

Less than Perfect: Health Care Coverage in Spite of
Preexisting Conditions

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I. INTRODUCTION

The dictionary definition of the word “perfect” is “being entirely without fault or defect.”¹ However, what happens to an individual’s insurance coverage when their health is less than perfect? Traditionally, the United States health care system, including insurance companies, has viewed individuals with less than perfect health as costly liabilities, thus resulting in the denial or cancellation of insurance coverage.² Subsequently, these individuals are often left without adequate or viable health care coverage options.³ Therefore, the end result has been devastating for the many Americans deemed by insurance companies to have preexisting conditions.

This article will address gaps in the American health care system, particularly those disparities that exist for individuals with preexisting medical conditions. Furthermore, it will analyze the current state of access to health care for people with preexisting medical conditions in light of recent health care legislation passed during the Obama Administration. In particular, this article will explore the Preexisting Condition Insurance Plan (PCIP), which aims to “bridge the gap” to 2014 when insurance coverage will be open to all individuals regardless of adverse medical diagnoses or preexisting conditions.

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1. THE AMERICAN HERITAGE DICTIONARY 973-74 (1st ed. 1975).

2. *Coverage Denied: How the Current Health Insurance System Leaves Millions Behind*, HEALTHREFORM.GOV, http://www.healthreform.gov/reports/denied_coverage/index.html (last visited Apr. 7, 2011) [hereinafter *Coverage Denied*].

3. See U. S. DEP’T OF HEALTH AND HUMAN SERV., NEW REPORT: 129 MILLION AMERICANS WITH A PRE-EXISTING CONDITION COULD BE DENIED COVERAGE WITHOUT NEW HEALTH REFORM LAW (2011) [hereinafter HHS NEWS RELEASE: 129 MILLION AMERICANS].

II. A LEADER'S PERSPECTIVE

President Barack Obama's battle with the health care industry began long before his presidency. While campaigning for the 2008 presidential election, then Senator Obama often "spoke of his dying mother's struggle to persuade her insurer to cover her cancer treatments."⁴ In a March 2010 e-mail message to supporters outlining the reasons Congress should pass the health care reform plan, President Obama again referenced a vivid recollection of his dying mother as she lay in her hospital bed "on the phone . . . arguing with insurance companies instead of focusing on getting well and spending time with her family."⁵ Obama's mother, Ann Dunham, succumbed to ovarian and uterine cancer on November 7, 1995 at the age of 52.⁶ Eventually, Ann's less than perfect health forced her to experience insurance coverage difficulties while battling a deadly disease. It is evident that regulation of insurance companies' practices is necessary to ensure fair health coverage opportunities for all Americans, including those with less than perfect health.

President Obama used his mother's experience as an example of why lawmakers should tackle insurance coverage difficulties and denials head on,⁷ and in late March of 2010, Congress passed the President's landmark health care legislation.⁸ Under the Patient Protection and Affordable Care Act (PPACA), Americans will not be denied insurance coverage or have their coverage cancelled due to preexisting health conditions.⁹ Though "[c]onsumers and policy makers will be crossing treacherous terrain as they make the transition to a new health care system in the next three and a half years,"¹⁰ Americans can eventually rest assured that having less than perfect health does not mean they must have less than perfect health care. In fact, by 2014, insurance

4. Kevin Sack & Sheryl Gay Stolberg, *Obama Says Health Law Shouldn't Be Excuse to Raise Rates*, N.Y. TIMES, June 22, 2010, <http://www.nytimes.com/2010/06/23/health/policy/23health.html>.

5. Melanie Hunter-Omar, *Obama Evokes His Dying Mother in Health Care Reform Push*, CNSNEWS.COM, Mar. 17, 2010, <http://www.cnsnews.com/news/article/62961>.

6. Amanda Ripley, *The Story of Barack Obama's Mother*, TIME, Apr. 9, 2008, <http://www.time.com/time/nation/article/0,8599,1729524,00.html/>.

