

# Health Insurance Is Illegal

Health insurance is a crime. No, I'm not using a metaphor. I'm not saying it's a mess, though it certainly is that. I'm saying it's illegal to offer real health insurance in America. To see why, we need to understand what real insurance is and differentiate that from what we currently have.

## Real insurance

Life is risky. When we pool our risks with others through insurance policies, we reduce the financial impact of unforeseen accidents or illness or premature death in return for a premium we willingly pay. I don't regret the money I've spent on auto insurance during my first 55 years of driving, even though I've yet to file a claim.

Insurance originated among affinity groups such as churches or labor unions, but now most insurance is provided by large firms with economies of scale, some organized for profit and some not. Through trial and error, these companies have learned to reduce the problems of [adverse selection](#) and [moral hazard](#) to manageable levels.

A key word above is unforeseen.

If some circumstance is known, it's not a risk and therefore cannot be the subject of genuine risk-pooling insurance. That's why, prior to Obamacare, some insurance companies insisted that applicants share information about their physical condition. Those with preexisting conditions were turned down, invited to high-risk pools, or offered policies with higher premiums and higher deductibles.

Insurers are now forbidden to reject applicants due to preexisting conditions or to charge them higher rates.

They are also forbidden from charging different rates due to

different health conditions – and from offering plans that exclude certain coverage items, many of which are not “unforeseen.”

In other words, it’s illegal to offer real health insurance.

## **Word games**

Is all this just semantics? Not at all. What currently passes for health insurance in America is really just prepaid health care – on a kind of all-you-can-consume buffet card. The system is a series of cost-shifting schemes stitched together by various special interests. There is no price transparency. The resulting overconsumption makes premiums skyrocket, and health resources get misallocated relative to genuine wants and needs.

## **Lessons**

Some lessons here are that genuine health insurance would offer enormous cost savings to ordinary people – and genuine benefits to policyholders. These plans would encourage thrift and consumer wisdom in health care planning, while discouraging the overconsumption that makes prepaid health care unaffordable.

At this point, critics will object that private health insurance is a market failure because the refusal of unregulated private companies to insure preexisting conditions is a serious problem that can only be remedied by government coercion. The trouble with such claims is that no one knows what a real health insurance market would generate, particularly as the pre-Obamacare regime wasn’t anything close to being free.

What might a real, free-market health plan look like?

- People would be able to buy less expensive plans from anywhere, particularly across state lines.

- People would be able to buy catastrophic plans (real insurance) and set aside much more in tax-deferred medical savings accounts to use on out-of-pocket care.
- People would very likely be able to buy noncancelable, portable policies to cover all unforeseen illnesses over the policyholder's lifetime.
- People would be able to leave costly coverage items off their policies – such as chiropractic or mental health – so that they could enjoy more affordable premiums.
- People would not be encouraged by the tax code to get insurance through their employer.

What about babies born with serious conditions? Parents could buy policies to cover such problems prior to conception. What about parents whose genes predispose them to produce disabled offspring? They might have to pay more.

Of course, there will always be those who cannot or do not, for one reason or another, take such precautions. There is still a huge reservoir of charitable impulses and institutions in this country that could offer assistance. And these civil society organizations would be far more robust in a freer health care market.

### **The enemy of the good**

Are these perfect solutions? By no means. Perfection is not possible, but market solutions compare very favorably to government solutions, especially over longer periods. Obamacare will continue to bring us unaccountable bureaucracies, shortages, rationing, discouraged doctors, and more.

Some imagine that prior to Obamacare, we had a free-market health insurance system, but the system was already severely hobbled by restrictions.

To name a few:

- It was illegal to offer policies across state lines, which suppressed choices and increased prices, essentially cartelizing health insurance by state.
- Employers were (and still are) given a tax break for providing health insurance (but not auto insurance) to their employees, reducing the incentive for covered employees to economize on health care while driving up prices for individual buyers. People stayed locked in jobs out of fear of losing health policies.
- State regulators forbade policies that excluded certain coverage items, even if policyholders were amenable to such plans.
- Many states made it illegal to price discriminate based on health status.
- The law forbade associated health plans, which would allow organizations like churches or civic groups to pool risk and offer alternatives.
- Medicaid and Medicare made up half of the health care system.

Of course, Obamacare fixed none of these problems.

Many voices are calling for the repeal of Obamacare, but few of those voices are offering the only solution that will work in the long term: complete separation of state and health care. That means no insurance regulation, no medical licensing, and ultimately, the abolition of Medicare and Medicaid, which threaten to wash future federal budgets in a sea of red ink.

Meanwhile, anything resembling real health insurance is illegal. And if you tried to offer it, they might throw you in jail.

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