Solidarity or Personal Responsibility? A Look at the Lessons Switzerland’s Health Care System Can Teach the United States

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I. INTRODUCTION

In 1994, the year that President Bill Clinton’s universal health care plan was “going down in flames”, voters in Switzerland approved a national referendum guaranteeing health care for every Swiss citizen.1 Almost two decades later, the Swiss health care system and its individual mandate, requiring every citizen to purchase health insurance directly from private insurers, emerged as a promising model for the United States during debates regarding reform.2

The Swiss model stood out as a viable option for the United States for a number of reasons.3 Both countries are strong democracies with extremely competitive political parties.4 Both have a rich and influential network of health insurance companies and hospitals.5 Both hold capitalism in high

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3. T.R. Reid, supra note 1, at 164.
4. Id.
The most important similarity, however, is that, like the United States, Switzerland had a fragmented health care system marked by dependency on employers, large numbers of uninsured people, and high costs—that is, until Switzerland passed Loi Fédérale sur L’Assurance-Maladie (LAMal) in 1994. With the recent passage of the Patient Protection and Affordable Care Act (PPACA), the United States implemented many policies that the Swiss have had in effect for over ten years through LAMal. The goal of this article is to describe some important aspects of the Swiss system since LAMal reforms took effect in 1996 and to explore the lessons that the United States can draw from the Swiss experience. In order to understand the Swiss experience, it is first important to understand the Swiss. Section II begins by discussing how the Swiss people and their values influenced the emergence of their current health care system. Section III will then discuss the similarities and differences between the Swiss system under LAMal and the proposed U.S. system under the PPACA. Finally, Section IV will discuss the lessons that the United States can learn from Switzerland’s experience with mandated health care and other similar features.

II. THE SWISS PEOPLE AND THEIR SYSTEM OF HEALTH CARE

Switzerland is comprised of people from a variety of national and

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6. T.R. Reid, supra note 1, at 164.
7. See generally Loi Fédérale sur L’Assurance-Maladie (LAMal) [Federal Law on Health Insurance] Mar. 18, 1994, RS 832.10 (Switz.).
8. T.R. Reid, supra note 1, at 164-79.
cultural backgrounds. Its eight million citizens are divided among twenty-six cantons, or states, and speak four official languages: German, French, Italian, and Romansch, a Latin derivative. As a result, solidarity is a core value among Switzerland’s diverse population. For the Swiss, the word “solidarity” means community, equality, and that “despite our differences, we’re all in this together.” Another meaning for “solidarity” in the Swiss context is an equal access to basic rights, and this includes access to health care.

For most of the twentieth century, Swiss citizens received health coverage through their employers from nonprofit insurance companies. By the 1980s, however, consolidation of the health insurance industry resulted in the replacement of nonprofit insurers with big profit-making businesses. Consequently, health insurance costs escalated, leaving five percent of Swiss citizens without coverage by 1993. For the Swiss, leaving five percent of the population uninsured violated their core value of solidarity, and in 1993, a special task force was established to examine this national problem. LAMal was the result of this special task force.

LAMal endeavored to bolster solidarity “between the healthy and the sick and the young and the old” by imposing the guaranteed issue and

11. T.R. Reid, supra note 1, at 176.
12. Id. at 175-76.
13. Id. at 176.
14. Id.
15. Id. at 177; See also Amanda Littell, Can a Constitutional Right to Health Guarantee Universal Health Care Coverage or Improved Health Outcomes?: A Survey of Selected States, 35 Conn. L. Rev. 289, 306-307 (2002) (describing some cantons in Switzerland recognizing an unwritten constitutional right to subsistence, which includes essential medical care).
16. T.R. Reid, supra note 1, at 177.
17. Id. at 177-78.
18. Id. at 178.
19. Id.
20. Id. at 179.
community rating requirements on insurers. The “guaranteed issue” requirement means that insurers may not deny coverage on the basis of health status or risk. The “community rating” requirement means that, subject to a few exceptions, each insurer must charge all people enrolled in a specific plan in a given canton the same premium, regardless of health status or risk. Exceptions to the community rating requirement are afforded to individuals up to age eighteen and students up to age twenty-five, whose premiums are community-rated within those categories and are somewhat lower. One more exception to the community rating requirement is for nonsmokers, who can receive premiums up to twenty percent lower than smokers.

Another policy of LAMal, designed to bolster solidarity across income and class lines, is “individual premium reductions” for low-income citizens. “Individual premium reductions” are subsidies administered by the cantons under federal guidelines. The subsidies are intended to prevent any individual from having to pay more than eight to ten percent of their income on insurance. As a rule, the maximum amount for the subsidy is based on each canton’s average premium. Therefore, if individuals receiving subsidies select especially expensive plans, they must pay the extra costs themselves.

