The Patient Protection and Affordable Care Act: A Cure for Medical Bankruptcy?

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I. INTRODUCTION

In 2009, an estimated 1.4 million Americans filed for bankruptcy.1 Although bankruptcy was once largely attributable to job loss and family problems,2 in recent years, medical-related costs have become its leading cause.3 Bankruptcy due to medical costs, known as “medical bankruptcies,” have risen by almost fifty percent over the past decade, and most bankruptcy filers are middle-class homeowners who have gone to college.4 Few, it seems, are safe from the potentially devastating effects of staggering hospital bills and prescription drug costs. As Dr. Steffie Woolhandler characterized the boundaries of medical bankruptcy, “Unless you’re a Warren Buffett or Bill Gates, you’re one illness away from financial ruin in this country.”5

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2. TERENCE A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT 142 (Yale University Press 2000).


4. Id. at 741 (“Using a conservative definition, 61.2% of all bankruptcies in 2007 were medical . . . Most medical debtors were well educated, owned homes, and had middle-class occupations.”). The authors defined “medical bankruptcy” as including one of the following among debtors: $5,000 or at least 10 percent of income owed to uncovered medical bills; medical bills or illness as the reported reason for bankruptcy; two or more weeks of work-related income loss due to debtor illness or medical disability; two or more weeks of lost income due to a sick family member; a mortgaged home to pay off medical bills. Id.; but see David Dranove & Michael L. Millenson, Medical Bankruptcy: Myth Versus Fact, 25 HEALTH AFF. w74 (2006) (suggesting that medical bills are a contributing factor in just 17% of personal bankruptcies and that those affected tend to have incomes closer to poverty level than to middle class).

5. Theresa Tamkins, Medical Bills prompt more than 60 percent of U.S. bankruptcies, CNN HEALTH, (June 5, 2009), available at http://articles.cnn.com/2009-06-05/health/bankruptcy.medical.bills_1_medical-
In 2010, President Barack Obama passed the Patient Protection and Affordable Care Act (PPACA) to expand coverage for the uninsured, regulate out-of-pocket medical expenses, and prevent financial ruin over medical debt.\(^6\) In an email to supporters following PPACA’s passage, President Obama stated, “we’ll finally start reducing the cost of care – creating millions of jobs, preventing families and businesses from plunging into bankruptcy, and removing over a trillion dollars of debt from the backs of our children.”\(^7\)

Despite the President’s assurances, scholars have offered mixed reviews about whether the PPACA will ultimately produce a decline in medical bankruptcies.\(^8\) PPACA proponents argue that it will prevent medical bankruptcy by limiting out-of-pocket medical costs and expanding medical coverage to people who did not previously have health insurance.\(^9\) Others disagree, highlighting that most medical bankruptcy filers already have health insurance, approximately seventy-five percent,\(^10\) and even after the full implementation of PPACA, families will continue to face significant out-of-pocket costs and obstacles in accessing health care.\(^11\)

This article analyzes the dynamic ways the PPACA will affect U.S. bankruptcies and highlights its potential pitfalls. Part II provides a background to this analysis by exploring how medical debt contributes to a large and increasing share of U.S. bankruptcies and introduces the PPACA. Part III explains why scholars and politicians...
argue that the PPACA will significantly decrease medical bankruptcies. Part IV explores the alternative argument and observes that the PPACA, though a positive development, does not address many of the fundamental issues facing today’s medical debtors. Ultimately, this article suggests that the PPACA will not produce a significant decline in medical bankruptcies throughout the United States.

II. MEDICAL BANKRUPTCY: AN OVERVIEW

Medical bankruptcy refers to a bankruptcy filing that was “significantly influenced by the medical problems facing someone in the family.” The largest contributing factors to medical bankruptcy include hospital bills, prescription drugs, doctor’s bills, and other out-of-pocket medical expenses.

