Health Care Reform — A Historic Moment in US Social Policy

Lawrence O. Gostin  
*Georgetown University Law Center, gostin@law.georgetown.edu*

Elenora E. Connors  
*Georgetown University Law Center*

This paper can be downloaded free of charge from:  
https://scholarship.law.georgetown.edu/facpub/384  

303 JAMA 2521-2522 (2010)
Health Care Reform—
A Historic Moment in US Social Policy

303 JAMA 2521-2522 (2010)

Lawrence O. Gostin
Professor of Global Health Law
Georgetown University Law Center
gostin@law.georgetown.edu

Elenora E. Connors
Law Fellow
Georgetown University Law Center

This paper can be downloaded without charge from:
Scholarly Commons: http://scholarship.law.georgetown.edu/facpub/384/
SSRN: http://ssrn.com/abstract=1645432

Posted with permission of the author

Elenora E. Connors; Lawrence O. Gostin


http://jama.ama-assn.org/cgi/content/full/303/24/2521
Health Care Reform—A Historic Moment in US Social Policy

Elenora E. Connors, JD, MPH
Lawrence O. Gostin, JD

In a historic ceremony on March 23, 2010, President Obama signed into law the first US comprehensive health care reform bill, the Patient Protection and Affordable Care Act (PPACA). For almost a century, presidents have tried and failed to pass national health insurance—ranging from President Franklin Roosevelt’s exclusion of national insurance from the Social Security Act to the failure of President Nixon’s and President Clinton’s health care plans.1 Previously, health care reform passed incrementally with a uniquely US blend of public and private coverage. The War Labor Board’s exclusion of employer-based health insurance from wage and price controls significantly increased coverage. By 1954, Congress exempted employee benefits from income tax, creating powerful incentives. The enactment of Medicaid and Medicare in 1965 expanded public coverage, followed by President Clinton’s State Children’s Health Insurance Program and President Bush’s Medicare Part D Prescription Drug coverage.1

Expanded Coverage

The current public/private system has resulted in major coverage gaps, with an estimated 46.3 million US individuals uninsured in 2008 (15.4% of the population)2 and an additional 23 million underinsured.3 Premiums have far surpassed the inflation rate, with many insured individuals paying disproportionate out-of-pocket costs relative to their income. The United States currently spends approximately twice as much per capita for health care as other industrialized countries, but ranks low on health outcomes and preventable mortality. The PPACA is expected to expand health insurance coverage to 32 million individuals by 2019 through a variety of measures.

Individual Purchase Mandate. By 2014, the PPACA requires most individuals to have health insurance. With certain exceptions (eg, income level and religious objections), individuals without qualifying coverage will pay an annual tax penalty reaching the greater of $695 ($2085 per family maximum) or 2.5% of household income.4 To make insurance more affordable, the act offers sliding-scale subsidies and caps out-of-pocket spending. The mandate expands the pool of insured individuals, spreading the health risk and thereby decreasing premiums. However, if the penalty proves to be too low or is not adequately enforced, individuals might not purchase insurance, thereby defeating the central purpose of the mandate.5

Medicaid. The PPACA will expand Medicaid to individuals with incomes up to 133% of the federal poverty level (FPL), adding 16 million to 20 million individuals to the Medicaid roster. This includes a critical group of low-income adults without children who were previously ineligible for Medicaid coverage. The reform standardizes Medicaid benefits by guaranteeing a minimum package of essential services. However, even with expanded eligibility, access to essential services may be limited due to a lack of clinicians. Medicaid reimbursement rates are low and although the PPACA raises rates temporarily in 2013 and 2014, it is uncertain whether this will truly expand access.

Health Insurance Exchanges. By 2014, states are required to establish American Health Benefit Exchanges and Small Business Health Operations Program (SHOP) Exchanges—marketplaces in which consumers will shop for health insurance at competitive rates. Exchanges will offer an array of private health insurance choices, centralizing enrollment and providing information.6 Exchanges will also provide consumers greater purchasing power by allowing individuals or small businesses to join together to purchase insurance. The same market regulations apply in and out of exchanges, and exchanges will have to sell at least one “qualified health plan” with minimum benefits.

The PPACA helps low-income US citizens (up to 400% of the FPL) who are not Medicaid-eligible to purchase insurance through exchanges by giving credits and subsidies for premiums and other out-of-pocket costs. It also gives small businesses with fewer than 100 employees tax credits for offering insurance.7

Eliminating Coverage Barriers. The PPACA reverses common industry practices that created barriers to coverage. It immediately prohibits insurers from denying coverage to children with preexisting medical conditions and allows young adults to remain on their parents’ plans up to age 26 years. In 2014, insurers will have to accept all applicants, irre-
spective of health status or preexisting condition, and re-
new coverage. Furthermore, the legislation proscriptes re-
scission (canceling coverage), eliminates the lifetime amount
insurance will pay for certain conditions, and restricts an-
nual limits. Until Medicaid expansion and state exchanges
begin in 2014, the act creates federally subsidized state high-
risk pools for those with preexisting conditions.

The PPACA closes the Medicare Part D coverage gap or
“donut hole.” Currently, after Medicare beneficiaries sur-
pass the prescription drug coverage limit, they are finan-
cially responsible for the entire cost of prescription drugs
until the expense reaches the catastrophic coverage thresh-
old. The act provides a $250 rebate to Medicare Part D en-
rollees, with industry required to decrease the cost of pre-
scription drugs by 50% in 2011. For Medicare recipients,
the act eliminates cost sharing for preventive care and lim-
its the amount of out-of-pocket costs consumers must pay
eyear.

Cost to the Nation
At a cost of $938 billion over 10 years, the PPACA is pro-
jected to reduce the deficit by $143 billion in the first de-
cade and $1.2 trillion in the second. However, despite the
guarantee of coverage for 95% of US individuals and a defi-
cit neutral projection, concerns that the expansion costs will
to significantly reduce medical costs and improve qual-
ity. The government cannot compel states to create insurance
exchanges. Health care has a substantial national economic im-
impact and is not restricted to intrastate business. Further-
more, because the mandate is enforced through a tax penalty,
the federal government can also rely on its taxing power.

State attorneys general similarly argue that the federal gov-
ernment cannot compel states to create insurance ex-
changes. The act, however, does not create a requirement
for states to establish exchanges. Instead, states can either
create an exchange or opt for the Secretary of Health and
Human Services to set up and operate the exchange. This
conforms to Supreme Court precedent. The Supremacy
Clause, moreover, holds that federal law supersedes state
law—if state and federal law conflict, federal requirements
prevail.

Like Medicare and Social Security, which were highly con-
tested before enactment, national health insurance reform
hopefuly will, in time, become part of accepted social struc-
tures. Affording everyone the right to medical care irrespec-
tive of income or health status should become a widely shared
social norm, as it is in most other countries. Future debate
probably will center on the difficult choices needed to cur-
tail increasing costs, improve quality, and change physi-
cian and hospital incentive structures. Those are crucial as-
pects of reform that will have powerful effects on the economy
and the population’s health and cannot be ignored by po-
itical leaders.

Promises and Challenges of Health Care Reform

National health care reform promises to dramatically ex-
...