

2012

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Tyler Hanson

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Recommended Citation

Tyler Hanson, *Barefoot and Pregnant: How the Patient Protection Affordable Care Act Will Leave Young Mothers to Fend for Themselves*, 18 *Pub. Interest L. Rptr.* 23 (2012).

Available at: <http://lawcommons.luc.edu/pilr/vol18/iss1/5>

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BAREFOOT AND PREGNANT: HOW THE PATIENT PROTECTION AFFORDABLE CARE ACT WILL LEAVE YOUNG MOTHERS TO FEND FOR THEMSELVES

by TYLER HANSON

“**T**he Patient Protection and Affordable Care Act (“PPACA”) is a history-making piece of legislation that aims to decrease the number of uninsured Americans and allows young adults to stay on their parents’ insurance plans as dependents until the age of 26.¹ After the passing of the PPACA, dependent status can no longer be determined on factors such as whether that

person lives with their parent, is financially dependent on a parent, is a student, unemployed, or unmarried.² The only requirement under the new law is that the dependent must be the child of the subscriber.³ While this increase in dependent age has expanded coverage, the new provisions provided by the PPACA have excluded crucial language that will enforce maternity coverage for dependents currently under their parents' plans.⁴

Until relatively recently, women's health has not been a great concern of the government and was not always considered an essential right.⁵ The first step towards healthcare equality amongst men and women began with Title VII of the Civil Rights Act of 1964, which prohibits sex discrimination on the basis of pregnancy.⁶ The Pregnancy Discrimination Act of 1978, which amends Title VII of the Civil Rights Act, furthered a woman's right to healthcare by declaring that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs," forcing an employer to provide the same insurance coverage for women as it did men.⁷ After the passing of this act, insurers could no longer deny women benefits because of pregnancy or other sex-related reasons.⁸ While this act was a monumental step towards women's health equality, the act's provisions did not address the coverage of dependents of those subscribers on health insurance plans.⁹

Under the recently upheld PPACA and starting in 2014, maternity and newborn care will be one of ten "essential health benefits" that must be offered by individual and small group health insurance plans.¹⁰ Large insurance groups, which are those that cover more than 100 employees, and grandfathered insurance plans, those insurance plans that have "continuously covered at least one person" since March 2010, are not effected by this specific provision of the PPACA.¹¹

This loophole in requirements for large group insurance and grandfathered plans has provided insurance companies and employers the option to decide whether they will provide dependents of subscribers with maternity coverage.¹² Although there are no clear-cut numbers on maternity coverage of dependents, it is estimated "that roughly 70 percent of companies that pay their employees' health-care claims directly choose not to provide dependent maternity benefits."¹³ Dania Palanker, a senior health policy adviser at the National Women's Law Center "believes this number could grow with the recent expansion of coverage to children under 26."¹⁴

HOW THE GAP IN COVERAGE WILL EFFECT YOUNG MOTHERS

Without any maternity coverage or state-related aid, the average cost of maternity care without complications was \$10,652 in 2007.¹⁵ As if a medical bill of over \$10,000 is not expensive enough, the cost of a pregnancy that ends in a caesarean delivery could cost a young mother nearly \$25,000.¹⁶

For young mothers dependent on their parent's insurance plans, lack of maternity coverage may mean this population is forced to pay for their care out-of-pocket. Professor Lawrence Singer, Director of the Beazley Institute of Health Law and Policy at Loyola University Chicago School of Law, pointed to Medicare, state run women's health programs, and charity care as alternative options for payment in a situation like this.¹⁷ However, Singer concluded that the "best case here is to secure independent, private coverage," explaining that the healthier the mother, the better the chances of her delivering a healthy baby.¹⁸

When asked about other healthcare systems that the United States could use as a model when it comes to maternity care, Singer pointed to Sweden, which offers full coverage for maternity care to its citizens and gives the mother up to a full year of paid maternity leave after giving birth.¹⁹ In Sweden, all care delivered in a maternity hospital is free of charge and the cost of maternity care is covered by the government if an individual does not have private insurance.²⁰

