

A Health Reform For Everyone?

On December 14, 2010 HHS Secretary Kathleen Sebellius & U.S Attorney General Eric H. Holder Jr. wrote an article published in the Washington Post entitled “*A Health Reform For Everyone*”. In response, this author will attempt to provide the facts behind this article. In a time when our nation is polarized over the issue of Health Care it is more important than ever to step back and consider the facts instead of operating on emotions.

In their article, Sebellius & Holder refer to a pre-school teacher from New Hampshire by the name of Gail O’Brien. Mrs. O’Brien was diagnosed with an aggressive form of Lymphoma in March of 2010. The article refers to her inability to obtain health insurance because of her Lymphoma being considered a “Pre-Existing Condition”. The question that was not answered in this article is why this condition was considered “pre-existing” in the first place? More importantly, why is any medical condition considered to be “pre-existing”? The answer requires a brief history lesson.

In 1996, Congress passed the HIPAA law. HIPAA is an acronym that stands for the “Health Insurance Portability & Accountability Act”. Most people are familiar with HIPAA privacy clause but an equally important clause is the portability clause, more specifically portability of coverage for pre-existing conditions when moving from one health insurance policy to the next.

For nearly 15 years, 90% of the American insured have been able to move freely from one health insurance policy to the next without any risk of being considered “uninsurable”. They also are protected from having a medical condition that existed before switching policies (a “pre-existing condition”) excluded from coverage. How is this possible?

HIPAA Portability

The HIPAA portability clause states that so long as an insured has “proof of creditable coverage” (18 months or more or of prior health insurance coverage with no lapse of more than 63 days). They are given “credit” for prior coverage and therefore, are entitled to coverage for their “pre-existing” medical conditions from the first day of their new policy. This is why when you leave a former employer who offered you health insurance coverage you are often asked by your new employer to provide them with a “Certificate of Creditable Coverage”.

That arrangement probably sounds familiar to the majority of those reading this article.

The question we must ask then, is why was Mrs. O’Brien denied coverage for *her* pre-existing condition if the aforementioned HIPAA portability law is already on the books?

The answer to this question will shed light not only on why she was denied coverage but also why the phrase “*pre-existing condition*” exists in the first place. The onus (as with many problems our nation faces) rests squarely on the shoulders of the Federal Government.

When HIPAA law was written, “portability” protection was allotted *only* to those who are insured on an employer sponsored group health insurance policy. However, the legislators left out the same protections for those who buy their health insurance on the individual market. Who comprise these consumers? The self employed entrepreneur, the small business owner, and any individual or family that does not have an employer who offers group health insurance coverage. How many American’s fall in to this category? The numbers equate to 10% of the American insured, or nearly 14 million Americans.

Why was HIPAA portability not extended to all Americans regardless of whether they buy group or individual health insurance coverage? That is a GREAT question you should ask your elected official. For if the legislators had added just one sentence all Americans would have coverage for “pre-existing conditions” providing that they continue to maintain health insurance coverage.

Individual Responsibility

The overall theme of Ms. Sebellius and Mr. Holder’s article was “individual responsibility”. In fact, the term “individual responsibility” is used no less than three times in their article. Yet there is no mention of the fact that if Mrs. O’Brien had practiced “individual responsibility” by purchasing an individual health insurance plan *before* she was diagnosed with Lymphoma, she would be paying about half of the \$500 monthly premium she now pays on the new temporary “Pre-Existing Condition Insurance Plan” (PCIP) enacted by the new Patient Protection & Affordable Care Act (PPACA). More importantly, because the

cost for an individual plan is far less expensive she would be able to purchase a plan with a lower deductible than the \$5,000 deductible she now carries on the PCIP.

In fact, the only way that Mrs. O'Brien qualified for the new PCIP is because she was uninsured for a period of 6 months or more. The new PCIP requires that you remain uninsured for a period of 6 months in order to qualify. This qualification measure has been widely criticized by some who are already enrolled in one of the 33 State High Risk Health Insurance Pools that already existed before the PPACA. This criticism comes because those who are already insured on the existing High Risk Health Insurance Pools can not move to the new lower priced PCIP because they would have to drop their coverage for a period of 6 months in order to qualify. This is a risk they are not willing to take, even though the premiums are lower with the PCIP.

Is neglecting to purchase and maintain health insurance for 6 months or more an act of "individual responsibility"? Should those who have been "individually responsible" by faithfully paying higher premiums on existing High Risk health insurance pools be denied lower rates for doing so? Furthermore, when the PPACA mandates that all health insurers issue coverage to anyone regardless of their health history in 2014, will this not just *further* promote "individual *irresponsibility*"?

Why would any American bother purchasing and maintaining health insurance coverage month after month when they know they can now wait to purchase health insurance until they are sick, thereby "gaming the system"? This would be tantamount to waiting to purchase homeowner's insurance until *after* your home burns down. In fact, such a concept was already implemented in the State of Massachusetts resulting in massive costs to the State and Federal governments and the highest health insurance premiums in the nation. "Mass Care" was originally projected to cost \$880 million. The cost this year is more than \$4 Billion. Imagine the cost to our nation if such a failed concept was spread to all 50 States. If the "Individual Responsibility" mandate is not repealed you won't have to imagine it, because this is *exactly* where we are headed.

