

Mark Masselli: This is Conversations on Health Care, I'm Mark Masselli.

Margaret Flinter: And I'm Margaret Flinter.

Mark Masselli: Well Margaret the year's winding down, business is picking up on the state and federal exchanges. The White House is saying that over 300 bugs have been fixed on the federal side, healthcare.gov and that it should be able to handle the anticipated load of 50,000 customers at ones at hopefully 800,000 in a day.

Margaret Flinter: And there are still some fixes underway I know including challenges to be worked out on the Spanish language sites as well it's a small business exchange. Those fixes were pushed back so that the repairs could be made to the main site. But I think we'll see more activity on the federal exchange now that the both of these bugs have been worked out in not a moment too soon.

Mark Masselli: And there is more deadline pressure factor as well but the deadline has been pushed back a little. You now have until December 23<sup>rd</sup> to select plan in time to make sure your covered for the first of the new year and some other deadlines have been pushed back as well. Insurers are being given some extra time next year to set up their rates for 2015.

Margaret Flinter: And there was another interesting development Mark, the supreme court has decided not to hear a case brought against the Affordable Care Act by Liberty University. That's Jerry Falwell's conservative college and they were challenging the law's requirement that institutions must provide insurance for their employees or pay a fine and the high court has opted not to hear that case.

Mark Masselli: There are still other legal challenges pending, Margaret including claim by private for a profit company, they shouldn't have to pay for birth control based on religious grounds that decision is still looming.

Margaret Flinter: Well our guest today can speak to some of the legal issue surrounding the Affordable Care Act Dr. Timothy Jost is a Law Professor at Washington and Lee University. He's a Legal Analyst for the Health Care Industry and he's been writing and speaking extensively about the Affordable Care Act, he's going to shed some light on the rollout of the health care law, some of the changes that have been required and the impact that is likely to have overall on health care consumers.

Mark Masselli: Lori Robertson Managing Editor of FactCheck.org will be stopping by to shine a spotlight on misstatements about health policy spoken in the public domain.

Margaret Flinter: And no matter what the topic you can hear all of our shows by Googleing CHC Radio, we'll get to our interview with Timothy Jost in just a moment.

Mark Masselli: But first here is our producer Marianne O'Hare with this week's headline news.

**(Music)**

Marianne O'Hare: I'm Marianne O'Hare with these Health Care Headlines. Well glitches have been fixed many of them on the federal insurance exchange site healthcare.gov. Many issues and questions still linger, there are still concerns across the country on the functionality of the part of the site that verifies income and identity as well as residence status of those applying for health care coverage. And some states who have proactively set up their own exchanges are seeking to further distance themselves from the federal site which just had numerous scheduled and non-scheduled downtimes which hampers the states abilities to carry our enrollment.

Meanwhile administrators or healthcare.gov use web analytics software to track the insurance exchanges performance and real time. The software from startup new relic was a key tool that led to several of the fixes including a new feature that alerts consumers via email when the exchange is available to process their request.

And want your daughter to be a science or math wiz, well the answer may lie on the soccer field. Turns out it helps young girls wire their brains for a special math, physics and other complex scientific ideas. I'm Marianne O'Hare with these Health Care Headlines.

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Mark Masselli: Today we're speaking with Timothy Jost, Law Professor at Washington and Lee University of Virginia Professor Jost is an expert on the Affordable Care Act and health policy is a regular contributor to peer reviewed health industry publication health affairs and he's a frequent commentator on health law on NPR and CNN, professor welcome back to Conversations on Health Care.

Timothy Jost: Thank you good to be here.

Mark Masselli: You know I remember the last time you are on just before the Supreme Court ruled you are a little worried about the states argument that the feds can't constitutionally require them to expand the Medicaid program. And you thought that, that was sort of at the heart of federalism that if this was sort of approved that this could pose problems for the Medicaid program and so I wanted to get your sort of thoughts on that it's a little while but I also wanted to ask you about the – now that we're out in – on the (inaudible 4:46) full implementation of the Affordable Care Act what changes have happened to the act since the supreme court decision and how are they strengthen or weaken the law.

Timothy Jost: Well we're really beginning to see now and I think we will really see after the first of the year what a devastating effect the Supreme Court's opinion has had on trying to expand health insurance in the United States to cover the uninsured. We now have probably about half the states that have decided at this point at least not to expand Medicaid to cover people under a 138% of poverty level. And the premium tax credits will pick up people over a 100% of poverty. But, for people under a 100% of poverty and in many state such as Virginia, even parents with minor children whose incomes are not very, very low I think in Virginia it's about 30% of poverty that you can earn and still qualify for Medicaid for all those people, they're going to be too poor to qualify. And so you're going to see a situation where families

over a 100% of poverty level will qualify for really at the 100% level will qualify for very generous tax credits, very low cost sharing. You could have the same income level and yet the people would be below the poverty level and won't qualify for anything and that's going to be millions of people. So I think we're going to see the consequence of that Supreme Court decision very soon, where people are target just going to be too poor to qualify for anything.

