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**The PPACA and the Federal Deficit: What is the True Effect
of the Legislation?**

*Dan Palermo**

I. INTRODUCTION

For years the United States has faced the predicament as to how to bring about health care reform that improves citizens' accessibility to affordable health insurance, protects families from potentially daunting healthcare expenses, and improves the incentive for providers to offer cost-effective care. After a seemingly interminable health care debate spanning much of 2009 and 2010, President Barack Obama signed into law the Patient Protection and Affordable Care Act (PPACA) on March 23, 2010, as the federal government's attempt to achieve the reform.¹ Nevertheless, in the aftermath of the 2010 Congressional elections when the Republican Party took control of the House of Representatives, it became clear that the health care reform debate relating to the PPACA was far from a final resolution.

Aside from the obvious partisan disagreements over the scope of the government's role in health care, the PPACA is under the microscope for its effect on this country's growing deficit. According to the Congressional Budget Office (CBO) the PPACA will reduce the deficit by \$143 billion over the first ten years after its enactment,² and by another \$1.2 trillion the following decade.³ Critics of the Act have raised concerns

* Juris Doctor Candidate, Loyola University Chicago School of Law, Class of 2012. Mr. Palermo is a staff member of *Annals of Health Law*.

1. Patient Protection and Affordable Care Act (PPACA; P.L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (HCERA; P.L. 111-152).

2. Letter from Douglas W. Elmendorf, Dir., Cong. Budget Office, to Nancy Pelosi, Former Speaker, U.S. House of Representatives at 2 (Mar. 20, 2010) *available at* <http://www.cbo.gov/ftpdocs/113xx/doc11379/AmendReconProp.pdf> [hereinafter *Pelosi*].

3. *Where Does Health Care Reform Stand?*, CNN (Mar. 18, 2010), <http://www.cnn.com/2010/POLITICS/03/18/health.care.latest/index.html>.

regarding the accounting practices used by the CBO and legislators, stating that these numbers are not a true reflection of the impact the Act will have on the deficit due to intentional exclusions, double counting, and false sets of assumptions.⁴

The PPACA has somewhat of an identity crisis because, unlike a single program such as Social Security, the Act is a collection of mandates, subsidies, and regulations that will be applied to numerous groups of Americans in distinct ways and at different points in time.⁵ Threats of a repeal of the Act prior to the 2012 congressional elections are more symbolic in nature than realistic due to the Democratic control of the Senate and the President's power of veto.⁶ However, it is important to analyze the effect the PPACA will have on the federal government given its current and growing deficit. Ideally, the United States will provide all citizens with effective health care, but at what expense on current and future generations is this proposition reasonable? While it is important to achieve health care reform and legislative goals, it is equally important to do so in a fiscally responsible manner.

II. DEFENDING THE EFFECTS OF THE PPACA

The PPACA extends coverage to millions of people who would otherwise not have access to health care, and allows access to new benefit programs that were previously unavailable to those who have existing insurance.⁷ Despite a divide in opinion on the legislation, the CBO reports that the PPACA will reduce the deficit over the course of its lifetime and that there is a risk of significant financial fallout if the legislation is repealed.⁸

a. Risks of Overturning the PPACA

If the Senate majority were to switch from Democrat to Republican control in 2012, attempting to repeal the Act altogether would be a risky strategic move. Although it

4. James C. Capretta & Kathryn Nix, *Obamacare and the Budget: Playing Games with Numbers*, THE HERITAGE FOUND., 1-2 (Jan. 21, 2011), available at <http://www.heritage.org/research/reports/2011/01/obamacare-and-the-budget-playing-games-with-numbers>.

5. Jonathan Oberlander, *Beyond Repeal - The Future of Health Care Reform*, 363 NEW ENG. J. MED. 2277, 2278 (Dec. 9, 2010).

6. *Id.* at 2277.

