

Affordable Care Act – by Henry Powell, M.D.

The Affordable Care Act signed into law by US President Barack Obama is viewed as a landmark piece of social legislation. Colloquially known as ‘Obamacare’, its enactment followed an often bitter and certainly protracted political effort extending back many decades before Obama’s birth. His decision to put this proposal at the head of his legislative agenda, an agenda that included resuscitation of the collapsing US economy, was an act of political will, as noted by John McDonough, one of the architects of the plan. Behind the president stood an uneasy coalition of special interests, the self interested and members of an often confused public, nearly fifty million of whom lacked any kind of health insurance. For the uninsured, illness could threaten jobs, marriages and family, and their housing. Obama’s effort resulted in a law that was nearly a century in the making. Why did it take so long? A key point in this presentation, is to show what historian Paul Starr describes as a ‘policy trap’, created during the piece-meal evolution of US health care, became a huge impediment to universal coverage and remains a factor in the difficult process of implementation of the ACA. In addition this paper will consider the breadth of the legislation and its interlocking parts, some of which combine government, the private sector, pharmaceutical companies and medical instrument manufacturers, a huge coalition in which elements of self interest and human need are inextricably combined.

The Affordable Care Act (ACA) signed into law on March 23rd. 2010, consists of ten segments or ‘titles’, dealing with diverse but related elements of the legislation, each of them key to its successful implementation by the US Federal Government, the fifty states and the many entities that comprise local government in more than 3000 counties. Many of the titles contain elements that have been proposed but not enacted over several decades, but are now codified into a single major piece of legislation. The seeds of this legislation appeared in legislative attempts made as successive

presidents and congresses struggled to either give life to ideas or kill them during the course of many US administrations. Since the several parts of the law include such elements, it is worth reviewing the history of US health care legislation, since the often arduous legislative process did eventually bear fruit.

In 1912, former President Theodore (Teddy) Roosevelt ran for election as head of the Progressive Party. The platform included a proposal for health insurance but he didn't raise the issue and it died with his candidacy. In 1932, his cousin Franklin was elected to office in a time of unprecedented economic crisis when national resuscitation and economic recovery occupied his complete attention. After reviving the economy, he turned to the great crisis of elder poverty and at the urging of Dr Francis Townsend, a California physician whose personal campaign for social insurance caught the attention of the American public and resulted in a famous correspondence that led to enactment of Social Security, an elder retirement system in 1935. Although this program would eventually articulate with Medicare, a health insurance program for senior citizens, Roosevelt hesitated to legislate it in 1935, it was successfully enacted thirty years later under the leadership of Lyndon Baines Johnson. The political energy for that landmark law, came from the vision of the Kennedy brothers and the political skill of Lyndon Johnson, who in the wake of John Fitzgerald Kennedy's assassination mobilized a grieving nation around the unfulfilled agenda and fought off resistance from the American Medical Association. It was resistance such as this that twice put off FDR who was preparing for a third attempt in April 1945, his final month of life. And it was this resistance that doomed the efforts of Harry S Truman to put in place a national health care system in the late 1940s. But in the defeat of the Truman proposal, the seeds of a future program were sown, Congress toyed with the idea of funding sixty days of hospitalization for all recipients of Social Security aged fifty five and over. This proposal would become the Medicare single payer system legislatively enacted during the presidency of Lyndon Johnson. Another Truman proposal sought to provide federal assistance for the very poor, politically characterized as

indigent. Although this was considered and rejected in 1949, it would eventually be enacted during the Johnson years as a state and locally administered program, funded in large part by the Federal government. This was looked on by legislators as an afterthought while their attention was focused on the challenge of providing Medicare. Also Medicaid was to be administered by the public assistance arm of local government, the much deprecated 'welfare' system. Given the lack of experience of the public assistance program in health care matters, this was inauspicious, but the germ of a future idea seeded in 1949 has become one of the elements of change under the new ACA legislation of 2010.

