

RNC Research BRIEFING

Obama's Early Christmas Gift For PhRMA

Once Again, Obama Puts His Friends Ahead Of American Taxpayers

THE OBAMA ADMINISTRATION GIVES ANOTHER HANDOUT TO PHRMA

PhRMA Is Now Free To Skirt Federal Fraud Prevention Law In Return For More Taxpayer Dollars

Obama Exempted ObamaCare "From A Law That Bans Rebates, Kickbacks, Bribes, And Certain Other Financial Arrangements, Stripping Law Enforcement Of A Powerful" Fraud Fighting Tool. "The surprise decision, disclosed last week, exempts subsidized health insurance from a law that bans rebates, kickbacks, bribes and certain other financial arrangements in federal health programs, stripping law enforcement of a powerful tool used to fight fraud in other health care programs, like Medicare." (Robert Pear, "Strategic Move Exempts Health Law From Broader U.S. Statute," [The New York Times](#), 11/5/13)

- **According To The New Designation, ObamaCare Doesn't Fall Under "Federal Health Care Programs."** "The Affordable Care Act is the biggest new health care program in decades, but the Obama administration has ruled that neither the federal insurance exchange nor the federal subsidies paid to insurance companies on behalf of low-income people are 'federal health care programs.'" (Robert Pear, "Strategic Move Exempts Health Law From Broader U.S. Statute," [The New York Times](#), 11/5/13)

"Lawyers And Law Enforcement Officials Said Ms. Sebelius's Decision Was Unexpected Because The Insurance Exchanges And Subsidy Payments Appeared To Fit The Definition Of Federal Health Care Programs In The Anti-Kickback Statute." (Robert Pear, "Strategic Move Exempts Health Law From Broader U.S. Statute," [The New York Times](#), 11/5/13)

- **Federal "Law Makes It A Crime To Pay Or Receive Anything Of Value In Return For The Referral Of Patients Or As An Inducement For People To Buy Goods And Services Reimbursed By Federal Health Care Programs."** "Generally, the law makes it a crime to pay or receive anything of value in return for the referral of patients or as an inducement for people to buy goods and services reimbursed by federal health care programs. Such programs are defined broadly as 'any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States government.'" (Robert Pear, "Strategic Move Exempts Health Law From Broader U.S. Statute," [The New York Times](#), 11/5/13)

Even ObamaCare Navigators, Who Are Supposed To Guide Consumers In Choosing A Health Care Plan On The ObamaCare Exchanges, Can Now Be Sold To The Highest Bidder. “Ms. Sebelius said the Health and Human Services Department ‘does not consider’ the subsidies to be federal health care programs. She reached the same conclusion with respect to federal and state exchanges, built with federal money, and with respect to ‘federally funded consumer assistance programs,’ including the counselors, known as navigators, who help people shop for insurance and enroll in coverage through the exchanges.” (Robert Pear, “Strategic Move Exempts Health Law From Broader U.S. Statute,” [The New York Times](#), 11/5/13)

As PhRMA Continues To Win Under Obama, The Taxpayer Loses

Former Chief Counsel To Health And Human Services Inspector General: Secretary Kathleen Sebelius’s “Decision Will Have Some Very Significant Consequences.” “‘The secretary’s decision will have some very significant consequences,’ said D. McCarty Thornton, former chief counsel to the inspector general at the Health and Human Services Department. ‘The federal anti-kickback statute will, in most cases, not apply to subsidized health plans or the items and services furnished by those plans.’” (Robert Pear, “Strategic Move Exempts Health Law From Broader U.S. Statute,” [The New York Times](#), 11/5/13)

- **“Patients And Taxpayers “Are Now At Risk Of Fraud On Behalf Of PhRMA.** “The main purpose of the anti-kickback law, as described by federal courts in scores of Medicare cases, is to protect patients and taxpayers against the undue influence of money on medical decisions.” (Robert Pear, “Strategic Move Exempts Health Law From Broader U.S. Statute,” [The New York Times](#), 11/5/13)

The Ruling Will Allow Brand-Name Drug Manufacturers To Offer Discounts “When Lower-Cost Alternatives Are Available.” “Kevin G. McAnaney, a lawyer who specializes in health care fraud and abuse cases, said Ms. Sebelius’s decision would allow drug companies to give coupons to people who buy insurance through the exchanges. Such coupons subsidize co-payments and reduce out-of-pocket costs for consumers, encouraging them to use certain brand-name prescription drugs when lower-cost alternatives are available, Mr. McAnaney said.” (Robert Pear, “Strategic Move Exempts Health Law From Broader U.S. Statute,” [The New York Times](#), 11/5/13)

- **The Rule Could Allow For Coupons That “Steer Consumers Away From Lower-Cost Alternatives To More Expensive Drugs, Increasing Costs To Insurers And To The Government.”** “Mark Merritt, the president of the Pharmaceutical Care Management Association, which represents benefit managers like Express Scripts and CVS Caremark, expressed a similar concern. ‘The coupons steer consumers away from lower-cost alternatives to more expensive drugs, increasing costs to insurers and to the government,’ he said.” (Robert Pear, “Strategic Move Exempts Health Law From Broader U.S. Statute,” [The New York Times](#), 11/5/13)

OBAMA ALREADY CUT A BACKROOM DEAL WITH PHRMA TO ENACT OBAMACARE

Could This Be Another Unpublicized Giveaway In The Deal That Obama Made With PhRMA To Pass ObamaCare?