7. Pelosi, *supra* note 2, at 9.

8. Letter from Douglas W. Elmendorf, Dir., Cong. Budget Office, to Honorable John Boehner, Speaker, U.S. House of Representatives, 8 (Jan. 6, 2011) available at <http://www.cbo.gov/ftpdocs/120xx/doc12069/hr2.pdf> [hereinafter *Boehner*].

would allow conservative members of Congress to appease their constituents, it would effectively de-insure thirty-two million Americans who are predicted to gain coverage by the law.⁹ In addition, several facets of the PPACA have already gone into effect, including allowing children under the age of twenty-six to remain under their parents' coverage, and reforms that incentivize preventive care and prohibit lifetime limits on coverage.¹⁰ Furthermore, repealing the PPACA would deregulate the insurance industry, deprive persons currently utilizing the coverage provided by the Act that is already in effect, and increase the federal budget deficit.¹¹ According to the CBO, a repeal would cost the U.S. \$145 billion by 2019 and \$230 billion by 2021, and would continue to proliferate going forward due to disbanded revenue-raising provisions.¹² Following a repeal, the Republican Party would be challenged with the task of replacing the PPACA with a plausible alternative bill that would reduce the deficit, control costs, and expand access to insurance at the same time.

b. How the PPACA reduces the Federal Deficit

The PPACA will reduce the long-term federal budget deficit through a wide range of strategies designed to deliver improved health care at a lower cost.¹³ According to the CBO, the net cost of the expanded insurance coverage provisions will be \$788 billion.¹⁴ The CBO also states that the PPACA will reduce federal healthcare spending via procedural regulations, such as prohibiting insurance companies that raise costs over certain thresholds from partaking in insurance exchanges and making the procedures health workers use to collect statistics more efficient.¹⁵ The PPACA will also adjust bio-fuel regulations and assign the resulting revenues towards reducing the cost of the reform. At the same time, it will decrease the number of participants in nursing homes by increasing the support given by Medicaid to home care and it will increase funding for

9. Oberlander, *supra*, note 5., at 2277.

10. Amy Goldstein, *CBO says health care repeal would deepen deficit*, WASH. POST, Jan. 7, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2011/01/06/AR2011010606159.html>.

11. Oberlander, *supra* note 5, at 2277.

12. Goldstein, *supra* note 10.

13. U.S. DEP'T OF HEALTH & HUMAN SERV., PROPOSED BUDGET FOR THE FISCAL YEAR OF 2012, 80 (2011).

14. Pelosi, *supra* note 2, at 5.

15. *Will Healthcare Reform Reduce the Federal Deficit?*, THE HEALTH FOUND. OF GREATER CINCINNATI, (2010), <http://reform.healthfoundation.org/is-what-i-hear-true/i-heard-that-the-bill-will-reduce-the-deficit-is-that-true>.

preventive care – including providing added preemptive services for mental health and substance abuse disorders.¹⁶

Additionally, the CBO estimates that \$420 billion in revenue will be produced by the PPACA from tax provisions and other revenues resulting from several regulations affecting programs such as Medicare and Medicaid.¹⁷ Thus, the overall effect of the PPACA, with \$788 billion in costs for coverage countered by a \$511 billion reduction in federal spending and \$420 billion in new revenue, could result in a net reduction of \$143 million in the federal deficit from 2010 to 2019.¹⁸

III. CRITICS QUESTION THE CBO'S CALCULATIONS

Despite the reports by the CBO regarding the effects of the PPACA on the federal deficit, critics of the legislation believe that the numbers are inaccurate and do not paint a complete picture of the true cost of the Act on the federal government.¹⁹ They believe that the projections from the legislation have been manipulated and that the accounting by the CBO only reveals a fragment of the PPACA's full cost.²⁰

a. Excluding the "Doc Fix"

According to the critics, one of the primary ways the CBO projections fall short is the Medicare "doc fix." The PPACA includes legislation intending to reduce payments to many Medicare providing physicians.²¹ This is not new legislation, as it originated in 1997 health care budget reforms by Congress.²² The reforms mandated fee cuts based on a "sustainable growth rate," where once the volume of services performed by physicians exceeded a designated threshold, relief was granted to Medicare patients.²³ Despite this, every year since 2002, and as recently as December of 2010, these mandated fee cuts have been delayed by Congressional action. This legislation was nicknamed the "doc fix" based on the fear of physicians refusing care and elderly patients losing access to the

16. *Id.*

17. Pelosi, *supra* note 2, at 6.

18. *Id.* at 5.

