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RISE IN COST OF PUBLIC POSTSECONDARY EDUCATION IN NORTH CAROLINA: THE EFFECT OF THE AFFORDABLE CARE ACT

SELBY LO

I: INTRODUCTION

The 2014 tax return to be filed in April 2015 will be the first year that individuals and families will need to pay the individual shared responsibility payment for failing to maintain health coverage and not qualifying for an exemption under the Patient Protection and Affordable Care Act (“ACA”).¹ Individuals who fail to sign up for coverage or opt not to sign up for coverage face a payment amount of the greater of: (1) one percent of the household income that is above the tax return threshold for the filing status or (2) a flat dollar amount of \$95 per adult and \$47.50 per child (limited to \$285 per family).² The maximum individual shared responsibility payment is capped at the national average premium for the bronze level health plan through the online Health Insurance Marketplace.³

While it is an option for some Americans to opt not to sign up for medical coverage, the University of North Carolina System (“UNC System”) mandates that students have medical insurance coverage to be enrolled in one of the sixteen 4-year campuses.⁴ Students will automatically be billed for student health insurance unless the student can demonstrate creditable outside medical coverage.⁵ In the UNC System as of fall 2012, there were 221,010 students enrolled at the sixteen UNC system campuses.⁶ Of the 221,010 students enrolled at the various campuses, approximately 65,000 students participate in the UNC System Health Insurance Plan (“SHIP”).⁷

1. 26 U.S.C.S § 5000A (2010).

2. *The Individual Shared Responsibility Payment- An Overview*, INTERNAL REVIEW SERVICE (Mar. 25, 2014), <http://www.irs.gov/uac/Newsroom/The-Individual-Shared-Responsibility-Payment-An-Overview>.

3. *Id.*

4. *Student Health Insurance*, North Carolina Central University, <http://www.nccu.edu/studenthealth/insurance.cfm>, (last visited June 16, 2014).

5. *Id.*

6. Daphne Dow, *Statistical Abstract of Higher Education in North Carolina, 2012-13* 6 (Univ. of N.C. ed., 2013).

7. *In the Spotlight: the Affordable Care Act and Student Health Plans*, BLUE CROSS BLUE SHIELD OF N.C. (Mar. 12, 2013), http://www.bcbsnc.com/assets/hcr/pdfs/spotlight_student.pdf.

Those 65,000 students do not have the option to pay the individual shared responsibility payment; rather, they must sign up for health care. With the mandatory health care, the cost of a public postsecondary education continues to rise in North Carolina.

II: PATIENT PROTECTION AND AFFORDABLE CARE ACT AND THE UNC SYSTEM “HARD WAIVER” STUDENT HEALTH INSURANCE

On September 17, 2009, Representative Charles B. Rangel of New York introduced the Patient Protection and Affordable Care Act (“ACA”).⁸ The ACA was introduced to provide comprehensive medical health insurance reform to all Americans.⁹ By 2014, all Americans were to have access to affordable health insurance options offered by various insurance providers.¹⁰ Some of the key features of the legislation included prohibiting the denial of coverage of children based on pre-existing conditions, eliminating lifetime limits on insurance coverage, providing free preventive care, and extending coverage for young adults.¹¹ The legislation was enacted on March 23, 2010 by President Barack Obama.¹² The ACA amended the existing Public Health Service Act (“PHS Act”) which was enacted in 1944.¹³ The PHS Act created the Department of Health and Human Services.¹⁴

In August 2009, prior to the enactment of the ACA, the University of North Carolina Board of Governors (“UNC BOG”) implemented a “hard waiver” student health insurance plan on all sixteen of the 4-year campuses beginning in the fall of 2010.¹⁵ According to former UNC System President Erskine Bowles, the UNC BOG implemented the system-wide hard-waiver program to allow the UNC System “to standardize health insurance while using its [student population] size to get better rates than campuses could get individually.”¹⁶ The majority of undergraduate and graduate students in a degree-seeking program were required to have creditable health insurance coverage.¹⁷ Students were offered health insurance through the UNC

8. H.R. 3590, 111th Cong. (2009).

9. *Key Features of the Affordable Care Act by Year*, U.S. DEP’T OF HEALTH & HUM. SERV., <http://www.hhs.gov/healthcare/facts/timeline/timeline-text.html> (last visited June 16, 2014).

