

Title	On the character of insurance for medical care
Sub Title	
Author	庭田, 範秋(Niwata, Noriaki)
Publisher	
Publication year	1963
Jtitle	Keio business review Vol.2, (1963.) ,p.79- 93
JaLC DOI	
Abstract	
Notes	
Genre	Journal Article
URL	https://koara.lib.keio.ac.jp/xoonips/modules/xoonips/detail.php?koara_id=AA00260481-19630000-03919625

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ON THE CHARACTER OF INSURANCE FOR MEDICAL CARE

by

Noriaki Niwata

1) Preface

Broadly speaking, the term "social security" has gained a formal position in the realm of social science since the foundation of social security system in the United States by 1935. Thereafter, taking such opportunities as the Article 5 of Atlantic Charter, Beveridge Report of 1942 and International Labor Conference at Philadelphia in 1944, the concept of social security has spread itself in the United States, the United Kingdom and other nations of the world. And, nowadays it is realized as established institutions in a large number of countries. Such social security has been conceived as a comprehensive system of public services for providing economic security, devised in order to assure minimum standard of living and to ease fears regarding the living of the people as a national policy, centering on social insurance and social assistance and combining other welfare provisions. It represents a different aspect from mere social insurance as it covers those groups of people who have been excluded from social insurance, and, at the same time, extends the sphere of insurance coverage so as to prevent those difficulties and assist therein that might be caused by risks of disease, old age, death, unemployment and large-family, usual happenings in private lives.

The system of social security has been contrived so that; firstly contains income security that might be required for living in case of its temporary suspension or permanent loss and unordinary expenditure; secondly, includes medical care measures to supply general services of precaution and treatment to persons as many as possible; and thirdly, pays full regard to security of employment for the sake of the full-employment policy. It means materialization of the right of living to be charged by responsible society and state; it serves for maintenance, conservation and cultivation of productive labor forces by way of income-redistribution through public finance; and ultimately intends further development of the modern society by overcoming economic unrest and contradictions included in it.

Social insurance, as a part of social security, may be classified as below, on the basis of risks to be insured by respective insurance. Namely, in the

risks of social insurance, as a personal insurance, are include physiological ones such as injury, disease, physical disability, death, childbirth and old age; and economic ones such as unemployment. As technical foundations of insurance are numerous according to the nature of risks, specific insurance system has been formed respectively, as personal accident insurance, health or sickness insurance, disability insurance, childbirth insurance, burial expense insurance, survivors' insurance for widow, widower and orphan, old age insurance and unemployment insurance.

Social insurance, on the other side, is divided into those putting the subject on persons in general, for instance national health insurance, and those on employees. The latters, again, are divided into those directed to private employees, such as health insurance, annuity insurance, and those directed to public employees, such as the Government employees' mutual benefit association and the local self-governing body employees' mutual benefit association. Particular parts of private employees are covered, for example, by seamen's insurance and mutual benefit association for teachers and officers of private school.

By the way, health insurance, being one of the earliest and the most general branches of social insurance, manages benefits for medical care and/or means of living for sick persons in our country, while in other countries a distinction is made between "insurance for medical care" that carries the former, and "health insurance" that carries the latter. Specifically in Japan "health insurance" means the system for employees which has been legally founded in 1922 and in effect since 1927. The medical care benefit for persons in general is managed by "national health insurance" created in 1938.

Sickness, injury and childbirth affect livelihood, though these have no relationship with the jobs of workers, male or female. These risks are insured inclusively by one system in some cases, such as seen in Kranken-Versicherung of Germany and the health insurance of the United States and the United Kingdom. In Japan the term health insurance is used in the same meaning as sickness insurance, in a wide sense, but, in a narrow sense, it denotes the insurance under the Health Insurance Act. Sickness insurance manages benefits for medical care and suspended jobs in case of sickness or injury; that is, health insurance in a wide sense.

Presently in Japan, medical care security is provided by social insurances, including health insurance and others, and medical care assistances by public and private institutions, in order to secure medical care in some form to every person, at least of necessary degree. In its narrow sense, the contents of medical care security may be confined to insurance system for the sake of rationalization of the burden of medical expenses, and medical care assistance for the sake of socialization of the burden; and in a wider sense, such factors are to be added that define the relations among doctor—insurer—insured, medical provisions and operators. Medical care insurance may have a same sense with sickness insurance or health insurance so far as it manages benefit against sickness or injury, but usually it is so called when medical benefit, or benefit in kind, is to be stressed. Health insurance is distinguished from other

branches of social insurance; the one which accomodates short-term benefit such as in the case of injury or childbirth, and which gives benefit in kind or services, in contrast to benefit in cash by other insurances.

