

S6-Ep02_ACA-Negotiations - aug 27 draft

Hey there-- today's episode takes us someplace this show has never gone before: Inside the Washington, DC beltway. Deep inside-- one scene actually takes place inside the Oval Office. If you pay attention to politics AT ALL, you will hear a couple of very-familiar voices.

But it's not a familiar story. We're looking at how a single provision landed in an humongous piece of legislation-- the Affordable Care Act.

Given the absolutely enormous scope of that law--famously more than 900 pages -- this is a teensy-tiny provision.

But it's one that we've talked about a fair amount on this show, especially this year, because it turns out that it can be a SUPER-important tool for a lot of people with medical bills that seem un-payable. Charity care, financial assistance.

Non-profit hospitals-- which is [most hospitals in the U.S.](#)-- are legally REQUIRED to have charity care policies: To write off bills for folks whose incomes fall below a figure the hospital sets. I really only learned that early this year-- along with millions of other people, thanks to a super-viral TikTok video. Spreading the word about that requirement has been making a difference for a LOT of people, and it's been kind of a highlight of my year to see it.

And charity care policies weren't always the law. They only became a requirement when it got written into the Affordable Care Act. Which could easily NOT have happened.

Because politically, in the context of the whole Affordable Care Act drama, this was super-duper obscure.

It was not on the White House's radar. Among the five hundred and 35 members of Congress, it seems like there was exactly ONE legislator who actually cared about it. And he made sure it happened.

Even though he didn't actually vote for the bill. And since Obamacare became law, he has voted to repeal it. [More than once.](#)

This is An Arm and a Leg, a show about why health care costs so freaking much-- and what we can maybe do about it. I'm Dan Weissmann-- I'm a reporter, and I like a challenge, so my job here is to take one of the most enraging, terrifying, depressing pieces of American life, and bring you a show that is entertaining, empowering and useful.

And this is the second in a four-part series about how change actually happens. In an area where SO much needs to change, understanding how even a relatively small -- but hugely important-- change can happen, it's worth spending some time on.

And as you're probably already noticing, that process turns out to be... NOT straightforward. At all.

To recap the story so far, In our last episode, we told the story of a legendary attorney-- a guy named Dick Scruggs, best known as the guy who took on Big Tobacco in the 1990s, and beat them: How he tried to take on non-profit hospitals on this issue, to force them to provide charity care... and pretty much failed.

In 2004, Dick Scruggs and a team of attorneys launched a series of class-action lawsuits against hospitals all over the country. Alleging that these hospitals were price-gouging their neediest patients, folks without insurance-- charging these folks way more than they charged, say, insurance companies-- and then chasing these folks, who were usually poor, to pay. Chasing them mercilessly. Taking them to court, garnishing their wages, raiding their bank accounts. These hospitals were all tax-exempt charities. The tax-exemptions are a huge public subsidy, worth a LOT. So where was the charity?

Scruggs and his team scored a few settlements, but no wins in court. Judges said, essentially, hey: This behavior may not be especially nice, but we're not seeing actual legal rights that these hospitals are violating. Case dismissed.

Then, in 2005, as lots of those cases were winding down, somebody with a big platform let the world know he had noticed these lawsuits.

U.S. Senator Chuck Grassley, a Republican from Iowa who chaired the Senate Finance Committee, [sent a letter to ten big hospital systems](#), with a BUNCH of potentially-uncomfortable questions. Like:

What are your charity care policies?

How much charity care do you actually DO?

If you really think it's fair to charge uninsured people more than you charge insurance companies, then how about you explain that position?

Hey, how many lawsuits have you filed against uninsured patients in the last five years?

And: Tell me about the total compensation for your five highest-paid employees. Be sure to include travel. And country-club memberships.

And the list of hospitals he sent that letter to, it was a signal that he was paying attention to those lawsuits Dick Scruggs was filing. The list included some super-famous names-- Mayo Clinic, New York Presbyterian, Cleveland Clinic. Others were... less famous. Like North Mississippi Health Services, in Tupelo. And Phoebe Putney Hospital, in Albany, Georgia. The kinds of places that wouldn't necessarily get on a U.S. Senator's radar... except that they'd been sued by Dick Scruggs.

Grassley didn't stop with that letter.

The next year, he [held a legislative hearing on non-profit hospitals](#).

