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EDITORIAL

Myths vs. Realities About Health Care Reform, Part 7

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June 2, 2010

A funny thing about legislation and regulations is that almost any complex laws and regulations designed to change or regulate human behavior can be "gamed", and the rule of unintended consequences is quite real. This is as true of totalitarian societies as it is of our own. For example, economists who have studied the question estimate that over 40% of all real consumer economic activity in the former USSR in the 1970s took place in the black market. Closer to home, in the early 1990s when health insurance companies had to prepare for the contingency that the Clinton Plan might pass, many of them began studying ways to use selective marketing rather than underwriting to make their mix of policyholders as healthy as possible. Farther back in our own history, this page could easily be filled with the unintended consequences of many of our social legislation programs from Prohibition to public housing complexes to AFDC to multiple other examples.

There is an apocryphal story about a US Navy admiral who decades ago was allegedly confronted with a problem regarding an island in the South Pacific. The females naturally went about topless, and the admiral felt that this situation would have a bad effect on discipline for his men. He attempted to solve the problem by passing out free T-shirts for the females along with a program encouraging them to wear them. He then left the area, and upon his return some time later noticed that many of them were wearing the new T-shirts. However, they had frequently cut very large holes in two strategic places for "comfort".

Which brings us to the recently-passed health care legislation. On May 27th, US Representative Ron Paul (TX) introduced HR 5444, the *Private Option Health Care Act*, which among other things proposes the repeal of the law passed earlier this year and provides a range of market-based solutions and tax incentives for individuals. We'll take a closer look at the specifics of the proposal next time, but for now, let's assume for the sake of the discussion that this won't pass. What are some of the ways that the new legislation is likely to be "gamed"?

1. Passive resistance. For healthy individuals who don't have insurance today, the fines associated with not purchasing coverage are still substantially less than the premium that they would need to pay to purchase it. Some individuals will pay the fine as a lesser expense to buying coverage.

1a. Until, that is, they get sick or have reason to believe they are becoming sick. With the prohibition regarding preexisting conditions, there is nothing to prevent you from waiting until the last reasonable minute to buy coverage. It will be interesting to see what will happen in the industry if too many individuals go this route. One possible outcome may be that companies might start refusing to take payment with applications and stipulate some future date as the effective date of coverage rather than be "on the risk" from the day that the application is taken and paid for.

2. Legal exceptions. Some religious groups already appear to be exempt from the coverage mandate. We have seen the birth of new "churches" over the years for the purposes of tax evasion; will we see something similar for the sake of avoiding mandates?

3. Selective marketing. This was already under study in the early 1990s. Being forced to accept everyone does not compel you to actively market to everyone. For the population that is less than Medicare age, we might see greatly intensified marketing by health insurance companies to the young and healthy and much more subdued marketing to segments considered higher risk. The data mining tools already exist to make this outcome both possible and quite likely.

4. Benefit manipulation. After the dust settles, will supplemental coverage be outlawed? Probably not. Will it be heavily taxed if it is a separate product? That's less clear. The "Cadillac Plan" provisions of the law are vulnerable to the use of separate policies for supplemental coverage. It will take a while for this to evolve, and it will result in a labyrinthine array of new products, a labyrinthine set of new regulations or both (this last being the most probable outcome).

There will also be a few other unintended consequences to the legislation:

1. Market consolidation. Some small companies are already bailing out due to fears that they won't be viable under the "new order". After the dust settles, there will be a small number of much larger companies. This is somewhat ironic given our national fixation on the problem of companies that became "too big to fail". Then again, our new "financial reform" legislation will supposedly give government the right to seize companies that are in that category. Hmmm. Is this how they get to the "public option" through the back door? Just

a thought.

2. Increased tensions between State and Federal legislators and regulators. A number of states are already considering various ways to try to "nullify" the new law as an infringement upon their constitutional rights and powers as states. This struggle will ultimately land in the Supreme Court. Whichever way the Court decides, it will leave tensions regarding the relative powers of the states vs. the federal government not felt since the 1800s.

3. Increased practitioner shortages. The more "managed" that care becomes, the more specialists leave practice. This trend has been in place for a couple of decades now and will accelerate if marketplace rules become even more uniform.

There will be other things that I didn't mention here if the law is fully implemented. Time will tell whether that takes place.

Next month, we'll look at Ron Paul's new proposal in depth.

Pages updated June 2010 by Tilford Consulting