

Up Close and Personal with the ObamaCare Act

by Colin Fuess

That many senators did not bother to read the Patient Protection and Affordable Care Act, passed on December 24, 2009, is common knowledge. Equally apparent is that most members of the House did not read it (*“We have to pass the bill so that you can find out what is in it.”* – Speaker Nancy Pelosi) before they passed it on March 21, 2010. It is just as likely that President Obama did not read it when he signed it into law two days later.

Despite the fact that legislators as distinguished as Rep. John Conyers scoffed at the notion of reading the entire bill, and despite the fact that it took more than 54 hours just to read it aloud, presumably without comprehension, I decided to read—for comprehension—the entire [906-page monstrosity](#). Senator Max Baucus (D-MT), *one of the chief authors of the bill*, when asked if he read the bill, said:

“I don’t think you want me to waste my time to read every single word in that health care bill. You know why? It’s written in statutory language. We write the legislation, and then we send it over to legislative council. They write the bill. [The bill] is this reference to that statute to that piece of appropriation, to this and that. It takes a real expert to know what the heck it is. We hire experts!”

Even though a staggering 36% of the House and 54% of the Senate (including Senator Baucus) [are lawyers](#), it is safe to assume that the (vast?) majority of them never read the bill – nor wanted to. When Nancy Pelosi made her now-famous statement, she falsely implied that the lawmakers would *ever* know the provisions of the law.

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One cannot just read the bill. At least half of it amends previous legislation, most notably the Social Security Act with much revision. Luckily, the Social Security Administration has the complete amended text of the SSA at www.ssa.gov.

Below is an example from page 179:

PUBLIC LAW 111–148—MAR. 23, 2010	124 STAT. 297
Subtitle E—New Options for States to Provide Long-Term Services and Supports	
SEC. 2401. COMMUNITY FIRST CHOICE OPTION.	
Section 1915 of the Social Security Act (42 U.S.C. 1396n) is amended by adding at the end the following:	
“(k) STATE PLAN OPTION TO PROVIDE HOME AND COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS.—	
“(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, beginning October 1, 2010, a State may provide through a State plan amendment for the provision of medical assistance for home and community-based attendant services	Effective date.

SEC. 9006. EXPANSION OF INFORMATION REPORTING REQUIREMENTS.

(a) **IN GENERAL.**—Section 6041 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsections: 26 USC 6041.

“(h) **APPLICATION TO CORPORATIONS.**—Notwithstanding any regulation prescribed by the Secretary before the date of the enactment of this subsection, for purposes of this section the term ‘person’ includes any corporation that is not an organization exempt from tax under section 501(a).

“(i) **REGULATIONS.**—The Secretary may prescribe such regulations and other guidance as may be appropriate or necessary to carry out the purposes of this section, including rules to prevent duplicative reporting of transactions.”

(b) **PAYMENTS FOR PROPERTY AND OTHER GROSS PROCEEDS.**—Subsection (a) of section 6041 of the Internal Revenue Code of 1986 is amended—

(1) by inserting “amounts in consideration for property,” after “wages,”

(2) by inserting “gross proceeds,” after “emoluments, or other,” and

(3) by inserting “gross proceeds,” after “setting forth the amount of such”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to payments made after December 31, 2011.

This entire section amends Section 1915 of the Social Security Act (42 U.S.C. 1396n). To find this section on www.ssa.gov, a simple Google search of the United States Code, 42 U.S.C. 1396n, suffices:

The image shows a Google search interface. The search bar contains the text "42 U.S.C. 1396n". Below the search bar, there are several search results. A black arrow points to the result titled "Social Security Act §1915". The search results include:

- United States Code: Title 42, 1396n. Compliance with State plan and ...
- 42 U.S.C. § 1396n : US Code - Section 1396N: Compliance with State ...
- Notes on 42 U.S.C. § 1396n : US Code - Notes
- Social Security Act §1915 (highlighted by an arrow): [42 U.S.C. 1396n] (a) A State shall not be deemed to be out of compliance with the requirements of paragraphs (1), (10), or (23) of section 1902(a) solely ...
- MEDICAID - HOME AND COMMUNITY BASED WAIVER PROGRAMS
- Helen King v. Karen Beye - Welcome to the United States Department ...

