Advancing Behavioral Health Equity: Assessing the Opportunities & Challenges Presented by Health Reform

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Cultural Competence and Mental Health Northern Region Summit XIX

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CALIFORNIA INSTITUTE FOR MENTAL HEALTH
What is the impact of racial and ethnic health disparities?

- Racial and ethnic minority groups experience disproportionalities
  - 83,000 deaths per year
  - $300 billion in costs to the country

- Health disparities are not isolated issues

- Negative health outcomes and disparate treatment in health care impact the economic and social vitality

- Policy is a driving force for helping us eliminate health disparities
Today’s Agenda

- Discuss the education and advocacy that was involved during health reform negotiations to ensure inclusion of health equity provisions.

- Discuss provisions of the health reform law that will have the greatest impact on mental and behavioral health equity.

- Discuss challenges to implementing these provisions, and

- Discuss opportunities you can leverage.
Past, Present, and Future

“If you would understand anything, observe its beginning and development”

Aristotle
The Health Reform Law

- 3rd Anniversary of the Affordable Care Act
- Sweeping changes to health care
- Implemented over the next several years in the following areas:
  - Expanded coverage
  - Data collection & reporting
  - Prevention & wellness
  - Comparative effectiveness research
  - Delivery system reforms
  - Payment system reforms
  - Workforce development
  - Attack fraud and abuse
Impact of Health Reform – 3 Years After Passage

- Over 6.6 million young people have gained health insurance coverage under the ACA.

- Over 105 million people have gained preventive services coverage.

- And over 62 million individuals who experience mental health challenges will for the first time gain access to mental health and substance use disorder benefits.
Health Insurance Consumer Protections

- Insurance Reforms (Pre-existing conditions for children, policy rescissions for expensive care/unintentional mistakes, no lifetime limits, restrictions annual limits)
- Insurance Reforms (Pre-existing conditions for adults; no annual limits)
- Nondiscrimination in Health Insurance

ACA Impact on Mental and Behavioral Health

- ACA requires benefit packages to include 10 essential health benefits: treatment for mental health and substance use disorder services, prescription drugs, rehabilitative, habilitative, prevention and wellness services, etc.

- ACA provides for parity between medical/surgical benefits and mental health/substance use benefits.

- Preventive services at no cost-sharing include depression and substance use screening, etc.

- Comparative effectiveness research on behavioral health disparities.
ACA Impact on Mental and Behavioral Health

- ACA provides a health home option under Medicaid to assist enrollees with chronic conditions, including behavioral health issues to better coordinate primary care, mental health, and addiction services.

- Strengthening Community Mental Health Centers: co-locating primary and behavioral health services.

- Expansion of school-based health centers offering mental health and substance use services.

- Community-Based Care Transitions Program requiring the inclusion of behavioral health consideration.

- Opportunities for outreach and education campaigns.
A CA Impact on Mental and Behavioral Health

- Strengthen community-based service options for individuals with a mental health and/or substance use condition. Medicaid state plan changes and demonstration grants will expand these services for individuals who have long term care needs.

- Develop workforce capacity to provide behavioral health services, including education and training grants, loan repayment programs, and residency and graduate education.
Health Reform Changes for Vulnerable Populations

- transform the delivery of care from treating sickness to preventing illness and promoting wellness,
- strengthen protections for the approximately 57 million Americans who have a pre-existing condition by prohibiting discrimination based on their health status,
- prioritize the reduction of health disparities in research,
- ensure that we have a more robust data collection and reporting system to track the disparities in health status and health care services,
- increase the diversity, cultural, and linguistic competence of health services providers,
- improve the quality and cultural competence of care Americans receive from health care providers,
- provide grant opportunities to develop programs to reduce the gap in health status and health care between vulnerable populations and the general population,
- expand health insurance coverage for almost 32 million Americans who are uninsured or underinsured.
Effect of Health Reform on Insurance Enrollment

Estimated Effect of the Patient Protection and Affordable Care Act, as Enacted and Amended, on 2019 Enrollment by Insurance Coverage (in millions)

- Medicare: Prior Law 60.5, PPACA 60.5
- Medicaid & CHIP: Prior Law 63.5, PPACA 83.9
- Employer-sponsored insurance: Prior Law 165.9, PPACA 164.5
- Individual coverage (Exchange & other): Prior Law 25.7, PPACA 41.6
- Uninsured: Prior Law 56.9, PPACA 23.1

Note: Totals across categories are not meaningful due to overlaps among categories (e.g., Medicare and Medicaid).
Health Insurance Coverage Expansion

Exceptions to the Individual Mandate: (1) Undocumented Immigrants; (2) Religious; (3) Objections; (4) Financial Hardships; (5) Incarceration; (6) Incomes below tax filing household; (7) Membership in an Indian Tribe; (8) Have been without coverage for less than three months; (9) The lowest cost plan option exceeds 8% of household income.

