



## Ethical Perspectives On Health Care Reform

# CLEARING THE BRUSH

## *Myths Surround the Affordable Care Act*

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**T**he Patient Protection and the Affordable Care Act was enacted with the intention of expanding health coverage to most U.S. citizens and permanent residents. This is to be accomplished by requiring most people to have or purchase health insurance. For those who have no insurance, are not covered by Medicaid and who cannot afford insurance, the law will create state-based “exchanges” through which individuals and small businesses can purchase coverage, with premium and cost-sharing credits available to individuals and families with income between 133-400 percent of the federal poverty guideline (in 2011, the poverty guideline is \$18,530 for a family of three).<sup>1</sup>

The Affordable Care Act is not perfect. It does not provide health insurance coverage for absolutely every American or permanent resident. Still, it is a beginning of long-overdue health reform. But the act is under siege, and there are some threats that it will be defunded or repealed. Part of the siege is fueled by misinterpretations of the legislation. Some are deliberate, creating various myths about the Affordable Care Act, many of which are both false and distort public opinion about the viability of the reform law. In this article we want to clear the brush, so to speak, to rectify the errors propagated by these myths.

Some of these myths include claims that:

- The Affordable Care Act covers all residents of the United States including undocumented immigrants

- The law will provide free health care to all non-U.S. citizens

- Since the Affordable Care Act requires everyone to purchase insurance, it violates Article 1, Section 8, Clause 3 of the U.S. Constitution

- Health reform, at least as spelled out in the Affordable Care Act, is a form of socialism

- Health reform is in fact government takeover of the whole health care system so that individuals and organizations cannot choose their provider, insurer or benefits

- The provisions in the Affordable Care Act are expensive and will increase the national debt

- The alleged Medicare savings proposed in the act are actually cuts in Medicare

- Provisions in the reform will be harmful to seniors and their present Medicare coverage

- Death panels will ration health care coverage for the elderly, chronically ill and disabled

- These death panels will be controlled by the Health Choices Commissioner who has almost unlimited powers in the new system

- The Affordable Care Act will fund abortions

- All businesses of any size will be required to provide health insurance to their employees

- The Affordable Care Act is costly to employers, more costly than the present system

We will touch on these falsehoods, each of which represents a set of values or beliefs that are not necessarily antithetical to the ideal of universal access to health care. Rather, they represent fears of increased national debt, health care rationing and reduced benefits, particularly for seniors. These are all legitimate concerns and represent closely held American values, but the present health care law does not perpetuate any of these, wherein lie the falsehoods.

### WHO WILL BE COVERED?

To begin, let us consider the claim that by 2014 the Affordable Care Act will provide health care to everyone residing in the United States. This is clearly not the case. The Affordable Care Act will

cover approximately 30 million of the 47 million presently uninsured by 2014, none of whom are undocumented residents. Since there are approximately 50 million uninsured in 2011, a figure that includes 11-12 million undocumented persons, in fact the law will not cover every U.S. resident by 2014. According to the Kaiser Family Foundation, “exemptions [from the requirement to have health insurance] will be granted for financial hardship, religious objections, American Indians, those without coverage for less than three months, undocumented immigrants, incarcerated individuals,”<sup>2</sup> and those who qualify for Medicaid. Moreover, according to the act, only those qualifying for Medicaid, the eligibility for which will be expanded to households with incomes up to 133 percent of the federal poverty level, will have more or less free insurance.<sup>3</sup>

The act neither provides free care for non-U. S. citizens, nor are they eligible for insurance through the state exchanges. Some provisions in the Affordable Care Act, however, do mandate “certain free preventive services, such as annual wellness visits and personalized prevention plans for seniors on Medicare.” The law will also “fund state Medicaid programs that cover preventative services for [Medicaid] patients [and] all new plans must cover certain preventative services such as mammograms and colonoscopies without charging a deductible co-pay or coinsurance.”<sup>4</sup>

#### CONSTITUTIONAL VIOLATION?

The next area of controversy that has been the subject of significant misinformation is whether or not requiring the purchase of health care insurance violates the Constitution. Article I, Section 8, Clause 3 states in part:

Congress shall have Power To lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States; To borrow money on the credit of the United States; To regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes . . .

