

Obamacare Compromises Privacy

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The 1974 Privacy Act governs the collection, maintenance, use and dissemination of personal information maintained by federal agencies.

It prohibits disclosing it without written consent, stating:

“No (federal) agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.”

Exceptions include:

- the Census Bureau and Labor Department for statistical purposes;
- “routine” internal federal agency usage;
- archives for a historical record;
- law enforcement;
- congressional investigations; and
- other administrative purposes.

All federal agencies must prevent unauthorized release of personal records.

To protect privacy and other civil liberties when requesting information, they must cite the statutory or presidential executive order “authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary.”

The 2002 Federal Information Security Management Act (FISMA) requires administration officials to insure Americans’ personal records are adequately protected from misuse and security breaches.

Privacy rights no longer exist. Big Brother rules changed things. NSA operates its way. So do the CIA, FBI and other US spy agencies.

They egregiously violate privacy. Their rules alone apply. Obamacare has its own. More on that below.

Days after launching insurance marketplaces, federal officials acknowledged serious online design and software flaws. On day one, most exchange web sites crashed.

Major changes are required. Greater server capacity is needed. Washington runs online marketplaces for 36 states. Fourteen others have their own systems. They've had mixed performance.

Overall, relatively few Americans so far enrolled. Most others trying failed. Washington won't say how many succeeded. Obama urged patience. It's wearing thin.

A Virginian resident said he tried a dozen or more times to log in. Web site errors prevented each attempt. A federal hotline representative couldn't help.

A system designed to determine eligibility for federal subsidies or Medicaid isn't working properly. It's rejecting some qualified households. It's accepting others that don't.

Considerable time and expense are needed to fix things. It remains to be seen how efforts progress. Obamacare's inauspicious October 1 launch suggests more trouble ahead.

Much already exists in other ways. Previous articles discussed lots of rude awakenings enrollees can expect. Marketplaces offer a confusing array of plans.

Many leave consumers paying around 40% of costs out-of-pocket. They'll do so after spending thousands of dollars on premiums. They'll get much less than expected.

Obamacare rations it. Coverage afforded is full of holes. Underinsurance is the new normal. Potential consequences are financially and medically devastating.

Everyone must be covered. Anyone not is penalized. The IRS will automatically seize funds from personal bank accounts.

Millions unable to afford employer coverage are ineligible for federal aid.

Consumers will get all the healthcare they can pay for. Eligible low income households will get skimpy government help. Everyone's privacy will be violated. Don't expect Washington to explain.

Obamacare takes full advantage of the Privacy Act "routine use" exception. It permits personal information disclosure when used "for a purpose which is compatible with the purpose for which it is collected."

Invoking "routine use" lets Washington violate privacy rights. In January 2012, Obama proposed a Consumer Privacy Bill of Rights.

He urged Congress to pass appropriate legislation. He said "American consumers can't wait any longer for clear rules of the road that ensure their personal information is safe online."

He said one thing. His policies are polar opposite. It bears repeating. He governs by diktat authority. He heads a domestic police state apparatus. He permits lawless NSA spying.

He lets FBI, CIA and other federal agencies operate extrajudicially. His kill list decides who lives or dies. He violates privacy rights egregiously.

He's beholden solely to wealth, power and privilege. He spurns popular interests. He governs lawlessly. He does so with impunity.

In June 2013, a Government Accountability Office (GAO) report omitted mentioning how Obamacare breaches privacy. Failure to do so violates the public trust.

Enrollees must provide their name, street address, email address and password, Social Security number, private bank account information, employment details and more. Private medical history records will be maintained.

The ACLU said Obamacare violates sexual privacy rights. Information doctors obtain must be entered into an electronic database. Patient medical records should remain private.

Lawyer/client consultations are confidential. Why should doctor/patient ones be different?

Data collected may be shared with law enforcement and other federal agencies. Doing so violates Fifth Amendment rights. They include the right to remain silent. They protect against self-incrimination.

The Fourth Amendment prohibits "unreasonable searches."

In 1890, future Supreme Court Justice Louis D. Brandeis and attorney Samuel D. Warren wrote a landmark article titled "[The Right to Privacy](#)." The Harvard Law Review published it.

US jurist Harry Kalven called it the "most influential law review article of all." In *Kyllo v. United States* (2001), concurring and dissenting Supreme Court justices cited it in their ruling.

Subsequent privacy laws stemmed from what Brandeis and Warren wrote. They said:

"Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society."

"It is our purpose to consider whether the existing law affords a principle which can properly be invoked to protect the privacy of the individual; and, if it does, what the nature and extent of such protection is."

Brandeis and Warren said privacy rights should protect businesses and persons. Individuals are entitled to have their "thoughts, sentiments, emotions," diaries, letters and other personal information remain private.

Trust is breached when "facts relating to (a person's) private life" are made public. Long before today's technological advances they added:

"Now that modern devices afford abundant opportunities for the perpetration of such wrongs without any participation by the injured party, the protection granted by the law must be placed upon a broader foundation."

Throughout his Supreme Court tenure, Brandeis remained an uncompromising right to privacy advocate.

In his famous *Olmstead v. United States* dissent (1928), he called the "right to be let alone...the most comprehensive of rights, and the most valued by civilized men."

Modern tort law includes four privacy category invasions:

- (1) physical or electronic intrusion into one's private space;
- (2) disseminating personal information considered objectionable;
- (3) publishing or revealing facts placing individuals in a false light; and
- (4) unauthorized use of a person's name or likeness for ill-gotten gains or other purposes.

Personal privacy should be sacrosanct. No one should be allowed to intrude into the private space of others.

Although constitutional provisions don't specifically mention the word "privacy," legal limits prohibit violations.

The 9th Amendment forbids government from infringing on rights not explicitly mentioned in the Constitution.

The Supreme Court recognized 14th Amendment due process privacy protections. It did so by protecting a married couple's contraception rights (*Griswold v. Connecticut*, 1965).

It did by protecting abortion rights (*Roe v. Wade*, 1973). It did by upholding privacy rights of same sex couples (*Lawrence v. Texas*, 2003).

Article 1 of California's Constitution calls privacy an inalienable right. Other states have similar provisions.

Article 10 of Montana's Constitution states:

"The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest."

The US Constitution has 27 amendments. A 28th is long overdue. It should unequivocally guarantee privacy. It should do it in unambiguous terms.

It should prohibit government, business and other outside parties or interests from violating personal privacy spaces.

It should impose heavy penalties for doing so. It should protect inalienable rights so egregiously violated today. It should end these practices once and for all.

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