Words Have Consequences

Illinois appears to follow guidelines for enrolling individuals into the state's Affordable Care Act's (ACA) pre-existing condition insurance plan, but Illinois' interpretation of the ACA's wording may be questioned. In its interpretation, Illinois does not allow enrollment if a person has insurance coverage even though it excludes pre-existing conditions.

A virtually contradictory interpretation can be found on the federal government's website HealthCare.gov. The federal government sets conditions of who is eligible to apply to the government for pre-existing condition insurance plans in states that opted out of participation. To apply, you will need to provide a copy of one the following documents:

- **A denial letter** from an insurance company licensed in your state for individual insurance coverage (not health insurance offered through a job) that is dated within the past 6 months. Or, you may provide a letter dated in the past 6 months from an insurance agent or broker licensed in your state that shows you aren't eligible for individual insurance coverage from one or more insurance companies because of your medical condition.
- An offer of coverage from an insurance company licensed in your state for individual insurance coverage (not health insurance offered through a job) that is dated within the past 6 months. **This offer of coverage has a rider that says your medical condition won't be covered.**

It is not logical that if a state runs the program, it can exclude people, while if the federal government runs the program, those same people could be included in the plan.

This analysis explores in more detail how Illinois and by extension, other states may have come to the conclusion they did and why that may not be the correct interpretation.

Illinois Pre-existing Condition Insurance Plan (IPXP).

To qualify for insurance in IPXP, a person must meet three conditions that seem to mirror the text of the Affordable Care Act. The ***Affordable Care Act (ACA)*** established eligibility criteria for federally funded high risk pools like the IPXP. The pertinent wording of the *Affordable Care Act* that states in section 1101 (d). An individual shall be deemed to be eligible … if such individual:

1. *Is a citizen or national of the United States or is lawfully present in the United States*
2. *has not been covered under creditable coverage (as defined in section 2701(c)(1) of the Public Health Service Act as in effect on the date of enactment of this Act) during the 6-month period prior to the date on which such individual is applying for coverage through the high risk pool; and*
3. *Has a pre-existing condition*

These same provisions in IPXP require that "*To enroll, a person must:*

1. *Be a U.S. citizen, national, or legal resident;*
2. *Be uninsured for 6 months; and*
4. *Have a preexisting condition."*

The IPXP application specifically notes regarding item 2, *"that if you currently have insurance coverage that doesn't cover your medical condition, you are not eligible for IPXP"*.

This raises the question of how Illinois adopted their meaning of ACA's wording. **Words have consequences and so it is important to determine what the Public Health Service Act (HIPAA) actually said and meant by its use of the phrase "creditable coverage"** and did Illinois misinterpret it?

Public Health Service Act (HIPAA)

HIPAA's opening paragraph sets forth its purpose: "… *to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery …"*

HIPAA contains five main components or "Titles", the first of which is "HEALTH CARE ACCESS, PORTABILITY, AND RENEWABILITY". That title is divided again into two subtitles, "Group Market" and "Individual Market".

In general, under Individual Market Section 2741(a)(1) health insurers may not decline coverage to or impose any pre-existing condition exclusion on "eligible individuals". However, Section 2741(a)(2) allows states to implement an "acceptable alternative mechanism". One acceptable alternative is a state managed high risk pool which Illinois has, so private health insurers in Illinois may deny coverage or include pre-existing exclusions in their policies since an alternative is available.

However, the act does not change the definition an "eligible individual" which is one who (a) has 18 or more months of "creditable coverage" and (b) whose most recent prior "creditable coverage" was under a group health plan.

CREDITABLE COVERAGE DEFINED

HIPAA defines "creditable coverage" in Section 2701(c)(1) to mean with respect to an individual, coverage of the individual under any of the following: *a group health plan; health insurance coverage; or… any of 8 other government health insurance plans. "**Such term does not include coverage consisting solely of coverage of excepted benefits (as defined in section 2791(c))".***

GROUP HEALTH PLAN DEFINED

Creditable coverage refers to coverage in a "group health plan" that also needs definition. A group health plan Sec. 701(a)(1) means an employee benefit plan that provides payment for medical care directly through insurance, reimbursement, or otherwise. In short, what most people think of as basic group health insurance.

EXCEPTED BENEFITS DEFINED

Creditable coverage also introduces another concept – "excepted benefits". Including this definition allows a contrast to group health plans that provide creditable coverage. Given the number of excepted benefits, of which only a sample is shown below, it is clear that HIPAA intended only a few basic types of basic health benefits to be considered creditable coverage.

Excepted benefits as defined in *Section 2791(c)* includes but is not limited to:

- *Coverage only for accident, or disability income insurance, or any combination thereof.*
- *Coverage issued as a supplement to liability insurance.*
- *Liability insurance, including general liability insurance and automobile liability insurance.*
- *Workers' compensation or similar insurance.*
- *Limited scope dental or vision benefits.*
- *Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof.*
- *Coverage only for a specified disease or illness.*
- *Medicare supplemental Insurance.*

Combining references and definitions from HIPAA, to be eligible for ACA's pre-existing condition insurance plan, prerequisite #2 requires an individual to:

- *have 18 or more months of a group health plan that provides payment for medical care, AND*
- *have not been covered for 6 months under either a* group health plan or a health insurance coverage

Now if an adult person is unemployed, has recently graduated or lost a job, that individual is not likely to be covered by a group health plan. Such individual, however, may be insured under individual health insurance coverage of which there are several types, of which one of the more common is "short-term limited duration insurance."

INDIVIDUAL HEALTH INSURANCE COVERAGE

Section 2791 (b) (5) states: *The term 'individual health insurance coverage' means health insurance coverage offered to individuals in the individual market, **but does not include short-term limited duration insurance***. Oops. This means that HIPAA considers one of the more common forms of individual health insurance not to be insurance at all.

PULLING IT ALL TOGETHER IN ILLINOIS

Recall from the beginning of this essay, the IPXP application form specifically states *"that if you currently have insurance coverage that doesn't cover your medical condition, you are not eligible for IPXP"*. This requirement is NOT one of the ACA requirements. And ACA in turn, references HIPAA that pointedly declares "short-term limited duration insurance" does NOT constitute insurance coverage at all. **Conclusion: Illinois may have incorrectly defined short-term limited duration insurance as health insurance which definition specifically contradicts HIPAA definition.**

CONCLUSION

It is clear that both the intention as well as the wording of the ACA and HIPAA acts allow persons who once had but were later denied health coverage or who have coverage but with pre-existing exclusions, to apply for and receive coverage under the ACA pre-existing condition insurance plans.

Allegedly, enrollment in state ACA pre-existing condition insurance plans has been running behind projections. Is it possible states are restricting enrollment in a manner similar to Illinois? It is something worth investigating further.

Disclaimer: While having extensive years of legal experience demonstrated in this analysis, the author is not a licensed attorney. What has not been verified is whether later amendments to the HIPAA changed any of the provisions mentioned above.

