

The Affordable Care Act Compared to International
Health Care Systems: Can Changes in
Pharmaceutical Industry Impact the Health Care
System in the United States of America?

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I. INTRODUCTION

The Patient Protection and Affordable Care Act (ACA) was signed into law by President Barack Obama on March 23, 2010 making the United States of America (U.S.) part of the vast majority of countries that provide affordable access to health care.¹ However, the U.S. is a fairly new player in the affordable healthcare market, as most European countries introduced similar programs as early as the 1800s.² The primary reason European countries implemented such programs so early on was to promote income stabilization and prevent wage loss of for the ill.³

In the early nineteenth century, American medicine was inefficient and controlled by for-profit organizations.⁴ Several institutions tried to change

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1. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010); *See also*, Larry Bernstein, *Once again, U.S. has most expensive, least effective health care system in survey*, THE WASHINGTON POST, June 16, 2014, <http://www.washingtonpost.com/news/to-your-health/wp/2014/06/16/once-again-u-s-has-most-expensive-least-effective-health-care-system-in-survey/>.

2. Karen S. Palmer, *A Brief History: Universal Health Care Efforts in the US*, PHYSICIANS FOR A NAT'L HEALTH PROGRAM (1999), *available at*: <http://www.pnhp.org/facts/a-brief-history-universal-health-care-efforts-in-the-us>.

One of the first health care systems for sick workers began in Germany in 1883 with compulsory sickness insurance. Other countries including Austria, Hungary, Norway, Britain, Russia, and the Netherlands followed until 1912. Sweden in 1891, Denmark in 1892, France in 1910, and Switzerland in 1912, funded mutual benefit societies that workers created.

3. *Id.*

4. John M. Luce et al., *A Brief History of HealthCare Quality Assessment and Improvement in the United States*, 160 W. J. MED, 263, 263 (1994). *available at*:

this by establishing the Hospital Standardization Program in 1917.⁵ Since then, the U.S. has been pushing to improve health care but has faced resistance because of the socialist connotation that universal health care brings with it.⁶ Despite passing the ACA, the U.S. falls behind in quality health care compared to many industrialized countries.⁷ This article will compare the American health care system to Canada, France, the United Kingdom (U.K.), and Germany, and conclude that the ACA can be improved by changing the way in which the pharmaceutical industry functions by regulating the amount pharmaceutical companies spend on marketing drugs.

II. ACA COMPARED TO THE CANADA HEALTH ACT

The U.S. implemented the ACA to provide affordable care to all citizens, but this health care system does not compare to the success of other health care systems in the world.⁸ According to a report by the Commonwealth Foundation, the U.S. has the most expensive health care system in world but ranks last overall compared to eleven industrialized countries on the quality of its health system.⁹ Although the ACA allowed for more people to have health insurance, insurance is still by no means universal.¹⁰ Under the ACA approximately thirty million people remain uninsured.¹¹ On the other

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1022402/pdf/westjmed00067-0065.pdf>.

5. *Id.* The American Medical Association was founded in 1847 to improve hospital conditions and ensure that patients received quality care.

6. Palmer, *supra* note 2. The health care issue became the center of politics during President Truman's time and received his support despite anti-communist culture of America at that time. However, critics thought that compulsory health insurance was symbol of the Cold War and thought socialized medical care was a communist way of life.

7. Mary Mahon, *US Health System Ranks Last Among Eleven Countries on Measures of Access, Equity, Quality, Efficiency, and Healthy Lives*, THE COMMONWEALTH FUND (2014) available at: <http://www.commonwealthfund.org/publications/press-releases/2014/jun/us-health-system-ranks-last>.

8. *Id.*

9. *Id.*

10. Michael Lee Jr., *Trends in the Law: The Patient Protection and Affordable Care Act*, 11 YALE J. HEALTH POL'Y L. & ETHICS, 1, 4 (2011).

