

Costs and The Law that Shall Not Be Named

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Judging from the year's political advertisements, those who supported the healthcare law now view it as The Law that Shall Not Be Named (or, for the less squeamish, the Voldemort Act of 2010). The law (officially, the PPACA) is now politically toxic in part because event after event has shown that a central selling point – cost-containment – was and is transparently false.

For years, small business argued that America desperately needed healthcare reform and that any such reform had to relieve the cost burden that was crushing small business and its employees. Last fall, NFIB and others in the small business community warned that the PPACA offered no such relief. Still, supporters promised that the law would “bend the cost curve down,” and that argument helped ram the bill through over the objections of a majority of Americans.

Now, six months after passage, there is no longer any credible, coherent argument that the law will make healthcare more affordable for small business – now, next year, or anytime in the foreseeable future. The evidence runs strongly in the other direction – that passage of the law will increase the costs for small business. The PPACA creates a maze of new costs – direct and indirect – as well as layer-upon-layer of uncertainty.

By the time the PPACA began to approach its final form last fall, its new costs were obvious to small business: new benefit mandates, mandatory coverage of preventive services, elimination of annual and lifetime coverage limits, drug tax, medical device tax, Medicare payroll and investment taxes, small business health insurance tax, the individual mandate, the employer mandate (free-rider provision), the Cadillac Tax. Several additional cost increases came into view at the time of passage: the tanning tax and the notorious 1099 provision, for example. Since passage, each month has brought more bad news for those who hoped or argued that the law would bring down costs. The list of unpleasant post-passage cost surprises is endless, but here's a chronology of picks-of-the-month:

March: Just days after the law's passage, **Caterpillar, Verizon, John Deere and other companies** [announced](#) that they were setting aside funds to protect against anticipated losses resulting from the law. A House of Representatives committee demanded that CEOs appear before the committee, but canceled the hearing after it became clear that (1) The companies' actions were clearly required by law and (2) The law's new costs had led all the companies to examine the possibility of dropping health insurance coverage altogether.

April: The top healthcare forecaster in the federal government, **Rick Foster, the Chief Actuary for Medicare and Medicaid**, issued a breathtakingly critical [analysis](#) of the law. Among many other points, Foster wrote that healthcare costs will rise faster with the law than without it, that imbedded taxes will push premiums up faster, and that the Class Act (the long-term care program created by the PPACA) is financially unsound from the outset.

May: In his [blog](#), **Congressional Budget Office Director Doug Elmendorf** wrote that “The rising costs of health care will put tremendous pressure on the federal budget during the next few decades and beyond, ... In CBO's judgment, the health legislation enacted earlier this year does not substantially

diminish that pressure.” CBO, of course, produced the official numbers on which the PPACA was sold just two months earlier.

June: After endless promises that businesses could keep their insurance policies if they wished to, **the Department of Health and Human Services issued “grandfathering” [regulations](#)** that will cause up to 80% of small businesses to lose their current plans. Instead, those 80% will have to purchase new, more expensive bells-and-whistles-laden policies in the health insurance exchanges to be established by 2014. According to the new regulations, even minute changes to existing policies would render them ineligible for grandfathering.

July: Massachusetts passed PPACA-like reforms several years ago, so problems in that state may foreshadow things to come for the national legislation. In July, several ominous cost-related stories hit for Massachusetts. One noteworthy story was that [emergency room](#) visits have increased, not decreased, since the state’s reforms were adopted. Like the national law, the state law was supposed to shift patients out of expensive emergency rooms and into cheaper primary care facilities. But the opposite happened because reforms expanded coverage and increased demand without also increasing the supply of healthcare providers. The result is a scarcity of primary care physicians and more patients than ever heading to the ERs.

August: In a **conference call**, [prominent pollsters](#) outlined a new messaging strategy to defend the PPACA. The PowerPoint used on the call noted that “Voters are concerned about rising health care costs and believe costs will continue to rise,” and that “Many don’t believe health reform will help the economy.” The pollsters explicitly told PPACA supporters on the call: “Don’t ... say the law will reduce costs and deficit” – the exact opposite of the claims on which the law was sold just five months earlier.

September: At a [press conference](#), **President Obama** said that costs would not be contained anytime soon. “I said at the time, it wasn’t going to happen tomorrow, it wasn’t going to happen next year. ... as a consequence of us getting 30 million additional people health care, at the margins that’s going to increase our costs, we knew that.” In the same month as the president’s comment, insurers in several states [suspended](#) offering **child-only plans** because the PPACA adds the risk of potentially huge and unexpected costs to these policies. In particular, the law provides incentives for parents to leave children uninsured until and unless they have a major illness. In Minnesota, several large insurers suspended their sale of individual policies because of PPACA-related [uncertainty](#).

The list goes on. And will continue to go on. Now and then, a stray “healthcare reform will help small business” study comes over the transom. But thus far, the underlying assumptions of such studies have always been contradicted by the unpleasant facts rolling out each month. Looking forward, there’s every reason to believe that small business will see an environment of higher premiums, greater administrative burdens, vanishing options, and endless surprises.