The argument against the constitutionality of requiring the mandatory purchase of health

insurance is that this requirement “would be an unprecedented form of federal action; [t]he government has never required people to buy any good or service as a condition of lawful residence in the United States.”<sup>5</sup> According to U.S. District Court Judge Roger Vinson in Florida, one of the federal judges who ruled against the constitutionality of the Affordable Care Act, “If Congress can penalize a passive individual for failing to engage in commerce, then the enumeration of powers in

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the Constitution would have been in vain . . .”<sup>6</sup>

Arguing for the constitutionality of the Affordable Care Act, U.S. District Court Judge George Caram Steeh of Michigan concluded, “Far from ‘inactivity,’ by choosing to forgo insurance plaintiffs are making an economic decision to try to pay for health care services later, out of pocket, rather than now through the purchase of insurance, collectively shifting billions of dollars, \$43 billion in 2008, onto other market participants.”

“The provision at issue addresses cost-shifting in those markets and operates as an essential part of a comprehensive regulatory scheme,” the judge said. “The uninsured, like plaintiffs, benefit from the ‘guaranteed issue’ provision in the Act, which enables them to become insured even when they are already sick .... This benefit makes imposing the minimum coverage provision appropriate.”<sup>7</sup>

As constitutional scholar Laurence Tribe said in a *New York Times* op-ed piece, “Individuals who don’t purchase insurance they can afford have made a choice to take a free ride on the health care system. ... This conscious choice carries serious economic consequences for the national health care market, which makes it a proper subject for federal regulation.”<sup>8</sup>

Let us draw the parallels between this requirement and Social Security and Medicare. Unless one is exempt by law, every working person is required to pay into Social Security and Medicare. Is that unconstitutional? The difference, opponents of the Affordable Care Act contend, is that Social Security and Medicare are government-mandated and government-run programs. Under the Affordable Care Act, however, single individuals

can meet the requirement by purchasing private insurance or obtaining public coverage. That requirement is what allegedly violates Article I of the Constitution, despite the fact that the mandatory requirement for purchasing or having insurance is a government-mandated program. This is because individuals are required to purchase something, and something they can purchase from a private insurer, rather than pay into a federal fund.

But, as Tribe said, “the court unanimously recognized in 1982 that it would be ‘difficult, if not impossible’ to maintain the financial soundness of a Social Security system from which people could opt out. The same analysis holds here: by restricting certain economic choices of individuals, we ensure the vitality of a regulatory regime clearly within Congress’s power to establish.”<sup>9</sup>

If this requirement is a violation of the Constitution, then it would follow that either health care insurance is merely a privilege for some, or that we should have only government health care insurance to which all pay into, leading to a single-payer system and perhaps even a single provider system, the very phenomena the opponents of reform accuse the Affordable Care Act of creating.

### GOVERNMENT CONTROL?

The contention that the Affordable Care Act is a form of socialism is hard to understand. What the act requires is that most citizens and legal residents have health insurance, but this could be private insurance, employer-paid insurance, Medicaid, Medicare or insurance from state-based

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insurance exchanges. There is nothing in the act that suggests government control of the health system, and to imagine that the act prescribes a state or national government single-payer system is completely erroneous.

The act attempts to improve both access and efficiency through a set of mandates, but these

mandates are to be carried out by states, insurers and private health care providers. These include:

- Expanding Medicaid to more lower income families, guaranteeing that all children are covered by some form of insurance
- Expanding parental benefits to dependent children up the age of 26
- Improving the prescription drug benefit for seniors
- Improving quality and reducing inefficiencies (as well as fraud) in the health care system
- Increasing preventative measures for seniors and those on Medicaid
- Eliminating lifetime limits on health care coverage
- Providing tax credits for small businesses
- Guaranteeing that no insurer spends less than 80 percent of premiums on health care versus administration, profits and advertising

Part of the beauty of the Affordable Care Act and the individual mandate to obtain health insurance is that each of us may choose our health care professional, in many cases the kinds of benefits we would like covered and there is a broad availability of a network of covered providers.

### INNUMERABLE BENEFITS

If the Affordable Care Act is not repealed or changed, by 2014 at least 30 million formerly uninsured people will have health insurance, and with the expansion of Medicaid eligibility and other programs, there will be added costs to national health expenditures.

The cost of the act’s coverage provisions through 2019 is approximately \$828 billion, according to an actuarial report by the Department of Health and Human Services (HHS). However, the long-term financial results of the act, according to the report, will be reductions of government expenditures on

Medicare of approximately \$575 billion by 2019. Overall the net increase in federal expenditures for the Affordable Care Act over a nine-year period through 2019 will be a total of \$251 billion, according to HHS. Large as this number appears, it should be noted that it is the total increase over a nine-year period, which is an expenditure growth

## HEALTH REFORM AND THE AFFORDABLE CARE ACT:

# *Public Perception Does Not Match Reality*

Many prognosticators thought that once the Affordable Care Act became law and people started seeing benefits, public approval for health reform would grow. That has not been the case.

