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Healthcare Risk and Healthcare Liability
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The Presidential election puts healthcare policy front and center. It particularly puts the future of the Affordable Care Act (ACA)in doubt as it makes us rethink the social planning of the past eight years. In 2013, the *Washington Post* published an article identifying what it called "five myths of the ACA." Two of them stated: the ACA forces people to buy health insurance and the ACA will not add to the national debt. The article then stated that citizens are not forced to buy health insurance, because they have the option of paying a fine, if they choose not to buy health insurance. This reminds me of the old story about the raccoon which is treed by a pack of dogs. The hunters argued this was not cruel as the raccoon had the choice of jumping into the pack of fifty dogs, whipping all of them and walking off.

"A fine" is defined as: "money that a court of law or other authority decides has to be paid as punishment for a crime or other offence. The amount of a fine can be determined case by case, but it is often announced in advance. The most usual use of the term is for financial punishments for the commission of crimes, especially minor crimes, or as the settlement of a claim." While no one argues that the uninsured are guilty of a "crime," in not obtaining health insurance, the ACA coerces people into obtaining health insurance by the imposition of a "fine" for not doing so. If this is not bad enough, the Supreme Court "redefined" the ACA "fine" as a "tax," as the ACA penalty defined as a "fine" would have been declared unconstitutional.

Most of the problems facing the ACA resulted from the fact that not enough healthy people were coerced by the ACA "fine" qua "tax" to purchase insurance, which meant that the majority of people who have insurance through the ACA are either chronically ill, or high users of healthcare services. This resulted in insurance companies losing millions and in some cases billions of dollars.

The second myth the *Washington Post* identified in regard to the ACA was that it would add to the national debt. In 2013, it was argued that there would be a 10-years savings of $109,000,000,000 to the Federal treasury due to the ACA. The reason for this was not that the ACA would decrease the unit cost of healthcare, or that it would produce efficiencies of care decreasing cost, or that it would change how people accessed and used healthcare services. The decrease in cost was because reimbursement to healthcare providers and to hospitals would be decreased. And, particularly there would be a 28% decrease to the reimbursement to what the article called “private insurance carriers” called Medicare Advantage (MA). MA companies contract with the Federal government to care for the sickest of our senior and disabled citizens. Finally, the deficit would be avoided by new taxes imposed upon healthcare providers and others. Unless you think this is small and manageable, local Independent Physicians’ Association, (IPA) have fines imposed upon them of $1,700,000 annually.

Insurance and Liability

Most people who are not running a business have never thought about the nature of insurance. Simply put, insurance is defined as a person that has a “potential liability,” contracts with a company who is willing to assume the burden of that “potential liability” for a fee. If that company is able to insure a broad enough spectrum of “potential liabilities”, it can meet its responsibilities to those clients who experience a loss and still pay their expenses and make a profit.

The key to this formula is the concept of “potential liability.” Think of it this way, if you own a car and you have borrowed money to pay for that car, the lender wants to make sure that if you lose that car due to theft or damage, that they will still get their money. For a fee, a company is willing to assume the risk of the value of your car and/or the amount of your debt on that car.

There is a difference however between “risk” – a potential liability – and a “liability.” For instance, as above, a company is willing to insure the “risk” of a “potential liability.” On the other hand, if you wrecked your car on Tuesday and you ask an insurance company on Wednesday, not to assume the risk of your wrecking your car, but to assume the reality of your having wrecked your car, it is a different situation. On the one hand, you are insuring a risk; on the other you are asking a company to assume an existing liability.

That seems pretty straight forward with a possession, but now apply those principles of “risk’ and “liability” to healthcare. The concept of health insurance, like life insurance, is based on “risk” not on “liability.” You insure your health when you are healthy and have the risk of illness, so that when you become ill and have a liability for the cost of the care of that illness,0 you will have the resources with which to pay.

Insurance was never designed to pay for a liability but only to insure a risk. Because it is compassionate and because everyone will at some time in their life be ill, social planners and public policy advocates want the government to assume the liability of existing illness. We have already proved that in the assuming of the cost of an existing illness the entire concept of insurance is turned on its head.

The Bait and Switch

The government decided that our society ought to pay for the health of everyone, both for those who may become ill and for those who are already ill. So the government passed a law which does just that. The social planners and the public policy planners are happy. But, now, how are they going to pay for it?

There are two ways. You can limit the access to care by defining what full care would be. But the social planners want every one to get every thing, so they don't define what care will look like. If you are not going to limit care, there are only two ways to pay for this assumption of liability: increase taxes and decreased payment for the care.

The bait is, "We are going to pay for pre-existing conditions"; the switch is "actually we are going to increase your taxes, all citizens, particularly healthcare providers, and we are going to decrease your reimbursement, all healthcare providers.

These concepts were first address in July, 2009 in response to President Obama's address to the American Medical Association. An Analysis and Response to President Obama's Health Care Reform Address to the American Medical Association: Part III

I want everyone to have access to healthcare. Particularly, I want the poor, the ill and even the immigrant to have healthcare. The proof of that is that I have never refused to see anyone because they are ill or because they don't have insurance and/or because they cannot pay. However, as a public policy, we have to have an effective way of paying for the care we guarantee to others. And the burden of the paying for care cannot be borne simply by decreasing the payments to those who are willing to take care of our neediest citizens or by increasing the taxes on those who provide care.