

Government by Accident: The Medicare Disclaimer

The Department of Health, Education, and Welfare has decided to seek repeal of a provision in the Medicare law requiring about 2 million aged citizens to state that they do not belong to any "Communist-action organization, Communist-front organization or Communist-infiltrated organization" before they can qualify for hospital-insurance benefits.

The fact that the disclaimer proviso remained unnoticed during years of microscopic congressional and public study of the Medicare legislation makes a nice problem for students of governmental processes to ponder. Its presence is a bureaucratic accident for which no one in Washington will take responsibility, and, though no one is certain exactly how it got there, its history appears to be something like this.

Origins

The 1961 version of Medicare, widely known as the King-Anderson bill, provided hospital insurance for the aged already receiving Social Security or Railroad Retirement benefits. The next year the proposal was broadened to extend hospital insurance to the 2 million or so citizens over 65 who, for a variety of reasons, are not eligible for Social Security or Railroad Retirement. Their coverage was to be financed through general revenues. At that time the congressional sponsors, including Senator Jacob Javits (R-N.Y.), turned to the legal staff of Congress for aid in drafting the complex bill, and the drafter, apparently on his own initiative, inserted the disclaimer, applicable only to the 2 million newcomers to the federal rolls. By 1963, when the Kennedy administration was preparing its own version of Medicare, the two Javits additions were taken over unchanged. There are two theories about the reason. One is that no one noticed the disclaimer at all. The other is that they noted it in an offhand way, and vaguely approved; at the time, similar disclaimers, many now eliminated, were found in a variety of federal programs, including the National Defense Education Act. In any event there was no congressional debate, and no official notice was taken. Once ensconced, the disclaimer remained in all subsequent versions of the bill. The situation seems to have been that the administration thought Congress wanted it and Congress thought the administration wanted it. And no one was looking for any more trouble on the Medicare bill.

The call for the disclaimer is sufficiently obscure that it could not be recognized by anyone lacking a well-thumbed copy of the original Social Security Act. It is based on a 1956 portion of that act, which denies Social Security benefits to individuals in the employ of any organization under a final order from the Subversive Activities Control Board (SACB) to register as a "Communist-action," "Communist-front," or "Communist-infiltrated" organization. The Medicare proviso took over the definitions but extended the ineligibility to members, not just employees. To enforce it, HEW placed the disclaimer (of the "I am not now and during the last year have not been a member of" variety)

in bold print at the bottom of its application forms for hospital insurance.

The requirement became generally known when a recipient of the HEW form complained to the American Civil Liberties Union (ACLU), which complained to HEW. The disclosure stirred up considerable criticism in the press around the country. The suggestion, made by the ACLU, that, for technical reasons, the provision did not have to be implemented found no supporters at HEW. But the department was plainly embarrassed and is now trying to repeal both the Medicare disclaimer and the original ban on Social Security for employees of Communist organizations. Several bills to that effect have also been introduced in the Congress. The Department has made it plain, however, that as long as the restriction is on the book it will be enforced.

How many organizations or individuals are being affected by the disclaimer is difficult to judge. The Social Security Administration believes that only eight organizations fit the description of being under an SACB registration order, and that only one of these, the Communist Party, still has an active existence. The other seven, it believes, are defunct. Other sources, however, have estimated the number of affected organizations to be as high as 20. And, while the actual number of such groups may not be high, the number of older people uncertain about some of their affiliations (a much larger number of groups has, after all, been labeled "Communist" by one propagandist or another), unwilling to risk a criminal charge for answering wrongly, or simply confused by the question may be substantial.

Economic Illogic

But the point, as critics of the disclaimer have noted, lies not in the numbers but in the principle. The ACLU stated, in a letter to Congress, "The effect of such provisions is to put on notice millions of elderly people that their receiving much needed government aid is conditioned on their giving up their right of freedom of association under the first amendment." There is also an economic illogic to the provision. As a Hartford, Connecticut, newspaper editorialized, "If even a convinced and zealous Communist in his old age and poverty needs hospitalization, are we to let him die on the streets for lack of it? Or are towns and states supposed to step in and succor him while the federal government keeps its hands free of a pink stain?" Social Security Commissioner Robert Ball recognized the same point when, referring to the exclusion of Communists from Social Security, he stated that it is "anomalous to relieve employees of these organizations from the responsibility to contribute under social security since, if they become needy, they will generally be eligible for cash assistance and medical care paid for out of general taxation." Finally, as the *Washington Post*, one of the newspapers chiefly responsible for the fray, put it: "Social Security is a program designed to benefit the whole Society by giving dignity and independence to old age. Political belief, even hateful belief, ought not to be a bar to eligibility."—E.L.