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Review Article

Maternity benefits and the American Health Care Act: a tragedy in two acts (so far)

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Abstract: The premise of this paper is as follows: The requirement of the Patient Protection and Affordable Care Act that all insurance plans include maternity benefits is the single most cited factor driving adverse selection, and hence rapidly rising premiums, in the ACA marketplaces. Parenthetically, it also underlies the initial failure to take a vote on the American Health Care Act in the House of Representatives (Act I), and the revisions required for subsequent approval (Act II). Since the US has the highest maternal mortality rate of any developed country, this is an American tragedy, which is still to be finalized.

Keywords: Maternity benefits

Background

This premise of this paper, on it's face, is preposterous. This paper will attempt to connect the dots to support the argument, by first critiquing the events leading up to the recent events.

The Patient Protection and Affordable Care (e.g. Obamacare) is the largest and most complicated social legislation since Medicare, Medicaid, and Social Security. Similarly, it has been the most contentious, subject to two Supreme Court rulings, more than 60 votes in the House of Representatives to repeal the bill, and at the core of many political campaigns.

From well before its passage, opponents of the ACA were adept at creating sound bites that mischaracterized the entire law or elements of the law (see Politifact 2009 and 2010 lies of the year, below). They were equally quick to point out the inevitable missteps inherent in implementing such complex legislation.

At the same time, the Obama administration and ACA advocates, often by their own admission, did a poor job of explaining in simple terms what the ACA was, and was not, about. This failure was compounded by some of the unintended or poorly anticipated consequences of the law, particularly when these consequences violated promises made by the President (**Table 1**).

Opponents predicted dire consequences with full implementation of the ACA in 2014, most notably that employers would shift employees in large numbers to part time work to circumvent employer ACA mandates, or even stop providing health benefits altogether and shift employees to the health care marketplaces. Neither transpired to any significant extent. In fact, RAND researchers reported that the biggest gain in health care coverage has involved employer-sponsored insurance [1].

In the face of these observations, there is little wonder that public opinion has remained nearly equally divided between proponents and opponents, since passage of the ACA in 2010. Adashi and Nama (*The Septennial Congressional Quest to Repeal the ACA: A Study in Intransigence*) [2] describe the series of congressional actions over 6 years to repeal or modify the ACA, targeted at specific programs. These authors make it clear that there was no obvious strategy behind the legislation, other than to cut funding, nor did the steps reflect the initial phases in a coherent plan to replace the ACA:

Table 1. 2013 Politifact lie of the year

Year	Politifact Lie of the Year (*politifact.com*)
2009	Sarah Palin's assertion that the Patient Protection and Affordable Care Act of 2009 would lead to government "death panels" that dictated which types of patients would receive treatment.
2010	The Patient Protection and Affordable Care Act is a "government takeover of healthcare".
2011	Democratic Congressional Campaign Committee (DCCC) statement that a 2011 budget proposal by Congressman Paul Ryan, entitled *The Path to Prosperity* and voted for overwhelmingly by Republicans in the House and Senate, meant that "Republicans voted to end Medicare".
2013	President Barack Obama's promise that "If you like your health care plan, you can keep it".

"Viewed in perspective, the impending repeal of the health care law is but another step in an unforgiving congressional campaign the precise rationale of which has never been fully clarified". Their compilation of the congressional actions illustrates little or no evidence that congress was responding to the concerns of their constituents regarding the specific programs that were targeted for budget cuts or were eliminated, or that congress was addressing the shortcomings of the insurance market prior to the passage of the ACA. Rather, the actions were taken because they were possible.

So what about maternity benefits?

Of considerable relevance, the concern that insurance premiums would rise too quickly in the exchanges was not an initial prediction of either opponents or proponents, and certainly not the subject of criticism of the law.

Why are premiums rising so rapidly? The primary factor is that not enough young and/or healthy individuals signed up, despite the individual mandate and the attendant penalties associated with having no health insurance. While multiple explanations were tendered, arguably the one which was easiest to understand, and was certainly most commonly offered, was the requirement that all policies included maternity benefits. For single males of all ages, this was a rallying cry. It was arguably the single most often heard refrain from opponents of mandated core benefits [3], and provided a "logical" justification for those choosing not to comply with the individual mandate.

Prior to passage of the ACA, the non-group health insurance market was fraught with shortcomings - benefit exclusions and limits, coverage denials, premiums varying markedly by health status, high cost sharing, and minimal information on plan benefits and design.

Among non-group plans offered in 2013 that were not ACA compliant, some were amended, some were cancelled, and some were "grandfathered". In the latter case, the plans were not required to comply with the new rules for enrollees holding their policy continuously before and since the passage of the ACA, if insurers did not substantially change benefits or costs. Some insurers nonetheless cancelled policies that were ACA compliant, for reasons such as low enrollment or a preponderance of high cost enrollees, leading to unsustainable premiums. At the core of many of these decisions was the requirement to provide maternity coverage.