10. *Id.*

11. *Id.*

12. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119.

13. 42 U.S.C.S. § 201 (LexisNexis 2010).

14. 42 U.S.C.S. § 202 (LexisNexis 2010).

15. *State-Level Health Insurance*, N.C. ST. STUDENT HEALTH CTR., <http://healthcenter.ncsu.edu/insurance/state-level-health-insurance-requirement/> (last visited June 15, 2014).

16. Eric Ferreri, *UNC System Mandates Health Insurance*, NEWS & OBSERVER, Aug. 23, 2009, <http://www.newsobserver.com/2009/08/23/68716/unc-system-mandates-health-insurance.html>.

17. N.C. ST. STUDENT HEALTH CTR., *supra* note 15

SHIP.¹⁸ Students could opt out of SHIP by demonstrating creditable health insurance coverage by being a dependent on a parent's health insurance plan, having an employer's health insurance plan, or having an individual plan coverage through another source.¹⁹

As a result of the passage of the ACA, the UNC SHIP monthly costs nearly doubled from the initial range of \$66 to \$77 in the 2011-2012 academic year to the new range of \$118 to \$133 in the 2012-2013 academic year.²⁰ The increase in monthly premiums came from various requirements of the law such as preventive services with no cost-sharing²¹ and the elimination of annual limits on essential health benefits.²² The increase in student health insurance costs, in addition to the increasing costs of higher education, has a detrimental effect on students. While this option serves as the cheaper alternative to a student getting insurance on their own, there are many arguments and counterarguments against rising student costs.

III: RISING STUDENT COSTS

The University of North Carolina System was created "to improve the quality of education, to extend its benefits, and to encourage an economical use of the State's resources . . . dedicated to the service of North Carolina and its people. . . . The university shall seek an efficient use of available resources to ensure the highest quality in its service to the citizens of the State."²³ In recent years, in-state tuition rates have risen around 8% on a yearly basis.²⁴ For example, the cost of in-state tuition was raised \$465 on average at the sixteen UNC campuses from \$5,382 in the 2011-2012 to \$5,847 in the 2012-2013 academic year.²⁵ The rising increase of tuition rates are due to various factors such as the availability of State general fund revenue, changes in various price and income indices, and the analysis of the impact on tuition and fee changes on student access.²⁶ In addition to tuition rates, each campus has additional fees assessed to students to pro-

18. *Id.*

19. *Mandatory Health Insurance*, UNIV. OF N.C. CAMPUS HEALTH SERVICES, <http://campushealth.unc.edu/general-info/feature-stories/mandatory-health-insurance.html> (last visited June 15, 2014).

20. Letter from Tom W. Ross, Pres., Univ. of N.C., to Univ. of N.C. Bd. of Governors (Apr. 24, 2012).

21. Cost-sharing is the share of costs covered by your insurance that you pay out of your own pocket such as deductibles, coinsurance, and copayments.

22. BLUE CROSS BLUE SHIELD OF N.C., *supra* note 7.

23. N.C. GEN. STAT. § 116-1(a)-(b) (2013).

24. Dow, *supra* note 6, at 155.

25. *Id.*

26. Establishing Tuition and Fees, UNC Policy Manual § 1000.1.1 (2007).

vide services in addition to education in the areas of athletics, health services, student activity, and educational and technology fees.²⁷

The nearly doubled increase in the UNC System Health Insurance Plan was a result of the ACA finalized rules and regulations approved on March 21, 2012.²⁸ In the final regulation, the annual dollar limits on essential health benefits could not be less than \$500,000 for policy years beginning on or after September 23, 2012, but before January 1, 2014.²⁹ For policy years beginning on or after January 1, 2014, the coverage must comply with the annual dollar limit requirements in 45 C.F.R. § 147.126, which prohibits lifetime limits.³⁰ Additionally, the student health plans were subject to the Medical Loss Ratio (“MLR”)³¹ rule in 2013.³² The PHS Act requires insurers to ensure that 80% of premiums are spent on clinical services and quality improvement activities.³³

With the rising cost of tuition, fees, and the UNC System Health Insurance Plan, students are feeling the pinch for the cost of higher education. While data for financial aid is a year behind, the average financial aid received per student recipient in the 2010-2011 academic year was \$12,069.³⁴ In the 2011-2012 academic year, the average financial aid received per student was \$12,118, an increase of \$49 per student from the previous academic year.³⁵ Financial aid data for the 2012-2013 academic year is expected to be released in August 2014. Based on the new costs of the UNC System Health Insurance Plan, the amount of financial aid received per student recipient should be expected to rise.