Give the Social Security Administration credit: their website is up-to-date, and when the Social Security Act refers to other sections within it, it has hyperlinks to that section or subsection.

Of course, it is never so simple. With no background in law, it has taken me a long time to get a feel for [the nomenclature of United States Code](#) (section, subsection,

paragraph, subparagraph, clause, subclause). For example, Section 1886(b)(3)(B)(x)(I) can be written out as, subclause (I) of clause (x) in subparagraph (B) of paragraph (3) in subsection (b) of section 1886. By the time I get to a subclause, I usually have forgotten in what subsection I am, and I have to retrace my steps, frequently over the span of many pages.

One of the most unpalatable provisions was an immediate target of the business community, the requirement found in Section 9006 of the Act that businesses file a Form 1099 for *every purchase of \$600 or more*. Given how quickly lawmakers of both parties recanted, it seemed that they were surprised the mandate was in the bill. Below is the entirety of Section 9006:

There is no mention of Form 1099. Unless one took the time to stop and read Section 6041 of the Internal Revenue Code of 1986 (26 U.S.C. 6041), one would have no idea what Section 9006 means, and when pressed for time, why bother? It looks like nothing more than minor changes to the previous legislation's wording.

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I am a neophyte, but even going beyond the legalese, I have often found the Act to be needlessly complex. Sentences can be several hundred words long. Sometimes the Act amends legislation that I cannot find online. I have even come across an entire section (Section 1332 [42 U.S.C. 18052]) that fails to differentiate when “the Secretary” refers to the Secretary of Health and Human Services or the Secretary of the Treasury.

And then there is Section 2001(b)(2), which amends Section 1902 of the Social Security Act (42 U.S.C. 1396a) by adding subsection (gg). Subsection (gg)(3) refers to the poverty line “as defined in section 2110(c)(5) [of the Social Security Act (42 U.S.C. 1397jj(c)(5))].” But, upon checking, I learned that that section does not define the poverty line. It simply states that “the term ‘poverty line’ has the meaning given to such term in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)),” which actually does define the term in legalese. But why the extra step? Why did the authors not refer to the Community Services Block Grant Act outright?

The most aggravating – and disappointing – experience so far was when I encountered Section 1552 (42 U.S.C 18112), “Transparency in Government.” At 55 words, it is one of the shortest and easiest to read sections in the Act:

“Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall publish on the Internet website of the Department of Health and Human Services, a list of all of the authorities provided to the Secretary under this Act (and the amendments made by this Act).”

When I read this, I nearly cried for joy. Through 140 pages, I had found approximately 300 “authorities” of the Secretary of Health and Human Services: every instance of “the Secretary shall,” “the Secretary may,” “as determined appropriate by the Secretary,” etc. Section 1552 promised that since April 23, there has been, or should have been, a website that lists every explicit and implied power granted to the Secretary by the Act.

I performed the equivalent of a TSA pat down to the Department of Health and Human Services’ website (www.hhs.gov): no such page exists. However, the site does provide a link to www.healthcare.gov, the website where visitors can “take health care into your own hands, explore insurance coverage options and learn about how the Affordable Care Act impacts you.” The site spoon-feeds major provisions of the law, but not a whit about the Secretary’s “authorities.” Not even under the yellow “About the New Law” tab. With the help of the site’s search engine, I found a [relevant page](#) (which you can find by clicking the little “Implementation Center” hyperlink at the top of the main page, and then clicking on the “Authorities” tab on the left side).

This “Authorities” page is nothing more than the Act’s table of contents with intermittent gobbledygook that the Secretary has the authority to coordinate with so-and-so and implement such-and-such. At the bottom of the page, you can download the full certified version of the Act, but it’s the Senate version passed on December 24, 2009, not the House version that Obama signed into law March 23, 2010.

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The nagging question is how legislation evolved into the tangled mess of legalese, amendments, and bureaucratese epitomized by this highly unpopular act. Even more worrisome is that, with only specialists qualified to interpret such impenetrable verbiage, legislators have yet another escape hatch from accountability to the electorate. If Speaker-to-be John Boehner is serious about changing how Congress operates, he would do well to start with comprehensibility standards for any law enacted.

[This article is the first in a series on the Patient Protection and Affordable Care Act]