11. *Id.*

hand, the Canada Health Act provides universal health care for all Canadian residents.¹² Unlike in the U.S., there are no financial restrictions to care at the point of service.¹³ For example, in Canada, costs are controlled because Canada pays ten percent of its gross domestic product (GDP) for its health care system, covering everyone.¹⁴

On the other hand, the ACA will do little to curtail insurance industry profits and will actually increase insurance industry profits.¹⁵ In the U.S., under the ACA, costs continue to rise.¹⁶ The U.S. pays eighteen percent of its GDP on health care and still does not cover millions of people.¹⁷ In Canada, the government negotiates drug prices so they are more affordable.¹⁸ In the U.S. under the ACA, Congress has banned the government from negotiating drug prices for volume purchases, so they remain unaffordable.¹⁹ These financial barriers exist because American pharmaceutical companies spend billions of dollars on marketing their drugs.²⁰

12. Jennifer L. Halser, *Canadian Pharmacies: A Prescription for A Public Health Disaster*, 54 DEPAUL L. REV. 543, 549 (2005).

13. Trudy Lieberman, *Comparing U.S., Canadian Health Care Systems*, ASS'N OF HEALTH CARE JOURNALISTS (2014) available at: <http://healthjournalism.org/blog/2014/01/comparing-u-s-canadian-health-care-systems/>.

14. Goran Ridic et al., *Comparisons of Health Care Systems in the United States, Germany and Canada*, 24 MAT. SOC. MED. 112, 112 (2012).

15. Bruce Japsen, *Despite Glitches, Obamacare Profit Windfall to Insurers Well Underway*, FORBES, Oct. 26, 2013, <http://www.forbes.com/sites/brucejapsen/2013/10/26/despite-glitches-obamacare-profit-windfall-to-insurers-well-underway/> (stating that health insurers are predicting an increase in revenues and profits as the ACA is implemented).

16. See generally, Melanie Evans, *Cost growth projected to climb; can ACA initiatives slow it down?*, MODERN HEALTHCARE, <http://www.modernhealthcare.com/article/20140906/MAGAZINE/309069983>.

17. AFL-CIO, *The U.S. Health Care System: An International Perspective*, THE DEP'T FOR PROF'L EMPLOYEES, 1, 4-13, (2014).

18. Zaheer Babar et al., *Evaluating Drug Prices, Availability, Affordability, and Price Components: Implications for Access to Drugs in Malaysia*. 4 PLOS MED, 466, 472 (2007).

19. Steve Maiken, *Obamacare Is Not True Universal Health Care While Under Corporate Control*, THE SUNDIAL CALIFORNIA STATE UNIVERSITY NORTHRIDGE, February 6, 2014, <http://sundial.csun.edu/2014/02/obamacare-is-not-true-universal-health-care-while-under-corporate-control>; See also: *U.S. Health Insurance Survey: 84 Million People Were Uninsured For A Time Or Underinsured In 2012*, SCIENCE DAILY, April 26, 2013, <http://www.sciencedaily.com/releases/2013/04/130426073856.htm>.

20. Hannah Keppler, *Pharmaceutical Company Profiteering: Behind the High Cost of Drugs in America*, EINSTEIN J. OF BIO. & MED., 1 (2014), available at: <http://theejbm.word>

Drug companies claim that they need to make billions of dollars on their medicines because of medical research and the risk of being unsuccessful.²¹ However, the U.S., with less than five percent of the world's population, buys more than half of its prescription drugs at prices aimed at funding the rest of the industrial world, where the same drugs cost much less.²² Pharmaceutical companies in the U.S. determine the price of prescription drugs, whereas pharmaceutical prices in Canada are subject to federal price limits.²³ The lack of regulation over pharmaceutical companies in the U.S. allows these companies to set drug prices whatever levels the market will allow.²⁴ By allowing this much autonomy, drug prices increase and as a result so do out-of-pockets costs for consumers.²⁵

III. ACA COMPARED TO THE FRENCH HEALTHCARE SYSTEM

The French health care system provides all citizens with health care by both private and governmental entities.²⁶ Although the French system is expensive, it provides universal coverage for every citizen.²⁷ On the other hand, American health care remains expensive and still leaves millions of people uninsured.²⁸ In 2007, pharmaceutical companies attempted to pass a bill in France that would allow for direct-to-consumer advertising (DTC).²⁹

press.com/2014/02/06/pharmaceutical-company-profiteering-behind-the-high-cost-of-drugs-in-america/.