Western medicine as a cultural entity, traces its lineage to the island of Cos where Hippocrates is believed to have practiced and taught. One of his aphorisms, 'the art has three factors. The disease, the patient and the physician' has been cited by medical historian Roy Porter in comparing late twentieth century medicine with its classical origins. One could say that the 'factors' have been multiplied beyond the original three so that now close to twenty other allied health professionals work under the direction of physicians. Furthermore, factors far beyond the mind of Hippocrates now play crucial roles in the delivery of medical care. Starting with hospitals and clinics and other centers of practice, a first layer of complexity may be identified. Right up to the twentieth century physicians often compounded their own medicines, but that would be unthinkable today when such 'factors' as pharmacies, the professionals who operate them, the industry that supplies them and the Food and Drug Administration which regulates such activities in the USA exist to facilitate medical treatment. 'Factors' such as nurses, medical technologists, physiotherapists constitute key elements of the professional collaboration that implements medical treatment and provides medical service. All of these factors are in turn regulated by independent professional societies and systems who educate their members and supervise the conduct and oversight of allied health professions. And a factor that Hippocrates never envisioned, or at

least wrote about, the insurance companies that play such a dominant role in US health care and without whose support, no legislation could have been written, let alone placed into law. Prior to the mid-twentieth century, insurance could be obtained through mutual associations and small voluntary groups, but generally not through government. Over time the voluntary non-profit organization grew as this model for personal health insurance worked for many people. Managed with an eye to the public good, these non-profit, non-governmental entities enjoyed both success and financial stability. However the private sector looked at their growing financial size and wanted to benefit from this phenomenon. This led to such growth in the private sector, as for profits took over, that today, health care accounts for about one in every six jobs. Private health insurance became an employee benefit during World War II, when wage and price controls, promulgated by the US government to prevent war profiteering, began to be used by employers to lure valuable employees into their service during a wage freeze. After the war these benefits became tax protected so that employers got a tax break and employees got a rich benefit, also tax free. This large constituency has generally remained contented with their coverage and the 'policy trap' described by Paul Starr relates to anxiety provoked in this sector, for example by insurance company TV advertising during the Clinton health care initiative of the early nineteen nineties. During that time the notorious 'Harry and Louise' TV advertisements are credited by shaking faith in the Clinton plan, the first attempt at universal coverage in US history. Ironically, Harry and Louise were mobilized again, during the discussion of Obamacare, this time they favored the proposal, of course their funders had negotiated a very favorable deal from the government as insurance companies eyed the likely benefit of insuring some thirty to thirty two million new beneficiaries. Even that was insufficient at one point in early 2010 to stem the tide of anxiety, but when five of the most powerful insurance companies broke away from their peers and started raising rates, public anxiety grew. This reached a high point when Anthem Blue Cross, without further explanation, raised their rates by 39% and provided no

justification for doing so.

The ten titles of the ACA start with a proposal go greatly expand insurance coverage. The second title expands and reforms Medicaid and the Children's Health Insurance Program (CHIP). Title three implements quality and efficiency regulations intended to improve service and cut costs. Title four focuses on prevention of chronic disease, a major trust of the legislative initiative. Title five seeks to expand the health care work force, including doctors, nurses and allied health professionals. Title six requires insurance companies to account for the thirty cents on every dollar that they absorb, only seventy percent goes to pay hospitals, physicians and other providers. Title seven deals with generic drugs and 'bio-similars', each regarded as a cheaper alternative to name brand pharmaceutical products. Title eight is concerned with community living assistance, it is intended to provide affordable long term health care outside of hospitals, the latter being staggeringly expensive institutions to be in. Title nine is a revenue specific bill designed to finance titles one and two. And title ten, entitled the Manager's amendment provided the most experienced congressional legislators a chance to direct how the other nine titles could be implemented, sometimes to the detriment of individual provisions. The bill seeks to bring the sum of its parts into a better functioning whole. But its prospects for funding are uncertain, given the fierce polarization of US politics and the strong desire of Obama's opponents to deny him a victory. The intensity of this fight is as fierce as any US controversy since the civil war, waged a hundred and fifty years ago, and the language of the combatants is not entirely dissimilar. During his final years in office, Barack Obama will have to fight as fiercely for this program as any other part of his hoped for legacy.