

Obama's "Death Panel" Moment

Between 2009-2010, the Obama administration incessantly bewailed conservative reliance on “fear-mongering” to forestall passage of the Patient Protection and Affordable Care Act (“Obamacare”). Responding to criticism first incited by a rather infamous Sarah Palin quote, the president admonished critics for accusing Democrats of “want[ing] to set up death panels to pull the plug on grandma.” It was quite remarkable, then, when Obama-proxy Kathleen Sebelius, Secretary of Health and Human Services, released a [report](#) yesterday claiming that repeal of Obamacare would jeopardize the coverage of *half* of all Americans because of latent pre-existing conditions. The falsity of this claim cannot be overstated, and it unfortunately represents the administration’s opening salvo in the upcoming battle to repeal Obamacare. And while the prospect of “death panels” is a dead issue these days, the administration seems to have acquired a new appreciation for the same empty scare-tactics it once derided during the health care debate. But will it be effective enough to save the bill?

The political function of the pre-existing conditions [report](#) was captured transparently enough by its title and the title of its accompanying [press release](#): “129 million Americans with a pre-existing condition could be denied coverage without new health reform law.” Hearing this dire pronouncement — adroitly crafted to imply that 1 in 2 Americans is in imminent danger of losing health care coverage — one is almost tempted to sign up for the death panels.

Never mind that the prohibition on coverage denial for pre-existing conditions doesn’t even begin until 2014. Why haven’t we noticed the urgency of the situation before Obama and Kathleen Sebelius rescued us from certain demise? A presentation of the facts is needed to explain the peculiar discrepancy. In the first place, the report lets slip that the number of people who *might* have problems with a pre-existing condition could be as low as 50 million people. That is, anywhere from 19 to 50 percent (129 million) of people under the age of 65 could have a pre-existing condition — a wildly uncertain figure, which should immediately give pause.

However, even if we concede that “up to 129 million” Americans “have some type of pre-existing condition,” as HHS nebulously explained, what makes this obscurantist report completely irrelevant is that scarcely a fraction of 129 million people — or even 50 million for that matter — will ever be denied coverage due to a pre-existing condition. As [Michael Cannon](#), director of health policy studies at the conservative Cato Institute rightly pointed out, only about 1% of Americans are ever denied health care coverage due to pre-existing conditions. In fact, a HHS [survey](#) administered in 2001 (yes, the same HHS) “found that...only 1 percent of Americans had ever been denied health insurance,” Cannon [explained](#). In a two year period (between 2007-2009), the four largest private insurance companies in the country (Aetna, Humana, UnitedHealth Group, and WellPoint) denied coverage for pre-existing conditions for about 300,000 people per year (about 600,000 total), less than .01% of all Americans. These figures come from a

congressional [investigation](#) commissioned by leftist Rep. Harry Waxman (D-CA), intended to demonize private insurance companies.

What possibly accounts for the stark differential between the administration's warning and reality? First, the sense in which HHS uses of the term "pre-existing condition" is overly broad to the point of being meaningless. This is in contrast to what insurers are actually allowed to classify as pre-existing conditions, which is highly restrict by the federal government. The Health Insurance Portability and Accountability Act (HIPAA), enacted in 1997, introduced a number of regulations to address pre-existing conditions. For instance, if you change jobs and subsequently change insurance plans, the new insurance company is only allowed to review the last six months of your health history for a pre-existing condition. This is usually defined as something that was diagnosed or treated during the six months prior to a person's enrollment in the new insurance company.

Even so, periods of coverage exclusion are restricted to 12 months in most cases, although some plans may have shorter or nonexistent exclusion periods, as the Department of Labor [explains](#). Furthermore, the exclusion period is typically *waived* by the insurance company. This is because HIPAA also has a "creditable coverage" provision, which basically stipulates that if an individual has had coverage for 63 continuous days prior to switching insurance companies, the coverage carries over to his or her pre-existing conditions. Thus, there is a very limited number of ways insurers are legally permitted to deny coverage for pre-existing conditions.

Bearing this in mind, it is exceedingly difficult to not interpret the Obama administration's claim that as much as half the population could be denied coverage for pre-existing conditions as a naked scare-tactic to diminish support for the repeal effort. It should be no surprise that the report was released on the same day as debate over Obamacare's repeal geared up in the now Republican-led House.

The report's purpose is clearly to mislead the public on the facts of pre-existing conditions — and it is frankly as wild a mischaracterization as anything that has come from the Right in the last two years. As deceptive as it is, this maneuver is of course prudent of the Obama team, as it capitalizes on one of the few **advantages** the administration has over the repeal effort. As is constantly pointed out by Obamacare's proponents, there are select components of the bill that are very popular with the public. Regulations prohibiting coverage denial because of pre-existing conditions stand alongside other provisions, such as allowing children to remain on family plans until the age of 26, as measures the public will no give up readily. Exaggerating the consequences of repeal in terms of these provisions is obviously a winning **strategy**. It may be no more credible than Sarah Palin's "death panels," but as recent history has shown, even a dubious meme, if publicized enough, can have enormous consequences on the debate at large.

On the other hand, it is also clear enough that the administration's first shot across the bow of the repeal effort is a sensational distraction from the more central issues of the

debate. Obamacare, with its massive bureaucracy, regulation, and taxation, remains generally unpopular. The key pillar of the legislation — the universal insurance mandate — is even more disliked. A few demagogical stances may score cheap political points, but the overall success of Obamacare is seriously in dispute. If the legislation lives out the next two years more or less in tact, it will be a serious albatross around Obama's neck as he struggles for re-election.

However, it is also true that the House repeal bill is little more than Republican bluster, as it is projected to die in the Senate after sailing through the lower chamber later this week. There is realistic hope, however, that piecemeal repeal will be successful, and it could very well be the case that the president's stand on pre-existing conditions represents the first peg in a regulatory amalgam of both Republican and Democratic design. Would it weaken the president too much to accept this route of compromise? Perhaps it would help him.