The Federal Reserve Bank of New York estimated in 2012 that the outstanding student loan balance was around \$870 billion, surpassing the total credit card balance of \$693 billion and the total auto loan balance of \$730 billion of all Americans.³⁶ With such a high amount of student loan debt

27. *Id.*

28. Student Health Insurance Coverage, 77 Fed. Reg. 16453 (Mar. 21, 2012) (to be codified at 45 C.F.R. pt. 144, 147, 158).

29. *Id.* at 16468.

30. *Id.* See 45 C.F.R. § 147.126 (2010).

31. Medical Loss Ratio is a financial measurement used in the ACA to encourage health plans to provide value to enrollees.

32. Student Health Insurance Coverage, 77 Fed. Reg. at 16469.

33. *Update: Student Health Insurance Coverage Final Rule*, HEALTHREFORMGPS (Aug. 22, 2012), <http://www.healthreformgps.org/resources/update-student-health-insurance-coverage-final-rule/>.

34. Daphne Dow, Statistical Abstract of Higher Education in North Carolina, 2011-12 147 (Univ. of N.C. ed., 2012).

35. Dow, *supra* note 6, at 206.

36. Meta Brown, Andrew Haughwout, Donghoon Lee, Maricar Mabutas, & Wilbert van der Klaauw, *Grading Student Loans*, FED. RES. BANK OF N.Y. (Mar. 5, 2012, 7:00 AM), <http://libertystreeteconomics.newyorkfed.org/2012/03/grading-student-loans.html#.U6BY7JRdVv8>.

across America, delinquency rates are rising.³⁷ In 2004, the 90+ days delinquency rate on student loans was approximately 9%.³⁸ In 2012, the delinquency rate increased to 17%.³⁹ Student loan delinquency reduces a borrower's ability to secure other types of credit.⁴⁰ By keeping postsecondary education costs low, students are less likely to default on their loans, thus the federal government would not have to expend more resources to recuperate federal financial aid money.

IV: MAINTAINING LOW INSURANCE COSTS

Young adults typically help keep plans viable and affordable because of their relatively, healthy lifestyle.⁴¹ However, accidents do happen to everybody. Health insurance coverage protects individuals and family members from potential high medical care costs.⁴² Prior to the mandate by the UNC BOG, Mary Covington, former campus health services director at the University of North Carolina at Chapel-Hill ("UNC") recalled a student who had appendicitis but refused surgery because she had no insurance.⁴³ The appendix ended up rupturing and the student was hospitalized with complications.⁴⁴ With the lower cost of health insurance than that which is offered through the Health Insurance Marketplace, students are able to afford a health care plan that better fits their limited needs. Students should not have to worry about the high costs associated with medical care with the mandate of health insurance.

Additionally, the ACA mandates a health insurance issuer offer group or individual health insurance coverage that provides dependent coverage of children until the child turns 26 years of age.⁴⁵ Students can remain on their parents' plan even if they are married, not living with their parents, not financially dependent on their parents, or eligible to enroll in their employer's plan.⁴⁶ With the ability for college students under the age of 26 to re-

37. Donghoon Lee, *Household Debt and Credit: Student Debt*, FED. RES. BANK OF N.Y. (2013), <http://www.newyorkfed.org/newsevents/mediaadvisory/2013/Lee022813.pdf>.

38. *Id.*

39. *Id.*

40. *Id.*

41. T.R. Goldman, *Health Policy Brief: Young Adults and the Affordable Care Act*, HEALTH AFF. (Dec. 16, 2013), http://www.healthaffairs.org/healthpolicybriefs/brief.php?brief_id=105pdf.

42. *Why Should I Have Health Coverage?*, HEALTHCARE.GOV, <https://www.healthcare.gov/why-should-i-have-health-coverage/> (last visited June 15, 2014).

43. Ferreri, *supra* note 16.

44. *Id.*

45. 42 U.S.C.S. § 300gg-14 (LexisNexis 2010).