Just as it was in the months preceding health reform, confusion reigns among Americans who have heard so much information — and misinformation — that even wildly inaccurate myths continue to be perceived as reality.

More than any other feeling about the health care law, Americans turn to the word ‘confused’ to describe their feelings. The Kaiser Family Foundation, which conducts a monthly tracking poll on public perception of health reform, found in March that 53 percent of survey respondents report being confused about what is in the Affordable Care Act and what it means for their individual or family situation.

Confusion is understandable. The barrage of information about the reform law can be overwhelming. Still, with so much of the information coming from opponents of reform who wish to reframe what the law means, costs or accomplishes, Americans are left to discern what to believe and not to believe.

Overall, in March, 42 percent of survey respondents reported that they view the Affordable Care Act favorably, and 46 percent that they view it unfavorably. Those numbers have barely moved since the law became effective a year ago.

The lack of approval stems in large part from falsehoods about the law. Data from Kaiser’s surveys show a clear and persistent disconnect between facts and broadly believed alternative explanations.

Here are some of the most common misperceptions.

**The Affordable Care Act covers all U.S. residents, including undocumented immigrants.** Undocumented immigrants receive no benefits through the Affordable Care Act, but 41 percent of Americans believe they

do. Another 16 percent say they do not know, according to the Kaiser survey.

**The Affordable Care Act violates the Constitution by requiring that everyone carry health insurance.**

Courts have issued differing opinions on this, and the issue will not be settled until the U.S. Supreme Court weighs in. Meanwhile, however, many people believe the law has been suspended or that the personal responsibility provision was eliminated. Neither belief is true.

**The Affordable Care Act is a form of socialism or government takeover.** The public option that would have offered a government-run insurance plan to compete with private ones was not included in the Affordable Care Act. Still, 59 percent of Americans told Kaiser that they believe there is a government option, and 14 percent said they didn’t know.

**The Affordable Care Act is unaffordable and will increase the national debt.** Despite Congressional Budget Office estimates that the law will decrease the debt over time, various opinion polls show that as many as half of Americans believe the opposite is true. While no one can accurately predict exactly how much will be spent or saved over a 10-year period, the CBO is a non-partisan group that is trusted by Democrats and Republicans alike.

**Affordable Care Act provisions will cut Medicare benefits to seniors.** Seniors have been among the toughest groups to persuade that the reform law is a positive thing. Many benefits flow to Medicare beneficiaries, including closing of the prescription drug “doughnut hole” and adding free preventive services not previously available. Nevertheless, 45 percent of survey respondents told Kaiser that they believe the reform law cuts Medicare benefits for seniors. Fifteen percent didn’t know what effect the law has on Medicare.

**The Affordable Care Act includes “death panels” that will decide which seniors can receive ongoing care.** Of all the myths, this was one of the most damaging. Despite numerous efforts by lawmakers, advocates and others to correct the record, 40 percent of people still believe that a government panel will be making end-of-life decisions for Medicare beneficiaries.

**The Affordable Care Act includes federal funding for abortions.** Independent fact-checking organizations have concluded that the law provides protections to ensure that no federal dollars are used to fund abortions. Misinformation continues to have many people believing otherwise. When told that the law includes no federal funding for abortions, 55 percent of survey respondents who don’t support the law softened their opposition, Kaiser found last year.

**The Affordable Care Act requires all businesses of every size to provide health insurance to their employees.** Sixty-five percent of Kaiser survey respondents reported that they believe this to be true, even though there is no sweeping employer mandate in the law.

The confusion over the Affordable Care Act will not end quickly or easily but there are glimmers of hope. Children, young adults, seniors and small businesses are getting help through the law. As their stories are told, support is bound to grow. Even people who say they are completely opposed to health reform — many call it “Obamacare” — support many of its core provisions.

Advocates for health reform, including CHA, are continuing their efforts to educate the public and correct the ongoing misinformation. As it becomes clear that the myths aren’t true and middle-class people are benefiting from the law, support should increase. — *Jeff Tieman*

rate of under 1 percent.<sup>10</sup> So while it is true, according to these actuarial figures, that health care costs will increase, the incremental increase is very small, not a budget-breaker.

