

IS YOUR FREE TIME REALLY FREE?

The Impact of Federal Health Care Regulation
on Motorcycling, Transportation and Recreation

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When they were denied health care coverage by some employer-provided insurance plans, motorcyclists nationwide rallied and won protection from health insurance discrimination in a 1996 law. Through that law and subsequent rules, the Federal Government assures coverage to motorcycle riders, at no extra premium compared to coworkers who prefer four-wheeled travel. There is a catch, however: workers who drive home in a four-wheeled vehicle and have an accident could win injury benefits, while coworkers who ride home on motorcycles and meet the same fate could be denied benefits for their injuries – and win nothing more than financial ruin and bankruptcy.

The following research takes a close look at the cost of free time – and an even closer look at a complex law that protects millions of Americans, while somehow leaving millions of other Americans unprotected and in jeopardy.

NON-DISCRIMINATORY DISCRIMINATION: THE BACKGROUND ON HIPAA

After years of lobbying by motorcyclists and other interest groups, the Congress passed and President Bill Clinton signed the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Following the August 21, 1996, signing ceremony, the Clinton administration took almost five more years to issue the 43-page “Interim Final Rules for Nondiscrimination in Health Coverage in the Group Market” on January 8, 2001. Unfortunately, for motorcyclists, the rules were not worth the wait.

HIPAA “is intended to ensure, among other things, that individuals are not excluded from health care coverage due to their participation in activities such as motorcycling, snowmobiling, all-terrain vehicle riding, horseback riding, skiing and other similar activities.”¹ In addition to listing motorcycle riding along with decidedly recreational pursuits, the Act refers to motorcy-

cling as a recreational activity in several different places.

Although HIPAA ensures coverage for persons who participate in the listed activities, it does not ensure benefits. The rules make this distinction even more clearly – and for motorcyclists, much worse. Under the section titled, “Source-of-injury restrictions,” the rules provide that, “a plan can nonetheless exclude benefits for injuries because they were sustained in connection with various recreational activities if the accident did not result from any medical condition (or from domestic violence).”² These recreational activities for which benefits can be denied include the very activities listed above, although examples of permissible exclusions include “any injury sustained while participating in any of a number of recreational activities, including bungee jumping.”³

In short, this means that motorcycle riders are covered, at no extra cost, but the new rules give group health plan providers a new tool in their cost-cutting toolbox. They can deny accidental injury benefits to employees who ride to work, while assuring those same benefits to employees who drive.

HIPAA was expected to close the door on health care discrimination against motorcyclists. During a Senate debate in 1996, Senators Carol Moseley-Braun (D-IL) and Nancy Kassebaum (R-KS) clarified the Congressional intent of this important non-discrimination language. Senator Moseley-Braun stated, “As I understand it, this formulation is intended to ensure that, among other things, participants and beneficiaries are not excluded from health care coverage because they participate in activities such as motorcycling, skiing, horseback riding, snowmobiling, all-terrain vehicle riding, or other similar kinds of activities.” Senator Kassebaum replied, “The Senator from

Illinois is correct⁴ . . . Clearly these Americans deserve to know that when they are sick or injured, they will get the medical attention that they need when they need it, without having to worry about losing their homes, savings, and financial security.”⁵

According to Tom Wyld, Vice President of Government Relations for the Motorcycle Riders Foundation, “That language and that understanding became law in 1996 when 421 Congressmen and 98 U.S. Senators voted to pass HIPAA. The regulators who wrote the rules on HIPAA, however, narrowly interpreted the word ‘participation’ in a way that legalizes denial of health benefits to motorcyclists who sustain an injury while riding. That narrow interpretation is wrong and directly contrary to Congressional intent.”⁶

Interestingly, the narrowness of the rule was no surprise to federal health care regulators. In an interview with the Atlanta Business Chronicle, Don McCloud, a Health Care Financing Administration spokesperson, stated that, “This is nothing new. Group health plans always could exclude certain coverage. That right now has been written into regulations.”⁷

True to form, the combined grassroots efforts of many motorcyclists’ rights organizations took active measures to indefinitely suspend the implementation of the proposed HIPAA rules. The American Motorcyclist Association, ABATE of Wisconsin, and the Motorcycle Riders Foundation worked with Congressman Mark Green (R-WI) to draft a “letter to help rescue employer-provided health care for motorcyclists,” which was signed by more than 50 United States Congressmen, and sent to Health and Human Services Secretary Tommy Thompson (who is himself an avid motorcyclist) on April 9, 2001.⁸ In addition, on April 24, 2001, in response to the efforts of ABATE of Illinois and the Motorcycle Riders Foundation, a letter was drafted by Congressman Philip Crane (R-IL) and signed by all 20 Illinois Congressmen, including Speaker of the House Dennis Hastert (R), and forwarded to Secretary Thompson. Unfortunately, after an exhaustive review by Secretary Thompson and his staff, no legal justification could be found to disallow the rule.

