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Bipartisan Health Reform? Obamacare in the States

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Few laws have provoked as much furor as the Affordable Care Act (ACA). It staggered through Congress with a single Republican vote, squeaked past the Supreme Court by a single vote, and became a major issue in the 2012 election. Once it got past those hurdles, governors and state legislatures went to war over implementation. There has not been this much conflict over an act of Congress since Prohibition (1920-1933). Yet, even as the conflict rages, a compromise between Democrats and Republicans may be emerging on the ground. Beyond the partisan beltway histrionics, a new health care regime –call it the mixed or purple ACA—might just be rising.

The ACA itself has two large programmatic components. One is a classical Republican idea: health insurance marketplaces. The other expands a program from the Democrats' halcyon days: Medicaid. The red half of the law tries to tap the magic of market capitalism; the blue half grows the kind of Great Society government program much loved by liberals. The compromise –which might point to the future of American health care—puts the red and the blue together in an unanticipated way.

The Republican ACA

Since the Nixon administration, Republicans have prescribed market capitalism for health care. Competition can solve health care problems and save (or modernize) big government programs like Medicare and Medicaid. The ACA

marketplace reflects this Republican thinking. The conservative Heritage Foundation dreamed up the approach, Republican Senators (most notably, Bob Dole [KS] and John Chafee [RI] proposed a version in the mid 1990s, and Republican Governor Mitt Romney famously introduced it in Massachusetts.[1]

Today, the ACA mandates an insurance market in every state. Citizens shop among competing private health insurance plans; they specify their income and then learn whether they are eligible for a tax subsidy – and how much.

The effort injects an enormous irony into American politics: The Democrats have lashed themselves –and their immediate political future—to the kind of market medicine that their base has long disparaged. For starters, argue the liberals, markets are inherently unfair. Competing insurance companies are not likely to treat all applicants the same way. It takes extremely nimble and active government to enforce fair markets. And the results are, willy nilly, complicated programs. Why put beneficiaries through all the rigmarole of choosing insurers when all they care about is picking their doctors? Why struggle to ensure fairness against powerful market incentives? Simple government programs are far superior, say progressive Democrats: simpler to administrate, easier for beneficiaries to negotiate, and far more likely to be fair. [2]

The embarrassing chaos of the ACA rollout comes as no surprise to liberal thinkers: It is precisely what they predicted would happen to health care markets as they moved from the economists' drawing boards into the real world. Thanks to the Obama Administration, liberals find themselves defending the market mess while they yearn for a simple government program.

On the other side of the aisle, Washington Republicans blast the program as socialism while conservative intellectuals suggest expanding it to include Medicare (see Avik Roy a blogger for *Forbes* and the *National Review*) or adjusting the exchanges to cover both uninsured and Medicaid (Governor Scott Walker of Wisconsin). But before we get to Republican ideas about the future, let's check in with the Democratic side of the ACA.

The Democratic ACA

When the Obama administration turned to health reform, the left wanted a single payer system; when that proved impractical, it moved on to the public option (an attenuated

form of single payer that permitted people to choose a government program over private insurers) and finally grasped for a Medicare buy-in (an attenuated form of the public option that would have let some citizens buy into Medicare). None of these government run programs survived in Congress.

In the fog of politics, however, many observers failed to notice that the ACA included the largest entitlement expansion for poor citizens in American history. Every low income American –anyone making less than 138% of the poverty line (roughly $32,500 for a family of 4) would be eligible for traditional Medicaid. For the first time, almost all low-income people would have health insurance. For Progressives, this should have been a very big deal.

To appreciate the scope of the Medicaid expansion, you have to understand how Medicaid had been operating. The state Medicaid programs varied enormously in who qualified and for what. For example, only a handful of states offer any coverage at all for adults without children.

