EPSTEIN BECKER GREEN

# National Congress On The Un and Under Insured

## Welcome and Overview of Local Initiative Models

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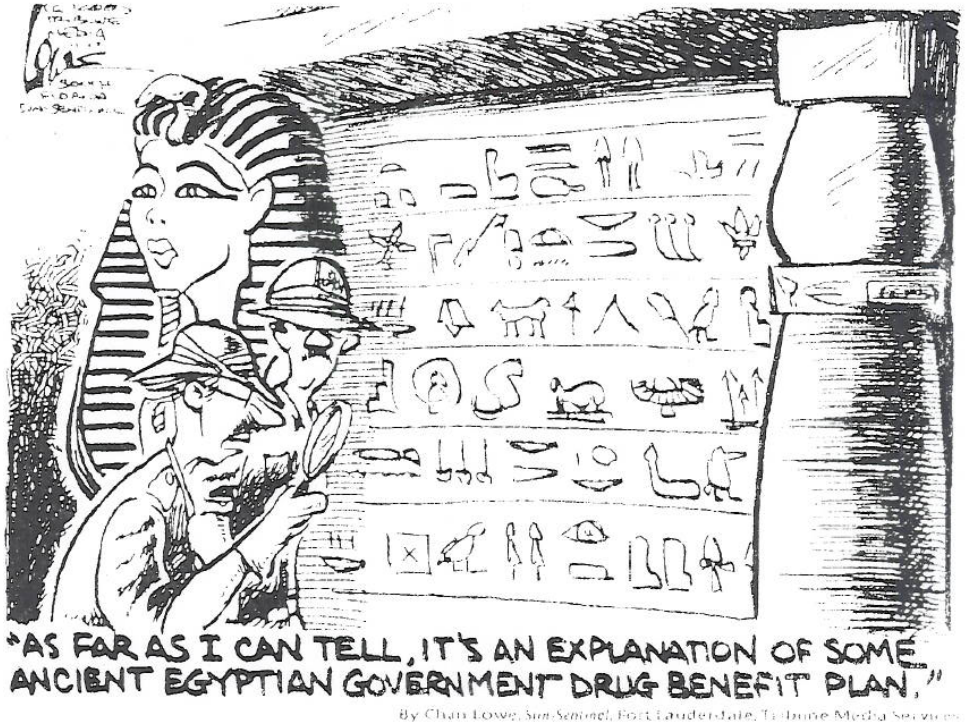
# Premise



- Can we depend on the government to adopt universal health care?




- Should we depend on the government to adopt universal health care?

# ‘Chicken and Egg’ Debate



- First cost-containment, then health reform?

-or-

- First health reform, then cost-containment?

- First mandates, then market reform and subsidies?

