

## **American College of Physicians:**

# **Allowing Employers to Opt-Out of Benefit Requirements Would Undermine the ACA's Consumer Protections and Lead to Poorer Health Outcomes**

### *Could Potentially Result in Discriminatory Health Benefit Packages*

Policy Statement Approved by ACP Executive Committee, Board of Regents on March 14, 2014

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(Washington) –

#### Policy Statement:

1. The American College of Physician reaffirms its support for requiring all insurance plans and products—whether purchased by an individual, through a fully-insured group plan, or a self-insurance arrangement—to cover an evidence-based essential health benefit package.
  - a. All public and private health insurance plans and products should be required to encourage preventive health care by providing full coverage, with no cost-sharing, for evidence-based preventive and screening services recommended by expert advisory groups. This should include preventive services that have an A or B rating from the U.S. Preventive Services Task Force; vaccines recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention; evidence-informed preventive care and screenings for infants, children, and adolescents provided for in the comprehensive guidelines supported by Health Resources and Services Administration (HRSA); and women's health services based on HRSA's guidelines for preventive care and screening related to women's health.
2. Allowing employers to selectively opt-out of providing such evidence-based preventive and screening services would undermine essential consumer protections established by the Affordable Care Act, leading to under-insurance, poorer health outcomes and potentially discriminatory health benefit packages based on gender, socioeconomics, health status, religion, sexual orientation, or other factors.
  - a. Under-insurance (insurance that lacks coverage of essential evidence-based services) is associated with poorer health outcomes.

- b. Allowing employers to selectively opt-out of coverage would have a disproportionately adverse effect on low-income persons, because they will be less likely to have the financial resources needed to purchase such services on their own. This would exacerbate racial, ethnic and socioeconomic disparities.
- c. Allowing employers to selectively opt-out of providing evidence-based benefits could threaten public health. For example, some employers could decide not to offer coverage of adult or childhood vaccinations, adversely affecting the health not only of individuals who would go unprotected against preventable infectious diseases, but also adversely affecting population based health outcomes (e.g. measles or influenza outbreaks).
- d. Allowing employers to selectively opt-out of providing evidence-based benefits could result in discrimination against patients with chronic or acute diseases, contrary to the intent of the ACA. For example, a decision by an employer not to cover medications for HIV/AIDS could have a discriminatory impact on patients who have these conditions.
- e. The College acknowledges that it does not have expertise in the constitutional questions brought by some for-profit employers that are challenging the ACA's requirement that all qualified health plans must include coverage of evidence-based preventive services. Solely from a health policy standpoint, which is within the College's expertise, the courts' rulings could have major (and potentially adverse) impact on health outcomes, if the courts rule in a way that allows employers to selectively opt-out of providing essential, evidence-based benefits, including preventive and screening services, or a positive impact on health outcomes, if the courts rule in a way that maintains the essential benefits requirements established by the ACA.

#### Discussion:

The Affordable Care Act requires that group and individual health plans cover preventive services without cost-sharing, including diagnostic screenings, immunizations, and services specific to women's health. The preventive services in each coverage category are selected based on clinical evidence, including those rated A or B by the United States Preventive Services Task Force. The services and items available in the women's health category are based on recommendations from the Institute of Medicine.

The preventive services requirement has drawn controversy, as some non-profit religious organizations and for-profit corporations have argued that the law forces them to provide health services that conflict with their religious or philosophical beliefs. In response, the federal government issued an exemption process for religious organizations to choose whether to cover contraceptive services. Religiously-affiliated non-profit charities and health providers may also be relieved from directly paying for contraceptive services; in this case, the federal government requires that the organization's health insurer reimburse such services if they are used by plan enrollees to ensure that the services can be accessed without cost sharing.

While these exemptions accommodate religious organizations and religiously-affiliated non-profit entities, they do not extend to for-profit employers. Dozens of lawsuits have been filed by employers and sympathetic organizations arguing that exemptions should be extended to for-profit corporations and other employers. One notable case, *Hobby Lobby v. Sebelius*, is scheduled to be heard by the U.S.

Supreme Court beginning on March 25, 2014. The Court will consider whether the preventive services benefit mandate violates the Religious Freedom Restoration Act of 1993, “which provides that the government ‘shall not substantially burden a person’s exercise of religion’ unless that burden is the least restrictive means to further a compelling governmental interest, allows a for-profit corporation to deny its employees the health coverage of contraceptives to which the employees are otherwise entitled by federal law, based on the religious objections of the corporation’s owners.”

Roughly 50% of Americans receive health insurance benefits from their employer.<sup>i</sup> The ACA seeks to enhance employer-based insurance by creating an essential benefits package for small group insurance plans; mandating coverage of evidence-based preventive services; and levying a tax on larger employers that do not provide comprehensive, affordable insurance to their employees. Benefit mandates for employer-based health insurance are nothing new. According to the National Conference of State Legislatures, there are over 1,800 state laws that mandate coverage of specific medical services and payment.<sup>ii</sup> One-third of states have over 40 laws that mandate health insurance benefits.<sup>iii</sup> For instance, all states and the District of Columbia mandate vaccinations for children entering childcare and schools. Nearly all states allow vaccination exemptions for individuals based on their religious beliefs, but twenty states allow individuals to refuse vaccination based on *personal beliefs*.<sup>iv</sup> A survey of pediatricians found that 74% reported “encountering a parent that refused or delayed one or more vaccines” within a 12-month period.<sup>v</sup> Evidence also shows a connection between personal belief exemptions and communicable disease rates.<sup>vi</sup> One study found elevated levels of pertussis in areas with a high population of children from families with these exemptions, concluding that “geographic pockets of vaccine exemptors pose a risk to the whole community.”<sup>vii</sup> Hypothetically, if coverage exemptions were granted to businesses, employers with either religious or personal objections to vaccines could deny coverage to such critical services, forcing employees to pay out of pocket.