In terms of other changes in the law, there really haven't been any changes in the law itself. There has been a whole series of regulations and guidance and implementing the law. Some of them delaying the implementation of certain parts of the law and so those will make a practical difference but there are not actually changes in the law itself.

Margaret Flinter: Which they may wonder as you've talk about the impact of Medicaid we certainly have questions whether there would be a last minute or sometime in the new year of 2014, pressure brought to bear on those states under legislatures and governors from the health care industry if nobody else if not for the people themselves for the health care industry to go ahead and expand Medicare and if you like to do any crystal ball gazing for us, do you think that, that's in the cards, do you think we'll beginning to see a shift ---

Timothy Jost: Well it think the pressure is going to be tremendous in Virginia where I live that the economic study was done that projected that we would be losing almost four billion dollars a year in federal spending in Virginia. Three to four hundred thousand people, more would be uninsured and we'd lose 30,000 jobs. But I really do think I mean you're seeing moderate republican governors really pushing for this and legislatures because they realize that this is – this is a tremendous lost to their states but for those who care more about ideology then about jobs and insurance for poor people they're going to continue to dig in their heels and so we'll just see how the balance of power goes.

Mark Masselli: You know the act has, had so many big challenges and certainly the website's not the only one certainly the president was accused of not keeping his promise around the sort of ability for Americans to keep their existing plan and the president offered a fix for one year saying insurance company should allow those plans to continue through 2014. First of all you say that the promise was seriously misrepresented in the media is the president's fix at a good idea and does it compromise any other aspects of law in your mind.

Timothy Jost: The promise of the law itself was that if you have a health insurance policy that is enforced on the day that this law is adopted March 23<sup>rd</sup> 2010 nothing in this law will take that to health insurance policy or plan away from you actually I mean there were a few really important provisions that the plans had to comply with but that was basically done and it wasn't a big problem. So basically people who still have health insurance policies that were in effect they still have those policies, they're still enforced. But it didn't mean that any policy you buy any time in the future you'll be able to keep forever it couldn't have meant that because the whole point of the law was to change the way in which health insurance is sold in the United States. And so, you know, here we are almost four years later, and all of a sudden people are surprised that this law that was intended to change the way health insurance

been sold and the way it – this policies are written is actually doing that. And I'm a little disappointed that the president didn't communicate more clearly to people what the promise was. Now I frankly think that for probably the majority, probably the vast majority of people who have plans now they're going to see that, that they can get more affordable coverage once they go through the exchanges and take advantage of the premium tax credits. But for some higher income people who have been getting very low rates because they're healthy. They are going to see higher rates and maybe even coverage that isn't generous. So that's a real problem but that's kind of the nature of change that people who have been completely closed down as a market because of pre-existing conditions will be able to get health care but people who have benefit it from the market are now going to have to pay more.

Margaret Flinter: You've also noted that, that this could pave the way for a different payment structure that supports a high risk pool as is done with Medicare but that you've saw that there would be an inherent risk in that. That I think is another whole area that would be certainly a little bit murky to me at best, could you clarify that for us a little what do you mean by that?

Timothy Jost: The law itself includes three premium stabilization programs. Because there is the fear that you're going to have a lot more people and I think we're seeing this right now actually. A lot more higher risk people entering the market would have been closed out of the market. And that is going to kind of increase the risk tool for health insurers. And I think also there's concern that the presidents plans and then to a much greater extent some of the fixes that congress is considering right now that would allow people to continue to buy 2013 plans into 2014 would really segregate the risk pool and I think that's probably what you're referring to. This premium stabilization programs are intended to help with that, one of them is to reinsurance program that would collect a fee from people from insurers and then would use that to back up insurers in the individual market who have very high close cases. The federal government going to absorb some of that cost. The second program on risk adjustment program move funds from insurers that tend to do very well, have low risk in release to those who have high risk and really. And then a third plan which has not gotten much coverage but is starting to get more coverage now is a risk quarter program so that insurers in the exchange mainly insurers who've qualified health plans. Who end up losing money because the risk pool turns out to be worst than what they anticipated would be compensated again by insurer who make money because they put their premiums high enough to cover their cost. But in that program, the federal government would be the ultimate back stop so that if all the insurers lost money if the federal government would, would kick into to, to back stop them in that program.