To fully illustrate the Medicaid pastiche, consider the eligibility criteria for one category: working parents with a dependent child. Table 1 shows who qualified from state to state. In Arkansas, working parents are eligible for Medicaid only if they make less than $3,768 a year (16% of the Federal Poverty Line). The number rises to $5,662 a year in Louisiana and $5,887 in Texas; small wonder that almost one in five Texans (19%) is uninsured. The eligibility limit goes to $11,068 in North Carolina and New Hampshire (that's 47% of the poverty line), 15,072 (or 64%) in Michigan and all the way up to Connecticut, which proffers Medicaid to families up to 190% of the poverty line.

TABLE 1: Who Qualifies for Medicaid?

State	Eligibility up to:	
	FPL	Income (family of 4)
Arkansas	16% FPL*	$3,768
Alabama	23%	$5,416
Louisiana	24%	$5,662
Texas:	25%	$5,887
Kansas	31%	$7,300
Idaho	37%	$8,713
N Carolina	47%	$11,068
New Hampshire	47%	$11,068
Montana	54%	$12,717
Florida	56%	$13,188
Kentucky	57%	$13,423
Michigan	64%	$15,072
South Carolina	89%	$20,959
California	106%	$24,963
Arizona	106%	$24,963
Mass	133%	$31,321
New York	150%	$35,325
Connecticut	191%	$44,980

**FPL Federal Poverty Line*

Parents with dependent children do NOT qualify for Medicaid if their 2013 income is over the amounts listed here.

Remember that Medicaid offers a different table like this one for every personal category: Children (generous in most states), parents who do not work (roughly half the levels reported in table one), adults who do not have children (good luck), and so forth.

The ACA meant to put an end to this chaos. Eligibility would be the same for every person in every state: $32,500 (or 138% of the federal poverty line) for a family of four. It is worth repeating the breakthrough this represented: for the first time, almost all poor Americans would have health care insurance through the Medicaid. A major government program would construct a near universal entitlement for the lowest income Americans.

Moreover, the ACA appeared to make it easy for the states. The federal government

would begin by paying 100% for the new enrollees. After three years, it would pay 90% of the costs. Compare that to the usual federal Medicaid match, which averages 57% and ranges from 50% to 74%.

Of course, the enthusiasm has to be tempered by the programmatic realities: In many states, Medicaid is a poor program. It pays providers so little, that physicians shun Medicaid patients. The patchwork—generous Medicaid in some states, stingy welfare programs in others—would barely change under the ACA.

The Conflict Moves to the States

There were intimations of trouble as the ACA wound its way through Congress. Democratic Senator Ben Nelson of Nebraska took a skeptical red state view. Since he was generally seen as vote number 60 for health reform (Democrats needed 60 votes to stop Republican filibusters) he was in a strong bargaining position. The Democratic leadership responded to his complaints by buying him off. Observers sarcastically dubbed the ensuing deal, "the Cornhusker kickback" and it generated so much criticism for backroom dealing that the Democrats squashed it at the last minute.

What exactly were the details of the cornhusker kickback? In retrospect, the Democrats would have done well to pay more attention. Senator Nelson objected to the 10% that Nebraska was being asked to put up for Medicaid. Even a dime on the dollar is too much for deep red states. Raising eligibility to 138% of poverty would be an expensive proposition in states, like Nebraska, where the Medicaid cutoff was way down around 33% of poverty. To mollify Nelson, the Democrats agreed to continue paying 100% of Nebraska's Medicaid costs even after the federal match was scheduled to go down to 90%.

But why should the Democratic leadership pay Ben Nelson's argument any mind? They needed his vote, but the federal government had always set the rules on Medicaid. It never occurred to anyone that the states might have the option of rejecting the new Medicaid rules.