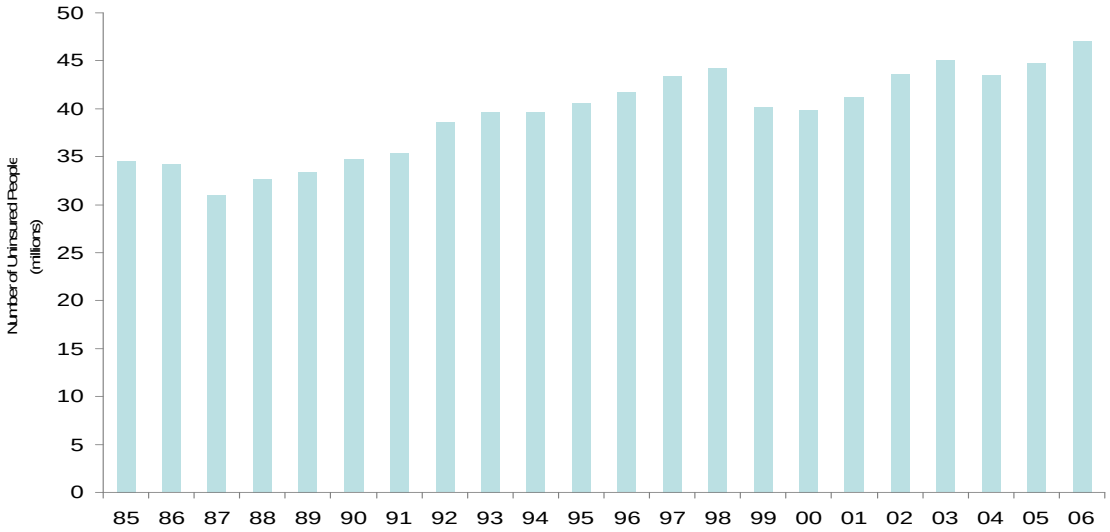
-or-

- First market reform and subsidies, then mandates?

# The Number of Uninsured People is Rising



## Number of Uninsured People, 1985 – 2006




Source: US Census Bureau. (2007). *Income, Poverty, and Health Insurance Coverage in the United States: 2006*.

2008 Update—

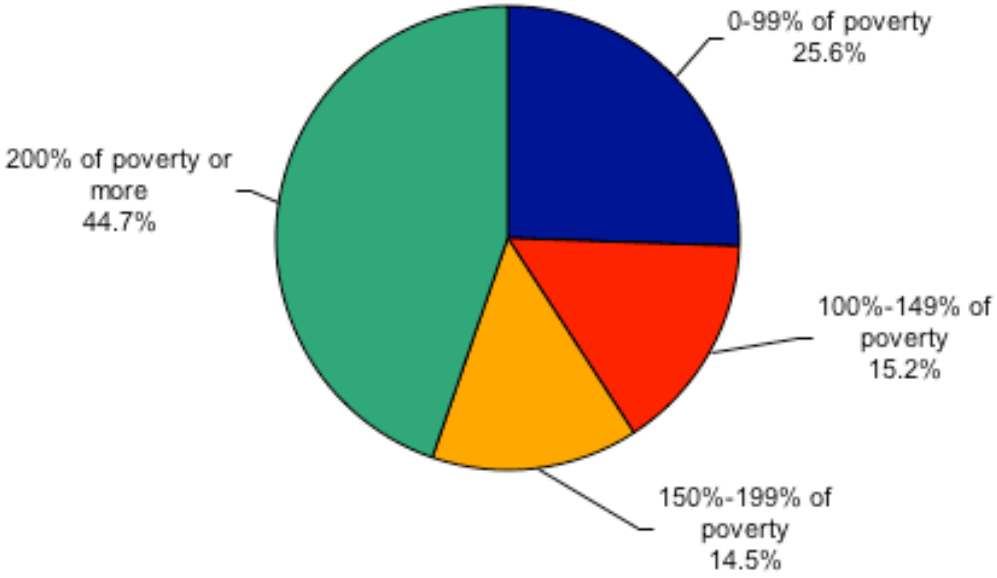
- Number of uninsured may have fallen
- <u>But</u> statistics before 2008 credit crunch and economic downturn
- So, uninsured expected to rise again

# Income and Poverty Status



- According to national surveys, the high cost of health insurance is the primary reason people are uninsured.

***Uninsured Non-elderly Population by Family Poverty Status, 2005***




Source: Employee Benefit Research Institute estimates from the March Current Population Survey, 2006 Supplement retrieved from: covertheuninsured.org

- Query—Perception or Reality?

# Uninsured but Eligible for Coverage?



- Public programs designed to cover the uninsured may not be reaching everyone eligible.
- In 2002, the Urban Institute estimated that approximately 30% of the non-elderly eligible for either Medicaid or SCHIP were not enrolled.