22. Id. at 93.
23. Id.
26. See Kreier & Zweifel, supra note 10, at 97; see also TANNER, supra note 25, at 26.
27. Kreier & Zweifel, supra note 10, at 97 (explaining that roughly two-thirds of the subsidies are funded by the federal government, with the cantons funding the rest).
28. See Kreier & Zweifel, supra note 10, at 97; see also TANNER, supra note 25, at 26.
30. Id.
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the Swiss population received some form of subsidy.31

The special task force that created LAMal anticipated that if every
citizen was guaranteed coverage at a community-rated price, regardless of
health status, then insurance pools would become flooded by sick, high-risk
individuals driving premiums upward.32 This would likely cause the
healthy low-risk individuals to opt out of insurance.33 Thus, the only way
the community rating and guaranteed issue requirements work is if
participation is mandated.34 Under LAMal, this is exactly what the Swiss
decided to do.35

LAMal requires all citizens to purchase Compulsory Basic Social
Insurance (CBSI) from private insurers.36 Insurers are prohibited from
profiting on CBSI policies, although they may sell supplemental coverage
for profit.37 Likewise, employers may not offer CBSI coverage to their
employees, but they may offer supplemental coverage.38 The “basic”
benefits included in CBSI policies are actually quite extensive.39 Within
their canton, they include “inpatient and outpatient care, care for the elderly
and the physically and mentally handicapped, long-term nursing home care,
diagnostic tests, prescription drugs, and even complementary and
alternative therapies.”40 Supplemental coverage, on the other hand, entitles
beneficiaries to services outside their canton, private rooms, doctor

32. See Paul J. Donahue, Federalism and the Financing of Health Care in Canada and
Switzerland: Lessons for Health Care Reform in the United States, 21 B.C. INT’L & COMP. L.
33. Id.
34. Id.
36. Id.
37. Id. at 94.
38. Id. at 92.
39. TANNER, supra note 25, at 25.
40. Id.
preferences in hospitals, and extra benefits like dental care.\textsuperscript{41}

Without the ability to manage risks due to the guaranteed issue and community rating requirements, and because CBSI requires insurers to offer benefits packages that are nearly identical, insurers can only really compete on price points.\textsuperscript{42} Insurers compete by offering plans with varying deductibles and copayments.\textsuperscript{43} Generally, enrollees can opt for less expensive plans with higher deductibles or more expensive plans with lower deductibles.\textsuperscript{44} However, LAMal sets some ground rules. The minimum annual deductible insurers may offer is approximately $400 and the maximum is $2,500.\textsuperscript{45} For co-insurance, enrollees must pay ten percent of expenditures in excess of the deductible, not to exceed $700 per year.\textsuperscript{46} Accordingly, the most cost-sharing an individual can incur is $3,200,\textsuperscript{47} which is high by international standards.\textsuperscript{48}

Under LAMal, prices for medical devices, pharmaceuticals, and providers are negotiated by associations of insurers and providers within each canton.\textsuperscript{49} Private and public hospitals also must negotiate reimbursement prices in this way,\textsuperscript{50} although public hospitals receive additional funding from cantonal governments.\textsuperscript{51} All of these negotiated prices are subject to government regulation.\textsuperscript{52} Through this negotiation and

\textsuperscript{41}ROBERT E. LEU ET AL., THE SWISS AND DUTCH HEALTH INSURANCE SYSTEMS: UNIVERSAL COVERAGE AND REGULATED COMPETITIVE INSURANCE MARKETS 2 (Commonwealth Fund, 2009).

\textsuperscript{42}TANNER, supra note 25, at 26.

\textsuperscript{43}Id.

\textsuperscript{44}Id.

\textsuperscript{45}Kreier & Zweifel, supra note 10, at 96 (exchange rates from 2010).

\textsuperscript{46}Id.

\textsuperscript{47}Id.

\textsuperscript{48}ROBERT E. LEU ET AL., supra note 41, at 2.

\textsuperscript{49}TANNER, supra note 25, at 27; see also Reinhardt, supra note 24, at 1229.

\textsuperscript{50}TANNER, supra note 25, at 27.

\textsuperscript{51}Kreier & Zweifel, supra note 10, at 98.

\textsuperscript{52}Reinhardt, supra note 24, at 1229.
regulation, the Swiss can ensure that differing perspectives are heard, but that ultimately, the decisions are made with solidarity in mind.