21. Berry Werth, *A Tale of Two Drugs*, MIT TECH. REV. (2013), available at: <http://www.technologyreview.com/featuredstory/520441/a-tale-of-two-drugs/>.

22. *Id.*

23. Halser, *supra* note 12, at 553.

24. *Id.* at 550.

25. Martha Ann Holt, *International Prescription Drug Cost Containment Strategies And Suggestions For Reform in the United States*, 26 B.C. INT'L & COMP. L. REV. 326, 329 (2003).

26. Mira Radadia, *The High Cost of Health: The French System and What It Means for the U.S.*, 21 ANNALS HEALTH L. ADVANCE DIRECTIVE 14, 14 (2012).

27. *Id.*

28. *Id.* at 21-22.

29. Ray Moyniha, *Attempt To Undermine European Ban On Advertising Drugs Fails In France*, 334 BRITISH MED. J. 279, 279 (2007). Available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1796687/>. The bill failed to pass because critics believed that the plan's purpose was to increase the amount of drugs consumed and thereby increase drug industry

French citizens believe that DTC is an advertising tactic with the purpose of increasing company profits and therefore did not allow the bill to pass.³⁰

The success of France's health care system is attributed to maintaining cost control over the health industry by regulating drug prices rather than engaging in DTC.³¹ The government approves drug prices, taking into account feedback from the manufacturers, and reimburses the manufacturers.³² By keeping the cost of drugs at a low price through regulatory measures, savings can be put towards complimentary health insurance for those who cannot afford it.³³ France is able to provide universal care and the U.S cannot reform to such a health care plan unless fundamental changes are made in the health care industry such as involving the government to set price limits for drug prices.³⁴

IV. ACA COMPARED TO THE UNITED KINGDOM'S NATIONAL HEALTH SERVICE PROGRAM

The United Kingdom's National Health System (NHS) is funded through taxation and provides a wide variety of free health services for individuals who are legal residents in the U.K.³⁵ In 2008, health care spending was sixteen percent of the GDP in the U.S., while it was only 8.7% in the U.K.³⁶

The NHS compensates for almost all drugs and approximately eighty-

profits.

30. *Id.*

31. Karen Bloor et al., *Lessons From International Experience In Controlling Pharmaceutical Expenditure III: Regulating Industry*, 313 *BMJ* 33, 33 (1996), available at: <http://www.jstor.org/stable/29732190>.

32. Radadia, *supra* note 26, at 21.

33. *Id.* at 20.

34. Maya Sabatello, *Disclosure of Gamete Donation in the United States*, 11 *IND. HEALTH L. REV.* 29, 75-76 (2014).

35. Leonard J. Nelson, III, *Rationing Health Care in Britain and the United States*, 7 *J. HEALTH & BIOMEDICAL L.* 175, 189 (2011).

36. David A. Squires, *The U.S. Health System in Perspective: A Comparison of Twelve Industrialized Nations*, THE COMMONWEALTH FUND, 1, 2 (2011) available at: http://www.commonwealthfund.org/~media/Files/Publications/Issue%20Brief/2011/Jul/1532_Squires_US_hlt_sys_comparison_12_nations_intl_brief_v2.pdf.

five percent of drugs are distributed at no cost to the patient.³⁷ Although the NHS does not directly regulate drug prices, the Pharmaceutical Price Regulation Scheme (PPRS) regulates companies' profits on sales to the NHS.³⁸ Therefore, drug companies can set the price of a new drug, but will be limited on the return rate of its capital for all products sold to the NHS.³⁹ The PPRS requires the return on capital for each product sold to the NHS to stay within the amount negotiated with that company.⁴⁰

If a drug company wants to increase the price of a drug, it must seek approval from the PPRS.⁴¹ However, drug prices can be lowered without asking for approval.⁴² Additionally, the NHS allows consumers to pay a flat fee per prescription or a certain amount annually for an unlimited number of prescriptions.⁴³ These regulations have allowed for less government spending in pharmaceutical companies resulting in universal health care for all citizens in the U.K.⁴⁴

The most practical way for the U.S. to have affordable care is to use the process the U.K. has implemented. Because drug regulation is banned in the U.S.,⁴⁵ an easier route for the government would be to set up a program similar to the PPRS in which the government would not directly regulate drugs but assign caps to how a pharmaceutical company can profit off a drug. If the U.S. implements such a policy, it could reduce the cost of drugs and thereby spend less of its GDP to fund the healthcare system. The money saved from drug cost and marketing would be put towards funding a

37. Michele L. Creech, *Make A Run for the Border: Why the United States Government Is Looking to the International Market for Affordable Prescription Drugs*, 15 EMORY INT'L L. REV. 593, 619 (2001).