2) *Theory of Replacement in Insurance*

Generally, insurance benefit for insured risk is given in cash, but in social insurance it takes form of goods or services in some cases. The most popular instance is seen in medical care insurance, in which medical cares including medical examination, prescription, injection, operation, disposition or admission to hospital are given to the sick or to the injured. These direct benefits by goods and services are called benefit in kind, in contrast to benefit in money or cash. Several branches of the social insurance in Japan take the form of benefit in kind as a principle, providing cash or money benefit only when the former is impossible. Medical benefit means medical care in kind. Such benefit in kind is seen not only in medical care insurance, as a part of social insurance, but also in personal accident insurance, plate glass insurance, machinery insurance, aircraft insurance and even fire insurance.¹⁾ Hence, the theory of replacement must be reexamined firstly.

Replacement, or reinstatement,²⁾ in insurance theory denotes the replacement as defined in the Reinstatement Clause³⁾ in the United States and the

1) For example, Article 28 of General Clause on Airborne Cargo Insurance, Article 29 of General Clause on Aircraft Hull Insurance; Article 26 of General Clause on Windstorm and Flood Insurance; Article 16 of General Clause on Steam-boiler; Article 5 of General Clause for Plate Glass.

2) In English use of the term reinstatement corresponds to compensation in kind. The term replacement is also used in the same meaning, but usually regarding merchandises. Reinstatement is often used as to mean recovery of building or goods to former state.

3) Excerpts from the reinstatement clause written on the face side and Article 6 of the standard policy conditions in the United Kingdom;

"The company will pay to the Insured the value of the property at the time of the happening of its destruction or the amount of such damage or at its option reinstate or replace such property or any part thereof."

"If the Company elect or become bound to reinstate or replace any property the Insured shall at his own expense produce and give to the Company all such plans, documents, books and information as the Company may reasonably require. The Company shall not be bound to reinstate exactly or completely, but only as circumstances permit and in reasonably sufficient manner and shall not in any case be bound to expend in respect of any one of items insured more than the sum insured thereon."

Sentences written on the face side of the policy, prepared in 1943, of New York Fire Insurance Standard Policy, and Article 141-147 written on the backside:

"and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured,....."

"It shall be optional with this Company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required."

United Kingdom. It is a general term for replacement in kind instead of money. It was in fire insurance that replacement was admitted at first among property insurances. In fire insurance, means of compensation for damages have been payment of current money in principle, as shown in the Article 17 of the General Clause or Condition of Fire Insurance that states, "to compensate by payment of the insured amount of money." But the Article continues to say "except in cases of replacement by Article 18," and here the problem of replacement is propounded.

That Article 18 defines: "The company will reconstruct, repair or deliver goods for total or part of damage in place of payment of insured money, on giving notice of its intention to do so by document within the period qualified in the preceding Article."⁴) Article 19 also refers to replacement. In Article 16 of the old clause (enforced until September, 1961) the same was contained.⁵)

Replacement was originated in the United Kingdom. Its development there had been derived from the numerous, repeated disputes regarding agreements on amounts of damages between contract partners. Insurers want to assess proper damages, while insureds claim excess amounts for the sake of interest and profit, resulting in disputes, that had urged the birth of the replacement clause. In fact, replacement has been in practice since long before in the United Kingdom and in the United States, and the clause has performed its function in such cases. But, in Japan such clause has been set forth only formally following the existing patterns of these countries, actually with seldom cases. Hence, an essential item of the insurance clause exists only in a name.

Either in the case of replacement made by the will of insurer or by the claim of contractor or other interested persons, the fundamental thought of replacement has been placed on "reinstatement" of damaged properties by insurance.⁶) The concept of "reinstatement" is based on the "principle of Indemnity"⁷) in fire insurance. The principle of indemnity in fire insurance has been observed as an iron rule since old times, not allowing any violation. The principle, as its effect, has restrained insured on one hand, and insurer on the other, because insured might not gain any profit over the value of the damaged property, while insurer might not offer benefit below the value.