7. Melanie Hunter-Omar, *Obama Evokes His Dying Mother in Health Care Reform Push*, *supra* note 5.

8. Robert Pear, *Covering New Ground in Health System Shift*, N.Y. TIMES, Jan. 28, 2011, <http://www.nytimes.com/2010/08/03/health/policy/03insurance.html>.

9. COVERAGE DENIED, *supra* note 2.

10. Robert Pear, *Covering New Ground in Health System Shift*, *supra* note 8.

coverage will be a requirement for most Americans regardless of medical history.¹¹ But until then, the people most likely to purchase private insurance are the sick and infirm.¹² The health care and insurance industries recognize these individuals as clients plagued by preexisting conditions that translate into huge financial risks.¹³

III. “PREEXISTING CONDITION:” THE OMNIPRESENT EXPRESSION

In the last few years, “preexisting condition” has become an omnipresent phrase, often mentioned in political banter. Both sides of the party line have utilized this phrase to either bolster or oppose each side’s view of health care restructuring programs. However, politicians and media have used the expression liberally and to such a degree that its true meaning has become unclear. Uncovering what this phrase actually means involves a basic understanding of common American insurance program principles and practices prior to PPACA.

Preexisting conditions refer to any medical condition that existed before someone applies for or enrolls in a new health insurance policy.¹⁴ “Anywhere from 50 to 129 million . . . Americans under [the] age of 65 have some type of pre-existing condition.”¹⁵ Examples of preexisting conditions include but are not limited to heart disease, cancer, asthma, high blood pressure, and arthritis.¹⁶ Generally, an insurance company deems the diagnosis as detrimental to its business, essentially denoting individuals with such conditions as excessive liabilities.¹⁷ Interestingly, medical conditions qualifying as preexisting conditions from insurance companies’ perspectives range from commonplace conditions like heart disease to more serious diseases like cancer.¹⁸ They can even include minor conditions like “hay fever, asthma, or previous sports injuries” and can trigger high premiums or denials of coverage.¹⁹ In February 2010, United States Representative Louise Slaughter (New York) stated at a White House health summit on preexisting conditions that these conditions are “cruel . . . capricious, and . . . done only

11. *Id.*

12. *Id.*

13. *See generally id.*

14. *See* COVERAGE DENIED, *supra* note 2.

15. HHS NEWS RELEASE: 129 MILLION AMERICANS, *supra* note 3.

16. *Id.*

17. *See generally* COVERAGE DENIED, *supra* note 2.

18. *Id.*

19. *Id.*

to enhance the bottom line.”²⁰ Representative Slaughter went on to call attention to an alarming category of preexisting conditions—domestic violence.²¹ Domestic violence is considered a “preexisting condition on the ground . . . that if you’ve been unlucky enough to get yourself beaten up once you might go around and do it again.”²²

Insurance companies’ definition of what constitutes preexisting conditions is often shocking. The Department of Health and Human Services Secretary, Kathleen Sebelius, has said, “[f]or too long, Americans with pre-existing conditions have been locked out of our health insurance market.”²³ Imagine a one-day-old newborn being denied insurance coverage because he or she is considered “obese.” Alex Lange, “a chubby, dimpled, healthy and happy four-month-old,” was denied health insurance because he was deemed “fat.”²⁴ Undoubtedly, Alex’s “preexisting condition—obesity—ma[de] him a financial risk.”²⁵ It is it unfortunate that even brand new human life is at the mercy of powerful insurance company bureaucrats and their practices. As in the case of Alex Lange, denial of health care based on medical conditions happens every day in America.