HIPAA, it turns out, was intended to offer

greater coverage protections in lieu of federally mandated benefits. The larger issue that loomed in Congress at the time was whether mandated benefits would increase the cost of insurance premiums, and whether that increase would also increase the number of uninsured Americans. As evidenced throughout the Congressional record, Congress voted to extend coverage, not mandate benefits. In fact, a brochure on the Act, quoted in a Congressional Research Service Report dated June 4, 1998, asked the question, “Does a Group Health Plan Have to Provide Any Specific Benefits?” The answer in the brochure is, “No, the Act does not require an employer or issuer of group health insurance to offer any specific benefits.”

HIGHWAY MOTORCYCLING: RECREATION OR TRANSPORTATION?

How did highway motorcycling end up on HIPAA’s diverse list of “recreational activities?” More than likely, it was included because off-road motorcycling can be considered a recreational activity, and most SMROs and some other organizations such as the AMA that were fighting for this important legislation at the time represent members who ride both off-road motorcycles and highway motorcycles. HIPAA, with the intent that these organizations fought for so vigorously, was seen as an opportunity to protect all motorcyclists.

However, when HIPAA was written (or, more precisely, amended) to protect “motorcycling . . . horseback riding . . . and similar activities,” did anyone ask what made highway motorcyclists and equestrians “similar”? From the insurer’s standpoint, would the actuarial tables of one group all but condemn another? When you ride your motorcycle in lieu of driving a car or truck, are you participating in a recreational activity, or are you utilizing an alternate, legitimate form of transportation?

At least one federal agency avoids this muddled view. No friend of motorcyclists, the Environmental Protection Agency views the highway motorcycle as transport. In its “Advance Notice of Proposed Rulemaking (ANPRM) for the Control of Emissions from Non-road Large Spark

Ignition Engines, Recreational Engines (Marine and Land-Based), and Highway Motorcycles,” the EPA doesn’t seem to think that highway motorcycles are recreational vehicles. Highway motorcycles are not included in the section dealing with recreational engines (where off-highway motorcycles are discussed). Street bikes are listed separately.

Recreation may be fun, but it is taken seriously in state law. An Illinois Statute specifically defines hazardous recreational activities. It includes an extensive list of such activities including “off-road motorcycling,” but highway motorcycling is not mentioned.⁹ If a legislative remedy to HIPAA emerges, perhaps street motorcyclists and their champions on Capitol Hill should be quick to offer a clarifying amendment to make it clear that riding a highway motorcycle is not a recreational activity.

But let’s suppose that highway motorcycling is as much a part of our lifestyle as our transportation plan for living. How important is lifestyle, the pursuit of happiness, and just plain free time? According to researchers, plenty important.

HOW DO YOU SPEND YOUR FREE TIME?

The Declaration of Independence guarantees us, as Americans “ . . . that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness . . .”¹⁰ So what does “the Pursuit of Happiness” mean to most of us? Does it include the right to spend our free time in any legal manner we choose? According to Aristotle, “happiness depends on leisure.”¹¹ But how free is our free time?

DEFINITIONS

Free Time. Time study researchers John Robinson and Geoffrey Godbey define free time as “all activities considered less essential to daily survival . . . (people) can engage in activities that allow them maximum opportunities for choice, pleasure, and personal expression.”¹²

Leisure. The dictionary definition of leisure is, “use of free time for enjoyment . . . opportunity afforded by free time to do something . . .”¹³ Geoffrey Godbey, a professor of leisure

studies at Penn State University, defines leisure as “the absence of the necessity of being occupied.”¹⁴ Sebastian DeGrazia describes leisure time as “a ‘state of being’ in which one is free to do whatever he or she wants to do”¹⁵ or “the state of being free of everyday necessity.”¹⁶

Recreation. Recreation can be defined as, “activity done for enjoyment when one is not working . . .”¹⁷ DeGrazia defines recreation as, “activity that rests men from work, often by giving them a change (distraction, diversion), and restores (re-creates) them for work . . . our own conception of leisure is mainly recreative.”¹⁸ According to Robinson and Godbey, in their book entitled, *Time for Life: The Surprising Ways Americans Use Their Time*, “The goal of our free time . . . has become ‘recreation’ . . .”¹⁹

TRENDS IN FREE TIME AND LEISURE/ RECREATIONAL ACTIVITIES

Robinson and Godbey did an extensive study of how Americans spend their time over a period of three decades, which is summarized in their book entitled, *Time for Life – The Surprising Ways Americans Use Their Time*. The table below identifies the three major categories in which Americans spend their time.

