



Meet the New Boss, Same As the Old Boss: President Obama's Best Health "Insurance" Reforms Were Passed In 1997

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- President Obama's Health Insurance "reform" imposes unprecedented federal control over access to medical services.
- President Obama's best reforms have existed in law since 1997.
- States are fully competent to act, without federal intervention, against bad faith denial of claims or other misbehavior by health insurers.

The president's goal of exerting control over Americans' access to health care has been fighting serious headwinds. While insisting that the government would never get between "you and your doctor," he also pointed out that the government would only pay for the "blue pill" if it had the same effect as the "red pill" but only cost half as much.

And then Sarah Palin started talking about "death panels" and things started going off the rails. The media did its best to portray "death panelists" as kooks, but for those who read the bill, this extreme claim demonstrated the arrogance of the government's grab for our health care. Former governor Palin was referring to a section in the bill that causes Medicare to pay doctors to counsel their senior patients on Advance Planning Directives every five years.

The bill directs the U.S. Secretary of Health and Human Services to establish guidelines for "quality" in the counseling sessions and figure out how much to pay a physician for each counseling session. Even for those who don't fear that the government is planning to "kill grandma," the consequences are predictable. The day after this bill passes, the physicians will be interviewing lobbyists who can demonstrate an expertise in increasing the Medicare payments for these counseling sessions. There will be public-awareness campaigns to "educate" Americans about the tragic lack of counseling that seniors (don't) receive, and urgent prompts to "call your legislator" to stop any rollback of payments for end-of-life counseling.

So, even if we don't go off the deep end with the "death panel" rhetoric, there's still a fundamental problem, which

gets to the core of why health insurance is so expensive: There is no reason for a health insurer to pay for such counseling. It's a service you choose to use, not a risk.

Covering end-of-life counseling sessions is only marginally less silly for private insurance: Insurers still have to process the claims (while identifying and eliminating fraudulent ones), credential providers whose "quality" of counseling they cannot possibly observe, and perhaps pay for a second opinion if patients don't like their first counseling session! These costs go straight onto premiums.

This is a very intimate issue, into which no third-party payer should intrude. If you want an end-of-life counseling session you should either get it for free (from your church, for example), or directly pay a professional planner to advise you. Having health insurance cover end-of-life counseling is like having car insurance covering someone to advise you on whether you should buy a Toyota or a Chevy after you've totaled your old wheels.

Nobody can accuse the president's faction of understanding how insurance works, what it is for, or even understanding the laws that already exist to protect policyholders. That's a pretty big failure, because the White House has transmogrified "healthcare reform" into "health insurance reform," for the obvious reason that demonizing health insurers is just about the easiest thing in the world. Let's have a look at the president's eight "health insurance consumer protections":

1. No discrimination for pre-existing conditions.
2. No exorbitant out-of-pocket expenses, deductibles, or co-pays.
3. No cost-sharing for preventive care.
4. No dropping of coverage for seriously ill.
5. No gender discrimination.
6. No annual or lifetime caps on coverage.
7. Extended coverage for young adults (up to age 26).
8. Guaranteed insurance renewal.¹

Most of these are either objectionable for various reasons, or negotiable. However, let's give the president his due, and admit that two of these make sense. Number 4 and number 8 are actually the same thing. What they mean is that you can keep renewing your health insurance at the same premium as everyone else in your "block." So if you get diagnosed with pancreatic cancer, for example, the insurer will not jack up your rates. Actually, this is a fine idea: If the government allowed us to buy health insurance of our own choice, that was portable from job to job and state to state, I have little doubt that we would insist on such a clause in the policy.

Unfortunately, the government makes us accept health insurance of our employers' choice, so we are out of luck. Or are we? In fact, these protections have existed in federal law since 1997, and also under state law. Title 45 of the Code of Federal Regulations (45 CFR § 148.122), titled "Public Welfare," is about "guaranteed renewability of individual health insurance coverage." Paragraphs (a) and (b) read as follows:

(a) Applicability. This section applies to all health insurance coverage in the individual market. (b) General rules. (1) Except as provided in paragraph (c) of this section, an issuer must renew or continue in force the coverage at the option of the individual.

That seems rather straightforward. Paragraph (c), by the way, releases the health insurer from the obligation to renew coverage if you haven't paid your premiums, if you've committed a fraudulent act under the terms of the coverage, if you move out of the insurer's coverage area, or if you quit an association through which you've purchased insurance. These are all reasonable limits, and there's no necessity for such federal regulation.

Despite the president's claim that "no one holds these companies accountable for these practices," state insurance commissioners do, in fact, enforce good-faith execution of insurance contracts.² President Obama should know this because Kathleen Sebelius, his Secretary of Health and Human Services, served as insurance commissioner in Kansas.

If a health insurer drops you because you've misrepresented your health status on your application, it's called "rescission." If the insurer does it illegally, it's called "post-claims underwriting." Yes, it happens, but a lot less than the president suggests, and insurance commissioners are ruthless about it. Last September, Health Net agreed to reinstate 926 policies in California, pay \$3.6 million in fines, and reimburse \$14 million in medical claims for rescinded policies.³ In July 2008, Anthem Blue Cross agreed to pay \$11 million in hospital claims deriving from rescinded policies in California.⁴

Let's put these rescissions into perspective. I estimate that about one percent of the people in the individual market have claims of more than \$30,000 annually. California has about 2.6 million so insured, so about 26,000 people annually would fit the bill here. From 2003 through September 2007, there have been an average of 39 complaints annually: less than one-sixth of one percent of expensive claims.⁵

Indeed, authorities have often gone overboard, because evidence sometimes suggests applicants did misrepresent their health status. In February, 2008, an arbitrator ordered Health Net to pay \$9 million to a woman whose coverage was rescinded.⁶ The arbitrator's 28-page decision describes how she applied for health insurance:

- She did not fill out the application, but let the agent do it for her, while she was styling hair at her salon.
- She told the agent that the weight on her driver's license was 185 lbs.
- She did not read the application before signing it.
- When the agent returned to his office to process the application, he saw that her weight (as written) would have increased her premium, so he called to inform her.
- She told him that she actually weighed less than stated on her driver's license.
- He scratched out the "official" weight, and wrote in the lesser weight, before mailing the application.

This does not impress me as responsible behavior, but on reflection the status quo has actually served this woman pretty well. Maybe those who have been abused by health insurers have the most to lose from President Obama's "reforms."

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1. Barack Obama, *Health Insurance Reform Reality Check: Health Insurance Consumer Protections* (Washington, DC: The White House, 2009). Available at <http://www.whitehouse.gov/realitycheck/consumer-protections>.
 2. Barack Obama, *Remarks by the President in Health Insurance Reform Town Hall*, Portsmouth High School, Portsmouth, New Hampshire (Washington, DC: The White House, August 11, 2009). Available at http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Town-Hall-on-Health-Insurance-Reform-in-Portsmouth-New-Hampshire/.
 3. Lisa Girion and Marc Lifsher, "Health Net to Reinstate 926 dropped policy holders in California," *Los Angeles Times*, September 12, 2008, p. C1.
 4. Lisa Girion, "WellPoint Settles with California Hospitals Over Rescissions," *Los Angeles Times*, July 8, 2008, p. C3.
 5. Julie Appleby, "People Left Holding Bag When Policies Revoked," *USA Today*, January 29, 2007, p. 1A.
 6. Lisa Girion, "Insurer Loses, Alters Course: A Woman With Cancer Whose Policy Was Cancelled is Awarded Millions. Health Net Halts Such Actions," *Los Angeles Times*, February 23, 2008, p. A1.