19. Michael F. Cannon, *Do the Math- Obamacare Would Increase Deficits by \$59 Billion*, CATO INST. (Mar. 22, 2010), available at http://www.cato.org/pub_display.php?pub_id=11591.

20. *Id.*

21. Boehner, *supra* note 8, at 2.

22. Ken Terry, *Nobody Likes Obama's "Doc Fix," but a Real Solution Is Anything But Easy*, CBS BUSINESS NETWORK (Feb. 18, 2011) <http://www.bnet.com/blog/healthcare-business/nobody-likes-obama-8217s-8220doc-fix-8221-but-a-real-solution-is-anything-but-easy/2596>.

medical services.²⁴ As a result, criticism centers on the fact that non-existent deductions in pay for the physicians are included as savings in the PPACA budget. Yet, neither the doc fix, nor any offsetting reductions are included in the law.²⁵ The Obama Administration has sought to permanently eradicate the mandated pay reduction, which would cost the government a projected \$208 billion over the next decade, and would nullify the total deficit savings proposed by the CBO.²⁶ Thus, critics claim that the costs of covering care for Medicare patients are being addressed in separate legislation and are being shielded from the deficit calculations of the PPACA.

b. Double Counting Entitlement Program Figures

Additionally, critics assert that when accounting for the net effect of both Medicare and the newly created Community Living Assistance Services and Support (CLASS), some figures are either counted twice or not properly designated.²⁷ First with Medicare, the PPACA requires an increase in Medicare taxes and institutes cuts in the program.²⁸ The resulting revenue, however, is being double counted as both offsets to new programs created by the Act and as relief to extend the solvency of Medicare.²⁹ Thus, the reforms are being counted as both funding the expansion of other programs in the PPACA and financing future Medicare benefits.

The CLASS program is being instituted to make long-term care insurance available to anyone for programs such as home care, assisted living, and nursing home care, provided that they have been enrolled and paying premiums for the previous five years.³⁰ The CBO projects \$70 billion in revenue from premium payments generated by CLASS over the next ten years.³¹ Since beneficiaries must pay premiums for the initial five years without the government responsible for any outlays, critics' state that the \$70 billion

23. *Id.*

24. *Id.*

25. James C. Capretta, *Obamacare: Impact on Future Generations*, THE HERITAGE FOUND (June 1, 2010), <http://www.heritage.org/Research/Reports/2010/06/ObamaCare-Impact-on-Future-Generations>.

26. Cannon, *supra* note 19.

27. Capretta & Nix, *supra* note 4.

28. *Id.*

29. *Id.* at 3.

30. Lori Montgomery, *Proposed Long-Term Insurance Program Raises Questions*, THE WASHINGTON POST, Oct. 27, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/10/27/AR2009102701417.html>.

31. Scott Harrington, *Obamacare Deficit Debate is a Red Herring*, FORBES (Jan. 10, 2011), <http://blogs.forbes.com/sciencebiz/2011/01/10/obamacare-deficit-debate-is-a-red-herring>.

generated is being inaccurately counted as a frontload surplus for new spending.³² After five years when the benefits are paid, the surplus will decline, since the premiums need to be paid out to beneficiaries.³³ By 2025, the participants' projected benefits are expected to exceed premium revenues, which will result in a shortcoming for funding for the program by the government.³⁴ Thus, detractors claim that premiums being generated by the PPACA cannot be counted as contributing towards a deficit reduction because they will be needed to pay the claims of the beneficiaries.

c. Employers Dropping Coverage

Critics of the PPACA also point out a potential scenario, one in which an unexpectedly high number of employers elect to drop the mandated coverage they provide to the employees in favor of a penalty fee, and allow employees to purchase the government option.³⁵ The CBO predicts that 19 million Americans will benefit from purchasing tax-subsidized insurance, which is included in the PPACA projections as a \$460 million expense by 2019.³⁶ Since the penalty for dropping coverage is only \$2,000 per employee, this gives incentive to an employer and a consenting employee to have the employer drop their mandated coverage, raise the employee's wages to make up for the lost benefit, pay the PPACA penalty, have the employee purchase the government option, and have both parties land in a stronger financial position.³⁷ This could be especially beneficial for large corporations and Fortune 500 companies who have to outlay billions of dollars annually to provide healthcare coverage to employees. AT&T employs over 300,000 people and spends \$2.4 billion each year on healthcare insurance; their obligation could potentially be reduced to \$600 million if they paid the penalty option and allowed their employees to purchase the government option.³⁸ Another market