Time Used in Hours Per Week

Year	Gender	Productive Activity	Free Time	Personal Care
1965	Men	59.1	35.7	73.2
	Women	34.0	59.4	74.6
	Total	*	34.8	*
1975	Men	53.7	39.2	75.0
	Women	52.3	38.4	77.2
	Total	*	38.7	*
1985	Men	53.1	40.4	74.5
	Women	53.2	38.9	75.8
	Total	*	39.6	*

*Figures not provided.

The data above show that there has been a steady increase over the years in the number of hours per week Americans dedicate to free time.

Using the figures listed for 1985 (expressed as a percentage), Americans spend approximately 24% of their time participating in free time, leisure, and recreational activities. And if you subtract the number of hours per week that Americans spend on personal care (which includes sleeping, eating, and grooming), men spend 43% and women spend 42% of the remainder of their time participating in free time, leisure, and recreational activities.

The health care impact is extraordinary: this means that, under HIPAA, you can potentially be denied health insurance benefits for approximately 40% of your waking hours.

MEDICARE: NO CARE FOR INJURED RIDERS?

Robinson and Godbey also looked at age differences in time use. Their figures (hours per week) for 1985 are as follows:²³

Time Use in Hours Per Week, by Age Group

Gender, Age	Productive Activity	Free Time	Personal Care
Men, 18-24	39.6	50.5	77.0
Women, 18-24	44.3	44.0	77.9
Men, 25-54	55.7	37.8	73.6
Women, 25-54	55.2	36.0	75.3
Men, 55-64	43.3	44.7	78.2
Women, 55-64	45.9	43.0	77.3
Men, 65+	30.6	53.2	82.8
Women, 65+	35.5	47.9	82.6

As you can see, the largest number of hours spent participating in free time, leisure, and recreational activities (for both men and women) occur in the 65+ age group. Regulated by the Federal Government, although not through HIPAA, MEDICARE is the sole source of insurance for millions of Americans aged 65 and older. Although not yet confirmed in writing at press time, indications are that MEDICARE does not cover motorcycle accidents. The MEDICARE website has no specific exclusion for motorcycle accidents, but a telephone inquiry with a MEDICARE claims

adjuster revealed that MEDICARE does not, in fact, cover motorcycle accidents. Asked how the system would respond if MEDICARE-covered individuals had no private supplemental insurance or the private policy limits were exceeded, the adjuster said that injuries sustained in a motorcycle accident still would not be covered.

Not all private supplemental insurance covers the treatment of injuries or illnesses outside the MEDICARE window. AARP, one of the largest MEDICARE supplement insurers in the country, reported that their MEDICARE supplemental policy pays only the portion that MEDICARE does not cover for MEDICARE-approved medical expenses. In other words, if MEDICARE does not cover injuries incurred in a motorcycle accident, AARP's MEDICARE supplement insurance would not help the injured rider who carries both MEDICARE and the AARP supplemental policy.

Asked for the motorcycle exclusion in writing, the MEDICARE claims adjuster explained that an exclusion in writing was not available. "It's just a well-known fact," the adjuster explained, adding that MEDICARE covers illnesses, and individuals should obtain supplemental insurance to cover them for accidental injuries. Evidently, many do. According to the National Center for Health Statistics, 69.6% of Americans over age 65 have supplemental private insurance in addition to MEDICARE. In that group, however, are motorcyclists who have yet to ask their private supplemental insurance providers whether their policy covers anything more than MEDICARE-covered illnesses. It may be that motorcyclists have health insurance in greater numbers than any other road user group and, through no fault of their own, have, in those same policies, coverage that is worthless in an accident.

HIPAA, TRANSPORTATION AND LEISURE: THE HIGH COST OF FREE TIME Methodology

In Spring 2001, I led a survey research project at Southern Illinois University Carbondale to gauge the possible effects of HIPAA.²⁴ A research questionnaire was distributed to 60 people at different locations to get a mix of individuals with regard to age, gender, and participation in mo-

motorcycling and the recreational activities described in HIPAA.