Then the Supreme Court issued its blockbuster decision in National Federation of Independent Business v. Sebelius. Most of the commentary focused on the Court's ruling to uphold the individual mandate requiring people to carry insurance; without that, the marketplaces might have collapsed. The other half of the decision was just as important: The Court ruled (7-2) that Congress could not require states to expand

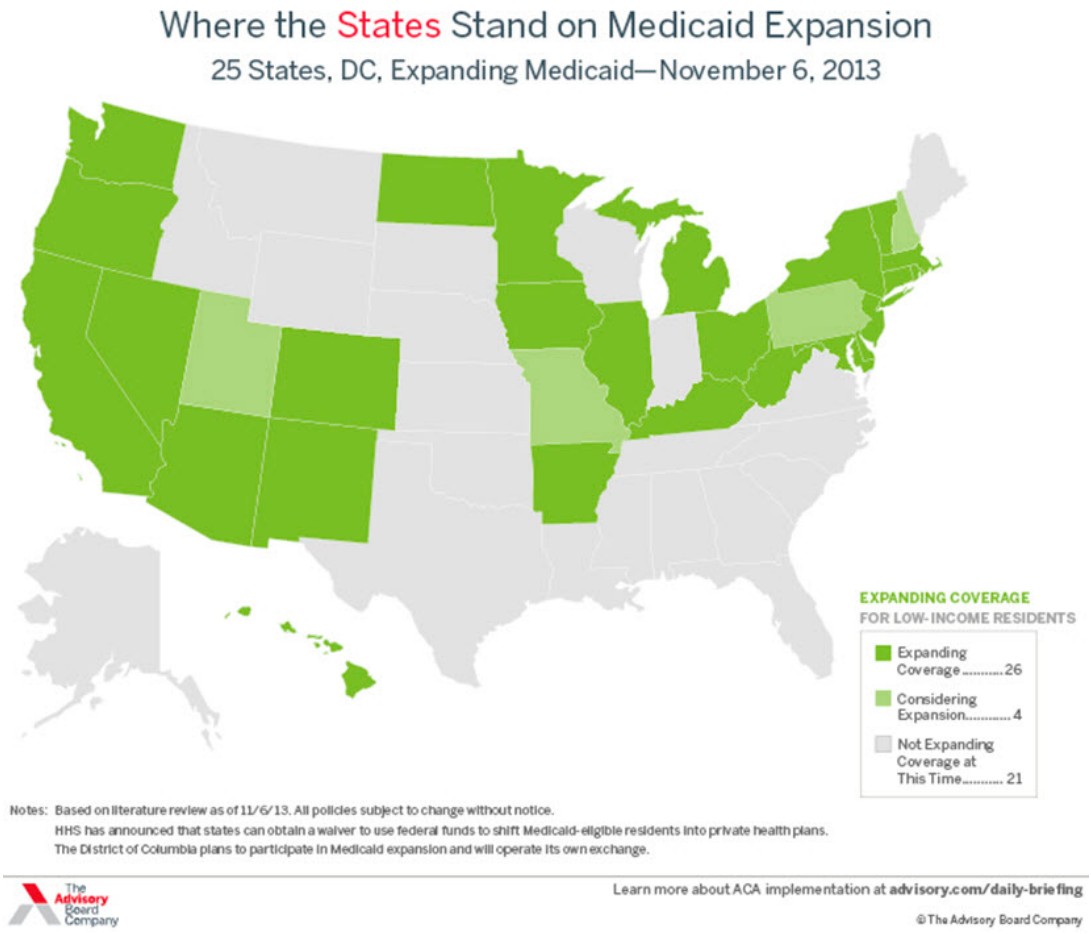
their Medicaid program. In effect, the court upheld the Republican part of the ACA and turned the Democratic half over to state politics.

The effort to insure low income Americans would now have to be fought out, state by state. The Obamacare brawl that had dominated Washington for four years moved to the states—where tempers appeared to run just as high.

Where Are We Now?

At first glance, most states appear to fall along predictably partisan lines: States run by Democrats quickly expand Medicaid. From New York to California, millions of low -income people are lining up to take advantage of the ACA's expansion. In red states, the reaction mostly ranges from "no" to "hell no!" In Texas, the Republican supermajority unanimously rejected expansion. Back in Nebraska, Republican Governor Dave Heineman opposed the program and the Republican majority filibustered it to defeat.

