

## From The Capitol

10/5/2011 James G. Cavanagh

*Politics is the art of the possible.*

*Attributed to Otto Von Bismarck, German Prussian politician*

As the Legislature headed back into session just after Labor Day, **25** Republican and **10** Democratic lawmakers were in varying stages of recall campaigns. The only serious threat to an incumbent is that found in the 51st District, where **Rep. Paul Scott** (R-Grand Blanc) faces a recall election in November. All other recall campaigns, even if successful in gaining a sufficient number of valid petition signatures, would have to wait until at least February before a recall election would be called.

The recall efforts have been **toxic** in nature, leading to even greater mistrust among the political parties and individual legislators. The Democrats and organized labor claim the Republicans have overstepped their power by way of their passage of legislation which allows an emergency financial manager to negate a collective bargaining agreement, making major modifications to the Teacher Tenure Law and restructuring tax policy to give greater tax breaks for business. The Democrats' effort was futile from the outset as there was never any realistic possibility of them gaining control of either House because Republican majorities are just too large. In retaliation, Republicans have submitted recall language on 10 Democratic lawmakers, mostly from the southeast Michigan area. All of this has led to a great deal of mistrust and partisan wrangling as we head into fall.

### **WORK BEGINS ON IMPLEMENTING HEALTHCARE REFORM**

As anticipated, Governor Snyder announced his Administration's intent to create **MI HEALTH Marketplace**, a nonprofit corporation where Michigan individuals and small businesses can shop for health insurance.

This is Michigan's version of a healthcare insurance exchange mandated by the federal **Patient Protection and Affordable Care Act (PPACA)**. Under the PPACA, each state is required to operate a health insurance exchange by January 1, 2014 or the federal government will operate the exchange for the state.

As mandated by PPACA, an exchange must include a "**qualified health plan**," as determined by the state and federal government. The exchange also must have at least four coverage options, with Bronze coverage being the least expensive and Platinum coverage costing – and covering – the most.

The Snyder Administration stressed that the MI HEALTH Marketplace was not an adoption of "**Obamacare**." It was created to make the Marketplace concept more palatable to Republican majorities in both the House and Senate. Republicans adamantly opposed the PPACA and, in particular, its provision calling for an individual mandate to purchase health insurance.

Ultimately, the question of whether or not Congress acted within its power to regulate **interstate commerce** when it passed the PPACA will be decided by the U.S. Supreme Court. In the meantime, several states with Republican legislative majorities have decided to work toward implementation of the Act even though they are philosophically opposed and may risk primary opposition from the Tea Party faction of the GOP. Unlike Texas and Florida Republicans who buck implementation of the PPACA, the prevailing view in Michigan is “**better the devil you know than the one (federal government) you don’t know.**”

In contrast to the perceived rigidness of “Obamacare,” the Administration said the MI HEALTH Marketplace will make shopping for insurance as easy as any online shopping experience. MI HEALTH Marketplace will be a non-exclusive insurance portal. In fact, whether or not the Act is upheld, the Snyder Administration intends to keep and maintain the Marketplace as the ideal place to shop for health coverage.

The MI HEALTH Marketplace is not for Medicaid or MI CHILD recipients, but individuals eligible for those programs will be able to enroll through the same website. The hope is to have a completely integrated system. Personnel from the state’s departments of Community Health (DCH), Human Services and Technology, Management and Budget are working to ensure seamless transitions between Medicaid and private coverage.

Enabling legislation for MI HEALTH Marketplace will be introduced soon. We anticipate the **Senate Committees on Health Policy and Insurance** will review the legislation, as will their counterparts in the House.

### **MOMENTUM FOR NITC GROWING**

The Snyder Administration has been for months urging the enactment of **SB 410 and 411** which authorize a public-private partnership for the construction and operation of a new bridge between Windsor and Detroit. The project has been in the works for years and was first named DRIC for the Detroit River International Crossing, and is now known as **NITC**, the New International Trade Crossing. The new bridge would be located approximately 2 miles south of the privately owned Ambassador Bridge.