The Sample Group

The age range of our sample was 14 years to 65 years, with 26 females and 34 males. Fifty-four of the 60 respondents are registered voters in the United States. Out of the 60 respondents, 4 reported paying for all of their health insurance out of their own pockets; 38 reported paying for only a portion of their health insurance coverage while someone else pays the rest; someone else reportedly pays for 17 of the respondents' health insurance coverage entirely; and one respondent reported not having any health insurance at all.

Participation

When asked about whether or not they had participated in any of the five activities listed in HIPAA in the past two years, the respondents answered that they have participated in these activities as follows: ATV riding – 29 participants; horseback riding – 17 participants; motorcycling – 35 participants; skiing – 8 participants; and snowmobiling – 5 participants.

Results

Our first hypothesis was that people faced with an increase in governmental restrictions on health insurance coverage for motorcycling and the recreational activities listed in HIPAA would decrease their participation in those activities. Below is the survey question that related to this hypothesis and a summary of the responses received. For purposes of this summary, I have removed the data for the respondents who have not participated in these activities in the past two years.

If your health insurance coverage did not pay for injuries incurred in the following activities, how would your level of participation in that activity be affected? Please mark one response for each of the five categories listed (see table at bottom).

The results indicated overwhelmingly that participants would not significantly decrease their participation in these activities, even if their

health insurance coverage did not pay for injuries sustained during participation.

Second, we hypothesized that participants in these activities would be less likely to seek medical attention for injuries incurred if those injuries were not covered by their health insurance. Seventy percent of the respondents stated that they would be very likely to seek medical attention for a slight injury incurred while participating in one of these activities (defined as a deep cut, sprain, or potential broken bone) if their health insurance covered that injury. However, only 41.7% of the respondents stated that they would seek that same medical treatment if the injury was not covered by their health insurance.

Our third and final hypothesis was that people who were injured in one of the activities excluded from health insurance coverage would be more likely to falsify the circumstances of the injury:

If you incurred a slight injury (such as a deep cut, sprain, or potential broken bone) and sought professional medical treatment as a result of your participation in one of the five activities listed above, and your health insurance covered you for those types of injuries in general, but did not cover injuries sustained while participating in such an activity, which of the following would you most likely do:

- 33.9% Intentionally report to the medical personnel treating you that you sustained that injury while participating in some activity other than the five listed previously.
- 16.9% Consider misleading the medical personnel treating you that you sustained that the injury while participating in some activity other than the five listed previously, depending on the potential cost of the treatment you would receive.
- 40.7% Truthfully report the source of your injury to the medical personnel treating you.
- 8.5% Not seek professional medical attention at all.

According to our findings, almost 60% of the respondents of our research questionnaire would either intentionally mislead or consider misleading medical personnel about the source of their injuries, or they would not seek professional medical attention at all.

Conclusions of Survey Research

Obviously the results of this study cannot be generalized to the entire American population. The sample size was very small, and it was not randomly selected. However, it is interesting to note that, although it appears that participants in the activities excluded from coverage under HIPAA would not reduce their participation in those activities, it also appears that they would be less likely to seek medical treatment if they sustained a slight injury while participating in those activities. This practice could lead to further complications of those injuries, as well as the potential for increased medical expenses, due to lack of timely treatment. It also appears that, even if the participants did seek medical treatment, over half of them would either intentionally lie or consider misleading the medical personnel treating them for those injuries regarding the source of the injuries.

Most of the critics we face on motorcycling issues argue that injured riders are burdens on society. With respect to this social burden theory, a study was conducted by the University of North Carolina Highway Safety Research Center in 1992, which revealed the following: "1. Motorcyclists admitted to trauma centers for treatment of crash-related injuries were just as likely as other road trauma cases to be medically insured, and considerably better insured than non-road cases. 2. Motorcyclists had the highest insurance payment rate of all groups. 3. Motorcyclists rely on MEDICARE and Medicaid considerably less than any other group. 4. Motorcyclists had a higher rate of self-paying than any other group. 5. Motorcyclists' average medical costs were less than other road trauma cases."²⁵

If participants in motorcycling and recreational activities that could lead to injuries would not reduce their participation in those activities,

and their health insurance no longer covered those injuries, who would pay the medical expenses related to those injuries? If health insurance coverage for injuries incurred while participating in motorcycling and recreational activities is taken away, but the number of injuries is not reduced, it seems that the burden on society would increase, not decrease. This sounds very much like a self-fulfilling prophecy on the part of critics, many of whom are insurers or insurance foundations (e.g., the Insurance Institute for Highway Safety). Convinced that we are a social burden, they are going to make sure we remain so by denying insurance benefits and complicating our ability to pay for our medical treatment.

