

## The Affordable Care Act and its Impact on Special Needs Planning

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On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act (ACA) into law. Included in this historic law are comprehensive prevention provisions supported by The Arc and leading experts in population health and prevention. The enactment of the Affordable Care Act (also known as Obamacare) has shifted our health system from one that focuses on treating the sick to one that focuses on keeping people healthy. The June 2012 Supreme Court decision upholding the constitutionality of the Affordable Care Act allows for the long-overdue changes made possible by the law to move forward. Despite the Supreme Court's decision, the progress of this legislation has been impeded with continued challenges and the failure of many states to adopt key provisions of the law.

While ACA has been extremely controversial and divisive on the political front, once the law is fully implemented, it will enhance the quality of health care received by many typical working class families in this country. This legislation is especially important to families with a child or spouse who is disabled. Removal of family caps and inability of insurance companies to refuse insurance based on a pre-existing condition will enable families to afford and maintain health insurance coverage. As a former social worker, I have witnessed the stress lack of insurance has on parents of children with special needs. Parents of children with disabilities or a spouse with a disability have a higher than average divorce rate. Some have estimated this rate to be 86% of all marriages challenged with a lifelong or long term disability. Prior to the ACA, when an insurance cap was reached or the parent changed jobs or lost insurance, the out of pocket costs impoverished families and was a major cause of personal bankruptcy. Stresses related to the increased worry and concern caused by lack of health insurance or reaching the cap on one's policy while their child is still in need of treatment will be removed by the ACA.

The Arc, a national advocacy organization that advocates for the rights of persons with disabilities and their families, has declared the ACA to be the most significant law for people with disabilities since the enactment of the Americans with Disabilities Act in 1990. This legislation will bring about comprehensive reforms that will benefit Americans with disabilities by prohibiting discrimination based on health status and improving access to care. In time, it will enhance the quality of health care received by all in this country - including those currently covered under private health plans. The Law creates a major overhaul of how health care is received in the U.S.

Critical to the law's success and financial security is the need to insure as many persons as possible - not just those who are in ill health and in need of care. The ACA was modeled after the Massachusetts mandatory health insurance program. The larger the pool of persons who enroll in the program, the more cost effective the program will be. The program will eventually fail if only sick people enroll in the plans offered. For this reason it is important that younger and healthier individuals continue to receive information about the ACA and are encouraged to enroll. Despite a slow start, progress has been made in that direction. Figures released by the Department of Health and Human Services Department on May 1, 2014, indicate the late scramble for coverage in March of 2014 resulted in nearly 1.2 million young adults ages 18 - 34, enrolling in the program, thus doubling the number of young folks enrolled. The number of young people who enrolled for health coverage accounted for 28% of state and federal marketplace signups. As of May 1, 2014, over 8 million Americans have successfully signed up for health insurance coverage under the ACA. There are 4 levels of coverage offered by the ACA: Bronze, Silver, Gold and Platinum. The majority of persons enrolled in this first year have enrolled at the Silver level.

For those who believe they cannot afford the premiums for the mandatory coverage and would prefer to pay the fine rather than enroll, there is information available about generous subsidies available to make the coverage affordable. Persons earning 133% of the federal poverty level (FPL) will qualify for expanded Medicaid benefits. In 2014, 133% of the FPL for a family of four is \$31,800. There are also subsidies available for families with incomes up to four times the FPL. That means a family of four earning up to \$94,200 per year could be eligible for a federal subsidy to pay premium costs. The ACA is not just for the poor. Working middle class Americans will receive great benefit by enrolling. Unfortunately not everyone eligible for subsidies has signed up for health coverage as many Americans are still skeptical of or in the dark about the ACA. Despite the mandate that all Americans carry health insurance as of 4/1/2014, many folks have chosen to pay the fine rather than enroll. Many have opted to pay the penalty rather than sign up for coverage because of ignorance of the law, distrust of the law or due to the intentional spread of misinformation about this legislation. That is a shame as the maximum cost of the penalty is no more than the cost of the bronze (lowest level) health care plan. The next enrollment period will be October 15 - December 7, 2015. Midyear enrollment will only be allowed if there is a change in status such as change in marital status, birth of child, death of a household member, etc. Having an accident, stroke, sudden

diagnosis of cancer is NOT considered a change in status. For those who opted to pay the penalty rather than purchase at least the bronze level plan could find themselves in a worse off position very quickly should the unexpected occur.