The principle is one of the most essential features, governing fire insurance contract. Observation of the principle would prevent insurance cheatings that might disturb social order, and would serve to preserve the scientific character

- 4) As for payment of insurance money: "Insurance money will be paid in exchange for insurance policy, although the exchange may be exempted in case of justifiable reasons. In the case of partial payment of the insured amount, it will be written on the policy and the policy will be returned to the holder. Preceding two clauses will be applied to cases of replacement."
- 5) "Generally loss will be compensated by current money. However, for the convenience of the Company, it shall be replaced by delivery of goods, repairing or reconstruction."
- 6) As properties are irremoval in fire insurance, reinstatement has been advocated more earnestly than in marine insurance since old times.
- 7) This principle has been observed since the primitive age of fire insurance, more than 150 years ago, and found in old judicial precedents.

and reasonableness of fire insurance. Insurers pay insurance money on the basis of this principle, but often face improper claims by insureds who fail to realize it. In such cases insurers will, in place of money, compensate it by rebuilding or repairing as to buildings, and replacement as for merchandises or other goods. Originally these methods of compensation are called replacement, which makes an exceptional system in insurance.

Article 18 of the general clause on fire insurance in Japan recites as follows: (1) In principle replacement is concerned with buildings but shall be applied to movable properties also. And, it shall be made on the whole or part of the value of the subject matter of insurance, besides monetary payment; (2) The scope of replacement shall be confined to restoring it to former states. It suffices to repair damaged parts or reconstruct or deliver buildings or movable properties of the same kind or quality as the burnt ones. In case of partial damage of building or property repairing or delivery of the estimated value of the damage will do suffice; (3) To make replacement in place of monetary payment, insurer must give notice by document for insured during thirty days after the receipt of notice and account on the damage by insured in pursuant to Article 13⁸⁾ of the clause. In this case, insurer must present plans, drawings or other documents as insurer requires. If insured had indicated purposely unfair facts upon these documents, or forged or counterfeited these documents or evidences, the responsibility of insurer regarding compensation would come to extinction⁹⁾; (4) By notice of replacement by insurer, his obligation of money payment changes to that of replacement. Thereafter insurer cannot alter it into monetary payment at his will; (5) The article also settles the time of replacement.

Exactness and perfectness in replacement should be expected, but are actually almost impossible. So, similarity in kind or quality is considered as a state of substantial sameness. Further, after selecting replacement, the insurer cannot confine the compensation to insured amount, damages or insurable value. Hence, even in case of under-insurance, the insurer cannot charge any part of necessary expenditure to the insurance partner; and even in case of betterment than the state previous to damage, he cannot make so-called "deduction of new for old".¹⁰⁾ And, such losses as being due to deferment of

- 8) As to happening of risk: "On the recognition of loss incurred by risks that the Company is charged of, insured should make notice to the Company by document without delay, and present informations on the fire and appreciated amount of loss, to be prepared by expense of the insured, as well as other evidences, books and other documents that the Company might require, during twenty days after the notice of the fire, or extension period that the Company will acknowledge."
- 9) As to loss of the right of insured, Article 22 of General Clause on Fire Insurance states: "When the insured purposely indicated unfair facts on documents mentioned in the articles from 13 to 18, or forged or counterfeited these documents or evidences..."
- 10) Differential profit by "new for old" means profit derived from exchange of old part of ship to new one as the result of repairing damaged ship. However, appreciation of such profit is very difficult actually, and so in most countries a practice has been born from old times that it is settled at one third of

(continued to page 84)

reconstruction works, or to storm or fire during reconstruction, are to be borne by the insurer. On these conditions, the insurer has the right to make selection between monetary payment and replacement.

Recently replacement has been seldom in practice. This is derived from the fact that, hence in most cases of replacement accounts of damages are already in dispute between insurer and insured, it could be hardly expected that the other party would be content with replacement, leaving fundamental points of dispute unsettled. Moreover, if insurer makes use of replacement too frequently, he would be compelled to come into numerous kinds of works such as civil engineering, construction, machinery manufacturing or repair, that are not necessarily beneficial for the insurance company.

Primarily replacement was confined to buildings, but since the 19th century it has been extended to merchandises. In theory, replacement is adaptable to any kind of subject matters without exception, but there are naturally certain economic limitations. Firstly, it cannot be applied to buildings of rare nature. For example, replacement concerning shrines, temples or other buildings of historical significance could not mean restoration in real sense, since mere shapes of these buildings would not realize their original values. Replacement shall not to be made in these cases.

Secondly, goods without market values are exempt from replacement. For instance, portrait of a family member may be precious to the family, but it is of no value to other persons. Replacement of such goods could not satisfy the insured and, still more, accompany difficulties for the insurer to perform. In other words, there could be no ways to satisfy the insurer, and hence replacement may be inapplicable.

Lastly, replacement is inapplicable for precise instruments, since repair and delivery of these, once damaged, could not satisfy the insured in timing and technical quality, especially as regards newly devised instruments of little market value. Above illustrations are the limitations put upon replacement. It is to be in practice upon subject matters other than these.