The expansion of evidence-based medical coverage exemptions could create a slippery slope where an employer could claim an exemption to not only preventive care, but also coverage of essential health benefits such as mental health services or blood transfusions. Further, expanding benefit exemptions to more employers would enable them to make coverage decisions irrespective of medical evidence or the objective recommendations of medical experts such as the Institute of Medicine. The College reiterates its position that health insurance plans must cover an essential health benefit package as well as evidence-based preventive services without cost-sharing. Protecting such a policy will ensure that the currently insured and newly insured can receive comprehensive, affordable care based on the best medical evidence available.

The ACA’s essential health benefit requirements, premium rating reforms, cost-sharing caps, and subsidies are efforts to address not only uninsurance, but also underinsurance, i.e., health insurance that covers a limited set of benefits and/or has significant cost sharing.<sup>viii</sup> Prior to the ACA, underinsurance was a substantial and growing problem. A 2009 study estimated that 25 million insured people were considered underinsured in 2007, a 60% increase over 4 years. The authors reported that the underinsured faced burdensome financial stress and medical care access problems and that improved benefit designs that ensure affordability and comprehensiveness of health coverage were needed.<sup>ix</sup> The underinsurance problem disproportionately affects those with low socioeconomic status, underscoring the affordability problem.<sup>x</sup> While it is unlikely that the ACA will eliminate the underinsurance problem, the law’s health

insurance market reforms and financial assistance provisions will undoubtedly relieve some of the more pernicious effects. The effectiveness of these safeguards would be undermined if employers were exempt.

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The [American College of Physicians](#) is the largest medical specialty organization and the second-largest physician group in the United States. ACP members include 137,000 internal medicine physicians (internists), related subspecialists, and medical students. Internal medicine physicians are specialists who apply scientific knowledge and clinical expertise to the diagnosis, treatment, and compassionate care of adults across the spectrum from health to complex illness. Follow ACP on [Twitter](#) and [Facebook](#).

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<sup>i</sup> Kaiser Family Foundation. Health Insurance Coverage of the Total Population. Accessed at <http://kff.org/other/state-indicator/total-population/>

<sup>ii</sup> National Conference of State Legislatures. State Health Insurance Mandates and the ACA Essential Benefits Provisions. January 2, 2014. Accessed at <http://www.ncsl.org/research/health/state-ins-mandates-and-aca-essential-benefits.aspx#contraceptive>

<sup>iii</sup> California Health Benefits Review Program. Interaction between California State Benefit Mandates and the Affordable Care Act's "Essential Health Benefits." March 2012. Accessed at <http://chbrp.org/documents/finl-ehb-issuebrief-mar2012.pdf>

<sup>iv</sup> Immunize.org. Personal belief exemptions for vaccination put people at risk. Examine the evidence for yourself. Accessed at <http://www.immunize.org/catg.d/p2069.pdf>

<sup>v</sup> American Academy of Pediatrics. Documenting Parental Refusal to Have Their Children Vaccinated. Accessed at <http://www2.aap.org/immunization/pediatricians/pdf/RefusaltoVaccinate.pdf>

<sup>vi</sup> ASTHO. Permissive State Exemptions Laws contribute to Increased Spread of Disease. Accessed at <http://www.astho.org/uploadedFiles/Programs/Immunization/ASTHO%20Vaccine%20Refusal%20Brief.pdf>

<sup>vii</sup> Omer SB, Enger KS, Moulton LH, Halsey NA, Stokley S, Salmon DA. Geographic Clustering of Nonmedical Exemptions to School Immunization Requirements and Associations With Geographic Clustering of Pertussis. *Am J Epidemiol.* 2008;168(12):1389-1396. Accessed at <http://aje.oxfordjournals.org/content/168/12/1389.full>

<sup>viii</sup> Gold J. The 'Underinsurance' Problem Explained. Kaiser Health News. September 28, 2009. Accessed at <http://www.kaiserhealthnews.org/stories/2009/september/28/underinsured-explainer.aspx>

<sup>ix</sup> Schoen C, Collins SR, Kriss JL, Doty MM. How Many Are Underinsured? Trends Among U.S. Adults, 2003 and 2007. *Health Affairs.* 2008; doi: 10.1377/hlthaff.27.4.w298. Accessed at <http://content.healthaffairs.org/content/early/2008/06/10/hlthaff.27.4.w298.full.pdf+html?ijkey=rhRn2Tr4HAKZ.&keytype=ref&siteid=healthaff>

<sup>x</sup> Link CL and McKinlay JB. Underinsurance is as Big a Problem as Uninsurance. New England Research Institute. Accessed at [http://www.neriscience.com/portals/0/uploads/documents/public/link\\_underinsurance.pdf](http://www.neriscience.com/portals/0/uploads/documents/public/link_underinsurance.pdf)