32. Capretta & Nix, *supra* note 4.

33. Memorandum from the Chief Actuary of the Dept' of Health & Human Services- Ctr. for Medicare & Medicaid Services on The Estimated Financial Effects of the "Patient Protection and Affordable Care Act," as Amended. (Apr. 22, 2010), available at https://www.cms.gov/ActuarialStudies/Downloads/S_PPACA_2010-01-08.pdf.

34. *Id.*

35. Capretta & Nix, *supra* note 4, at 3.

36. *Id.*

37. Douglas Holtz-Eakin & Cameron Smith, *Labor Marketis and Health Care Reform: New Results*, AMERICAN ACTION FORUM (May 2010), <http://americanactionforum.org/files/LaborMktsHCRAAF5-27-10.pdf> [hereinafter Holtz-Eakin].

38. Shawn Tully, *Documents Reveal AT&T, Verizon, other, Thought About Dropping Employer-Sponsored Benefits*, CNN MONEY (MAY 6, 2010),

leader, Caterpillar, would see its cost of employee coverage reduced by over seventy percent.³⁹ In fact, former CBO director Douglas Holtz-Eakin predicts as many as thirty-five million Americans will be utilizing government subsidized health care solely as a result of their employers dropping their coverage.⁴⁰ Thus, critics are concerned that the cost of the subsidized healthcare program will greatly exceed the \$460 million projection if companies, specifically large corporations with high employee counts, take advantage of the fiscal opportunity the PPACA potentially provides for them.

d. Effect at the State Level

Critics also assert that the PPACA will also have deleterious effects at the state level of government. The PPACA would bring 16 million new Americans into Medicaid, an entitlement program that already utilizes 20 percent of state budgets.⁴¹ From 2014 when the law goes into effect until 2019, states will face \$21 billion in new Medicaid costs.⁴² Additionally, the states will be responsible for just under \$12 billion in administrative costs, which will exceed \$100 million per year in the most populous states of California, Florida, New York, and Texas.⁴³ Forty-four states, including the four states already mentioned, and the District of Columbia all project a budget deficit for 2012 ranging from \$3.6 billion to \$25.4 billion.⁴⁴ Granted, the \$33 billion (\$21 billion for new Medicaid costs + \$12 billion for administrative costs) in state level costs is a small expense relative to the federal burden, yet many states are clearly in very poor financial condition and are in desperate need to cut spending, and cannot afford significant outlays.⁴⁵

IV. FUTURE FINANCIAL IMPACT

The potential omissions and future expenses that are not accounted for in the CBO's

http://money.cnn.com/2010/05/05/news/companies/dropping_benefits.fortune/.

39. *Id.*

40. Holtz-Eakin & Smith, *supra* note 37, at 6.

41. Paul Howard, *The Impact of the Affordable Care Act on the Economy, Employers, and the Workforce*, CENTER FOR MEDICAL PROGRESS AT THE MANHATTAN INSTITUTE (Feb. 9, 2011), http://www.manhattan-institute.org/pdf/testimony_02092011PH.pdf.

42. *Health Reform Issues: Key Issues About State Financing and Medicaid*, THE KAISER FAMILY FOUNDATION (May 2010), <http://www.kff.org/healthreform/upload/8005-02.pdf>.

43. Edmund F. Haislmaier & Brian C. Blasé, *Obamacare: Impact on States*, THE HERITAGE FOUNDATION (July 1, 2010), <http://www.heritage.org/Research/Reports/2010/07/Obamacare-Impact-on-States>.