46. *Can Children Stay on a Parent's Plan Until Age 26?*, HEALTHCARE.GOV, <https://www.healthcare.gov/can-i-keep-my-child-on-my-insurance-until-age-26/> (last visited June 15, 2014).

main under their parents' coverage, the cost of health insurance on the student can be passed onto the parents instead of the student.

While costs have risen due to the ACA, the UNC System Health Insurance Plan works as a consortium amongst the sixteen campuses to bring leverage for the purchasing power of the system and provide a core set of base benefits for all campuses.⁴⁷ When the individual campuses in the UNC System bargained for insurance on their own, the costs and level of coverage varied.⁴⁸ Prior to the UNC System mandate, North Carolina State University ("NC State") did not require health insurance.⁴⁹ Students at NC State could purchase the voluntary insurance plan for \$1,161 annually with a maximum benefit of \$100,000.⁵⁰ With the enactment of the ACA and the UNC System mandate, students currently pay \$1,376 annually with no maximum benefit.⁵¹

In order to lower costs for student health insurance coverage, there have been several arguments made. Insurers objected to the MLR set at an 80% loss ratio.⁵² Based on past operational costs, insurers calculated their MLRs between 65% and 82% due to unique administrative costs due to the transient nature of the student population, leading to high turnover, more frequent enrollment periods, operation and administration of student waiver programs, and special billing centers.⁵³ Several insurers recommended creating a special MLR for student coverage that consisted of an MLR between 70% to 75%.⁵⁴ The Centers for Medicare and Medicaid Services ("CMS") within the Department of Health and Human Services responded to the lowered MLR ratio by stating that insurers could gain efficiencies within their operations to help lower administrative costs.⁵⁵

Insurers also suggested the aggregation of student health insurance coverage at a national level as their own pool for the MLR.⁵⁶ The ACA requires that insurers provide a rebate based on revenue.⁵⁷ CMS requires that each insurance issuer must aggregate data by each state for reporting reasons.⁵⁸

47. Letter from Tom W. Ross, Pres., Univ. of N.C., to Univ. of N.C. Bd. of Governors (Apr. 24, 2012).

48. *Id.*

49. Ferreri, *supra* note 16.

50. *Id.*

51. *Benefit Highlights for NC State University Student*, BLUE CROSS BLUE SHIELD OF N.C. (Aug. 1, 2013), <https://www.bcbsnc.com/assets/studentblue/pdfs/NCSU%202013-2014%20Medical%20Benefit%20Summary.pdf>.

52. Student Health Insurance Coverage, *supra* note 28 at 16458.

53. *Id.*

54. *Id.*

55. *Id.* at 16459.

56. *Id.* at 16458.

57. 42 U.S.C.S. § 300gg-18(b)(1)(A) (LEXISNEXIS 2014).

58. Aggregate Reporting, 45 C.F.R. § 158.120(a) (2012).

Within each report, data must be aggregated separately for the large group market, the small group market, and the individual market.⁵⁹ The CMS approved a regulation that allows for student coverage to be reported separately from other individual market coverage as well as the national aggregation of student health insurance coverage.⁶⁰

V. CONCLUSION

The aim of the Patient Protection and Affordable Care Act was “to increase the number of Americans covered by health insurance and decrease the cost of health care.”⁶¹ While the UNC System Health Insurance Plan saw the number of students covered by health insurance increase when the UNC Board of Governors mandated health insurance, the cost of health care nearly doubled. The plan needed to ensure premiums covered the new regulations promulgated by the U.S. Department of Health and Human Services.

The cost of postsecondary education grows on a yearly basis in the State of North Carolina due to the State legislature continuing to strip funding away with budget cuts.⁶² In addition to higher costs in education, students are getting hit with higher fees to support non-academic programs. With the increasing costs to attend postsecondary education, the UNC System Health Insurance Plan must make sure that students are getting the best possible care based on the premiums that students have to pay. Students should not continue to be forced to increase their student loan debt if the quality of their health care and education is not also being improved. .

59. *Id.*

60. Aggregate Reporting, 45 C.F.R. § 158.120(d)(5) (2012).

61. Nat’l Fed’n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2580 (2012).

62. Jane Stancill, Ross Wants UNC Hikes to Stay Below 10%, NEWS & OBSERVER (Raleigh), Jan. 13, 2012, http://www.newsobserver.com/2012/01/13/1774351_ross-wants-unc-hikes-to-stay-below.html?rh=1.