PCIP

2010

2011

2012

2013

2014

2015

Dependent coverage up to age 26

Early Retiree Reinsurance Program

October 2013 - HIE

Medicaid Expansion

HIE Small Businesses

Individual Mandate
State Action on Health Insurance Exchanges

LEGEND:
- **Green**: Declared state-based exchange
- **Yellow**: Planning for partnership exchange
- **Red**: Default to federally facilitated exchange

UT and MA have exchanges in operation, not necessarily ACA compliant.
State Action on Medicaid Expansion

LEGEND:
- Participating
- Undecided (Leaning Towards Participating)
- Undecided
- Undecided (Leaning Towards Not Participating)
- Not Participating
- ACA Lawsuit Participant

Map showing states participating or not participating in Medicaid expansion.
Health Equity Provisions in Health Reform

Addressing Health Disparities
Overview of Selected Provisions

- Elevating Health Equity in the Federal Agencies
  - Health Insurance
    - Navigators
    - Cultural and Linguistic Competence Requirements
    - Incentivizing Health Disparities Reduction Activities
  - Data Collection/Nondiscrimination
    - New Collecting/Reporting Requirements
Quality

- Patient-Centered Health Homes
- Community Health Team
- Facilitation of Shared Decision-making
- Quality Measure Development
- Comparative Effectiveness Research
Overview of Selected Provisions (cont.)

- **Workforce Development**
  - Behavioral Health Professionals
  - Medicine, Nursing, Public & Allied Health
  - Community Health Workers/Promotoras
  - Cultural Competency Training
  - Interdisciplinary Collaboration
  - National Health Care Workforce Commission
  - National Health Service Corp
Overview of Selected Provisions (cont.)

- Prevention
  - Prevention Fund
National Strategies to Address Health Disparities

- National Health Disparities Strategy
- National Quality Strategy
- National Prevention and Wellness Strategy
- National Health Literacy Strategy
- Federal HIT Strategy
- National HIV/AIDS Strategy
The Supreme Court’s Ruling: Anything But Final

“In the end, it can be viewed as a success only to the extent a crash landing is still considered a landing.” – Jonathon Turley, George Washington University

The Continued Fight for Health Reform
### ACA Progress Through the Courts

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<tr>
<td><strong>26 Cases filed against ACA</strong></td>
<td>• 3 cases overturned law or part of law</td>
<td>• <strong>Appeals Courts’ Decisions</strong></td>
<td><strong>January 6</strong></td>
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<td>• 6 cases ruled law constitutional and dismissed case</td>
<td>• 4th Circuit Ct (5/10/11)</td>
<td>• Federal government and other amici curiae to file briefs</td>
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<td>• 9 cases dismissed for lack of standing or procedural reasons</td>
<td>• 9/8/11 dismissed – lack of jurisdiction</td>
<td><strong>February 6</strong></td>
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<td>• 8 cases pending lower court decision</td>
<td>• District Cts disagreed: 1 court const. 1 court unconst.</td>
<td>• Respondents to file briefs</td>
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<td>• 6th Circuit Ct (6/1/11)</td>
<td><strong>March 7</strong></td>
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<td>• 6/29/11 held const. (2–1)</td>
<td>• Federal government to file reply brief</td>
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<td>• District Ct held const.</td>
<td><strong>March 26–28</strong></td>
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<td>• 11th Circuit Ct (6/8/11)</td>
<td>• Supreme Ct will hear ACA case in 5 ½ hours of oral argument</td>
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<td>• 8/12/11 held unconst (2–1)</td>
<td>• 11th Circuit</td>
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<td>• District Ct held unconst.</td>
<td><strong>June</strong></td>
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<td>• D.C. Circuit Ct (9/23/11)</td>
<td>• Supreme Ct decided case and published its opinion June 28</td>
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<td>• 11/08/11 held const. (2–1)</td>
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<td>• District Ct held const.</td>
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<td></td>
<td>• <strong>Awaiting Decision</strong></td>
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<td></td>
<td>• 8th Circuit Ct (4/26/11)</td>
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<td>• District Ct dismissed for failure to state a claim upon which relief may be granted</td>
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Issues Discussed

1. Is the individual mandate within Congress’s constitutional power?
   a) Is the suit barred by the Anti-Injunction Act?
   b) Can the mandate be upheld under the Commerce Clause?
   c) Can the mandate be upheld under the Necessary and Proper Clause?
   d) Can the mandate be upheld under the Taxing Clause?