FIGURE 1



Source: The Advisory Board Company. http://www.advisory.com/Daily-Briefing/Resources/Primers/MedicaidMap

And yet, the smart money predicts that most states will eventually acquiesce and expand. Over time the 90% match will prove too alluring. Hospitals who serve a large number (or a disproportionate share) of uninsured patients have been covered by federal funds. Those funds are scheduled to phase out (since the ACA offers more extensive coverage for the same patients). That leaves every state with an influential interest pushing hard for Medicaid expansion. Opponents face the difficult task of finding alternative funding for their hospitals' uncompensated care burden.

When Medicaid was originally introduced, continue the expansion optimists, only 37 states had signed up two years after the program began. The ACA's Medicaid expansion –which has already come to 26 states and the District of Columbia (by December, 2013)—is likely to beat that record. The first round of nays is predictable: Republicans can be forgiven for getting that first "no" vote out of their system: they fought Obamacare in Congress and lost; fought before the Supreme Court and lost; fought during the 2012 election and lost. Now, the state legislatures finally get a crack at their nemesis and the first vote is a visceral "nay." Over time, however, the local politics of hospitals and health insurance will induce many to change their minds.

Not everyone agrees with this cheerful prediction. Conservative states are home to strong anti-government sentiment. Count on local groups, funded by national conservatives, to continue the fight against entitlement spending. In many places, opponents have framed the debate as a check on welfare. "How would you feel as parents and citizens," asked Carl Graham of the Montana Policy Institute, "if so many of our young people got a taste of welfare [through Medicaid expansion]"?[3] Finally, in many states, the Medicaid population includes ethnic and racial minorities and the debate takes on the familiar "us versus them." All this suggests a limit to predictions of inevitable expansion.

How will the debate come out? Naturally, we cannot know the future. But there are some surprising indicators. Four states fully in Republican hands have expanded Medicaid. In Arizona, Governor Jan Brewer demanded Medicaid expansion. To make it stick, Brewer threatened to veto every bill the legislature sent her until it acquiesced. She made good on her threat until nine Republicans in the House and five in the Senate crossed party lines to pass the expansion. In Ohio, Republican Governor John Kasich moved to expand Medicaid without approval of the Republican legislature.

Of course, there are snares from coast to coast. In Montana, Democratic Governor Steve Bullock supported expansion. Under intense pressure from local hospitals, six Republicans unexpectedly voted with Democrats to approve the bill in the Senate. In the House, however, the effort failed by a single vote when a rookie Democrat got lost in the procedural thickets, voted yes (because he supported the expansion), and unwittingly sent the legislation back to die in committee. The legislature only meets every other year. We will no doubt hear from Montana when the legislature next convenes in 2015.

In Maine, the Democratic legislature overwhelmingly voted expansion. Conservative Governor Paul LePage vetoed what he tagged "a massive increase in welfare." The House came 3 votes short (97-52) of overriding the veto. The legislature is likely to get its way and expand Medicaid – eventually.

As the debate continues across the states, Arkansas appears to have hit upon a Republican way to achieve what Democrats most wanted.

Slouching to Compromise: Democratic Ideals in Republican Form

In Arkansas, Democratic Governor Mike Beebe, working with a Republican legislature, decided to use the expansion to rewrite Medicaid. Newly eligible Medicaid recipients would not go into the traditional Medicaid program; instead, they would get premium assistance to shop in the same ACA exchange as other citizens. Eventually, the state plans to move all its Medicaid recipients into the marketplace. Note the strategy: Arkansas would simultaneously expand and privatize Medicaid.

