

**LAW OFFICE**  
**RUTHANN P. LACEY, P.C.**  
*Concentrating in Elder and Special Needs Law*

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**3541-E Habersham at Northlake  
Tucker, Georgia 30084**

**Telephone: (770) 939-4616 • Facsimile: (770) 939-1758  
[www.elderlaw-lacey.com](http://www.elderlaw-lacey.com)**

### **The Affordable Care Act**

The Affordable Care Act ("ACA"), commonly referred to as "Obamacare," became law on March 23, 2010. This change in the health care market is affecting some families and individuals under 65 years of age, some of whom have a disability. The goals of the ACA are to make health insurance more accessible, more affordable, and more comprehensive with the hope that doing so will bend the healthcare cost curve down and allow more people to obtain health insurance coverage.

#### **Accessibility**

Prior to the ACA pre-existing conditions often prevented individuals with disabilities from purchasing health insurance in the private market. It was not uncommon for individuals to be denied coverage because of their pre-existing condition or to lose their coverage because of an injury or newly acquired condition. The ACA addresses this issue by preventing health insurance companies from denying coverage based on an individual's medical history. Health insurance companies are also no longer be able to deny coverage, charge higher premiums, or exclude certain benefits because of a pre-existing condition or newly acquired condition. Further, children can now remain insured under their parent's health insurance policy until they reach age 26. The ACA also prevents health insurance companies from imposing annual and lifetime limits on most benefits.

#### **Affordability**

Health insurance companies can also no longer charge higher premiums or exclude certain benefits because of a pre-existing condition or newly acquired condition. The law also establishes a "marketplace" exchange where people can shop different plans and compare prices - adding more transparency to the system. Tax credits are available for low income individuals, though the credit may need to be repaid if the individual's annual income exceeds certain limits.

The law requires health insurance companies to disclose and justify premium

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increases and limits the amount the insurers can spend on administration. It also places limits on out of pocket expenses, while requiring that certain preventative services be provided without charging a co-payment, coinsurance, or deductible.

The ACA also seeks to expand the state run Medicaid programs to provide coverage for low income individuals. Georgia has elected not to expand its Medicaid program and is not participating in the expanded Medicaid coverage.

### **Coverage**

The stated objective of the ACA is to provide minimum levels of coverage across all health insurance plans. These "essential health benefits" include ambulatory patient services, emergency services, hospitalization, laboratory services, maternity and newborn care, mental health services and addiction treatment, rehabilitative services and devices, pediatric services, prescription drugs, and preventive and wellness services and chronic disease treatment.

### **Special Needs Trust Planning**

With the prospect of private health insurance being more affordable and accessible, the question is raised whether it is still important to engage in Special Needs Trust planning. While the ACA has promised to make coverage more accessible for individuals with disabilities, it is still important to look at each individual situation and the options available in assessing whether planning to maintain public benefits is appropriate.

While some of the barriers to coverage have been removed, the monthly premiums may still be expensive. A change in medical needs, or a move to an area where the insurer doesn't provide services, can result in limited or no coverage. Also, health insurance is often just one component of planning for an individual with a disability. Monthly income from Supplemental Security Income, home health care, eligibility for benefits under programs like the NOW and COMP waivers, and other ancillary services through Medicaid often cannot be replaced and are not covered under private health insurance plans.

### **Conclusion**

The ACA allows many individuals with disabilities to purchase health insurance on the private market. However, the law does not make the need for a Special Needs Trust obsolete. Professional advice is necessary to weigh the pros and the cons of foregoing public benefits in favor of purchasing private health insurance.