Thus, insurance companies’ responses to such medical diagnoses are often alarming as the companies deny or cancel insurance coverage based on adverse diagnoses or preexisting conditions. Typically, American insurance companies use preexisting conditions as excuses to remove individuals with conditions from existing coverage plans. Insurance companies have commonly engaged in rescission, an adverse practice whereby an insurance company reviews an individual’s initial health status questionnaire after he or she is diagnosed with what is deemed an expensive condition and then cancels the insurance coverage.²⁶ In most states, that individual’s insurance coverage could be cancelled based on a previously undiagnosed medical illness, like asthma, even if the

20. *Rep. Louise Slaughter Makes Remarks on Preexisting Conditions at White House Health Summit*, WASH. POST, Jan. 28, 2011, <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/25/AR2010022503133.html>.

21. *See generally id.*

22. *Id.*

23. Saundra Young, *HHS Unveils Insurance Plan for Those with Pre-existing Conditions*, CNN HEALTH, Jan. 28, 2011, http://articles.cnn.com/2010-06-30/health/health.insurance.plan_1_health-coverage-coverage-gap-health-insurance?_s=PM:HEALTH.

24. Nancy Lofholm, *Heavy Infant in Grand Junction Denied Health Insurance*, DENVER POST, Jan. 28, 2011, http://articles.cnn.com/2010-06-30/health/health.insurance.plan_1_health-coverage-coverage-gap-health-insurance?_s=PM:HEALTH.

25. *Id.*

26. COVERAGE DENIED, *supra* note 2.

illness is unrelated to the expensive condition being treated, like cancer, or if the individual “was not aware of the condition at the time.”²⁷ Rescission has saved insurance companies millions of dollars.²⁸ Recently, a Congressional investigation that spanned a five-year period and studied three large insurance companies revealed that the companies saved \$300 million dollars in medical claims.²⁹

Unfortunately, sometimes people are either born with or acquire adverse medical conditions during their lifetime. It has become apparent that such individuals are essentially powerless against arguably prejudicial diagnoses that give insurance companies the incentive to deny or terminate insurance coverage. Routine situations whereby an individual cannot retain or maintain insurance based on the adverse diagnosis seem to consistently involve medical conditions that require the help of insurance coverage dollars to treat.³⁰ When an insurance company decides to rescind insurance coverage, the individual is often left with few options since health care and drug costs can frequently be astronomical and, thus, unaffordable. The unfortunate consequence of rescission or denial of insurance coverage is that people who cannot afford to pay out of pocket health care costs decline in health and may die prematurely when known treatments exist. However, PPACA will help save lives by covering services, like chemotherapy, that may have been previously unavailable to individuals who could not secure or maintain insurance coverage.³¹ Thus there is hope, and this hope comes in the form of a new health care package that will protect millions of Americans from the unfortunate circumstances resulting from current health insurance practice pitfalls.

IV. PPACA: TRANSFORMING INSURANCE INDUSTRY PRACTICES

PPACA “provides affordable, accessible health care for all Americans, builds on the existing health care system, and uses existing providers, doctors, and plans.”³² While exorbitant health care costs and rescission practices have been common pitfalls in the

27. *Id.*

28. *Id.*

29. Memorandum from Comm. on Energy and Commerce Staff to Members and Staff of the Subcomm. on Oversight and Investigations (Jun. 16 2009) (on file with author).

30. Sandra Young, *HHS Unveils Insurance Plan for Those with Pre-existing Conditions*, *supra* note 23.

31. HHS NEWS RELEASE: 129 MILLION AMERICANS, *supra* note 3.

32. *The Obama-Biden Plan*, CHANGE.GOV, http://change.gov/agenda/economy_agenda/ (last visited Apr. 7, 2011).