III. COMPARING THE SWISS SYSTEM TO THE U.S. SYSTEM

The PPACA, signed into law by President Obama on March 23, 2010, has many similarities with LAMal. For instance, LAMal’s compulsory basic social insurance is similar to the PPACA’s “minimum essential coverage” provision, mandating that U.S. citizens obtain health insurance that meets established standards. LAMal’s community rating and guaranteed issue requirements are similar to the PPACA’s provision prohibiting insurers from excluding individuals or discriminating against individuals due to preexisting conditions. Additionally, both laws include public subsidies to make coverage more affordable for low-income individuals. Both laws encourage competition between private insurers. Due to their similar policies, LAMal and the PPACA are bound to have similar results within their respective countries. However, the Swiss experience with LAMal is also bound to have significant differences from the American experience with the PPACA in light of their various dissimilarities.

The first dissimilarity is that, unlike the PPACA, LAMal prohibits insurers from earning profits on most health insurance plans. LAMal also

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54. LAMal, Jan. 1, 2010, RS 832.0, art. 3, para. 1 (Switz); art. 25.
55. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §§1501(a)(1), 5000A(a), 124 Stat. 119, 242, 244 (2010); §1302(a)-(b) (establishing the standards of the insurance).
56. LAMal art. 13, para. 2(a).
57. Patient Protection and Affordable Care Act §2704(a).
58. Patient Protection and Affordable Care Act §1413; LAMal art. 66, paras. 1-2.
59. Patient Protection and Affordable Care Act §1311; LAMal art. 41, para. 1.
60. LAMal art. 43, paras. 4-5 (providing that insurance rates are based on a uniform tariff structure established by the Swiss federal government).
stipulates that prices for pharmaceuticals, medical devices, and the services of health care providers be negotiated and regulated.\textsuperscript{61} Further, it makes cantonal governments primarily responsible for funding hospital care.\textsuperscript{62} Another difference is that while almost a third of the health coverage in the United States is provided through government programs, such as Medicaid,\textsuperscript{63} the Swiss system allows individuals of all income levels and ages to choose their health coverage from identical private insurance plans within their cantons.\textsuperscript{64} Lastly, while LAMal expressly forbids employers from providing basic social health insurance as a benefit of employment,\textsuperscript{65} the PPACA attempts to encourage employer-sponsored health insurance.\textsuperscript{66} Despite all of these differences, the Swiss system through LAMal provides a number of lessons for the United States on what they can expect from the PPACA in the years to come.

\textbf{IV. LESSONS THE U.S. CAN LEARN FROM THE SWISS SYSTEM}

The Swiss are generally happy with their health care system,\textsuperscript{67} where coverage is almost universal at 99.5\% of the population.\textsuperscript{68} Switzerland generally receives good scores on health status indicators and quality outcomes, particularly when compared to the United States.\textsuperscript{69} Life

\begin{thebibliography}{99}
\bibitem{61} Id. para. 5; art. 44, para. 1.
\bibitem{62} See Id. art. 49, paras. 1-3.
\bibitem{63} Carmen DeNavas-Walt et al., U.S. Census Bureau, Income, Poverty, and Health Insurance Coverage in the United States: 2010, at 23 (2011).
\bibitem{64} LAMal art. 13, para. 2(a).
\bibitem{65} Id. art. 3 (making individuals and families responsible for their own CBSI insurance); art. 62, para. 2a (forbidding third parties from covering the differential premiums or out-of-pocket cost-sharing of individual’s CBSI plans).
\bibitem{67} Tanner, supra note 25, at 28; \textit{see also} Schwartz, \textit{supra} note 2, at A1.
\bibitem{68} Tanner, supra note 25, at 25.
expectancy in Switzerland was the second highest in 2009, and four years longer than the life expectancy in the U.S.\textsuperscript{70} Also, Switzerland’s infant mortality rate in 2008 was 4 deaths per 1,000 live births, while America’s was 6.5 deaths per 1,000 live births.\textsuperscript{71}

Even though the Swiss system delivers a superior statistical performance relative to the U.S., it spends quite a bit less on health care.\textsuperscript{72} In 2009, the Swiss per capita health care spending was $5,144, versus U.S. spending of $7,960.\textsuperscript{73} Likewise, Switzerland devoted only 11.4% of its GDP to health care, while the U.S. spent 17.4%.\textsuperscript{74}

Out-of-pocket spending, however, does not follow this same trend.\textsuperscript{75} In 2005, the OECD reported that Switzerland and the United States had the two highest out-of-pocket spending per capita at $1,276 and $842, respectively.\textsuperscript{76} However, despite such high out-of-pocket spending in Switzerland, medical bills do not pose as big of a problem for the Swiss as they do for Americans.\textsuperscript{77} According to a joint study by Harvard Law School and Harvard Medical School, around 700,000 people in the United States go bankrupt annually due to medical bills.\textsuperscript{78} In Switzerland, no one goes bankrupt due to medical bills.\textsuperscript{79}

