRS clarification that a child is considered to be a dependent of **both** parents for medical expense reimbursement, medical coverage, deductible medical expenses (personal tax return), HSA medical expenses and some fringe benefits (e.g. employee discount)

Defense of Marriage Act (DOMA) and State Initiatives on Domestic Partners

Massachusetts still recognizes the rights of Domestic Partners through 2012, but California Supreme Court decision allowing coverage of a Domestic Partner without a residency requirement appears to be in jeopardy with the passage of Proposition 8.

25 States now have a form of DOMA, which is a federal law – the Bush push for a constitutional amendment was defeated, but DOMA, created during his reign, lives:

"'Marriage' means a legal union between one man and one woman as husband and wife and the word 'spouse' refers only to a person of the opposite sex"

USERRA and COBRA

The rights of veterans are more expansive for continuation coverage than COBRA:

1) The USERRA continuation rules apply to an employer of **any** size
2) Health FSA must be continued in subsequent years
3) No time frame on when an employee must give notice of leave
4) Employee has the right to continue under USERRA and COBRA simultaneously
5) No special time frames for elections, payment or cancellation
6) Coverage will be 24 months under federal law rather than 18 months

Medicare

New Medicare Secondary Payer rule effective January 1, 2009 – requires insurers and Third Party Administrators to gather information from the plan sponsors regarding the covered dependents – this is "mandatory insurer reporting"

Retirees

EEOC rule affirms employer ability to reduce health benefits when the employee becomes eligible for Medicare

Major Accord -- Mental Health Parity

Old House and Senate bills packaged as part of the Emergency Economic Stabilization Legislation (PL 110-343), which amends ERISA, PHSA and Internal Revenue Code with a start date of October 3, 2009. Applies to groups of **50 or more employees**

Mental health coverage not mandated, but WHEN plans provide:

1) Financial Equity: coverage must ensure that financial requirements for mental health and substance use disorders are no more restrictive or costly than the financial requirements applied to medical-surgical benefits offered under the plan.

2) Treatment Equity: same, where coverage ensures similar treatment requirements and restrictions as for any medical-surgical benefits being offered (thus the traditional limits on the number of psychotherapy visits would be eliminated)

3) Out of Network: if the plan offers coverage for the use of out of network providers, it must pay for mental health and substance use disorders in the same manner as medical-surgical

Cost Exemption: if the requirements in this bill result in increased actual costs of coverage that exceed 2% during the first plan year or 1% in subsequent years, the plan may choose to be exempt from the equity requirements for the following plan year (note – the Congressional Budget Office estimates that the overall cost impact will be 0.2%)

Interaction with State Laws: Federal law permits states to be more generous and impose such restrictions on subject plans (self funded ERISA plans are exempt from state strictures). May also have some interaction with Americans with Disabilities Act

Family Accord – Updates and Clarifications to Family Medical Leave Act

Fans of FMLA may already be familiar with the many functions of Family Leave life but it can't hurt to repeat the rules in case someone wasn't paying attention. For those just wanting to know what's new:

1) Employer notice requirements are consolidated into a "one stop" section (these were attached as appendices to the Federal Register and can be found on the Department of Labor web site – www.dol.gov)

2) Employers may require that employees who take leave to care for an individual be supported by certification meeting certain requirements

3) There are new and updated forms (as usual)

For those who may have missed the highlights when they were first promulgated (a Greek word meaning "throwing against the wall to see what sticks") in 1985, here are some key things to note – we'll assume the basics are familiar to you (and if not, we are happy to send you the outline and analysis we wrote before gray hair was a concern). This includes some specifics about the new rules as well:

1) Eligible employees of a covered employer may take job protected unpaid leave, or substitute appropriate paid leave, if the employee has earned or accrued it, for up to a total of 26 work weeks in a single 12 month period to care for a covered servicememember with a serious illness or injury.

2) Employer may recover their share of premium payment only if the employee does not return to work for a reason other than the serious health condition of the employee or a covered family member or servicemember or another reason beyond the employee's control

3) Covered employer: employs 50 or more for **each** working day during **each** of 20 or more calendar workweeks in the current or preceding calendar year. Public agencies, public and private elementary and secondary schools are subject to FMLA regardless of how many employees they have. Determination of the number eligible for qualification is considered at the time an employee *requests* leave.

4) An employee who does not begin to work for an employer until after the first working day of a calendar week or terminates before last working day of calendar week is not considered employed on each working day of that calendar week.

5) The twelve months an employee must be working to qualify for leave need not be consecutive and (all three cases), or, for the 1,250 hour minimum (b and c):

    a) Employment with service break under 7 years still counted toward the 12 month minimum requirement for an employee to be eligible for leave

    b) National Guard or Reserve military service not counted here, and any service in the military is counted toward employment with regular employer

    c) Can be overridden with collective bargaining agreement

6) Separate entities will be deemed to be part of a single employer for purposes of FMLA if they meet the “integrated employer” test (common management, interrelation between operations, centralized control of labor relations, degree of common ownership and financial control)

7) “Employee” is one who “follows the usual path of an employee” and is dependent on the business which he or she serves

8) Many rules are shown for “joint employer coverage” and “successor in interest”

9) Employees with no fixed work site are assumed to be employed at the employer’s main address (for the 75 mile rule)