2. Is the Medicaid expansion constitutional?
Supreme Court’s Holding:

- **Individual Mandate: Upheld**
  - The Anti-Injunction Act does not bar this suit
  - The individual mandate is unconstitutional under the commerce clause, however, it is upheld under the tax clause.
Shared Responsibility Payment: A Tax, Not a Penalty

- The payment is not so high that there is no choice but to buy health insurance
- Payment is not limited to willful violations, as penalties for unlawful acts often are
- Payment is collected solely by the IRS through the normal means of taxation
- Therefore, mandate need not be read to declare that failing to purchase health insurance is unlawful
Supreme Court’s Holding:

- **Medicaid Expansion: Upheld in part**
  - Violated the Constitution by threatening States with the loss of their existing Medicaid funding if they declined to comply – unduly coercive
    - The Medicaid Expansion provision transformed the Medicaid program so drastically—a shift in kind, not degree—that is unconstitutional.
  - States had inadequate notice
  - Nevertheless, it is permissible if Secretary Sebelius does not withhold funds to states that choose to not expand their Medicaid programs.
  - Otherwise, Medicaid expansion upheld (severable), which means that the rest of the law is left intact, but now Medicaid expansion is optional for the states.
"Members of this Court are vested with the authority to interpret the law; we possess neither the expertise nor the prerogative to make policy judgments. Those decisions are entrusted to our Nation’s elected leaders, who can be thrown out of office if the people disagree with them. It is not our job to protect the people from the consequences of their political choices," C.J. Roberts.

Probably won’t say exactly what’s ripe for reconciliation until the lame-duck session.
Funding

- Appropriations
- President’s FY 2013 & 2014 Budgets
- Simpson–Bowles Deficit Reduction Commission
- Debt Ceiling
- Fiscal Cliff
- Deficit Reduction / Sequestration
ACA Provisions Repealed or Modified to Date

- Federal Program To Assist Establishment And Operation Of Nonprofit, Member-Run Health Insurance Issuers (CO-Ops)
- Free Choice Vouchers
- Special adjustment to FMAP determination for certain states recovering from a major disaster - technical correction
- Medicaid DSH Payments – Rebases state DSH allotments for FY 2021
- Prevention and Public Health Fund - i) no propaganda, ii) $6.25 billion cut)
- Community Health Centers
- Community Living Assistance Services and Supports (CLASS) Act
- Expansion Of Reporting Requirements (1099)

National Federation of Independent Business v. Sebelius (Supreme Court Ruling on ACA)

- Sec. 1396c - withdraw existing Medicaid funds due to failure to comply.
The Chances of Other ACA Provisions Being Repealed or Modified?
Deficit Reduction Timeline

Debt Ceiling/Creation of Deficit Reduction Commission (February 2010)

Debt Ceiling/Budget Control Act (August 2011)

Sequestration (January 2013)
... delayed until (March 2013)


Joint Select Committee on Deficit Reduction Failed (November 2011)

President’s FY 2014 Budget/The Moment of Truth Report 2 (April 2013)

Debt Ceiling/ ? (July 2013)
## Sequestration FY 2013

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<th>Mandatory Appropriations</th>
<th>Discretionary Appropriations</th>
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<td>5.1 percent decrease in non-defense mandatory programs</td>
<td>5.0 percent decrease in non-defense discretionary programs</td>
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<td><em>Health Insurance Exchanges</em> = $44 million</td>
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<td><em>Prevention Fund</em> = $51 million</td>
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<td><em>Maternal, Infant, &amp; Early Childhood Home Visiting Programs</em> = $20 million</td>
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<td><em>Patient-Centered Outcomes Research Institute</em> = $20 million</td>
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The Implications? No Money, No Mission

- Continuing Resolution (Expired October 1, 2013)
- Debt Ceiling (October 17, 2013)
- Sequestration (March 01, 2013 to 2021)
- President’s FY 15 Budget
- Deficit Reduction Negotiations
- ACA Mandatory Appropriations To Discretionary Appropriations
- ACA Funding Not For Health Disparities
Where is this all headed?

Reform in some form is here to stay
  ◦ But, there will be years of fixes and adjustments

Continuous Changes and Improvement
  ◦ Evidenced-based practices, comparative effectiveness research, integrated care, innovation, interdisciplinary collaboration, strategic partnerships, patient-centered care

Federal budget will continue to pressure healthcare cost reduction
  ◦ Keeping healthcare spending at the center of the political debate

2013 – watershed year

State issues and focus in implementation of health reform provides an opportunity and seems to be the future
What does this mean for you?

- Ensure that there is adequate funding from Congress and the Administration
- Provide sound information and feedback to regulators
- Join key advisory groups, commissions and task forces to ensure strong representation
- Participate in the development of national strategies on quality improvement and prevention
- Keep a watchful eye on efforts to amend health reform
HEALTH EQUITY FOR ALL!

Questions?

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