Medical bankruptcies are on the rise. As recently as twenty years ago, the aftermath of serious medical problems accounted for only eight percent of all bankruptcies. However, a number of changes in the last twenty years—including increasing health costs, a surging number of uninsured and underinsured Americans, and significant changes to the Bankruptcy Code—have drastically changed the reasons Americans file for bankruptcy. According to a 2007 Harvard study, medical problems accounted for 62 percent of all personal bankruptcies filed in the U.S. Surprisingly, 78 percent of those filers already had medical insurance at the outset of their illness, and 60.3 percent of

13. Id. at 7.
15. Id.
17. Annual Census Bureau estimates released in August show 47 million people, or 15.8 percent of the U.S. population, were without health insurance during 2006 — a 4.9 percent increase. U.S. CENSUS BUREAU, HEALTH INSURANCE COVERAGE BY SEX, RACE, AND HISPANIC ORIGIN: 1999-2009, Table HIA.1, available at http://www.census.gov/hhes/www/hlthins/data/historical/index.html. In 2005, census figures showed that 44.8 million people, or about 15.3 percent of the population, lacked health insurance coverage. Id.
20. Himmelstein et al., supra note 3, at 742.
those filers had private coverage.\(^2\)

In an effort to address the rise of medical bankruptcy,\(^2\) as well as other problems with the U.S. healthcare system, President Obama and the Democrats signed the PPACA into law on March 23, 2010.\(^3\) The Act includes health-related provisions that will take effect over the next four years including: expanding Medicaid eligibility for people earning up to 133 percent of the federal poverty level, subsidizing insurance premiums for people earning up to 400 percent of the federal poverty level, providing incentives for businesses to provide health care benefits, prohibiting denial of coverage and denial of claims based on pre-existing conditions, and providing support for medical research.\(^4\) Significantly, these efforts will expand health care coverage to thirty-one million currently uninsured Americans through a combination of cost controls, subsidies, and mandates.\(^5\)

III. IN SUPPORT OF PPACA: WHY REFORM SHOULD IMPACT MEDICAL BANKRUPTCIES

Politicians and scholars alike argue that the implementation of PPACA will produce a decline in medical bankruptcies.\(^6\) They argue Americans are often driven to medical bankruptcy because they have little or no health insurance coverage and a significant health problem.\(^7\) By expanding insurance coverage to include previously uninsured Americans and Americans with pre-existing conditions, and also guaranteeing that individual and family premiums are affordable, the PPACA will “end the cost-shifting and uninsurance that are the hallmarks of the current system,” and effectively decrease the number of Americans that are driven to bankruptcy because of medical debt.\(^8\)

PPACA supporters argued that these reforms would be particularly significant for

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21. \textit{Id.}
26. See id. at 8 (“The problems I have outlined in my testimony-families forced into bankruptcy . . . Congress can fix these problems.”); \textit{Hearing on Medical Debt: Is Our Healthcare System Bankrupting Americans? Before the Subcomm. on Commercial and Administrative Law Comm. of the Judiciary, 111th Cong. 10 (2009) (statement of Elizabeth Edwards, Senior Fellow, Center for American Progress Action Fund).}
27. \textit{Id.}
28. \textit{Id.} at 17.
people with disabilities and pre-existing conditions.\textsuperscript{29} For patients with disabilities, the Democratic Policy Committee proclaimed that “[w]ithin a year of enactment, people who have health problems, but who lack access to health insurance, will be able to purchase a plan that protects them from medical bankruptcy.”\textsuperscript{30} Moreover, for patients with chronic illnesses and other pre-existing conditions, advocates contend that the PPACA will provide “greater financial stability and access to health care.”\textsuperscript{31} Effectively, PPACA supporters argue that healthcare reform will target those people most at risk for medical bankruptcy—those with inadequate health insurance—and that reform will “result in affordable, reliable insurance coverage for all Americans.”\textsuperscript{32}

IV. POTENTIAL PITFALLS: WHY INCREASED COVERAGE MAY NOT PREVENT MEDICAL BANKRUPTCIES

There is little disagreement that PPACA will dramatically expand health insurance coverage.\textsuperscript{33} There is concern, however, about its implications for healthcare costs and for reducing the instance of medical bankruptcy.\textsuperscript{34} Citing the failure of one state’s health reform to significantly impact the number of medical bankruptcy filings and the PPACA’s failure to eliminate high co-pays and out-of-pocket expenses, critics predict that medical debt will continue to plague Americans, long after the full implementation of PPACA.\textsuperscript{35}