As mentioned already, in case of medical care insurance benefit in kind is given on the basis of replacement in insurance, or a form of replacement is adopted by benefit in kind. We cannot but wonder whether it is justifiable to extend the system of property insurance into a sector of social insurance, from the viewpoint of the theory of insurance. And, more practically, doubt would arise regarding the followings; whether reinstatement for human health is theoretically reasonable or not; since recovery of health in human body is not to be bound to "former state" but to be conceived as "the more, the better",

repair expenses uniformly, and deducted from repair expenses except when special clause is agreed. This customary deduction is called "deduction one-third new for old". This practice had begun in the age of wooden ship with high rate of loss; and as it is unreasonable to apply it to modern steel ship as it was, in such clauses as Rules of Practice of the Association of Average Adjusters (Article 53) and A.D.S. in Germany (Artikel 76), divergent deduction rates are applied to different parts of ships, classifying wooden ship, wooden ship with steel frame and steel ship, and according to lives; and also as for engine, boiler or chains deduction rates by lives are provided for.

the problem of profiting in insurance theory does exist or not. Further, while replacement is of little value in case of damage causing dispute upon its amount as mentioned above, there would be much more opposite views regarding the appreciation and examination upon deterioration of human health, that corresponds to the amount of damage in property insurance.

Adoption of replacement, benefit in kind and other connected activities by insurer would charge numerous tasks upon insurance company, that might confuse insurance management and hinder perfection of its purpose. How is this problem to be considered concerning the benefit in kind in medical care insurance? In practice, replacement or benefit in kind is not always desirable for insurer, as is shown in its history.

Replacement is limited in economic sense, and is restricted in its practical use. Needless to say, human health and life have no market values, and any replacement by other things is unthinkable. They are too precise and, so to speak, rare to permit economic evaluation. Limitations put upon property insurance are more strict as regards life insurance and social insurance.

Originally the clause of replacement in insurance was devised as a check against improper claims on compensation, but as the result of its general adoption in medical care insurance there have arisen many problems paradoxically. Paradoxical and contracting points have been brought into medical care insurance and medical care security system, when replacement, typical in fire insurance, is applied to medical care insurance, being of a different character, and that, putting main focus upon benefit in kind making money benefit as subordinate one, contrary to the case of fire insurance. Benefit in kind in medical care insurance does not mean delivery of human body as a goods, but supply many kinds of goods and materials that are necessary to recover insured's health, or deliver substitutes of lost organs of human body. Its character is the same as personal accident insurance and life insurance. Benefit in kind of such a wide sense is adopted in almost all kinds of insurance,¹¹⁾ but has brought about the most serious problem in medical care insurance.

So far, we have examined existing benefit in kind from the viewpoint of replacement in insurance theory, mainly in its legal side. Next we must inquire into the problem from economic viewpoint. The starting point here is the argument that insurance system has impartible relationship with monetary system. To speak broadly, insurance system has been established in parallel with the completion and popularization of monetary system. This process has been, at the same time, that of the development from benefit in kind to benefit in cash.

11) Replacement is possible in the sphere of private enterprise insurance, for example, in plate glass insurance in many countries; also in burglary insurance and water damage insurance. Methods of replacement in these insurances are renewal, repair and delivery of substitutes for damaged goods. Sometimes insurer of private enterprise insurance makes use of benefit in kind for the sake of "sue and labour". This is recognized as to ship salvage operation in marine insurance, preservation of house in fire insurance, health advice and control in life insurance, examination in machinery insurance and business report in credit insurance.

With the evolution of the function of money as means of exchange, insurance system has been extended over wide spheres of area, personal group and goods group, being discharged from restraints and troubles accompanied by delivery of goods and services. Also, with the evolution, insurance has been able to attain diffusion of risks and to overcome the resulting effects by occurrence of accidents, and further to modernize and rationalize its management.

The development of insurance has been promoted also by the evolution of the function of money for measurement of value. Under a natural economy of barter system, benefit in kind must be the principle. The growth of monetary economy has generalised economic idea of individualism and rationalism, provoking desires for the insurance. Gradually benefit in cash has taken place of benefit in kind. The equality and sameness between benefit and counter-benefit correspond to the balance and equilibrium between receipt, namely premium, and outlay, namely insurance money, in the management of insurance business. There could exist exact and proper rating of premiums and appreciation of insurance money. Rating of premiums corresponding to the sorts of risks has been made, and over insurance, double insurance and gambling policy have been prohibited. Benefit in money is indispensable for these matters.