The owners of the Ambassador Bridge have fought the effort to authorize the NITC, using nearly **\$5 million** of their own money toward political campaign contributions, public relations efforts and lobbying in an attempt to influence lawmakers and the citizenry.

The Snyder Administration sees NITC as a boon to the economy not only in the short term with construction jobs, but in the long run as well by making southeast Michigan a logistics hub.

Just recently, after a long silence, the **Michigan Chamber of Commerce** threw its support to NITC. It is hoped by the Snyder Administration that this support by one of the most fiscally conservative and Republican friendly organizations will gain several more votes for the measure among House and Senate Republicans.

Getting solid Republican majorities for NITC legislation is a must, for without that, the Governor will need a significant number of votes from Democrats. Democrats know this and will want something in return. Part of the horse trading, if it comes to that, is what is called “**community benefits**” legislation. The bridge would be built within the **Delray** neighborhood of southwest Detroit and will require the relocation of homes, businesses and churches. As the Delray neighborhood votes heavily Democratic, Democratic lawmakers from the area want concrete statutory assurances regarding relocation and job training for their constituents.

### THE BLUES ATTEMPT TO GET EVEN BIGGER

Michigan’s largest commercial health insurer, **Blue Cross Blue Shield of Michigan (BCBS/M)**, recently purchased **AmeriHealth**, a large Medicaid health plan. BCBS/M already claims approximately **70%** of the commercial market. With an additional **500,000 Michigan residents** qualifying for Medicaid by the middle of this decade due to PPACA, BCBS/M is poised to make its mark in the Medicaid market as well. The Medicaid health plan purchase is being reviewed by the **Michigan Attorney General** to determine whether BCBS/M **exceeded its statutory authority** by its purchase of AmeriHealth.

### PIP BATTLE JUST AROUND THE CORNER

A big political contest is shaping up between Michigan’s auto insurers on one side and plaintiff’s attorneys and health care professionals on the other. At issue is legislation (**SBs 293 and 294**) that would allow insurers to offer different levels of personal injury protection (**PIP**) insurance to their customers. Currently under Michigan’s No Fault Auto Insurance law, an insurer must provide and pay for an unlimited amount of medical care or PIP in the event of an injury to its insured attributable to an auto accident. Auto insurance carriers have for years been trying to get this PIP provision changed but have always been thwarted by Democrats who have, for most of the time the law has been in existence (**1973**), held a majority in one House or held onto the office of governor. Actually, insurers had two legislative terms in the 90’s where Republicans controlled both Houses of the legislature and the office of governor, but they failed to take advantage. This time, however, insurers are determined to get the change in PIP they say they really need. In fact, auto insurers contend the current system of unlimited medical benefits is unsustainable given the rise in health care costs.

They also contend the surrounding states that allow insurers to offer products with different limits on PIP have much lower costs for consumers. Finally, they point out that under the newly enacted PPACA, lifetime and annual medical expense will no longer apply. The opposing side is led by the **Michigan plaintiff’s bar (Michigan Justice Association)** and healthcare providers such as the **Michigan Health and Hospital Association** and the **Michigan State Medical Society**. Their argument is that limiting coverage for PIP will lead to more uncompensated care by providers, personal bankruptcies for consumers, and increased costs to society as people are driven to Medicaid due to financial disaster caused by medical bills.

Insurers counter that argument by noting that the PPACA fully implemented will require individuals to purchase

health insurance and health insurance entities will be required to issue policies.

Hearings before the Senate Insurance Committee should begin soon as the chair of that committee is also the bill's primary sponsor.

## HEALTHCARE REFORM AND POSSIBLE CONSEQUENCES

### Primary Care – Consequence #1:

The PPACA calls for an increased emphasis on primary care. In fact, federal funds will help primary care physicians receive greater compensation as an incentive for the influx of new patients into the healthcare system due to the healthcare insurance exchange, lower requirements to qualify for **Medicaid** and the creation of a **Basic Health Plan** to bridge the gap for those who find themselves between Medicaid and the Exchange.