The PPACA was largely modeled after a landmark 2006 healthcare reform in Massachusetts, which required all adults in the Commonwealth to have health insurance coverage.\textsuperscript{36} The mandate requires all uninsured adults in the state to purchase some kind

\begin{itemize}
\item \textsuperscript{29} How The Patient Protection and Affordable Care Act Will Help Americans with Disabilities, DEMOCRATIC POLICY COMM., available at dpc.senate.gov/healthreformbill/healthbill36.pdf (last visited Apr. 3, 2011).
\item \textsuperscript{30} Id.
\item \textsuperscript{31} Hearing on Medical Debt: Is Our Healthcare System Bankrupting Americans? Before the Subcomm. on Commercial and Administrative Law Comm. of the Judiciary, 111th Cong. 17 (2009) (statement of Elizabeth Edwards, Senior Fellow, Center for American Progress Action Fund).
\item \textsuperscript{32} Id. at 7.
\item \textsuperscript{33} See id.
\item \textsuperscript{34} See infra Part IV.A-B.
\item \textsuperscript{36} Sharon K. Long & Karen Stockley, Sustaining Health Reform in a Recession: An Updated ON Massachusetts As Of Fall 2009, 29 HEALTH AFF. 1234, 1234 (June 2010).
\end{itemize}
of insurance policy or face a fine. Their choices include a range of new and inexpensive policies—ranging from about $250 per month to nearly free—from private insurers subsidized by the state.

The reform exceeded many expectations in terms of expanding insurance coverage to Massachusetts’ residents. In mid-2008, just 2.6 percent of Massachusetts state residents lacked insurance coverage, which was down from 9.8 percent in 2006. Massachusetts now boasts the highest rate of coverage of any state in the nation, prompting Massachusetts Governor Deval Patrick to declare that, because of reform, “families [were] less likely to be forced into bankruptcy by medical costs.”

Unfortunately, increasing health insurance coverage did little to impact the medical bankruptcy rate. According to recent a Harvard study, between mid-2000, prior to the reform, and early 2007, after the reform took effect, the share of medical bankruptcies in Massachusetts changed only slightly, from 59.3 percent to 52.9 percent. Because there was a sharp rise in total bankruptcies during that period, the absolute number of medical bankruptcies actually increased, from 7,504 to 10,093 in 2009.

Because the PPACA is largely patterned on the Massachusetts plan, the findings in Massachusetts cast doubt on the claim that the PPACA will ultimately reduce medical bankruptcies across America. To explain why medical bankruptcies persist in Massachusetts—and may continue to persist after the implementation of national healthcare reform—the Harvard study’s lead author, Dr. David Himmelstein stated, “Massachusetts’ health reform, like the national law modeled after it, takes many of the uninsured and makes them underinsured, typically giving them a skimpy, defective private policy that’s like an umbrella that melts in the rain: the protection’s not there when you need it.” Effectively, even if Americans have healthcare insurance, if that

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38. Id.
40. Id.
43. Id. at 225.
44. Id.
45. See id. at 228.
46. Massachusetts Reform Hasn’t Stopped Medical Bankruptcies: Harvard Study, PHYSICIANS FOR A
insurance has too many co-pays, deductibles and loopholes, they will likely go bankrupt despite having coverage.47

The PPACA, which allows the sale of premiums for policies that will cover only sixty percent of health expenses, will do little to end medical bankruptcies.48 Because most medical bankruptcies afflict middle-class families with health insurance, high premium costs and gaps that exist in most insurance coverage—co-payments, deductibles and uncovered services—will continue to leave families liable for substantial out-of-pocket costs.49 Dr. Woolhandler, an advocate of a single-payer health-care system, reiterated Dr. Himmelstein’s concerns, explaining that PPACA would do little to address America’s increasing medical bankruptcy rate.50 “Providing coverage is not enough. . . Reform also needs to help families who already have insurance by upgrading their coverage and assuring that they never lose it.”51

V. CONCLUSION

At its core, PPACA is more focused on expanding insurance coverage and increasing access to health care than reducing healthcare costs. The Massachusetts model shows that merely providing insurance coverage to the majority of the population is not enough. Although Massachusetts was able to raise the rate of its insured population to the highest in the nation, insurance was not effective in reducing the rate of medical bankruptcies. This failure to produce a decline in medical bankruptcies is largely attributed to the Massachusetts’ model failing to protect insured individuals from coverage gaps and high out-of-pocket expenses. In effect, the Massachusetts model overlooked the fact that the large majority of medical bankruptcy filers already had medical insurance at the outset of their illness. Thus, instead of targeting the adequacy of the insurance coverage that existed, reform focused expanding coverage to more people. If the Massachusetts model
is any indication of what is to come, the PPACA will be insufficient in eliminating medical bankruptcies.

51. *Id.* at 24 (emphasis added).