The ACA may also minimize the need for some individuals to qualify for Medicaid. Beginning 1/1/2014, insurance companies can no longer discriminate and refuse to sell policies to persons with preexisting medical needs. Unless an individual is dependent on a Medicaid waiver program or requires residential care, self-insuring may be in his or her best interest. For some individuals, purchasing coverage under the ACA may be a viable alternative to relying on Medicaid coverage. For example, in some cases, private insurance may be available to cover the 24 month wait period under SSDI for Medicare. The need for the existence of an OBRA '93 trust will need to be reviewed on a case by case basis to see if purchasing health insurance is better than having to transfer one's assets to an OBRA '93 trust. (An OBRA '93 trust allows a person with a disability to transfer one's own assets into a trust for him or herself and enable the person to qualify for Medicaid without triggering a 5 year look back period. The OBRA '93 trust is a qualified special needs trust and is recommended by special needs planners when a person receives a law suit settlement, inheritance or in some cases to protect child support or alimony.)

The ACA creates a number of new options for persons with disabilities. Preserving life time access to proper health care often meant impoverishing oneself in order to qualify for Medicaid because private health insurance often was not available or affordable for persons with disabilities. For years, Medicaid or Medicare was the only health insurance options for persons with lifelong disabilities. Prior to the full implementation of the ACA, persons with disabilities were denied private health insurance because insurance companies automatically denied them coverage due to their preexisting medical needs. The ACA will have particular value to fill in the gap in medical coverage for those persons who qualify for Social Security Disability Income (SSDI) but then have to wait two full years to wait for Medicare coverage to begin.

If a person with a disability did not qualify for Medicare, he or she was forced to spend down his or her assets to \$2,000 or to transfer all countable assets in his or her name to a qualified Special Needs Trust. The federal law allows a disabled individual to transfer his or her assets to an OBRA '93 trust that conforms with 42 U.S.C. Section 1396p(d)(4)(A) or (C). For many persons with disabilities having to give up control of their own assets was insulting and emotionally difficult. While a special needs trust may still be appropriate in some cases where the individual needs Social Security Income (SSI) or is likely to be exploited by others or to mismanage his or her own assets, for many, retaining control of their own money is now possible for some but not all persons with disabilities.

Standard Medicaid may still be needed when a person requires long term care in a group residence or skilled nursing home or other Medicaid waiver financed residential programs in the community. Standard Medicaid also provides access to day habilitation, sheltered workshops or other job or community funded supports

and services funded under waiver programs. It is important to note that the new expanded Medicaid which is optional to the states, does not provide for waiver services mentioned above or for residential supports. If a person anticipates needing long term care, she or he will need to qualify for Standard Medicaid which still has a \$2,000 asset limit.

A special needs planner needs to look at each and every situation as unique and discuss various options rather than just recommending the use of a first or third party special needs trust.

One's abilities, one's natural supports, one's need for residential supports, one's need for day habilitation or vocational supports, and one's financial need for SSI cash benefits should be taken into consideration. A person with a disability and significant medical needs may be able to maintain control of funds received in a law suit settlement or through an inheritance or from another windfall source due to his or her ability to purchase private health insurance coverage.

A special needs planner needs to consider the following options rather than just assume the special needs trust is the right choice for a client challenged with a disability:

- 1) A Special Needs Trust - either 3rd party or 1st party depending on the source of funds.
- 2) Use a special needs trust but opt to buy ACA private healthcare rather than rely on Medicaid. This is particularly important in those states which have minimally adequate Medicaid funded services or where the majority of physicians will not accept Medicaid. This strategy leverages one's dollars and cuts back on the amount of funds that have to be paid back to the state for the cost of Medicaid funded services when the beneficiary of a 1st party funded special needs trust dies.
- 3) Use a Support Trust or retain control of the funds and buy ACA private insurance.
- 4) Retain control of funds and rely on the new expanded Medicaid which only looks to income eligibility and does not have an asset means test.