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\item \textsuperscript{72} Reinhardt, \textit{supra note 24}, at 1227-29.
\item \textsuperscript{74} Id.
\item \textsuperscript{75} Gerard F. Anderson & Bianca K. Frogner, \textit{Health Spending in OECD Countries: Obtaining Value Per Dollar}, 27 Health Aff. 1718, 1722 (2008).
\item \textsuperscript{76} Id.
\item \textsuperscript{77} T.R. Reid, \textit{supra note 1}, at 31.
\item \textsuperscript{78} Id. (citing David Himmelstein et al., \textit{MarketWatch: Illness and Injury As Contributors to Bankruptcy}, Health Aff. Web Exclusive, February 2, 2005, W5-62).
\item \textsuperscript{79} Id.
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Switzerland’s ability to control costs may be attributed to citizen involvement in buying their own individual insurance.80 By having to buy their own insurance, the Swiss citizens are more aware of the costs, and thus, they use health care services more conservatively, particularly when individuals choose plans with higher deductibles.81 The transparency of the Swiss system provides a good lesson for the United States about encouraging consumers to make cost-versus-value decisions when purchasing health care.82

The transparency of the Swiss system, however, has become compromised over time.83 The “basic” benefits included in CBSI policies have increased dramatically as health care providers and disease constituencies lobby for the inclusion of additional services or coverage.84 By extending basic coverage, the Swiss may become insulated from the cost consequences of their health care decisions, thereby undermining the transparency of the system.85 This trend in Switzerland serves as an excellent warning for the United States to keep the “minimum essential coverage” at a minimum.

Another important lesson for the United States is the need for some degree of personal responsibility. While the “community rating” and “guaranteed issue” requirements in Switzerland encourage solidarity, they discourage personal responsibility.86 Peter Zweifel, a professor at the University of Zurich and a member of the Swiss Competitive Committee which oversees insurance regulation, argues that the Swiss system needs to

81. Id.
82. See Tanner, supra note 25, at 29.
83. Id.
84. Id. at 28.
85. Id.
86. Id. at 29.
hold citizens accountable for their unhealthy lifestyle choices and the way to do that is by risk-rating.\(^{87}\) As Zweifel says, “Let competition work its magic. Let those who are bad risks get the message that they need to become better risks.…”\(^{88}\) Without some degree of personal responsibility, Zweifel worries about the long-term success of the Swiss system.\(^{89}\)

In the United States, the call for personal responsibility has been more prominent than the call for solidarity. In fact, a majority of Americans, when surveyed, say it is “fair” to ask people with unhealthy lifestyles to pay more for health insurance.\(^{90}\) Even President Obama declared back in 2009 that “we’ve got to have the American people doing something about their own care.”\(^{91}\)

It is no wonder then that since the PPACA passed on March 23, 2010, it has been met with fierce opposition.\(^{92}\) A recent poll by Washington Post-ABC News revealed that most Americans want the Supreme Court to invalidate either just the individual mandate requirement or the entire law altogether.\(^{93}\) Unlike in Switzerland, where a mere five percent of the population being left without health insurance ignited the Swiss people to

\(^{87}\) Id.
\(^{88}\) Id.
\(^{89}\) Id.
\(^{93}\) The poll revealed that forty-two percent of Americans want the Supreme Court to throw out the entire law; twenty-five percent want only the individual mandate to be thrown out; twenty-six percent want the entire law to be upheld; and seven percent had no opinion. See Scott Clement, *Toss Individual Health Insurance Mandate, Poll Says*, POST POLITICS (Mar. 19, 2012, 7:00 AM), http://www.washingtonpost.com/blogs/behind-the-numbers/post/toss-individual-health-insurance-mandate-poll-says/2012/03/18/giQAAztpLS_blog.html.
stand together behind a new health law, the 16.3% of uninsured Americans has merely ignited disagreement.

While the future of the U.S. health care system remains uncertain, Americans can and should look to other countries, like Switzerland, for lessons in sustainability. One such lesson is that a less fragmented society espousing solidarity can help create a less fragmented healthcare system and a happier nation.

V. CONCLUSION

The Swiss healthcare system under LAMal and the proposed U.S. healthcare system under the PPACA are quite similar. Both require every citizen to purchase health insurance. Additionally, both prohibit insurers from denying coverage or varying premiums due to health status or risk. Although there are also a number of differences between the Swiss system and the proposed system in the U.S., the biggest difference is probably the motivation behind them. While the Swiss are motivated by a national desire for solidarity, Americans remain divided between the need for solidarity and the need for personal responsibility. That division has left the fate of the U.S. healthcare system up to the Supreme Court. If the Supreme Court decides to find the individual mandate unconstitutional, the rest of the proposed system may not be sustainable. However, if the Supreme Court decides to uphold the PPACA and its individual mandate, the Swiss system has ten-plus years of experience with LAMal that can provide valuable lessons for the United States.

94. T.R. REID, supra note 1, at 178.