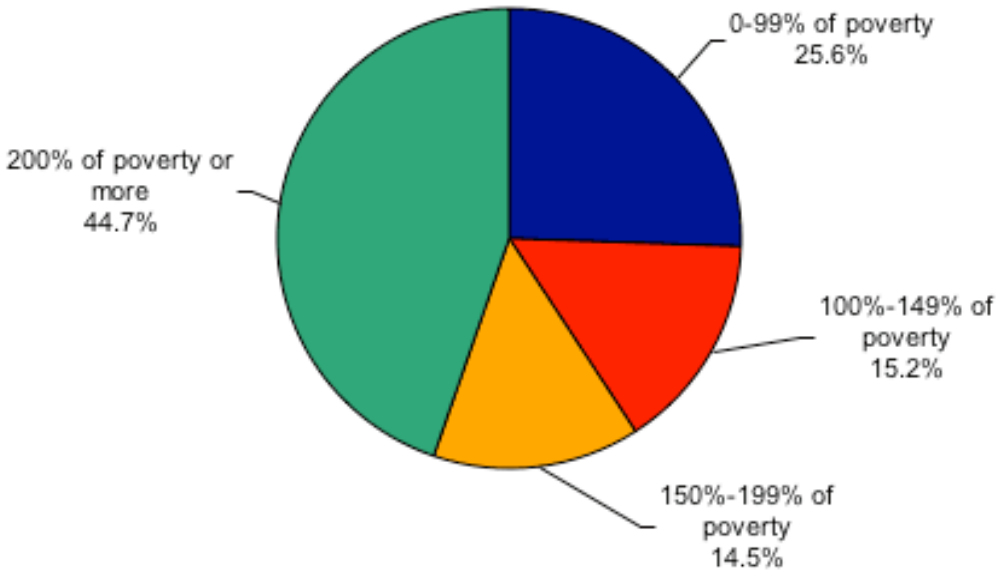
Source: *Health Coverage Issues: The Uninsured and the Insured,* Issue Brief by the American Academy of Actuaries, (December 2005), *available at www.actuary.org/pdf/health/uninsured_dec05.pdf*.

# Uninsured Children



- 9.4 million children are uninsured
- Up to 70% are eligible for public assistance programs

***Uninsured Children by Family Poverty Status, 2005***




Source: Employee Benefit Research Institute estimates from the March Current Population Survey, 2006 Supplement, retrieved from: covertheuninsured.org

# Why?



- Unaware of government program availability
- Administrative, cultural or language barriers
- Stigmatization associated with public assistance programs

Source: *Health Coverage Issues: The Uninsured and the Insured,* Issue Brief by the American Academy of Actuaries, (December 2005), *available at www.actuary.org/pdf/health/uninsured_dec05.pdf*.