Of relevance, the non-group market has historically been highly volatile, with just 17 percent retaining coverage for more than two years. Yet these facts were largely lost in the sound bites referring to President Obama's promise that "if you like your health care plan, you can keep it".

Before the ACA regulations went into place, many with individual health insurance weren't aware that their plans lacked maternity coverage - until they became pregnant. In 2013, the National Women's Law Center reported that only 12 percent of individual market plans included maternity benefits [4]. And that was despite the fact that nine states required maternity benefits to be included on all individual plans. Even when maternity coverage was included, premiums were at least 30 percent higher for women than men, for the same coverage. Prior to the ACA, pregnancy itself was also considered a pre-existing condition that would prevent an expectant parent from obtaining coverage in all but five states. Many health insurance carriers even considered a previous cesarean section justification to decline a decline or charge a higher initial premium.

There was a common expectation that as long as individuals maintained continuous coverage, they would be able to purchase maternity

Figure 1. Many media outlets were quick to point out the near exclusive presence of white males in this image.

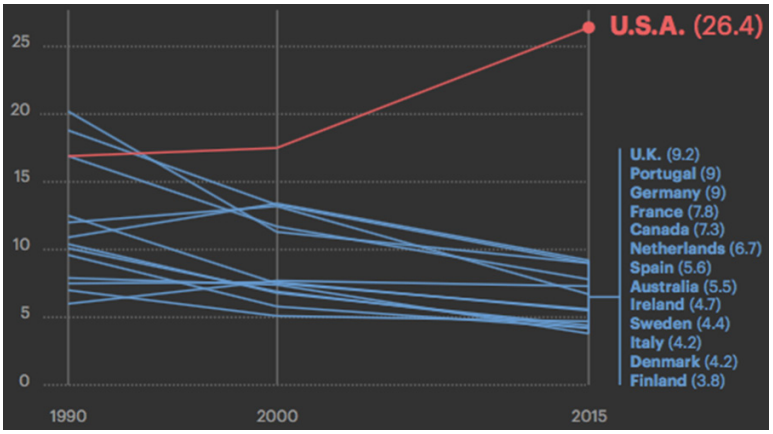

Figure 2. Maternal mortality is rising in the U.S. as it declines elsewhere. Per 100,000 live births. Source: "Global, regional, and national levels of maternal mortality, 1990-2015: a systematic analysis for the Global Burden of Disease Study 2015", The Lancet. Note: Only data for 1990, 2000 and 2015 was made available in the journal.

benefits when needed. In fact, in half of the states, it was not possible to purchase maternity coverage on the individual market at any price. As a consequence, this maternity "coverage "cost just about as much as paying cash for having a baby, which means it's coverage in name only" [5].

Maternity benefits in the group insurance market

Even before the ACA, maternity coverage was a component of most group plans. The 1978 Pregnancy Discrimination Act mandated that if an employer with 15 of more employees opted to provide health insurance, the coverage must include maternity benefits. A plurality of states required small group plans to include maternity benefits, even if the employer had fewer than 15 employees.

There was no outcry among beneficiaries in these plans that this mandate was unfair. Rather, this is how insurance works [6]. As per many other examples, criticisms of the ACA were opportunistic rather than reflective of any overall guiding vision for how health insurance should work for beneficiaries.

The demise (Act I) and resurrection (Act II) of the American Health Care Act in the House of Representatives

There is near general consensus that opposition from the House Freedom Caucus, a group of 40 of the most Conservative members of the Congress, led to initial defeat of the American Health Care Act on March 24, 2017. Despite many concessions at the 11th hour to gain their support, it was the requirement of the Affordable Care Act that all insurance plans provide a set of core benefits that was most objectionable to this group. Without the votes for passage, the law was pulled from the floor. The revised American Health Care Act, which passed on May 4, 2017, included the provision that states could opt out of the requirement to cover core benefits, including pregnancy, maternity and newborn care. A photograph of celebration in the White House Rose Garden that followed passage is shown below (**Figure 1**).

What next?

At the time of this writing, the fate of the AHCA in the US Senate is uncertain, with the common expectation that the bill will need to be substantially altered if it is pass gain passage in that body.

In the meantime, on May 12, 2017 Propublica and NPR [7] released a highly publicized report showing that maternal deaths were not only higher in the US than in all other developed countries, but were rising over time (See **Figure 2**).

While this general observation is not new, and the factors leading to the rise in maternal mortality are complex and varied, one fact seems certain: eliminating maternity coverage from core benefits will only exacerbate what is already a shameful situation.

Disclosure of conflict of interest

None.

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