Mark Masselli: We're speaking today with Timothy Jost, a Law Professor at Washington and Lee University in Virginia. Professor Jost is a expert on the Affordable Care Act and health policy and is a regular contributor to the publication health affairs as well as a frequent commentator and health law issues on NPR and CNN. Tim let's go back to the problematic rollout of the federal exchange and lots of people have had a various solutions to help with the enrollment process but people have suggested that perhaps direct enrollment in the future might be helpful where customers would be able to buy the plans directly from the insurers and then figure

out the federal subsidy part later. What are your thoughts about direct enrollment and does it adequately protect consumers?

Timothy Jost: The idea there is not that insurers would be able to bypass healthcare.gov because the law simply doesn't allow that. And they would have to tell the person, you know, there are more plans available to you in healthcare.gov if you would like to use the public website. But if you want to enroll with us, these are the plans that are available. The web brokers can do the same thing like eHealthInsurance. And I think this is problematic because obviously people won't see the same range of choices they can choose to but if they decide to stay with their insurer, they won't see the stand range of choices that they would see one the government website. On the other hand, one of the goals of the exchange is to get millions of people enrolled in health care and if we can do that more easily by having the insurers help out, direct enrollment then, you know, the price you pay for that is, is probably having somewhat more constrained choice. But one thing that is not being considered as far as I've heard and would not be legal under the current law, it would take a change in the law for them to do this would be to allow insurers to simply directly enroll people without having any contact with the website, and somehow qualified people for premium tax graded. I don't see how you can have private businesses deciding whether somebody gets it a tax credit or not.

Margaret Flinter: Well you noted in a recent health affairs blog post. Something else, that I think very few consumers probably are aware of and that's the department of health and human services has issued rulings on determining which health plans rank as quality health plans or QHPs I am sure is the new acronym. So I understand the consumer will play a role in that determination by engaging in surveys tell us about these ratings, how are they going to work. Why did they matter and when does this element of change actually get underway?

Timothy Jost: So they are starting to put out now proposed matrices that they would use for rating the plans. And so you'll probably see a star rating just like you do now when you go to trip advisor or Amazon or one of the websites. And then the other thing and well actually it would be part of that is a consumer satisfaction ranking. One thing people have to understand is that this is a process that we are going to start with something pretty basic and then over the next few years it will ramp up and so you know, if we're having this conversation two years from now, the consumers are going to have a lot more information available than they do now when they are picking plans but you have to start somewhere.

Mark Masselli: I wonder what's your thoughts are about the change in the Filibuster Rule in the Senath and how that's going to impact the courts. You know it's probably a longer term play but some of these federal district are not conducive to raising some important questions but certainly the DC district quarters in focus, how do you see the long term play in terms of the change in landscape with this change in center goals.

Timothy Jost: I think the DC circuit the specific issues that was before a congress the DC circuit is terribly important in that – that's where a lot of the key challenges and the federal laws and the DC circuit has some very conservative judges on it who I think in some rulings tend to look more outcome oriented than law oriented from my

perspective. And to the extent that challenges are you know are brought in the DC circuit to the law having three more moderate judges on the court I think makes it somewhat more likely that those challenges will not succeed. Right now the Filibuster Rules have only been changed for the appointment of lower court judges and administration appointees should the Filibuster Rule change at some point for laws and the republicans take control of the Senate then I think that could be a more existential threat to the Affordable Care Act so I think to that extent it's troublesome. I should also know however that one of the challenges was brought against the Affordable Care Act. The challenge to the individual mandate before the DC circuit which ended up before, at least a couple of the three judges who were very conservative and they actually ruled in favor of the individual mandate and in some very interesting decisions. So I don't know how this is all going to work out but I think you are right that it probably may have an impact eventually on the future of the law.

Margaret Flinter: Well there certainly have been a lot of legal challenges have been under statement to the law and I think we you know in our primary care space tend to think about individual enrollment but there is also that issue of the small business mandate which did get a one year delay. I know we are doing a lot of asking you to do a little somewhere between analytics and crystal ball gazing but what's the key change going to be for small businesses in the country?