Charles Grassley: nonprofit hospitals receive billions in tax breaks at the federal state and local level, the public has a right to expect significant measurable benefits in return. This is about real people and about real people's lives.

Dan: He kept it up, for years. And then Barack Obama won the 2008 election. Comprehensive health care reform is gonna be a top agenda item.

And a health-care geek named Jessica Curtis is just starting a new job,

Jessica Curtis: I was just out of law school, right out of class. Super baby lawyer.

Dan: She's working a non-profit called Community Catalyst, and it's her dream job: They do advocacy around health care issues.

Jessica Curtis: and this was one of the issues that I was working on.

Dan: This. Getting hospitals to provide charity care.

Because of course Dick Scruggs and Chuck Grassley weren't the only people to notice that the way non-profit hospitals behaved was a BIG problem. Community Catalyst and some other national groups, had been slugging away at it for years before Dick Scruggs took notice. And they'd helped nurture local efforts all over the country. Together, they'd worked to get news coverage for important stories. In some states, they'd gotten laws passed. They'd testified at those hearings Grassley organized.

All of that is a huge story-- and it's one we'll take up in our next episode. This time, we're zeroing in on how this issue --that all these people had been working on for a decade --actually became law-- and Jessica Curtis, baby lawyer, gets charged with making it happen.

Three weeks into the job, she goes to a big conference on health care in Washington, D.C. -- the big get-together, to talk about the upcoming push for health reform.

Jessica Curtis: And I found myself sitting next to Senator Grassley thinking, please don't ask me anything. I don't know anything.

Dan: He didn't. And she never saw him again. But over the next few months, she got to know members of his staff-- and she dug into the details.

Jessica Curtis: there was nothing very glamorous about it for the most part my day was spent, uh, researching the 50 state laws. How many states actually required hospitals to have these policies?

Oh, and reading tax returns from non-profit hospitals. And talking with advocates from all over the country-- some of whom were lawyers working one-on-one with broke clients getting jumbo bills from those hospitals.

Jessica Curtis: advocates sat down, we put our heads together. We said, what are the main issues that come up? What's our wishlist?

And how do we make the case for it? They even commissioned polls. It wasn't a big operation. Jessica and her supervisor-- who were both also assigned to other projects for half their time.

Jessica Curtis: that's the true nonprofit work ethic for you.

Dan: And they were total newbies at the whole project of lobbying in Washington DC. But even they could see: if Chuck Grassley doesn't make this happen, nobody will. Nobody in the Senate. And not in the House of Representatives.

Jessica Curtis: on the house side, you know, there were people who wanted to meet with us. But there was not such a strong champion on the house side.

Dan: There was no Charles Grassley, on the House side?

Jessica Curtis: there was no Chuck Grassley in the House. That's right.

this was not something that people were going to do, you know, put a stake in the ground over, unless you were Chuck Grassley.

Dan: And they didn't REALLY know-- was Chuck Grassley going to make it stick? Grassley's the senior Republican, the Ranking Member, on the Finance Committee. He has a super-close relationship with the Chair, Max Baucus, who's a Democrat. The two of them traded those two jobs for years and years. They were both super-interested in health care.

Democrats REALLY wanted some Republican support. And Baucus and Grassley were talking, a lot. The committee started publishing policy papers, laying out what they saw as the big issues.

Jessica Curtis: **these papers would come out,, and we would just pour over them and see, you know, is there anything in here that reflects the ideas that we're hoping to push forward?**

Dan: And you know, it's not at all clear that charity care will make the cut. We're talking about changing huge parts of the health insurance system. There are big discussions about how health care providers get paid. How much is all of it going to cost? All that stuff is competing for space in these papers.

And then, one of them DOES mention charity care. Boom.

Jessica Curtis: **that felt huge and massive I remember that feeling really good**

Dan: It was probably the high point for Jessica and her colleagues. Those papers [come out in May 2009](#).

And then, over the summer, a few things happen. Things that Jessica and her colleagues pretty much have to watch from the outside.

The first part is, Obama's people -- and anybody else who wants a health care bill to happen-- have to make deals with the big players in health care: Insurance companies, pharma, doctors, and hospitals.

Any of them decides they're flat out against the bill, and goes to war? It's probably over. That's what happened when Bill and Hillary Clinton tried taking on health care in the 1990s.