President George W. Bush tried something similar with Medicare. His administration's prescription drug benefit (Now Medicare, Part D) was originally designed as a carrot for beneficiaries who left traditional Medicare and shopped among private insurance plans for a Medicare carrier. Democrats successfully blocked the Republican effort to "modernize" Medicare by turning it over to insurance markets. Now, Arkansas moves Medicaid to the insurance markets – but with a difference. The ACA commits Democrats to the new exchanges; that, in turn, simplified the Republican path to "modernization." After much debate among Democrats, Kathleen Sebelius, Secretary of HHS, approved the Arkansas plan – as long as coverage extended to everyone below 138% of the poverty line.

The Arkansas model offers both parties a tough choice: Democrats prefer government programs and are wary of medical markets. Now, they are offered a deal: Privatize a great society program and you can expand it. Across the aisle, Republicans contend that markets permit choice and fit the American way – but that government entitlements are the road to fiscal ruin. Now, they get the "modernization" they want at the cost of expanding coverage with government funds. In short, the Democratic desire to expand benefits goes forward in a Republican format.

More states are lining up to try variations of the Arkansas model: New Hampshire is close to bipartisan agreement.[4] Iowa, Pennsylvania, and even Utah are poised to follow.

Wisconsin offers an extreme variation. Republican Governor Scott Walker rejected Medicaid expansion and refused to set up a state exchange. Under pressure to deal with the uninsured he recently announced his plan: Roughly half of Wisconsin's uninsured (now 14% of the population) and many current Medicaid recipients (those over 100% of the poverty line) would get their coverage in the very insurance exchange which the Governor declined to set up.

In the long run, the exchanges may become the centerpiece of American health policy. As they take hold –and, despite the rollout troubles, they are likely to do so– Republicans have a new (Democratic Party approved) vehicle for bringing Medicare to market. Why not turn the program over to the exchanges? On the other side, Democrats may be tempted to increase entitlements simply by expanding the tax credits – a far simpler (and Republican friendly) way to grow government health insurance benefits.

These are speculations for the distant future. For now, slowly but surely –and far from the beltway pyrotechnics–states are expanding their health insurance coverage. Democrats and Republicans are negotiating it out, state by state. In some places where Republicans are strong, they are offering an Arkansas style deal: Democrats get their Medicaid expansion. Republicans rewrite a Great Society program to fit their own philosophy.

The headlines continue to reflect the health care death match. Don't be fooled. Quietly, negotiations are moving, from state to state. Neither side gets exactly what it wants, each gets something. In the process, the US makes progress against its army of uninsured. In Washington, Republicans can try and repeal Obama Care with no replacement in view. State leaders do not have that luxury: the medical system needs a way to cope with millions of patients who need care and cannot pay.

The national politics of health care may have stumbled onto the path forward. The Obama administration wrangled a reform that combined Democratic (Medicaid) and Republican (insurance exchanges) aspects. The Supreme Court turned Medicaid to the states; the red and purple states, in turn, are finding ways to expand health insurance by merging the Democratic and Republican pieces of Obamacare. There are, of course no guarantees. But it just may be that federalism is working the way it was meant to work. If so, the future of our health care system is being forged in the classic laboratories of democracy.

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ENDNOTES

1. For the Republican origins of the ACA, see Jill Quadagno, "Right Wing Conspiracy? Socialist Plot? The Origins of the Patient Protection and Affordable Health Care Act." *Journal Of Health Politics, Policy and Law*. Published online before print November 5, 2013, DOI: 10.1215/03616878-2395172.

2. For my own efforts in this regard, see "The Ironic Flaw in Health Care Competition: The Politics of Markets" in Arnould, Rich and White, eds, *Competitive Approaches to Health Care Reform* (Urban Institute Press, 1993) and "Hidden Complications: Why Health Care Competition Needs Regulation," *The American Prospect*, 10 (Summer 1992).

3. Carl Graham, Remarks at the 2013 Mansfield Conference, "The Future of Health Care in America," March 21. Missoula, Montana.

4. Senator Bob Odell. Weekly Roundup. *The Argus Champion*. November 27, 2013.

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