44. Elizabeth McNichol et al., *States Continue to Feel Recession's Impact*, CENTER ON BUDGET AND POLICY PRIORITIES (Feb. 10, 2011), <http://www.cbpp.org/cms/?fa=view&id=711>.

calculation of the impact of the PPACA could significantly affect the prospective financial outlook of the U.S. government. First and foremost, it will increase the federal deficit rather than reduce it. In 2010, the federal deficit was \$1.3 trillion.⁴⁶ Historically, the average deficit is 2.9 percent of the Gross Domestic Product (GDP), but by 2050 the budget gap is projected to be in excess of 20 percent.⁴⁷ As the baby boomer generation retires, the cost of entitlement programs already in place such as Medicare, Medicaid, and Social Security will continue to escalate.⁴⁸ Adding the expense of the entitlements provided by the PPACA will only increase the burden and continue to cause the gap between the GDP and the deficit to close.

Also, history indicates that the costs of healthcare bills consistently exceed the estimates at enactment. Massachusetts Commonwealth Health Insurance cost twenty percent more than projected; Britain's National Health Service cost thirty percent more than forecasted; and in 1965 Medicare was projected to cost \$12 billion by 1990— instead it was \$110 billion.⁴⁹ While these ratios cannot be precisely applied to the PPACA, they give reason to be wary for the future expense of the legislation.

Additionally, the increased deficit created by the PPACA will delay the progress towards repairing the existing entitlement programs of Medicare, Medicaid, and Social Security. These programs do not have the discretion to decide how much they spend each year; rather they pay out what is demanded based on the covenants set out in the law.⁵⁰ Since these programs already take up about half of the federal budget, with the baby boomer generation retiring, the costs of these entitlement programs will continue to soar and occupy massive amounts of the annual budget.⁵¹ Increased entitlement programs under the PPACA only exacerbate this problem, and takes away physical and intellectual resources from the reducing deficit spending at its core.

45. Howard, *supra* note 41.

46. Capretta & Nix, *supra* note 4, at 3.

47. Nicola Moore et al., *Federal Budget Deficits Will Reach Levels Never Seen Before in the U.S.*, THE HERITAGE FOUNDATION (2010), <http://www.heritage.org/budgetchartbook/federal-budget-deficits>.

48. Richard Wolf, *Social Security Hits First Wave of Boomers*, USA TODAY, Oct. 9, 2007, http://www.usatoday.com/news/washington/2007-10-08-boomers_N.htm.

49. Dean Clancy, *5 Reasons Why Repealing Obamacare Will Not Increase the Deficit*, FOX NEWS (Jan. 7, 2011), <http://www.foxnews.com/opinion/2011/01/07/reasons-repealing-obamacare-increase-deficit>.

50. Jim Angle, *Entitlement Evolution Poses Threat to America's Finances*, FOX NEWS (Feb. 18, 2011), <http://www.foxnews.com/politics/2011/02/17/entitlement-evolution-poses-threat-americas-finances/#ixzz1ELgoyUat>.

51. *Id.*

Finally, the weight and responsibility of the unaccounted expenses in the PPACA falls on the shoulders of future generations. As soon as the new subsidies are put into place and actively relied upon by the American populace, it will be extremely difficult to ever eradicate them. In order to finance the added expenses of the PPACA, Congress will either have to raise taxes on future generations, reduce spending on other critical initiatives, or continue the cycle of adding to the deficit.⁵²

V. CONCLUSION

The PPACA provides a substantial benefit to a projected thirty-two million people, many of whom have never had insurance before, nor would have had any potential of receiving coverage in the future. However, with all benefits come costs, and the current estimates by the CBO do not present an accurate projection of the price of the legislation on the financial future of America. Interpreting the ten-year deficit projections of the PPACA as the alpha and omega of the fiscal impact of the bill would be naïve. The projections have been manipulated to represent the PPACA as providing a significant deduction to the federal deficit in the immediate and distant future. Even Bill Elmendorf, the current director of the CBO, said that the PPACA would “maintain and put into effect a number of policies that might be difficult to sustain over a long period of time.”⁵³ Although a primary benefit of the PPACA is believed to be long-term relief on the budget and future taxpayers, when omissions, double counting, unrealistic assumptions, and state level deficits are factored in, it becomes clear that the legislation amplifies the burden rather than reduces it.

52. Capretta & Nix, *supra* note 4, at 4.

53. Pelosi, *supra* note 2, at 14.