And this turns out to be the easy part. Relatively speaking, at least. I mean, I'm sure it was hard and weird and messy, but in Barack Obama's memoir he says it was wrapped up by the end of June. Everything else took a LOT longer.

Next, the politicians also have to make deals with each other. And Obama's people really want a bipartisan deal. If that's gonna happen, it's gonna happen in the Senate Finance Committee-- where Chuck Grassley and Max Baucus have been working closely together, across the aisle, for years.

Those two form the core of a "gang of six" Senators-- three Democrats, three Republicans-- who hole up in Max Baucus's office.

It was tense, and secretive. And I know someone who was right there-- well, standing right outside.

Julie Rovner has been covering health care for longer than anybody in the country. She literally wrote the book on health care politics and policy-- now in its third edition. These days she's the Chief Washington Correspondent for our pals at Kaiser Health News.

In 2009, she was covering health care for NPR, which meant keeping the closest eye she could on these negotiations.

Julie Rovner: And there got to be this like cadre of reporters sitting outside of boxes office. So anytime anybody came out, we would grab how's it going?

Are you going to support this? Do you have a deal? And it just, you know, it went on. It felt like endlessly. This was not my first lengthy stakeout. But this was sort of an annoying stakeout because it went on all summer.

And the suspense was real. Maybe the whole thing would blow up-- or maybe there would really be a bipartisan deal on health care.

Baucus and Grassley had worked together on so many other bills, including some big tax cut bills.

I mean, it was thought that it was possible. And I think it was possible for a while until it wasn't

Dan: OK, but that's getting ahead of ourselves a little bit.

Here's someone who had more inside information than Julie Rovner or Jessica Curtis. David Axelrod, the chief political strategist for the Obama White House.

He says the White House took their negotiations with Grassley super-seriously. Not just because they wanted to be able to say they had bipartisan support.

David Axelrod: I mean, we weren't talking to him simply for the fun of it or for the institutional imprimatur, we were hungry for votes. We needed 60 votes and we didn't necessarily have 60 votes.

Dan: But by the end of July, according to Obama's memoir, the White House team had given up on a bipartisan deal, given up on Chuck Grassley. But Max Baucus wouldn't budge. He insisted waiting till after the August recess to make a final call.

David Axelrod: you know, in retrospect, it's self evident that the six months or so that we lost chasing this fool's gold turned out to be very costly. It cost us a lot. It allowed the opposition to, fester and grow.

Julie Rovner: August, 2009 was very much the low point for the Affordable Care Act. All of these members, Republicans and Democrats had these incredibly boisterous town halls. Usually, you know, Republicans go home in August and they have a town hall and 20 people show up and they ask about, you know, pretty, uh, parochial issues.

Dan: But this time, the town halls were packed with super-pissed off citizens waving signs saying things like Obamacare SUCKS.

Julie Rovner: And that was all over cable TV. And, you know, people getting just absolutely hammered at these town hall meetings.

That's "hammered" as in taking a pounding. Not like pounding shots.

Protesters: You work for us! You work for US!

Dan: Early September, everybody's back. Obama calls Baucus and Grassley into the Oval Office. Grassley says he's got a few things he still doesn't like about the bill, and Obama cuts him off. Here's what he said, from his audio book.

Barack Obama: **Let me ask you a question, Chuck. If Max took every one of your latest suggestions, could you support the bill?**

Dan: And Grassley says, "Well...."

Barack Obama: **are there any changes any at all that would get us your vote?**

Dan: There's a pause, and Baucus says. "I guess not, Mr. President."

That was it. Everybody went to their corners. [September 9. Max Baucus announced that he was GOING to move a bill out of the Senate Finance Committee](#), with or without Republican votes. A week later, he put out a bill.

That was the first time Jessica Curtis and her allies got to see what was actually in the bill. She remembers being glad to see that language about charity care made the cut. And disappointed about what it actually said: Hospitals had total authority to set their own policy, to decide who would be eligible for charity care, and for how much.

Jessica Curtis: **That felt like a huge loss for us. So we were imagining a world in which nobody has ever overcharged. Again, no uninsured patient is expected to pay the charge, the sticker price, and we didn't get that.**

Dan: But she says her executive director reminded the staff: Don't mourn, organize. And there was a lot of organizing to do. OK, so they would have to settle for half a loaf. But only if they could get it. Only if a health-care bill actually passed. And that was no sure thing.