10) Qualifying reasons for leave:

    a) birth of son or daughter or to care for a newborn child
    b) placement with employee of a son or daughter for adoption or foster care
    c) care for spouse, child or parent with serious health condition
    d) serious health condition of employee making them unable to perform job
    e) qualifying exigency arising out of military service of spouse or child
    f) care for covered servicemember with serious illness injury or illness (assuming employee is spouse, child, parent or next of kin)

11) Serious Health Condition: involving inpatient care or incapacity, which means inability to work, attend school or perform other regular daily activity – treatment involved would only apply to exams and care related to diagnosis or active involvement with the medical condition

12) Incapacity and treatment would mean a period of three consecutive, full calendar days that also involves treatment two or more times within 30 days of onset or treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider

13) Substance abuse is considered a serious health condition if treatment, etc. meets the parameters set. “Absence because of the employee’s use of the substance, rather than for treatment, does not qualify for FMLA leave”

14) Husband and wife who are eligible for FMLA leave and covered by the same employer may be limited to a combined total of 12 weeks of leave during any 12 month period if the leave is taken for the birth or placement of a child (if one spouse is working at same employer but is not eligible for leave, the other may take the full 12 weeks)

15) An eligible employee may use intermittent or reduced schedule leave after the birth to be with a healthy child “only if the employer agrees” (employer permission not required for intermittent leave required by the serious health condition of the other or newborn child)

16) Spouse “means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

17) Incapable of Self Care means individual requires active assistance or supervision to provide daily self care in three or more of the “activities of daily living” (ADL)

18) Unable to perform the functions of a position is as defined by the ADA

19) Qualifying exigency for servicemember is defined – 8 qualifying events named

20) 12 weeks of leave must be taken at any time in a fixed 12 month period selected

21) Employee may substitute accrued paid leave for FMLA leave – the employer may also require the employee to do this- employee ability to substitute is determined by the terms and conditions of the employer’s normal leave policy. If no substitution made, then the employee is entitled to keep all accrued paid leave.

22) Health insurance payment: in the absence of an established employer policy providing a longer grace period, an employer’s obligation to maintain health insurance coverage cease under FMLA if an employee’s premium payment is more than 30 days late.. An employer has no obligation regarding the maintenance of a health insurance policy which is not a “group health plan”

23) An employer may recover its share of health plan premiums during FMLA leave if the employee fails to return to work after the leave entitlement has been exhausted or expires *unless* failure to return due to continuation, recurrence or onset of either a serious health condition of the employee or family member, or other circumstances beyond the employee’s control

24) The premium amount a self insured employer may recover is limited to only the employer’s share of the allowable “premiums” as would be calculated for COBRA purposes, excluding the 2% administration fee

25) Employer Notice Requirements: employer must notify employee of eligibility to take FMLA leave within 5 business days of becoming knowledgeable of the situation, or state at least one reason why employee would not be eligible. If eligible, must provide written notice detailing expectations and obligations of employee. Notice must also show that the leave is designated and counted against the employee 12 month leave period, that certification is required for a serious health condition, the employee right to substitute paid leave and any requirement for premium payment as well as their potential liability to pay. Also must notify employee if they are considered “key” for purposes of leave denial.

26) Employee giving notice of the need for FMLA leave does not need to expressly assert rights under the act or even mention the FMLA to meet their obligation to provide notice, though the employee must state a need for the leave overall. The employee must provide notice at least 30 days before leave is to commence for planned birth/placement/adoption or where care for illnesses is possible. The employee shall provide at least verbal notice

Not to be Ignored – Science Boards

Cholesterol Drugs Gets Fat but Just went Flat

Many researchers now doubt whether there is a need to drive down cholesterol at all The reports forthcoming are from Merck, Shering Plough and Lipitor's company, Pfizer Effectiveness may be even lower than what is now publicly stated because the studies cited base results on a group of carefully selected patients with multiple risk factors. Problem with cholesterol medication is not only our love of metrics, and your number is an easy metric, but also because doctors are being pushed to prescribe by national guidelines, patient requests and the "pay for performance" rules that reward physicians now for checking and reducing cholesterol.

Chantix Puffs Away

Pfizer's biggest hit in a decade replaces the gum/patch/inhaler combination to stop smoking and a recent flurry of prescriptions for Zyban (generic antidepressant). Chantix works on brain receptors, as does nicotine, and counteracts the nicotine "buzz" There is some anecdotal evidence that Chantix may exacerbate mental illness. This is not clear, but what is clear is the huge demand for it – and the high cost.

Ultrasound Seems Ultra Sound but Not Found Often Enough

Focused ultrasound should be one of the fastest growing procedures in medicine, but of 5 million women estimated to have fibroids, only 1,400 have undergone the procedure since the FDA fast tracked approval in 2004. Problem may be the fast track itself, which, it is suspected, does not fully review all the potential difficulties.

Facebook with a New Look

PatientsLikeMe is a new social networking resource for medical care (Health 2.0, if you will). Members chart their medical histories in minute detail and share their most private information with each other. Patients feel they are furthering the cause for a cure. This company, like others (SugarStates, Disaboom and Tursera) strip the information of patient identifiers and then sell the collective data to drug, device and insurance companies (with consent). The buyers can mine a rich vein of data on a variety of chronic illnesses not elsewhere available and may get an early indication of side effects without having to await drug company studies or validation.