To Pass ObamaCare, Obama Broke From His “Reformer” Message Of Taking On The Pharmaceutical Lobby. “Eager to dismantle barriers to the legislation’s passage, Rahm Emanuel and Jim Messina, a deputy chief of staff, had cut a quiet deal with Pharmaceutical industry lobbyists: in exchange for supporting the legislation, the administration would guarantee that it would cost the companies no more than \$80 billion. Many White House aides were surprised and alarmed: Obama had campaigned as a reformer who would fight lobbyists and Pharmaceutical companies, and now he was cutting a backroom deal with them that looked like a giveaway? David Axelrod and Emanuel, the closest of friends

and allies, went back and forth, Emanuel saying that he needed to do what had to be done to pass the bill, Axelrod protesting that this was exactly what they had campaigned against. But Obama, his competitive juices stoked and his most important initiative on the line, did not halt his chief of staff's horse trading. That was their deal, another aide said: Rahm would try to pass Obama's bill, but the president had to accept that it wouldn't look pretty." (Jodi Kantor, "The Obamas," 2012, pp. 137-138)

- **The Agreement Between Obama And PhRMA "Solidified A Compact With An Industry The President Had Vilified On The Campaign Trail."** "Just like that, Mr. Obama's staff signaled a willingness to put aside support for the reimportation of prescription medicines at lower prices and by doing so solidified a compact with an industry the president had vilified on the campaign trail." (Peter Baker, "Obama Was Pushed By Drug Industry, E-Mails Suggest," [The New York Times](#), 6/8/12)

PhRMA Exclaimed That They Received "A Good Deal" From The White House. "We got a good deal," Mr. Hall wrote. The White House thought it did, too, and defended it against Democrats in Congress. "WH is working on some very explicit language on importation to kill it in health care reform," Mr. Hall wrote in September." (Peter Baker, "Obama Was Pushed By Drug Industry, E-Mails Suggest," [The New York Times](#), 6/8/12)

- **Obama Dropped His Support For Drug Reimportation.** "Just like that, Mr. Obama's staff signaled a willingness to put aside support for the reimportation of prescription medicines at lower prices and by doing so solidified a compact with an industry the president had vilified on the campaign trail." (Peter Baker, "Obama Was Pushed By Drug Industry, E-Mails Suggest," [The New York Times](#), 6/8/12)
- **Drugmakers Would Not Have To "Negotiate Medicare Prices With The Federal Government, Which Could Have Reduced Drug Costs."** "They included a promise from the White House not to demand that drug makers negotiate Medicare prices with the federal government, which could have reduced drug costs." (Alicia Mundy, "E-mails Describe Deal-Making on Obama Health Bill," [The Wall Street Journal](#), 5/31/12)

Memos And Emails Show That The Drug Industry Would Finance Ads In Favor Of ObamaCare As Part Of The Deal With The Obama White House. "The internal memos and e-mails for the first time unveil the industry's plan to finance positive TV ads and supportive groups, along with providing \$80 billion in discounts and taxes that were included in the law. The administration has previously denied the existence of a deal involving political support." (Drew Armstrong, "Drugmakers Vowed To Campaign For Health Law, Memos Say," [Bloomberg](#), 5/31/12)

- **The Drug Lobby Eventually Spent \$69.6 Million On Pro-ObamaCare Advocacy Through Two Non-Profits.** "PhRMA spent \$10.2 million on Healthy Economy Now's ad campaign, according to the House committee's statement Friday on the emails. When Healthy Economy Now went dormant during the summer of 2009, it was replaced by another non-profit, Americans for Stable Quality Care, to which PhRMA gave \$59.4 million, according to the committee." (Alicia Mundy, "More Emails Emerge From 2009 Health Push," [The Wall Street Journal's "Washington Wire"](#), 6/8/12)

PhRMA Received Additional Concessions From The Deal Struck By The White House That Were "Unpublicized." "The emails show that drug makers won other unpublicized deals from the administration, which both the White House and the PhRMAceutical lobby repeatedly denied at the time but were later disclosed in news reports." (Alicia Mundy, "E-mails Describe Deal-Making on Obama Health Bill," [The Wall Street Journal](#), 5/31/12)