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* at 619-20.

44. *Id.* at 620.

45. Maiken, *supra* note 19.

PPRS program and inexpensive drugs could finally be accessible to the public.

V. ACA COMPARED TO GERMANY

Germany has a broad national health service that provides universal health care for the entire population.⁴⁶ Germany's health care system is decentralized and funded by taxes, co-payments, and workplace contributions.⁴⁷ The health care system includes nonprofit insurance funds that provide coverage for everyone except the wealthiest percentage of the population, who can buy private insurance coverage.⁴⁸

Similar to those in the U.S., drug companies in Germany have the freedom to price prescription and generic drugs.⁴⁹ Additionally, such companies can change the prices at their own will.⁵⁰ Unlike the U.S. however, Germany's health care system controls reimbursement by classifying drugs into groups based on which drug has a close substitute.⁵¹ Then each group has set a single price that is the cap reimbursement price for all drugs in the group.⁵² The process by which Germany implements its health care system allows for cost control that results in universal and affordable care for all its citizens. In order for the U.S. to be truly affordable, it could implement some of the policies that Germany utilizes such as capping reimbursement for drugs. By doing this, drugs will be more affordable in the U.S. and the excess money the government uses to support pharmaceutical spending can be used to expand the ACA to every citizen at a low cost.⁵³

46. Creech, *supra* note 37, at 620.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* While manufacturer prices remain unregulated, patients must pay any excess of manufacturer's price over the reference price. As a result, demand is highly elastic above the established reference price. Certain major drugs are exempt from reference pricing. For the majority of drugs, reference prices are reviewed every year.

53. Michael Adams, *Florida Approves Cap on Physician-Dispensed Drugs for Work-*

VI. DIRECT-TO- CONSUMER MARKETING IN THE U.S IMPACTS HEALTH CARE COSTS

The common denominator in international healthcare systems mentioned above is that each has some process to regulate pharmaceutical drugs. In order for the U.S. to be a contender in the list of countries with the best healthcare systems, it must change the way pharmaceutical companies function. One of the biggest factors that contributes to the cost of drugs in the U.S. is the high expense incurred through marketing and lobbying efforts.⁵⁴ Prescription drug prices in the U.S. are high in order to balance the costs that pharmaceutical companies spend on marketing their products.⁵⁵ In the U.S., not only does DTC advertising raise the cost of drugs, it can have adverse effects on the public due to misinformation.⁵⁶ In a poll cited by the bill maker, forty-three percent of individuals surveyed thought only completely safe drugs could be advertised and twenty-one percent thought only very effective drugs could be advertised.⁵⁷

The U.S. spends approximately one thousand dollars per person per year on pharmaceuticals.⁵⁸ This is twice as much as France and Germany and roughly forty percent more than Canada.⁵⁹ Prices in the U.S. for brand-name patented drugs are fifty to sixty percent higher than in France and twice as high as in the U.K.⁶⁰ The reason for this discrepancy is that most European countries have centralized health care systems in which govern-

ers' Compensation, INSURANCE JOURNAL, (2013), available at: <http://www.insurancejournal.com/news/southeast/2013/05/02/290595.htm>. At the state level, Florida put a cap on how much physicians can charge for prescription drugs. Pharmacies reimbursements will be maintained at a drug's average wholesale price plus a small fee. This deal is expected lower overall insurance costs by \$20 million.

54. Halser, *supra* note 12, at 550.

55. *Id.* at 551.

56. Bradley D. Kay, *Is the Cure Worse Than the Disease? The Direct-to-Consumer Advertising Exception*, N.Y. ST. B.J., 30, 32 (2009).