Canada, another international leader in maternity coverage and benefits, allows for full maternity care benefits under its national health insurance program, which the Canadian government refers to as "Medicare."²¹ This universal coverage is mandated by the Canada Health Act and is delivered "through 13 interlocking provincial and territorial health insurance plans, all of which share certain common features and basic standards of coverage."²²

While the PPACA has made great strides concerning a woman's access to healthcare, there is still work to be done on this matter. A simple correction of this loophole could solve the issue and make the PPACA a healthcare act that is truly comprehensive.

NOTES

1 Patient Protection and Affordable Care Act of 2010, H.R. 3590, 111th Cong. § 2714 (2010).

2 *Health Reform Whitepaper: Employer Impact of PPACA*, Jackson Kelly PLLC Health Law Monitor, <http://healthlawmonitor.jacksonkelly.com/2010/06/health-reform-whitepaper-employer-impact-of-ppaca.html>; Cynthia S. Marietta, *PPACA's Additional Requirements Imposed on Tax-Exempt Hospitals Will Increase Transparency and Accountability on Fulfilling Charitable Missions*, HEALTH L. & POL. INSTITUTE, UNIV. OF HOUSTON L. CTR. 1 (July 2010).

3 Marietta, *supra* note 2.

4 Michael Totten, *Why Pregnant Youth Under Age 26 are not Covered in the New US Health Plan*, HELIUM (Aug. 23, 2012), <http://www.helium.com/items/2363256-the-patient-protection-act-wont-cover-pregnancy-for-most-young-adults-until-2014>.

5 Pregnancy Discrimination Act of 1978, Pub.L. 95-555 §2000(e)(k), 92 Stat. 2076 (1978).

6 *Id.*

7 *Id.*

8 *Id.* See also U.S. Equal Employment Opportunity Commission, Facts About Pregnancy Discrimination, <http://www.eeoc.gov/facts/fs-preg.html>.

9 *Id.*

10 Erin Cusack et al., *Maternity Care Still a Struggle*, PHILLY.COM (Sept. 11, 2012), http://articles.philly.com/2012-09-11/news/33738486_1_maternity-coverage-maternity-benefits-prenatal-care.

11 *Health Reform Whitepaper: Employer Impact of PPACA*, Jackson Kelly PLLC Health Law Monitor, <http://healthlawmonitor.jacksonkelly.com/2010/06/health-reform-whitepaper-employer-impact-of-ppaca.html> (Nov. 14, 2012); Totten, *supra* note 4.

12 Lawrence Singer, Addressing PPACA and Gap in Maternity Coverage at Loyola University Chicago School of Law (Oct. 25, 2012).

13 Michelle Andrews, *Some Plans Deny Pregnancy Coverage for Dependent Children*, KAISER HEALTH NEWS (Aug. 6, 2012), <http://www.kaiserhealthnews.org/features/insuring-your-health/2012/under-26-pregnancy-coverage-michelle-andrews-080712.aspx>.

14 *Id.*

15 Michelle Andrews, *Pregnancy not Covered by Most Individual Health Policies*, NBC NEWS (Nov. 16, 2012, 8:30:55 AM), http://www.msnbc.msn.com/id/40201197/ns/health-health_care/t/pregnancy-not-covered-most-individual-health-policies.

16 *Id.*

17 Singer, *supra* note 12.

18 Singer, *supra* note 12.

19 Singer, *supra* note 12.; *The 10 Best Countries for Maternity Care*, Medical Billing & Coding (Jan. 22, 2012), <http://www.medicalbillingandcoding.org/blog/the-10-best-countries-for-maternity-care>.

20 Birger Lundquist, *Maternity Care in Sweden from the Medical and Social Point of View*, 41 AM. J. PUB. HEALTH 20, 22 (Nov. 1951), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1525704/pdf/amjphnation00433-0021.pdf>.

21 *Id.*

22 *Id.*