The function of money as means of reserving value has resulted in the system of advance payment of premium. In the primitive stage of benefit in kind formation of insurance funds was unthinkable of course, and insurance, even if so called, has not stepped out of the sphere of after-relief for damage. By the birth of money and through its flows-premium, insurance fund, insurance money-insurance of modern type and with reasonableness has been born. Benefit in kind has retreated and cash benefit become the usual form. In this way, following the foundation and completion of the functions of money, the form of premium has shifted from that in kind to that in cash, and in property insurance from benefit in kind to cash.

In insurance, the historical trend is a shift from benefit in kind to that in cash. On the contrary, as for medical care security the historical development has taken a course from individual care to social one, and from benefit in cash to that in kind. Here we must see its characteristic which is clearly distinguished from other insurances, and discover that medical care insurance is peculiar for the observation of the legal and economic theories on replacement.

3) Problems on Benefit in Kind in Insurance for Medical Care

Risks covered in social insurance may be classified, on the basis of the causes of their happenings, into physiological ones and economic ones. The former ones include physical accident, sickness, childbirth, disability, old age and death, while under the latter ones fall economic causes, such as unemployment. Risks by the physiological reasons may cause one or both kinds of losses, loss of income and increase in medical expenditure. Health insurance risks belonging to the physiological reasons include non-occupational risks that might result in suspension of work, besides occupational risks. Hence, health

insurance must deal with wider scope of risks than that of casualty insurance; and as most of these risks relate to sickness, health insurance is often called sickness insurance as is in Germany. A characteristic of the risks in health insurance is that they are very extensive.

In order to decide the sort and degree of benefit in social insurance, a recognition of the sort and degree of the economic results caused by risks must be made as a necessary premise. In the period when social insurance was starting to take its shape, and until the period of the First World War, the main form of benefit had been cash benefit. Thereafter, medical care, being a form of benefit in kind or service, has been given for physiological risks, making cash benefit as subordinate one. Such medical care benefit has resulted in the increases in the expenditures of social insurance, presenting a serious problem at present. The increase in the amount of benefit in kind in health insurance has been far above cash benefit, recently occupying more than half the whole. The main reason for such trend lies in the advanced medical examination and medical treatment given to patient by health insurance.

Benefit in kind, in its wide sense, is divided into that of true sense and that of services. Therein are included medical cares for insured and his family in case of sickness or personal accident, midwifery service into hospital in case of childbirth, taking children into orphanage, employment exchange service in case of unemployment, and activities of precaution for insurance risks. However, the principal part of benefit in kind is in medical cares including medical examination, supply of drugs and medical materials, treatment, operation, admission to hospital or consultation establishment, nursing and transfer of patient.¹⁾

From the viewpoint of the theory that insurance performs its function through a chain of activities of money, namely premium, insurance fund and insurance money, cash benefit must be the most ordinary and proper one. Then, how should it be interpreted that, in medical care insurance, benefit in kind is the principal? And, what a kind of problem does it propound to the theory of insurance?

When benefit in kind is adopted in a large scale, insurance will become to bear the risk of price fluctuations that are not included in the basis of premium calculation. This relationship naturally is concerned in medical care insurance too, bringing about a precarious position to insurance system itself and to its management. By benefit in kind, insurance business will inevitably fall into financial difficulties due to the risk of price fluctuations it bears. It might be derived from too cheap premium or too high degree of benefit.

Further, benefit in kind in social insurance and medical care insurance involves another sort of problem regarding insurance technique. It is that such benefit in kind is apt to increase, corresponding to the rises in the general standard of living and in the level of medical care following the advances in medical science and medicines, and herein also a risk outside the principle of

1) One of the main forms of cash benefit in health insurance is personal accident allowance to be paid for the period of job suspension caused by accident, including birth expense and allowance for female workers.

actuarial science. Increases in benefit in kind will far surpass that of cash benefit. To suppress benefit in kind of social insurance at low level is a hard task, especially as for benefit in kind. Expenses for benefit in kind contain a good deal of danger of rapid increase.

Thus, medical care insurance would come to bear the risks of price changes and the rise in the level of medical care. The charge of benefit in kind will be indefinite in amount, but on the basis of premium, it is limited. From the theoretical point of view, benefit in kind is very unsound, contradicting to the substance of insurance. It is cash benefit that makes the true form of insurance, and benefit in kind is to be employed in occasional cases for convenience. Particularly in medical care benefit, as benefit in kind in medical care insurance, qualifications for receiving are far more generous compared with cash benefit, and hence it is easy to perform injustice and cheating. It seems rather natural, in view of the insurance theory, that problems of deficit are always following the adoption of benefit in kind.