57. *Id.*

58. Valerie Paris, *Why Do Americans Spend So Much On Pharmaceuticals?*, PBS NEWS HOUR (2014), available at: <http://www.pbs.org/newshour/updates/americans-spend-much-pharmaceuticals/>.

59. *Id.* at 2.

60. *Id.* at 3.

ment agencies regulate the prices of medicines and set limits to the amount for which they will compensate.⁶¹

In the U.S., however, insurers agree to the price determined by drug-makers and cover the cost with large copayments.⁶² If there are competing drugs, insurers possess more bargaining power and have the ability to negotiate prices with manufacturers in exchange for lower cost sharing for patients.⁶³ In off-patent markets, the competition is fierce and prices of generic drugs are low.⁶⁴ Generic drug dispersion is increasing in the U.S. and typically within six months of a patent expiring on a drug, the generic substitute will account for eighty percent of the market.⁶⁵ Generics drugs account for twenty-eight percent of pharmaceutical expenditures and eighty-four percent of drugs distributed in the U.S.⁶⁶

Additionally, drug companies spend twice as much on marketing drugs than on research and development.⁶⁷ This is because there is no regulatory system in place to monitor pharmaceutical spending and American taxpayer dollars go towards initial research and development, which allows pharmaceutical companies to focus profits on marketing tactics.⁶⁸ This results in Americans paying for drugs twice: first, through taxes used to finance initial research and development, and then second by paying for the expensive drugs which are priced high because of marketing costs.⁶⁹

However, the ACA does not provide any incentive for pharmaceutical companies to lower prices and it does not adopt any of features used by European countries capping the cost of the drugs.⁷⁰ Rather than market drugs

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. Paris, *supra* note 58, at 3.

67. Kepler, *supra* note 20, at 2.

68. *Id.*

69. *Id.*

70. *Id.*

directly to consumers the U.S could implement a program similar to the one provided by the, European Commission.⁷¹ This program allows manufacturers to certify the efficiency of their drugs with the European Economic Community, the European Agency for the Evaluation of Medicinal Products and present them to the marketplace.⁷² Europe controls increasing health care costs by regulating the drug market.⁷³ By contrast, the prices of most drugs in the U.S. will increase and so will the profit margins for pharmaceutical companies.⁷⁴ As a result, affordable care will be an unreachable goal for the U.S. In order to be truly accessible and affordable the U.S. must learn from its international counterparts on how to manage pharmaceutical spending. By regulating marketing practices and controlling the cost of drugs, the government will ensure that pharmaceutical companies spend less on business tactics, and that money can be used to implement programs that can regulate pharmaceutical spending.

VII. CONCLUSION

Access to affordable health insurance and health care are factors that are remediable with reasonable effort, as is demonstrated by the fact that the United States is alone among industrialized countries in failing to guarantee at least some level of basic, non-emergency care for its population.⁷⁵ Although prescription drug spending is a small portion (11%) of personal health care spending, it is one of its fastest growing areas, increasing at fast rates in each of the past seven years.⁷⁶ Limiting how much pharmaceutical

71. Adam R. Young, *Generic Pharmaceutical Regulation in the United States with Comparison to Europe: Innovation and Competition*, 8 WASH. U. GLOBAL STUD. L. REV. 165, 181 (2009).

72. *Id.*

73. *Id.* at 180.

74. Kepler, *supra* note 20, at 2.

75. Emily Whelan Parento & Lawrence O., Gostin, *Better Health, but Less Justice: Widening Health Disparities After National Federation of Independent Business v. Sebelius*, 27 NOTRE DAME J.L. ETHICS & PUB. POL'Y 481, 512 (2013).

76. The Henry J. Kaiser Family Found., *Impact of Direct-to-Consumer Advertising on Prescription Drug Spending*, June 2003, available at:

companies spend on marketing could provide for more funding in other areas of public health.

Congress should limit DTC advertising for pharmaceutical companies. By doing this, these drug companies will cut their marketing costs and use those savings on producing cheaper drugs. This will allow for the government to spend less of the health care budget on drug costs and use it towards expanding the ACA to provide accessible and affordable care for everyone.