MIDROLL:

This episode of An Arm and a Leg is produced in partnership with Kaiser Health News. KHN is a non-profit newsroom covering health care in America. Kaiser Health News is NOT affiliated with the big health care outfit Kaiser Permanente. We'll have some more information about Kaiser Health News at the end of this episode.

Getting some version of health care passed with only Democratic votes? In September 2009, it didn't look good.

David Axelrod: **A lot of people were reading last rites over the Affordable Care Act. And you know, only through the President's like incredible perseverance, and the moxie of Nancy Pelosi, were we able to land the plane.**

Dan: So, I'm a Chicago guy, and some of these White House folks are longtime local characters here. Like Rahm Emanuel, the chief of staff, with an infamous temper, whose job it was to actually get a bill passed. I couldn't resist asking David Axelrod about the language Rahm used at the time. He described it as a rolling tirade of expletives and desk-pounding.

David Axelrod: this was really, really frustrating And Rahm has a fairly limited vernacular in expressing frustration-- all sort of symbolized by the, half amputated, middle finger on his right hand.

Dan: The finger. That's part of the legend. Rahm worked at a deli counter as a teenager. There was an accident.

Anyway, long story short-- and it's a REALLY long story, just one of the epic battles of modern political history-- it took six months before the ACA got passed.

And the charity-care provisions stayed in.

At the time, [Rodney Whitlock was the Finance committee's health policy advisor, later worked for Grassley himself](#). Spent 10 years working closely with him. Rodney says it was Grassley's relationship with Max Baucus-- the same relationship that kept talks going through the Tea Party summer, that David Axelrod describes as costly, that left Rahm Emanuel cursing and pounding his desk-- Whitlock says that's what kept the charity-care provisions in the bill.

Rodney Whitlock: the nature of that relationship was significant, their ability to work together, their willingness to talk to each other and the way they played together. So if they worked on something together, anything, the Democrats wants, the bipartisan talks failed.

Anything that they wanted to take out that they felt was too Republican or, or came from Grassley. There was nothing stopping them except for Max Baucus

Dan: I want to remember something here: This mattered to Grassley-- not enough to get his vote, but it mattered to him. But in this ginormous piece of legislation, re-engineering a sixth of the U.S. economy, it was teeny tiny.

Rodney Whitlock remembers it, but he was not involved in negotiating the details.

And David Axelrod? He doesn't remember this issue at all. If anybody mentioned it to him at the time, it's not one of the things that's stuck with him over the last dozen years.

And then: There's speculation about Grassley's role: Was he, at some point, stringing Max Baucus along? What *did* he want? I asked Rodney Whitlock about that. And the answer was... interesting. Bigger than one bill.

Rodney Whitlock: I mean, Grassley did what Grassley did all his life up to, up to arguably 2010, Grassley worked in a world where you worked on bills, you will try to get deals. um, 2010 broke America in a lot of respects politically.

Dan: Rodney Whitlock sees 2010 as the year when the total political polarization we experience now got locked in, in full. The Tea Party had taken off, AND so many of us had gotten locked into our filter bubbles-- Facebook, Google algorithms, confirmation bias-- and he thinks the passage of the Affordable Care Act added fuel to the fire.

I ran that one by Julie Rovner.

Julie Rovner: I absolutely agree with that. That was my scariest day on Capitol hill. Was it oddly the data house passing affordable care act?

Dan: I mean, until January 6, 2021. That day in 2010, she feels like she saw a preview.

Julie Rovner: because there were angry people outside the Capitol. And I had sort of never seen that before.

And they were surrounding all the entrances and I remember they harassed John Lewis and a bunch of the African-American members.

Anchor 1: Someone yelled the N word at Lewis.

Anchor 2: One protestor is said to have spat on Missouri representative Emanuel, Cleaver

Anchor 3: And tonight 10 Democrats who've been threatened are under increased security.

Julie Rovner: These were tea partiers, and they were angry and they didn't like the bill and , that day there was no violence, but I think that day inevitably kind of led to January 6th.

Dan: I mean wow.

And: This may seem kind of far afield for a show about one issue, health care.

But the big, frighteningly-polarized political world we live in... I mean, I said at the very beginning: In general, this show has NOT gone inside the Washington, DC beltway.

And in general, I have NOT taken on those highest-level debates about policy and politics that Julie Rovner reports on.