To offer additional perspective on the budgetary effects of the Affordable Care Act, the Con-

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gressional Budget Office estimates that the law will reduce the budget deficit by \$109 billion by 2014 and by \$143 billion by 2019.<sup>11</sup> Although all of these estimates are subject to debate, one figure that has not been disputed is that without the act, the deficit would increase by \$145 billion by 2019 because of the lost Medicare and other savings the act is projected to bring.<sup>12</sup>

It is obvious that part of the projected savings, thus projected deficit reduction, is achieved by large savings in Medicare. However, these are not cuts to benefits, as some allege. Rather, these savings will be a result of curbing the growth of Medicare, requiring higher premiums from seniors with high incomes, creating wellness programs, improving prevention services and other measures aimed at reducing health care costs.<sup>13</sup>

#### **RATIONING CARE?**

What about the infamous “death panels”? The Kaiser Family Foundation, which conducts regular health tracking polls, showed that in December, 2010, “fully four in 10 [of Americans surveyed] believe the legislation allows a government panel to make decisions about end-of-life care for people on Medicare.” Part of this belief stems from the original version of the health reform legislation. In that version was a provision under which physicians would be reimbursed for engaging with patients in end-of-life counseling and discussing end-of-life options. This was to be a one-on-one, voluntary discussion not mandated by the Health Choices Commissioner or any government body, nor were there any guidelines as to what was to be discussed, encouraged or discour-

aged. There is no proviso in the act for any form of rationing for Medicare patients, nor for anyone else. However, this part of the act was misinterpreted as a mandate for death panels to advise patients how to end their lives or to discontinue life-sustaining care. Because of all the death panel debates, that provision was dropped from the bill, but a similar provision has been included in the 2011 Medicare rates for physician reimbursement.

A second argument from which it was assumed the act would create death panels is that if the Affordable Care Act is to reduce Medicare costs, as it claims to be able to do, this will have the effect of rationing health care for the elderly, the chronically sick and disabled. Such rationing will entail denying coverage for expensive but life-prolonging procedures, thus shortening the life span of the elderly, chronically ill and disabled.

This is not the aim of the Affordable Care Act. The reductions in Medicare are to be the result of increased efficiencies in preventive care and delivery, not of rationing procedures or delivery options.

Another of the controversies surrounding the Affordable Care Act is the appointment of a federal Health Choices Commissioner. His or her mandate is to oversee the state-based insurance exchanges, through which individuals and small businesses can purchase health care coverage. Any citizen or legal resident, including those on Medicaid, and small businesses with fewer than 100 employees, may opt to purchase insurance through these exchanges. But they don't have to if they have other options.

### **Only those businesses with more than 50 employees will be required to make coverage available to employees and contribute to its cost or pay a fee.**

The Health Choices Commissioner also will regulate all insurers, making sure each provides various coverage options. The commissioner will not decide on specific benefits for individuals or businesses. Thus the commissioner will not even

be party to any counseling on end-of-life options, although he or she might make sure that insurers cover physicians who counsel people on those options.<sup>14</sup>

Concerning the public funding of abortions, the act states clearly that “federal premium or cost-sharing subsidies are not used to purchase coverage for abortion if coverage extends beyond saving the life of the woman or cases of rape or incest.” Moreover, individual states may “prohibit plans ... from providing coverage for abortions.” (Kaiser Family Foundation, 2010). In addition, an executive order signed by President Obama in conjunction with the legislation expressly bans federal funding from financing abortions as part of the Affordable Care Act.

#### **A BUSINESS BURDEN?**

Finally, let us address the questions about costs to businesses. First, only those businesses with more than 50 employees will be required to make coverage available to employees and contribute to its cost or pay a fee. Small businesses, meanwhile — those with fewer than 100 employees — will be able to obtain coverage for employees in the state-based insurance exchanges.

The act also specifies that businesses with fewer than 25 full-time equivalents that provide health insurance may qualify for a tax credit to offset the cost. For companies with over 200 workers, all employees are automatically enrolled in the company plan. Employees may choose to opt out, but those employers cannot exempt them otherwise.<sup>15</sup>

We have spent some time analyzing and debunking some of the most questionable myths about the Affordable Care Act, and there are others, because, as the Kaiser Family Foundation survey reported, so many of them are embedded in the mindset of the public. These mindsets can become so ingrained that sometimes the public neglects to substantiate their veracity. This sort of mythmaking distorts a more objective analysis of the Affordable Care Act, an analysis that is sorely needed if we are to effectively implement and improve upon the law.

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#### **NOTES**

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