

November 11, 2013

RE: *Affordable Care Act Potential Effects on Life Care Plan Damages*

The Patient Protection and Affordable Care Act (PPACA), commonly referred to as ObamaCare, was signed into law on March 23, 2010. Although debate regarding this legislation has been nearly constant since its inception, the application of specific policy details to civil litigation has seen little discussion. Two professors from the College of the Holy Cross have argued in a recent article, however, that implementation of the PPACA may fundamentally alter how forensic economists calculate losses in medical and related costs due to personal injury.*

In personal injury litigation where the plaintiff requires future medical care, life care planners are routinely used to put forth opinions regarding the anticipated medical services and commodities, and support services or care facilities may be a substantial part of these life care plans. Economists are then utilized to calculate the annual future costs and present value equivalents of these costs. The PPACA introduces three major changes to health insurance markets. First, this legislation prohibits discrimination based on pre-existing conditions and bans both annual and lifetime expenditure limits. Secondly, the legislation provides subsidies for insurance premiums and health care costs to those with low income and who do not receive insurance through the government or an employer. Third, all individuals are required to obtain and maintain proof of adequate health insurance coverage.

The existing model of economic damages has been to assume that the tortfeasor will be responsible for all necessary medical and related care of the plaintiff. This assumption is partially based on the recognition that not all individuals possess any health insurance which might cover future care costs. Furthermore, given that most insurance policies had excluded coverage for pre-existing conditions, it was not possible for a plaintiff to acquire the insurance after the injury. It is argued in the recent article that, after implementation of the PPACA, an injured plaintiff either would have already possessed insurance coverage, as required by the individual mandate, or the plaintiff could obtain insurance coverage for many of the costs to be expected due to the injury; pre-existing conditions are no longer excluded. The argument against any change in existing methods for estimating medical cost losses centers upon the collateral source rule that prohibits economists from considering third-party payments in estimating economic losses. Of course, subrogation provisions of state laws also permit third parties to recover past expenses paid to, or on behalf of, the plaintiff when another party is responsible for the injury. Since the application of the collateral source rule and subrogation rights varies across jurisdictions, the process by which the application of these laws to how the PPACA may affect medical care expenses is unknown and will likely take quite some time to evolve through the process of judicial review. Presently, no forensic economists have yet altered their existing methods to our knowledge.

*Joshua Congdon-Hohman and Victor Matheson, "Potential Effects of the Affordable Care Act on the Award of Life Care Expenses," *Journal of Forensic Economics*24(2), September 2013.

We remain devoted to research on how the PPACA is being interpreted among forensic economists by reviewing the available literature and being actively involved in presentations and discussions with our professional colleagues across the nation. In January, George will be attending the American Economic Association conference in Philadelphia, at which multiple presentations and panel discussions on this topic are being convened. As more information is acquired, we will keep you informed on any developments regarding this topic.

We were pleased that both of us were asked to write chapters in what is probably the first textbook for forensic vocational experts. The book is entitled *Foundations of Forensic Vocational Rehabilitation*, should be published in the next few months by Springer Publishing (www.springerpub.com), and is edited by Dr. Rick Robinson of Robinson Work Rehabilitation in Jacksonville. George's chapter, "Worklife Expectancy Models and Concepts," reviews the various approaches to the estimation of worklife expectancy in personal injury cases. Mike's chapter, entitled "Issues in the Handoff to a Forensic Economist" is the only chapter authored by a forensic economist.

Please feel free to give us a call or email if we can be of service.

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