Timothy Jost: I think that the delay of the mandate probably isn't going to have a huge effect. I think something like 95% of businesses with 50 or more employees cover their employees with health insurance. They are -- I think is little evidence, that there's going to be a mass exodus of larger employers from the health insurance market. With respect to a small groups I don't know, small groups are not required to offer health insurance. There are premium tax credits for very small groups with low wage workers that statute does require small groups to cover the essential health benefit. So I think some small groups are going to see their cost go up and so the question is should I continue to offer coverage that is you know pretty pricey for my employees or should I drop it. Maybe pay them a little more and then they can get coverage with premium tax, credits in the exchange, so I don't know where small business is going to end up on this. I would expect that as the case now small businesses who find it in their interest of a business reasons for retention and recruitment reasons to offer health insurance will continue to do so and those who have employees, who would do better in the exchange may drop it. I think that was the projection of the CBO to begin with.

Mark Masselli: We've been speaking with Timothy Jost, Law Professor and Health Industry Expert at Washington and Lee University in Virginia, you can find out more about his work by going to [law.wlu.edu](http://law.wlu.edu). Tim thanks so much for joining us in the conversation.

Timothy Jost: My pleasure, good to talk to both of you.

Mark Masselli: At Conversations on Health Care, we want our audience to be truly in the know when it comes to the facts about health care reform and policy; Lori Robertson is an award-winning journalist and Managing Editor of FactCheck.org a nonpartisan, nonprofit consumer advocate for voters that aim to reduce the level of deception in US politics. Lori, what have you got for us this week?

Lori Robertson: Well, we recently looked at a claim from Kentucky senator Rand Paul, who said the Medicaid expansion and the Affordable Care Act may bankrupt rural hospitals in the state. But Kentucky health care leaders say the hospital stands a benefit because the expense would extend insurance to those who otherwise wouldn't be able to pay their hospital bills. Senator Paul has introduced legislation to repeal the Medicaid expansion. He said the state hospitals could be overwhelmed with new Medicaid patients and may go bankrupt but state health care officials have supported the expansion partly because it would financially help the hospitals. In addition to extending Medicaid to those earning up to a 138% of the federal poverty level, the Affordable Care Act also slowly reduces federal funding for uncompensated care that goes to hospitals. The uncompensated care payments will be cut by 18.1 billion dollars over seven years nationwide to help pay for the medicare expansion.

In Kentucky, the states estimates the Medicaid expansion would cover an additional 308,000 state residence. A past president of the Kentucky Hospital Association said the not extending medicare would financially hurt hospitals and that the hospitals supported the expansion. The state cabinet for health and family services issued a report recommending expansion saying, our hospital will suffer without it. And that's my fact check for this week. I am Lori Robertson, Managing Editor of FactCheck.org.

Margaret Flinter: FactCheck.org is committed to factual accuracy from the country's major political players and is a project of the Annenberg Public Policy Center at the University of Pennsylvania. If you have a fact, that you'd like checked, email us at [chcradio.com](mailto:chcradio.com), we will have FactCheck.org's Lori Robertson check it out for you here on Conversations on Health Care.

Mark Masselli: Each week Conversations highlights a bright idea about how to make wellness a part of our communities and everyday lives. Much emphasis is been paid of late to the dangerous of distracted driving, a number of states have enacted laws banning texting and driving, which has led to a number of traffic deaths across the country. But what about distracted walking, a recent in-depth study conducted by [safekids.org](http://safekids.org) show it some pretty startling statistics. Older teens now account for over half of all pedestrian deaths of children and what if the main culprits distracted working?

Kate Carr: We collected data from over 3400 observations of middle schoolers and high schoolers, while they were walking in a school zone and crossing the street. We saw that 1 in 5 high schools students were distracted by using their mobile device, they were either texting, using headphones or talking on their cell phone.

Mark Masselli: Kate Carr is president and CEO of [safekids.org](http://safekids.org), whose mission is to find the best ways to keep kids safe. She decided there needed to be a campaign to promote better awareness to reduce the trend and they created a moment of silence.

Kate Carr: This campaign is a reminder to especially teens; there are 50% of the fatalities in kids under the age of 19. Put that device down, create a moment of silence, and pick your headphones or your ear buds out.

Mark Masselli: She's urging parents and pedestrians alike to access their site, [safekids.org](http://safekids.org) for more details about a moment of silence campaign and bring that message home to kids. A simple slogan based campaign to raise awareness about the dangers of distracted walking that has potential to save the lives of child pedestrians and adults for that matter, now that's a bright idea.

Margaret Flinter: This is Conversations on Health Care. I am Margaret Flinter.

Mark Masselli: And I am Mark Masselli. Peace and health.

Conversations on Health Care, broadcast from the campus of WESU at Wesleyan University, streaming live at [ww.wesufm.org](http://ww.wesufm.org) and brought to you by the Community Health Center.