American health care system for those with preexisting conditions, PPACA seeks to transform the current industry's practices into a new operation, whereby comprehensive benefits will be available at fair and stable premiums.³³ This plan will lead the health of Americans into the twenty-first century by making insurance coverage affordable for all Americans, even those with adverse and expensive medical diagnoses that, at one time, would have made coverage unrealistic.³⁴ The objective of this new and promising legislation is to "make health insurance work for people and businesses—not just insurance and drug companies" as it has in the past and to promote public health.³⁵ In order to achieve the goal of providing affordable insurance coverage for all Americans regardless of health status, the President intends to monitor the industry's behavior, regulating prior commonplace practices like rescission and denial of coverage based on preexisting conditions.³⁶

The first to benefit from new health care changes are children under nineteen years of age.³⁷ As of September 23, 2010, the new law—PPACA—"makes it illegal for insurance companies to discriminate against children under 19 with preexisting conditions."³⁸ PPACA benefits children like Alex Lange, the "obese" infant, and provides for a country willing to accept children born with less than perfect health. Eventually, PPACA will protect any American with less than perfect health from discrimination by insurance companies.³⁹ However, this protection will not take effect for those who are nineteen years old and older until 2014.⁴⁰

In the meantime, the government strategized a program to bridge the gap and provide immediate relief for anyone who has a preexisting condition—Pre-Existing Condition Insurance Plan (PCIP).⁴¹ This plan, entirely funded by the federal government with \$5

33. *Id.*

34. *See generally id.*

35. *Id.*

36. Sack & Stolberg, *supra* note 4.

37. Nancy DeParle, *Insurance for Americans with Pre-Existing Conditions*, THE WHITE HOUSE BLOG (Jul. 29, 2010, 8:40 AM), <http://www.whitehouse.gov/blog/2010/07/29/insurance-americans-with-pre-existing-conditions>.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

billion dollars coming from the PPACA,⁴² offers coverage for the uninsured if they have not had coverage for at least six months and are unable to obtain coverage due to a preexisting condition like diabetes.⁴³ It will help bridge the gap into 2014 when it will become illegal for insurance companies to discriminate against anyone with a preexisting condition by making insurance coverage available at the same rate as it is for a person without the same adverse medical diagnosis.⁴⁴

The government modeled PCIP after the highly successful Children's Health Insurance Program (CHIP).⁴⁵ Under PCIP, the government is providing states' legislatures maximum flexibility in how each chooses to run its health care programs.⁴⁶ PCIP will allow states to base their programs on each states' individuals needs as long as basic requirements are met as it did with CHIP.⁴⁷ PCIP is not based on income, nor does it charge higher premiums for certain medical conditions.⁴⁸ Instead, participants' insurance premiums will not be any more costly than the standard individual's health insurance premium in their state."⁴⁹

V. CONCLUSION: BUILDING BLOCK FOR CHANGE

Health care reform in the United States has long been a necessity, and the Obama-Biden plan aims to strike the balance between the two extremes Americans are often faced with: government-run health care, which translates into higher taxes, or letting insurance companies operate unethically without following rules. The new coverage programs will help by "reducing medical debt, improving health and worker productivity and reducing the amount of uncompensated care provided to the uninsured, potentially by billions of dollars."⁵⁰ The elimination of preexisting conditions will take away an element of unfair and unnecessary power that insurance company bureaucrats have possessed for far too long. More importantly, the Obama-Biden plan will create a sense

42. U. S. DEP'T OF HEALTH AND HUMAN SERV., HHS SECRETARY SEBELUS ANNOUNCES NEW PRE-EXISTING CONDITION INSURANCE PLAN (2010) [hereinafter HHS NEWS RELEASE: NEW INSURANCE PLAN].

43. *Id.*

44. DeParle, *supra* note 37.

45. HHS NEWS RELEASE: NEW INSURANCE PLAN, *supra* note 42.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. DeParle, *supra* note 37.

of security and comfort to those with the misfortune of having less than perfect health.

Many health conditions affect individuals of all races, backgrounds, genders, and ages as a result of no fault of their own. Is it fair to punish these individuals who have less than perfect health? Apparently, the Federal Government, under the direction of President Obama, does not think so, and the insurance industry will be required to react to new good faith industry regulations, like the Preexisting Condition Insurance Plan.