And there are a couple reasons for that. One is, well, there are already people DOING that. Tons of people make entire careers researching, advocating, politicking. Nobody needs me for that. It is available, in overwhelming amounts, with any amount you want of nuance, detail, or political passion.

And that last bit, political passion, is the OTHER reason I don't spend time on these top-level debates. Because-- as you've probably noticed-- the minute a conversation even leans over to take a look at them... most of us very quickly retreat to our corners.

And as much as I wish-- and I do-- that we could overcome our total polarization and SOLVE health care... I think the cavalry isn't coming on that one.

But occasionally, good things do slip through in some form, even in Washington, DC. This particular change-- creating a national legal requirement that non-profit hospitals have charity care policies-- well, in a lot of ways it depended on a lot of very particular pieces lining up a certain way, a few characters in Washington D.C. acting the way they did.

But in other ways, what it really depended on was work that-- by the time Jessica Curtis showed up-- had been going on for at least ten years. Driven by folks working locally-- pushing in individual states, counties, and cities-- all over the country.

That's the kind of work we'll be looking at next time.

The work of people like Elisabeth Benjamin. In 2000, SHE was a pretty-new lawyer, working at Legal Aid in New York, spending her nights and weekends trying to figure out why none of her clients could get financial assistance.

She got some help and started getting a comprehensive answer, calling every nonprofit hospital in the city to compile a report.

Elisabeth Benjamin: And so when we would call and said, Hey, can we have a copy of your charity care policy? They said we don't have them

Dan: They do now-- and Elisabeth Benjamin isn't done.

Elisabeth Benjamin: I mean, I've been working on this for literally two decades. It's

Dan: And things in New York HAVE changed in that time.

And not just in New York. Just this spring, advocates in Maryland GOT a new state law passed that limits the ways hospitals can chase patients for bills those patients can't afford to pay. Other states too.

So for our next couple of episodes, we'll look at what it took to make change in New York, and in Maryland.

Because, as I've been learning over and over again: There are things we can do-- for ourselves, for each other, and with each other, to make this incredibly awful situation ... suck at least a little bit less.

It's not impossible to make things suck less. I will take it.

Lots of you have also been pitching in to support the show financially-- I'll be shouting out a bunch of new donors at the very end. You can join in at armandalegshow.com/support.

And some of you are sending unbelievably nice notes.

After our last episode, I got an email from a listener with the subject line "Thank you." It said "You're giving people hope, tactical knowledge and strength."

That pretty much made my whole summer right there.

Thank you for keeping me going, in more ways than one.

In a couple weeks, we'll hear about New York. Till then, take care of yourself.

This episode of an arm and a leg was produced by me. Dan Weisman edited by Marian Wang. Daisy Rosario is our consulting managing producer. Adam Raymonda is our audio wizard. Emily Pisacreta is our amazing intern. Our music is by Dave Weiner and Blue Dot Sessions.

Extra-special thanks to Julie Rovner at KHN. Julie has her own podcast, called What the Health, and if you want the latest Washington, DC news on health care-- well, you're probably already a listener, but if not, go check it out right now.

This season of An Arm and a Leg is a co-production with Kaiser Health News. That's a nonprofit news service about healthcare in America, an editorially independent program of the Kaiser Family Foundation. Kaiser

Health News is not affiliated with Kaiser Permanente, the big healthcare outfit. They share an ancestor. This guy, Henry J Kaiser. He had his hands in a lot of different stuff.

Really different. He paved roads. Built a big chunk of the U.S. cargo fleet for World War II. Made cars- including the Jeep. Made aluminum foil.

When he died more than 50 years ago. He left half his money to the foundation that later created Kaiser Health News. You can learn more about him and kaiser health news at armandalegshow.com/kaiser.

Diane Webber is national editor for broadcast and Taunya English is senior editor for broadcast innovation at Kaiser Health News. They are editorial liaisons to this show.

Thanks to Public Narrative -- a Chicago-based group that helps journalists and non-profits tell better stories-- for serving as our fiscal sponsor, allowing us to accept tax-exempt donations. You can learn more about public narrative at www.publicnarrative.org.

Finally, thanks to everybody who supports this show financially. it's time to shout out some folks who have come aboard recently. Thanks this time to...

[Names redacted from transcript, because not everybody wants their name on the Internet.]

Thank you!