HOW MIGHT HIPAA AFFECT YOU AS AN INDIVIDUAL?

The full effects of HIPAA will take many years to unfold. HIPAA affects only group health plans (also called employer-provided health care). We have already examined the unique situation faced by MEDICARE beneficiaries. Millions more Americans have insurance policies regulated almost exclusively by the state. So, how HIPAA will affect you in the near future depends on a number of factors:

- It will depend on your individual state's health insurance laws, since benefits are largely mandated by each state and not at the federal level. Generally, if a benefit exclusion is permitted by the Federal Government but disallowed by the state, the state generally prevails. Your SMRO should already be looking into your state's health insurance laws to make sure that you are covered and to advance benefits that help motorcyclists, while the parallel effort to advance your health care benefits continues at the federal level.

- It will depend on whether or not you are a participant of a group health insurance plan, and whether or not your insurance carrier and/or employer decides to take advantage of the language in HIPAA. There are ways for employees to work with their employers to secure benefits. Keep in mind that HIPAA does not require insurers to exclude benefits; it merely allows them to do so. It is up to you as an individual to monitor

your group health insurance coverage to see whether or not an exclusion exists, and to negotiate with your employer to make sure that injuries incurred while motorcycling or participating in recreational activities are covered.

• Most of all, the effect that HIPAA will have on you and your family will depend on your perseverance in the fight to rescue your health care benefits, and the continued grassroots efforts that have become the trademark of motorcyclists' rights organizations. There has never been a better time to "Ride with the Leaders"™ – and there has never been a more important time to increase the membership and clout of the MRF and the state motorcyclists' rights organizations that will secure our benefits long into the future.

(Footnotes)

- 1 Interim Final Rules for Nondiscrimination in Health Coverage in the Group Market. Federal Register, Vol. 66, No. 5, 8 January 2001, 1379.
- 2 Ibid, 1381.
- 3 Ibid, 1399.
- 4 Response of the American Motorcyclist Association to regulations written for the Health Insurance Portability and Accountability Act (HIPAA) of 1996, 16 March 2001.
- 5 Response of ABATE of Illinois to regulations written for the Health Insurance Portability and Accountability Act (HIPAA) of 1996, 4 March 2001.
- 6 Wyld, Thomas C., 01NR11 – End the discrimination in health care! 28 March 2001.
- 7 Bryant, Julie, "Health rules throw horse lovers," Atlanta Business Chronicle, 13 April 2001, 1-5.
- 8 Wyld, Thomas C., Effort to rescue riders' health care moves ahead! 9 April 2001.
- 9 Illinois Compiled Statutes. Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/3-109).
- 10 Second Continental Congress. The Declaration of Independence, 4 July 1776.
- 11 Mullen S. Millennium changes definition of 'leisure.' USA Today, 27 May 1999.
- 12 Robinson, John P., and Geoffrey Godbey. Time for Life: The Surprising Ways Americans Use Their Time. University Park: The Pennsylvania State University, 1997, 123.
- 13 The New Oxford Dictionary of English. Oxford University Press, 1998.
- 14 Mullen S. Millennium changes definition of 'leisure.' USA Today, 27 May 1999.
- 15 Ibid.
- 16 DeGrazia, Sebastian., Of Time Work and Leisure. Hartford: Connecticut Printers, Inc., 1962, 246.
- 17 The New Oxford Dictionary of English. Oxford University Press, 1998.
- 18 DeGrazia, Sebastian. Of Time Work and Leisure. Hartford: Connecticut Printers, Inc., 1962, 246.
- 19 Robinson, John P., and Geoffrey Godbey. Time for Life: The Surprising Ways Americans Use Their Time. University Park: The Pennsylvania State University, 1997, 124.
- 20 Ibid, 108. (For purposes of this study, productive activity includes paid work, work commute, housework, parental childcare, and shopping.)
- 21 Ibid, 126. (For purposes of this study, free time includes education, religion, organizations, events, visiting, sports, hobbies, communication, TV, reading, and stereo.)
- 22 Ibid, 112. (For purposes of this study, personal care includes sleeping, eating, grooming, etc.)
- 23 Ibid, 1997, 207.
- 24 Kempfer, Jeremy and Teri Stobbs. Possible effects of the proposed rules for the Health Insurance Portability and Accountability Act of 1996 (HIPAA). 30 April 2001.
- 25 Zimmer, Steve. "Without helmet laws, who pays?" The MRF White Papers 7, 9-10.