Also—

- Provider Access/shortage
- Unaware of insurance product availability

# Assessing the Needs—Un and Under Insured



HEALTHCARE LEADERSHIP COUNCIL

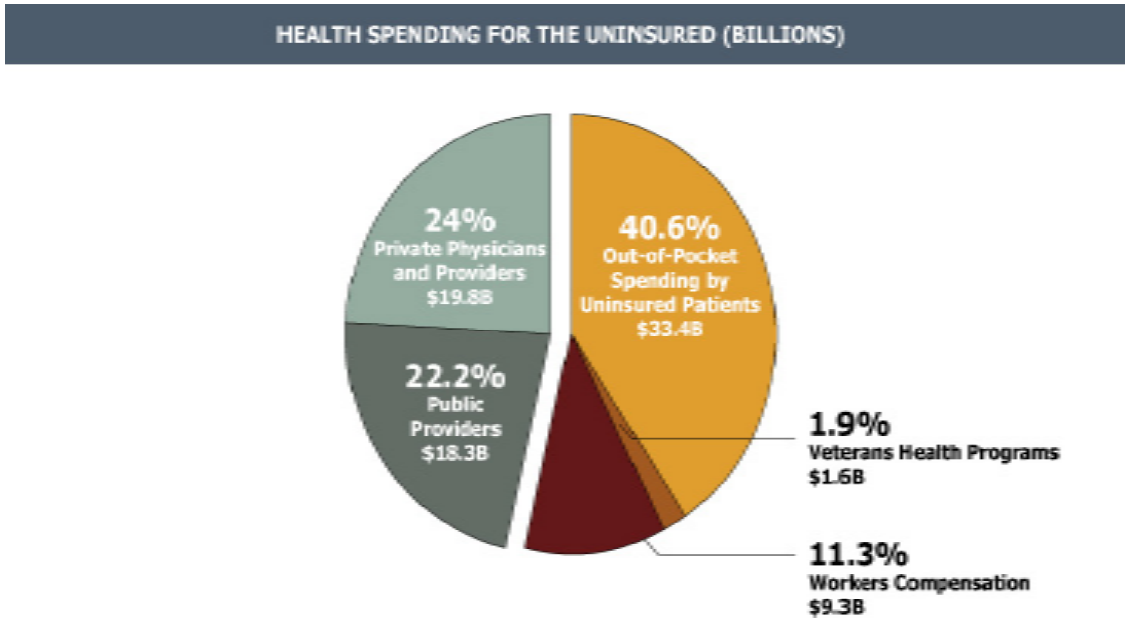
QUALITY ≈ COMPETITION ≈ INNOVATION

- Focus on:
  - Who is un/underinsured?
  - Why?
  - What programs might these individuals be eligible for?
    - Federal, State, Local programs
    - Private insurance product purchase options
- Local "sign up" coverage Initiatives—
  HealthAccess America

# Health Spending for Uninsured



- The uninsured will account for $82.4 billion in health expenditures in 2007; $38.1 billion of this care is uncompensated.




Source: Federation of American Hospitals. Health Coverage Passport.

- By 2010, the cost of health care provided to people without health insurance that is not paid out-of-pocket by the uninsured will exceed $60 billion.

# Legal/Regulatory Climate



- All segments of the health care community are giving it away/paying for it anyway
  - Increasing legal/regulatory pressure to subsidize coverage/care for the uninsured
  - Active Plaintiffs' bar
  - Federal/State government mandates, settlements
- But without credit for our good works!

# Hospitals



- Emergency Medical Treatment and Labor Act
  - Addresses "patient dumping"—now broadly interpreted and applied
  - Mandates patient medical screening and stabilization for anyone presenting at a hospital emergency department
- Unfunded mandate—in 2007, expected costs of EMTALA were $4.4 billion
- According to the American Hospital Association, hospitals provide more than $21 billion in uncompensated care every year

# Pharmaceutical Companies



- Voluntary "Patient Assistance Programs"
  - Provide free or low-cost medications to individuals who otherwise cannot afford them.
  - According to Pharmaceutical Research and Manufacturers Association (PhRMA), member companies contributed $5 billion annually to patient assistance programs.*
- Clinical trial funding

* Source: Pharmaceutical Research and Manufacturers Association, 2008 Industry Profile. *Available at* http://www.phrma.org/files/2008%20Profile.pdf.

# Tax Exempt Health Care Organizations



- New enforcement of charitable obligations at federal and state level
  - Vision Quest—federal tax exemption denial
  - CareFirst—D.C. government challenge under non-profit charter
- State property tax exemptions also jeopardized
  - Provena Covenant Medical Center (Catholic Hospital, Central Illinois)
  - Intermountain (Utah)

# Tax Exempt Health Care Organizations



- Tax exempt status of health care organizations threatened without significant amounts of charitable work
  - Health care mission may no longer be sufficient
- Federal Tax Form 990—Schedule H
  - Enumeration of charity care (not just bad debt)
    - Number of activities, persons served (optional)
    - Net community benefit expense
  - Requests policies and whether there are "budgeted amounts" for free or discounted care to the medically indigent

# Congressional Inquiries



- Senator Grassley (R-Iowa), Senate Finance Committee

  "[H]ospitals… losing sight of the public service that comes with tax-exempt status."