We could recognize a particularity of medical care insurance as social insurance in the above mentioned fact that benefit in kind, to be eliminated and kept aloof as far as possible from the theoretical viewpoint, has been adopted extensively. It comes to the reverse position as against cash benefit. It is suggesting that medical care insurance contains additional factors distinguished from the objectives and functions of general insurances of modern age, and they are more numerous, larger and heavier than those of the latter. There, the essential nature of insurance has retreated into the shadow and, in its place, another concept of value has been introduced. In respect of such concept of value, benefit in kind must be very necessary and essential. But from the standpoint of the existing concepts generally accepted in insurance, such as economic value, liberalism, individualism, materialism and rationalism, it must be an object of criticism.

4) The Character of Medical Care Security as Insurance

As explained above, while benefit in kind is very unsound compared with cash benefit, and the latter should be the primary one from the theoretical standpoint, actually in medical insurance benefit in kind has been increasing relatively and absolutely compared with cash benefit. This fact is based on the following reasons. Firstly, from the viewpoint of insurance management, workers could receive medical examination and treatment immediately, even without the money ready. Next, from the standpoint of doctors, expenses for medical care could be secured, that are to be settled between insurer and doctor. Further, injustice by insureds, possibly committed in case of cash benefit, that workers would not necessarily use the received cash for medical purposes, could be prevented.

However, a more fundamental reason lies in the spirit of humanism and the argument for the right of living, the basic right of every person in a society. To secure cultural and comfortable living for every person has been an object of earnest desire regardless of differences in place and time, and all

the efforts of human living have been oriented to this purpose. Health is one of the indispensable premises for this purpose, just for which institutions for medical care security and insurance have been established. For medical care insurance of such a significance, cash benefit or benefit in kind should be selected from the standpoint of fitness to the promotion and maintenance of health.

Health is the most precious thing for every individual as well as for the nation, and wealth of any magnitude could not compensate for its deterioration. Unhealthiness often causes economic poverty, and results in not only spiritual and physical pain on individuals but also brings social harms. For the preservation of health of every person in a society, close interconnection among treatment, precaution and health promotion, and further unification and harmonization including these must be maintained. Effective medical care is attainable only through these efforts.

Medical treatment, that makes the central point of medical care insurance, may be provided perfectly only by benefit in kind. We have pointed out that benefit in kind in medical care insurance would bear risks outside of the insurance calculation such as price fluctuations, or rises in standard of living and medical care. However, if we take a standpoint that higher level of medical care must be given, even if it might disturb the foundation of insurance, or regardless of inflation, we could say that the essential task is to undertake these risks willingly, and not to avoid them. It might mean abandonment of an essential element of the character as insurance, and introduction of another principle, namely socialization of medical care. Hence we should not simply pursue the substance of medical care insurance in its character as insurance, but find out the existence of problems within its social side. For medical care, to maintain the principle of insurance is difficult and not to be deemed essential. Rather, principles of and measures for socialization should be inquired. The substance of medical care insurance is other than insurances in general, since it has abandoned the principle of insurance.

So far as the main purpose of medical care insurance lies in the betterment and improvement of health of insureds and their families, from the standpoint of putting utmost value upon health of every person, it may be an approvable fact that prophylactic measures and measures of promotion of health have been made major functions of medical care insurance, although they are compared to the preventive activities in property insurance,¹⁾ taking

1) The view that takes "sue and labour" as the substantial task of insurance has existed in the past, mainly by scholars of Nazis. For example, Riesebeck; *Begriff, Gegenstand und Grenzen der Versicherung* (Deutsche Versicherungswirtschaft B.I.S. 122). Schellenberg, E.; *Individualversicherung und Schadenverhütung* (1936, S. 43). But most arguments are opposed to this and clearly distinguish precaution and insurance. For example see, Wörner, G., *Allgemeine Versicherungslehre* (1920, S. 191).

As an instance of the "sue and labour" clause, Article 13 of An Interpretation of Standard Cargo Policy states: "And in case of any Loss or Misfortune, it shall be lawful for the Assured, his or their Factors, Servants and Assigns, to sue, labour, and travel for, in and about the Defence, Safeguard and Recovery of the said Goods and Merchandises, or any part thereof, without prejudice to this Insurance; to the Charges whereof the Assurers will contribute." This clause was adopted from Lloyd's policy.

secondary position with subsidiary functions. An example of prophylactic measure is receiving into maternity hospital as benefit for childbirth by medical care insurance. Also, an orientation to measure of promotion of health may be seen in the intention to come into such works as medical inspection, periodical examination, health education, sanitary instruction, stepping out of immediate treatments for sickness and accident, and acting as home advisers for insureds and their families. All these are benefits in kind, suggesting a marked retreat of the character as insurance. Here we can acknowledge the birth of new social principle or current of idea, denying and adjusting existing concepts that are embodied in insurances.