While the special needs trust remains a viable option it is not the only option available to persons with disabilities. Advising families with members who are disabled requires the special needs planner to have a basic understanding of the ACA and what it offers to all Americans but especially those challenged with physical or mental disabilities.

The following is an excerpt from the Arc's website ([www.thearc.org](http://www.thearc.org)) which describes the key points of the ACA and will help you to better understand and appreciate this well thought out and long fought for legislation:

## **HOW THE AFFORDABLE CARE ACT HELPS PEOPLE WITH DISABILITIES**

### **Reforms Health Insurance Practices**

- Eliminates pre-existing condition exclusions
- Bans annual and lifetime limits
- Ends insurance companies retroactively denying coverage

- Improves the appeals process when a person is denied coverage of a treatment or service
- Requires that at least 80% of health insurance premium dollars are paying for health care
- Helps states to limit unfair increases in insurance rates
- Prohibits considering health status in calculating premiums
- Requires guaranteed issue and renewals of insurance plans
- Prohibits discrimination based on health status

#### Expands and Improves Long Term Services & Supports

- Establishes the Community First Choice Option for states to cover comprehensive community attendant services under the state's Medicaid optional service plan and avoid more costly nursing home and other institutional care
- Improves the existing Medicaid Section 1915(i) option for home and community based services by making it easier for individuals to qualify for services, allow states to target specific populations, and avoid more costly nursing home and other institutional care
- Reduces Medicaid's institutional bias by creating new financial incentives for states to rebalance their services from more costly institutional settings toward home and community based services
- Extends Money Follow the Person Demonstration program that provides additional federal payments to help people transition from more costly institutions to home and community based services

#### Expands Access to Health Insurance Coverage

- Establishes temporary high risk pools to cover those who are currently uninsured
- Allows coverage for dependents until age 26
- Creates private health insurance exchanges for individuals and small employers to purchase insurance (starting in 2014)
- Provides significant subsidies to assist low income individuals to purchase coverage in the exchanges and tax credits to help small employers provide insurance to their employees
- Includes coverage of dental and vision care for children in health insurance plans sold in the exchanges
- Includes mental health services, rehabilitative and habilitative services and devices, and other critical disability services in the health plans sold in the exchanges

#### Improves Medicaid and Medicare

- Expands Medicaid eligibility to childless adults with incomes up to 138% of the federal poverty level. Federal government pays 100% of the cost until 2016 (phases down to 90% in 2020)
- Creates an option to provide health homes for Medicaid enrollees with chronic conditions. Health homes are intended to be person-centered systems of care that integrate primary, acute, behavioral health, and long term services
- Allows a free annual Medicare well visit with assessments and individualized prevention plan
- Eliminates Medicare Part D (drug coverage) co-pays for persons who are dually eligible for Medicaid and Medicare, and receiving Medicaid waiver services
- Expands Medicare Part D coverage of anti-seizure, anti-anxiety, and anti-spasm medications
- Allows states in partnership with the federal government to try new models of care to provide better health care at lower costs to people with complex health care needs who are eligible for both Medicare and Medicaid

#### Expands Access to Prevention Services and Other Improvements

- Eliminates co-pays for critical prevention services
- Creates the Prevention and Public Health Fund to greatly expand wellness, disease prevention, and other public health priorities
- Increases opportunities for training of health care providers (including dentists) on the needs of persons with developmental and other disabilities
- Improves data collection on health care access for people with disabilities
- Requires the establishment of criteria for accessible medical diagnostic equipment **FT**

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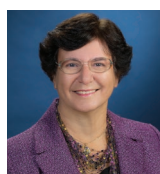


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