- Letters requesting information from:
  - University of Chicago Medical Center
    - Details re: free/discounted care to the poor
  - MD Anderson Cancer Center, Houston
    - Upfront payments for care

# Other Tax Exempt Health Care Organizations



- ***Vision Service Plan (VSP) v. United States****
  - One of the country's largest eye-care insurance programs, 50 year history as nonprofit, tax-exempt organization.
  - In 2003, the Government revoked VSP's tax-exempt status.
- 501(c)(4) tax exemption for "organizations not organized for profit but operated exclusively for the **promotion of social welfare**"**
- Treasury Regulations provide:
  - An organization is not operated primarily for the promotion of social welfare if its **primary activity** is "carrying on a business with the general public in a manner similar to organizations which are operated for profit."***
- District Court Opinion (2005)
  - VSP did not primarily promote social welfare.
  - VSP was engaged in carrying on a business with the public in a manner similar to that of for-profit organizations.
- District Court judgment affirmed by Appellate Court (2008).
- *Writ of certiorari* to Supreme Court to be filed.

* (Civ. No. S-04-1993 LKK/JFM)
** IRC, 26 U.S.C. §§ 501(a) and (c)(4)(A)
*** 26 C.F.R. §1.501(c)(4)-1(a)(2)(ii)

# VSP v. United States



**District Court Ruling**

- VSP's primary activity was NOT promoting social welfare:
  - Service small employers/rural subscribers ≠ social welfare
  - Medicaid, Medicare, Healthy Families contracts competitively bid and profitable, not social welfare
  - Charity services to non-enrollees comparatively small
    - **In 2003, VSP only spent $8M or 24% of net income on charity**
    - Sight for Students Program: spent only $2.8M, 0.19% of enrollment
    - Disaster Relief Services: only 285 victims serviced in 2003
  - Community outreach and education spending only a "small fraction" of gross income
  - VSP operated like a for-profit business
    - Cost-cutting measures—employee bonuses tied to cost reduction
    - Commissions paid to brokers to bring in new clients
    - Executive and officers had "high salaries," bonuses directly from net earnings

# Payors/Managed Care Organizations



**CareFirst**

- D.C. affiliate of Blue Cross and Blue Shield
- Tremendous surplus growth—$754 million by end of 2007
- Unsuccessfully sought to convert to for-profit entity between 2002 and 2003
- DC Appleseed Report:
  - "Congress meant for the company to pursue a true charitable public health mission… to benefit not just the company's current subscribers, but the public at large."
  - Cites Board fiduciary/legal duty to fulfill charitable obligations.

# DC Appleseed Report



- Says CareFirst should:
  - Offer health education programs
  - Conduct health data analysis and health research programs
  - Offer subsidized /low-cost coverage
  - Address needs of high risk individuals/groups
  - Participate in Medicare/Medicaid
  - Select a board of directors broadly representative of the community

Source: *CareFirst: Meeting Its Charitable Obligation to Citizens of the National Capital Area [hereinafter "Appleseed Report"],* by the DC Appleseed Center, Phyllis Thompson of Covington and Burling and Deborah Chollet of Mathematica Policy Research, (December 6, 2004), *available at* http://www.dcappleseed.org/projects/publications/DCA-Final-CareFirst-12-6-04.pdf.

# DC Appleseed Report



Says health insurers could be key players in:

- Healthier lifestyles
- Greater health care access by support public clinics, subsidize enrollment
- Best practices for:
  - ongoing quality improvement
  - protocols for public health emergencies
- Incentivize providers to serve low-income/ uninsured
- More language interpreters
- More training in cultural competency.

Source: *CareFirst: Meeting Its Charitable Obligation to Citizens of the National Capital Area [hereinafter "Appleseed Report"],* by the DC Appleseed Center, Phyllis Thompson of Covington and Burling and Deborah Chollet of Mathematica Policy Research, (December 6, 2004), *available at* http://www.dcappleseed.org/projects/publications/DCA-Final-CareFirst-12-6-04.pdf.