The contents of benefit in kind for medical care will be naturally improved owing to the inclination that they are always following the advances in medical science and technique. We must notice a reasoning that, so far as it is in line with the theory of insurance, benefit ought to be limited to the existing level; herein lies a limitation that medical care insurance could not adapt itself to the advances in medical care. For this reason a trend has been born that medical care benefit will take place of cash benefit, and be absorbed into medical care security system, instead of being placed in income security system as medical care insurance; medical care insurance that has been directed to employees only shall be extended to the whole nation; thus a complete social security system shall be established, consisting of income security, medical care security and security of employment. Such a trend corresponds to the assertion that medical care security is not to be founded on insurance, for the sake of socialization of medical care.

By the way, the socialization of medical care is not always clearly defined, allowing various interpretations. Firstly, it may mean popularization of medical care; namely, obtaining medical care at cheaper expense and of more modern type; and emancipation of medical care from the hands of special class of the society. Secondly, it may denote public or non-private enterprise management of medical care. Non-private enterprise may mean that by co-operative system, non-profit institution and state management.

The third meaning is division of the burden for medical care expense. That medical care may be given to anyone who pays the expense for it does not always mean that every one is actually receiving necessary care. Generally expenses for medical care are apt to increase. Hardship on the burden of expense is impeding the popularization of medical care, and showing a fundamental contradiction in social life. Thus such systems as co-operative insurance or health insurance, seeking the source of expense outside of the patients themselves and their families, or movement to charge part of the expense upon the state have emerged.

Fourthly, it may mean social organization of medical care business. It may be division or co-operation of business. Advances in medical science and technique have urged the development of hospitals from small scale to big scale, and brought about specialization within concerned personnels and necessity for co-operation among them. Systematization of medical organization, function and institution is often called socialization. And lastly, socialization

means democratization in the management of medical institutions and systems. It aims at solution of problems regarding medical care, by emancipating it from arbitrary will of management of private enterprise, by preventing bureaucratism, and by establishing management by people themselves under supervision and control of their own and by their abilities. These diversified implications of the socialization, as illustrated above, may be proper in respective senses. But I should like to inquire into a more essential meaning, synthesizing these views.

Socialization of medical care should mean to secure medical care of a certain level, equally for every person of a nation, and for that purpose, to complete and enlarge necessary institutions and systems. It is necessary to speak of the whole nation because health is the most essential and absolute condition for human living and the risk of sickness is immanent to every person. It is also necessary to speak of the uniformity because health is equally indispensable for every person, regardless of sex and age, or workable or unworkable, or degree of working. To secure a certain level of medical care means elimination of difference between the rich and poor as regards medical care. The care, if receivable, should not be below the existing general level; rather, the higher it is the better. In conclusion, socialized medical care might develop medical care insurance or assistance, and bring about a demand for collective systematization of these by the whole nation.

The completion and expansion of medical institutions and systems are spoken for obtaining the final object to supply medical care in planned and non-profit forms. It may imply modernized and rationalized management of public institutions, supervision and direction by state power, or direct or indirect state management. As the result of these performances, medical care, that has been born on the basis of individualistic commercialism, would be transformed to that of higher, social concept of value. Socialization of medical care has been advocated in order to attain these aims, and within such fundamental foundation we could find the substance of medical care security.

5) *Conclusion*

The substance of medical care security in the modern society could be recognized in the fact that benefit in kind has occupied main position in medical care insurance; the principle of insurance has retreated within medical care security; and socialization of medical care is desired. The principle for socialization might not be born without being dependent upon a higher social concept of value, to be found in a society other than the present; it could not be realized on the value concept of the present society that is individualistic and materialistic, even though it is liberal and rational. It may be rightly said that such situation means manifestation and activity of a part of the principles based on the value concept of future, higher society, be it socialism¹⁾

1) This argument is explained very thoroughly and impressively in Aneurin Bevan: In Place of Fear, Chap. 5.

or welfare-statism,²⁾ in order to suppress and justify the arguments and practices of the present society that are based on the desire for pursuit of profit. Such transition from the current to the future society may be gradual. Indeed, the substance of medical care insurance could be fairly realized as a step towards welfare state, in view of its retreat from the principle of insurance as shown in the extending of benefit in kind.