In order to transition toward having increased numbers of new patients seeing primary care physicians the **Center for Medicare and Medicaid Services (CMS)** instituted a project called the “**CMS Multi-Payer Advanced Primary Care Practice (MAPCP) Demonstration Project.**” Last November, Michigan was chosen as one of the 8 states to participate in the demonstration. The demonstration focuses on advanced primary care practice, often referred to as the patient centered medical home model. This model is meant to use a team approach to care, emphasizing prevention, care coordination, shared decision making between patients and the use of health information technology. The demonstration project will evaluate the extent to which advanced primary care practices affect utilization, improve safety and care, increase availability and delivery of care in underserved areas and reduce variation in utilization. All participating providers will provide funding to primary care practices and providers in what DCH believes will build and strengthen advanced primary care practice.

The demonstration project is expensive, also having a cost with a component for administration. Total cost for participating health plan providers is **\$7.86** per member per month. In addition, the question has been raised as to why this project should be so expensive when coordination of care is something primary care physicians should be doing now. Another criticism is this project seems **Blue Cross Blue Shield (BCBS/M) centered and biased**. Only primary care practices with the BCBS/M Patient Centered Medical Home designation, or having and/or achieved a 2/3 recognition by the **National Committee for Quality Assurance** as of June 2010 can qualify to participate. In short, health plans and insurers who would participate would be paying extra for the privilege of participating in a program sponsored by BCBS/M, the chief competitor and holder of 70% of the commercial health insurance market. So far, health plans are understandably reluctant to participate and the Department is reevaluating the necessity of health insurer payments.

### Dual Eligibles – An Attempt at Integrated Care – Consequence #2:

Approximately **220,000** Michigan citizens qualify or can be described as “**dual eligibles.**” That is, they qualify

under both the Medicaid and Medicare systems. These “dual eligibles” are also the most costly to treat. The conditions are more often chronic and involve the most severe physical and mental illnesses.

For some time, many health care experts have been advocating managing the care of “dual eligibles” for better medical results in a more cost efficient manner. DCH, with the assistance of subcontractor **Public Sector Consultants of Lansing**, is working on a project so it can best determine how to assimilate “dual eligibles” into managed care. A work group will be appointed among stakeholders (patients, health plans and providers) to make recommendations as to how best to proceed. For a timetable on this process please look to the “**On the Horizon**” section of this report.

### **A Chance to Expand Scope of Practice – Consequence #3:**

With the anticipated influx of new patients, the health care system will need more health professionals who can deliver primary care. In Michigan, there will be a huge shortage of primary care physicians willing or able. Therefore, other health care professionals such as **specialty nurses** and **physicians assistants** will seek to fill the gap and take on some of the responsibilities heretofore reserved for the practice of medicine. Not surprisingly, at the behest of specialty nurses, **House Bill 4774** and **Senate Bill 481** were introduced giving certain nurses more prescription authority and ability to order, conduct and interpret diagnostic tests including all **imaging**. While hearings on this legislation are not expected soon, there will be increasing pressure on the legislature to consider it early next year.

### **What’s to Become of The Blues? – Consequence #4:**

With the enactment of PPACA which calls for guaranteed issue, all health care insurers and health plans will be taking on the traditional role of BCBS/M “**insurer of last resort.**” The question now is, should BCBS/M be organized from a nonprofit to a for-profit. BCBS/M currently enjoys tax exemption due to its status as the “insurer of last resort.” Now that the game has changed removing that defining element from the Blues mission, it would be logical to **remove its tax exempt status** and place it on a more level playing field with competitor health plans and health insurers. Serious discussion is taking place on this and other matters affecting BCBS/M. Governor Snyder has indicated that changes have to be made to its enabling statute to make the healthcare insurance market more competitive. At least initially, expect to see the introduction of legislation by BCBS/M to require it to pay a “**premium tax**” that other Michigan insurance companies pay. However, BCBS/M will also push for legislation that will **remove Attorney General oversight of its rate filings** so it would receive the same “**file and use**” rate regulation as other health plans and insurance companies. The conversion of BCBS/M could be a major consequence of healthcare reform and Warner attorneys are helping to shape the outcome.