# Lawsuit Brought by DC Government



- Alleges surplus fund exceeds level for legitimate charitable or nonprofit purposes
  - Willful Violation of Charter by operating for purposes contrary to its charitable mission
  - Breach of Charitable Trust by using assets inconsistently with its charitable purposes
- Seeks:
  - Declaration and injunction from further violations of the charter and breaches of the charitable trust
  - Rehabilitation/rededication to charitable purposes
  - Special Master to oversee rehabilitation

# Government Settlements



- Antitrust
  - Merger of Sierra Health Plan and UnitedHealth Group
  - Payment of $7.175 million to Las Vegas public hospital to improve health care delivery and fund infrastructure improvements who are uninsured or underinsured, among other required charitable contributions
- Other Settlements?

# Other Business Costs



- Individual Bankruptcies from health care bills—$1.85 million per year (AARP Statistic)
- Means both health care and non-health care bad debts
- Affects health care and non-health care companies

# The Business Case for Health Care/Access Initiatives



- The health care community pays for it anyway
- Legal/regulatory pressure to pay for more
- Turn bad debts into good receivables
- Turn unfunded mandates into new markets
- Get credit! (Because credit is due!)
- Manage litigation risk/expense
- Manage reputational risk
- Promote corporate social responsibility

# Building Blocks for Local Initiatives





- Free Clinics/Federally Qualified Health Centers:
  - Laboring oar for primary care services for un/underinsured
  - Federal grants available

# Building Blocks for Local Initiatives



- What about continuity of care, specialty care, diagnostic services, surgical care, diagnosis and treatment of chronic conditions, preventive care?
- Where local initiatives come in—
  - "Build it and they will come"
  - Next generation models of collaboration, risk sharing

# The Social Sector as a New Economic Paradigm



ASHOKA
*Innovators for the Public*

- Social Entrepreneurship
- Hybrid Organizations (*i.e.,* amalgam of nonprofit/for profit)
- Access to equity capital and Foundation funding
- Leverage available government funding
- Sustainable efforts
- Mission-Related Profitability versus maximizing profitability

# For-Profit Health Care Organizations



- New Emphasis on Social Responsibility

  (It's not just for Ben & Jerry's anymore!)
  - Companies increasingly being judged on non-financial performance measures by consumers and investors
  - (*e.g.* carbon footprint)
  - Health care access as a new area of corporate social responsibility
- Corporate pride as a strategic asset in employee recruitment and retention

# Google Search Example




- UnitedHealth Group new website dedicated to social responsibility, June 2008
- Features its "social responsibility commitment to preventing disease and promoting health, addressing racial and social disparities in health care, improving medical knowledge, encouraging volunteerism, and fostering corporate citizenship."

# Building Blocks for Local Initiatives



**Government Funding**

- PHS Grants
  - FQHC Centers (primary care-focused)
  - Disease states
  - Rural and specified vulnerable populations
- Medicaid waivers
  - States can seek waivers, research and demonstration projects
  - Serve populations or provide services not otherwise covered by state Medicaid programs.
- SCHIP
  - Coverage for children
  - Creative use by states to cover families as well

# Building Blocks for Local Initiatives



## Private Funding - Nonprofit Sources

- Foundation Grants
  - *E.g.*, Gates, Robert Wood Johnson
  - Now largely
    - overseas funding
    - disease-state based
- Faith-based Initiatives
- Corporate foundations/philanthropy

# Building Blocks for Local Initiatives



## Private Funding - For Profit Sources

- Corporate social responsibility funding
- Corporate pro bono/community service/volunteerism initiatives
- Private Equity capital?
- Health care organization budgets for bad debt?
- Social Entrepreneurship funding?

# Benefits



- Coordination of funding sources
- Administrative simplicity - one-stop eligibility/intake
- Mainstreaming of care - reduce stigma
- Coordinated delivery of care
  - Primary care plus specialty, diagnostic services treatment, disease management for chronic conditions
- Cost-effective delivery of care
  - Emergency departments for emergencies, not routine care

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