A private enterprise health insurance had been born in Massachusetts in the 1850's, as the first case in the United States, as an enterprise for accident and health insurance. It accepted security on sickness and personal accidents other than those borne by the laborers' casualty insurance, and by the 1900's it had developed to cover loss of income caused by accident and disability, and further to those for hospital-surgical-medical policy. In 1910, a group insurance for personal accident and disability had been created.

Life insurance companies, which had been confining themselves to the sphere of accident and disability insurance, become concerned for health insurance. And in 1921, accident and health insurance was sold by life insurance companies. This insurance has gradually developed, especially since about 1947-48. In 1949, several companies began to sell high amount life insurance, bringing about increases in the kinds of insurance. In 1950, the National Association of Insurance Commissioners had adopted the uniform Individual Accident and Sickness Provisions Law, to provide for the sound development of health insurance by private enterprise.

Thus, American private enterprise health insurance has shown development in its broad line. It depends on the fact that public management systems for health insurance, either national government or states, have been directed to the particular groups of public employees and others, leaving voluntary insurance to private business. A general system of social insurance or social security for the purpose of medical care has not been developed in the United States and hence medical care there has been dealt with by private institution on the whole.

The health insurance managed by private enterprise in the United States³⁾ contains various branches such as hospital-surgical-medical policy, major medical expense insurance policy and income-loss policy by sickness and accident. It is argued that throughout all these insurances the fair principle of insurance is preserved, based on the ideas of individualism and liberalism. The primary task of these systems is to accommodate expenses for medical care. It provides cash benefit through claims by doctors or hospitals, not medical service itself, namely benefit in kind. Hence, they are out of touch upon the relations between patient and doctor or hospital. They maintain the traditional free selection of medical care for doctors and hospitals, that makes an essential point of the business, and also permit similar free selection to individual insureds according to the need of each individual. On the other side, severe competi-

2) This view is expressed, for instance, in J.K. Galbraith; *The Affluent Society*, 1958. Refer also, *op. cit.*, *Future of Welfare State*.

3) D.W. Gregg: *Life and Health Insurance Handbook*. This system is referred to in many places of this book.

tion is seen within the companies engaging in such insurances, with regard to business results, adaptability to general demands, and efforts for improvement and betterment, that contribute ultimately to the promotion of general interest of the society. Payments of medical expenses by these systems, being the main sources of receipts for many hospitals, and securing income for doctors, would serve to solve economic problems for hospitals and doctors, as well as for insureds and their families.

Concern on health insurance is widespread among life insurance companies, though not so much among property insurance companies. Besides life and property insurance companies, there exist, as the insurer, cooperatives for hospitalization, Blue Cross, and Blue Shield, that perform some kinds of services for medical care, nursing at home, X-ray treatment, services of ambulance and preventive activities such as supports to educational activities conducted by doctors and hospitals. These activities are confined to the sphere of contribution to medical progress, preserving cautious consideration so as not to violate the fundamental human rights of individuals. The significance of such voluntary system in the United States can be recognized as it works as a counteraction against the socialization, by preserving private system.⁴⁾ In other words, although voluntary system, founded on the strict and exact principle of insurance, is regarded as taking the place of the social insurance and social security system in the United States, it does never make efforts to achieve or perform socialization of medical care. Its emphasis is laid on cash benefit rather than benefit in kind, eliminating prophylactic measures and measures for promotion of health almost wholly.

By the way, even in such voluntary system in the United States, there are arising problems of over-insurance, derived from moral risk, mainly in the field of accident and sickness insurance. In order to provide for them, many sorts of limitations have been put upon benefits, which are not only uncomfortable for persons of low income class but also making the purpose of this insurance, security in living futile. On the other hand, concern of insurance companies engaging in this insurance has been shifting to major medical expense insurance policy, resulting in a danger of deficit due to inflation through the latter half of the 1950's. And, the wishes of the general public may be seen in the words that "desire of the general public, after experiencing severe shocks by this system during the past twenty years, is shifting from income insurance to medical care insurance."⁵⁾ A consideration on such situations in the United States would lead us to the recognition of the necessity of medical care security and inevitable socialization of it.⁶⁾

4) Against the state management or socialization of medical care system, there is another opposition that it would spoil minds of independence and self-help of individuals. In "The Road to Serfdom" (Chap. 9), F.A. Hayek has asserted it means abandonment of freedom by persons.

5) J.H. Magee: Life Insurance.

6) Literatures with a good deal of reference on this problem are as follows. D.W. Gregg: Life and Health Insurance Handbook. O.D. Dickerson; Health Insurance. Health Insurance Council; The Extent of Voluntary Health Insurance Coverage, 1959. Health Insurance Institute; Source Book of Health Insurance Data, 1959. Life Insurance Institute; Life Insurance Fact Book,