## **THE BATTLE OVER DRUG COSTS**

What started out as legislation to remove drugs meant for the treatment of **epilepsy** and **seizures** from

protection against prior authorization in the Medicaid program has been turned into a fight to institute a new drug utilization review program.

As originally introduced, **House Bills 4733** and **4757** amended the Public Health Code and the Social Welfare Act to remove from the ban on prior authorization within Medicaid those drugs prescribed to treat epilepsy and seizures. It was an effort to realize **\$6.3** million which has already been cooked into the upcoming budget which begins October 1. Just prior to a hearing before the House DCH subcommittee on Appropriations, the bills were drastically substituted, giving the **Department's Pharmacy and Therapeutics (P&T) Committee** unprecedented power to approve or disapprove of a health plan's formulary. In addition the P&T would be required to impose a prospective and retrospective **drug utilization review**. On top of that, the P&T Committee could approve or disapprove a pharmacist's software in keeping records. The substitutes were said to model the Indiana program for drug utilization review. However, Michigan has had an effective drug utilization review program since **1988**. It appeared, therefore, that the right hand didn't know what the left hand was doing. So, it appears the Subcommittee will go back to the drawing board in an effort to find that \$6.3 million in savings. We will keep you posted.

### PERSONAL PROPERTY TAX REFORM ON THE WAY

This legislature is determined to either eliminate entirely or at least substantially cut the tax that Michigan businesses pay on their **personal property and equipment**. The tax generates over \$1 billion and is heavily relied upon as a mainstay source of revenue for local governments.

Local governments have already seen significant cuts to statutory revenue sharing and have made efforts at reform such as the consolidation of services with other localities. Organizations representing local governments such as the **Michigan Association of Counties** and the **Michigan Municipal League** say they don't oppose eliminating the personal property tax as long as they receive a "**Constitutional guarantee**" of replacement funding. At this point, that is not likely to happen, although Sen. **Mike Nofs (R-Battle Creek)**, who is spearheading this effort, is looking at alternatives, one of which includes eliminating the **battery tax credit** which was legislation enacted in the latter years of the Granholm Administration.

### ON THE HORIZON

- Look for **recall efforts** to fade after the recall election in the 51st District in November.
- Governor Snyder will deliver his message on Transportation in October. Look for part of that message to be devoted to a revamping of the **car registration** fee system to include both value and weight and a look at obtaining tax revenue from electric cars that don't pay gas tax.
- Action will be taken to codify the definition of "**disability**" within the **Workers' Disability Compensation Act** so that the definition is more in line with recent decisions of the conservative Michigan Supreme Court differentiating between total and partial disability.

- Look for the GOP to pull out all the stops in attempting to defend Rep. Paul Smith (R-Grand Blanc) from being recalled. Whether or not Scott is popular within the House Republican Caucus is not the issue. GOP leadership just does not want to set a **precedent** by having one of their own recalled.
- Efforts to obtain a vote on making Michigan a “**right to work**” state will intensify possibly as early as November.
- A **Senate Fiscal Agency** report on what every local government receives in the form of personal property tax can now be obtained.
- To emphasize the importance of the 2012 election to the Democrats, and to organized labor in particular, **Karla Swift** who headed “**We Are The People Michigan**” was unanimously elected President of the state **AFL-CIO** to replace **Mark Gaffney** who stepped down. The shift to Ms. Swift indicates a total commitment by the state’s largest labor conglomerate toward electing labor friendly candidates in 2012.
- Don’t look for a change in Michigan’s term limits in the near future. The **Michigan Chamber of Commerce**, which has flirted with a modification of term limits, indicates there is not groundswell for change.
- **Karla Garcia**, a former aide to **Rep. Bob Genetski** and who has worked for a number of Republican legislators for years, is the new DCH legislative liaison replacing former **Senator Tony Stamas**, who is now the Senate Majority Leader’s chief of staff.
- According to all sources, the ruling by the **Michigan Supreme Court** on the **legality of the tax on pensions** imposed this year by legislative enactment is imminent.