The Obama administration states that the "individual responsibility" provision will prevent people from "gaming the system" by mandating that Americans (who can afford to do so) maintain basic health coverage. This however, is where the proverbial rubber meets the road. Since the IRS is specifically prohibited from levying criminal penalties on those who do not purchase health insurance. How exactly will they be able to enforce such a mandate? The answer is quite simple to the Statist. Simply levy a fine (which the Obama administration now insists is a tax) on any American who refuses to purchase health insurance.

The problem with this kind of Federal over-reach is that such a law would circumvent our Constitution. David Rivken, an attorney from Washington D.C., at the heart of this issue, stated "Congress can *regulate* commerce but Congress can not *compel* commerce. There is no precedent for it. If you go down in that direction, you produce the federal government exercising general police power. That is reserved for the states." This, among several other reasons, is why the "Individual Responsibility" clause was ruled unconstitutional. But let us for arguments sake, imagine that the Supreme Court were to rule that the "Individual Responsibility" clause was indeed Constitutional. How then would it work?

Penalties for non compliance

Starting in 2014, under the PPACA, the annual penalty for not purchasing health insurance is \$95 or 1% of one's income. The penalty eventually increases to \$695 for an uninsured adult, and up to \$2,085 per household or 2.5% of one's income, whichever is greater. With the annual cost of maintaining health insurance being far greater than \$695 for an individual and \$2,085 for a family, what impetus will one have to pay significantly more to purchase and maintain health insurance coverage? It will simply be more cost effective *not* to purchase health insurance, thereby further promoting *irresponsibility*.

Furthermore, as aforementioned, the IRS is specifically prohibited from levying criminal fines upon those who refuse to comply with the "Individual Responsibility" mandate. This being the case, the Obama Administration has informed Americans that the IRS will simply hold one's tax return if they refuse to comply. With nearly half of all U.S households paying no income tax in 2009, how exactly will the IRS hold a return from someone that pays no income tax?

Most troubling is the fact that, besides gutting Medicare, printing money we do not have and robbing the Social Security Trust fund, these fines are intended to be a primary funding source to help shoulder the financial burden of enrolling nearly 16 million more Americans on to our Medicaid system. If we can not

collect the fines, then the additional cost to existing health insurance policy holders will be FAR more than the \$1,000 they currently pay each year to offset “uncompensated care”. Most especially when you consider that when the PPACA is fully implemented the U.S taxpayer will also be providing generous subsidies to those who do act responsibly by purchasing health insurance.

Locked out of the health insurance market?

Sebellius and Holder further state in their article that repeal of the “Individual Responsibility” clause will “slam the door on millions of Americans like Gail O'Brien, who've been locked out of our health insurance markets.” Is that truly the case? Neither author mentions the 35 States that already had high risk health insurance pools* established long before the PPACA. Nor do they mention the 10 states that already had guaranteed issue individual mandates established long before the PPACA. Both of these State run options were designed long ago to cover people with pre-existing conditions severe enough to warrant a denial for individual health insurance coverage. In fact, the majority of these existing State run High Risk health insurance pools will provide seamless coverage (regardless of the applicant’s health history) to those who have lost their employer sponsored group health insurance coverage, have elected Cobra continuation coverage, and their Cobra has run out. They even provide coverage (regardless of the applicant’s health history) for those who are not HIPAA qualified. In these cases, there is typically a short waiting period before pre-existing conditions are covered.

The authors also neglect to mention that self employed American’s who find themselves uninsurable and have a corporate tax i.d number can purchase a small group health insurance policy from most insurance carriers. With this scenario, a minimum of 2 people (often husband & wife) who work for the same corporation can purchase a small group health insurance policy. This type of health insurance coverage also covers those with pre-existing conditions severe enough to warrant a denial for individual health insurance coverage. Even those who are not HIPAA qualified.

In light of the aforementioned information, it is quite clear that Mrs. O'Brien and other American’s would most certainly not have “the door slammed on them” should the “Individual Responsibility” clause be repealed. They do have other options, options that existed long before “Obamacare”. **

Is there a better way?

If the Supreme Court justices render the “Individual Responsibility” clause unconstitutional the issue of “pre-existing” conditions will still remain. What could be done to solve it? Since the insurance industry has already agreed to let consumers purchase health insurance at any time, regardless of health history come 2014. Would it not be wiser for the government to simply extend existing HIPAA portability protections to Americans who buy their health insurance on the individual market? Such an extension of existing law would not only provide a strong impetus for consumers to continue to pay their health insurance premiums but it would also prevent them from “gaming the system” as it has already done for 90% of the American insured for nearly 15 years. The best part is that it would not take 2,700 pages to get it done.

*For more information about options for the uninsurable that existed before Obamacare visit:
<http://www.statehealthfacts.org/comparetable.jsp?cat=7&ind=353>

** The New Hampshire High Risk Health Insurance pool does not cover pre-existing conditions for a period of 9 months. Had Mrs. O'Brien maintained a reasonably priced individual health insurance policy before she was diagnosed she would not need to enroll in the New Hampshire high risk health insurance pool or the new PCIP. Both of which are considerably more expensive options.

About the Author

C. Steven Tucker has been an independent multi-state licensed insurance broker since 1995. In 1999, he officially incorporated www.smallbusinessinsuranceservices.com which provides affordable health & life insurance products to the small business owner & the self-employed. Mr. Tucker has also served as a Health Insurance Subject Matter Expert for numerous Business Journals including The Wall Street Journal, Fortune Small Business Magazine and AIS Health Plan Week from Washington D.C.