

Healthcare Reform: It's as Easy as . . .

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Where are we now?

The easy answer: Healthcare costs are increasing well beyond the average rate of inflation, and these costs need to be better controlled and managed, or at least explained and understood. These latter considerations, explanation and understanding, are where all sides of the current healthcare debate fall short.

I bring to this analysis the training and skills of a Certified Public Accountant and Attorney-at-Law. I also bring my personal perspectives and shortcomings similar to any human being. I do not have a ready answer to all of the problems or some magnificent revelation that will bring forth a eureka moment. What I do have is the ability to understand and comprehend an outline or description of a plan or process that is laid out for me. To date, neither side has offered an acceptable or well-reasoned plan.

The healthcare debate has become polarized with those in support of massive changes using terms like “right, entitlement, public option, or single-payer system.” Those less trusting of the government’s ability to protect our “right” to high quality healthcare, and upon whose shoulders the true costs of reform likely would fall, have objected to the wholesale changes that have been proposed.

Any of us can relate stories of individuals who have had bad experiences in the provision of healthcare or who have been denied services. We can relate stories of high costs, and persons whose standards of living were impaired by those costs. We can all recognize the need to confront healthcare expenditures through cost containment and insurance, but persons who are actively involved in the discussions and debates are rarely comparing apples to apples.

Nearly everyone would agree that it is appropriate for a society to make available basic and emergency medical services for all persons who, through no fault of their own, are in need of those services and who are financially incapable of paying. The healthcare debate was originally based upon the premise that forty million Americans were without health insurance, and as a result, these persons were being denied reasonable access to healthcare.

What does it mean to be “Uninsured”?

Insurance is defined as, “The act, system, or business of insuring . . . one's person against loss or harm arising in specified contingencies, as . . . accident . . . disablement, or the like, in consideration of a payment *proportionate to the risk involved.*” (Emphasis added - *Random House Dictionary*, 2009.) Therefore, traditional insurance is a means by which one pays a premium less than the potential insured loss, and the total insured losses actually incurred are proportionally divided among all persons paying premiums.

This concept is consistent with “major medical” insurance. Such insurance covers non-routine and extraordinary medical expenditures, and the insurance provides a source for payment so as to prevent exhausting a family’s assets. Historically, this is what most people thought of as “health insurance,” and the cost of insurance was often paid as an employee benefit. Under such a program, the employee or insured continued to be responsible for regular and routine healthcare, including doctor visits and prescription medications.

The comprehensive health insurance product that has developed in recent years has little semblance to “insurance.” It is more akin to a “prepayment plan,” and the list of services and expenses for which this comprehensive insurance is expected to pay has continued to expand exponentially. Originally, programs such as “Dental Insurance” and “Eye Care Insurance” were non-existent, and even today, these programs have very little, if any, “insurance” component.

Those with comprehensive health insurance have become accustomed to negligible co-payments for doctor's visits and prescriptions. Those of us covered by such insurance have become far removed from the "buying" decision, and we have little appreciation for the "costs" of the services and products, which are provided to us. We take advantage of the services and benefits without any consideration of the underlying costs. That is not to say that there are no costs or that we do not bear those costs in the form of ever-increasing payments for health insurance.

Where we choose to be insulated from the purchase decisions and push the responsibility of negotiation and payment onto the insurance companies, we should expect that the costs of insurance coverage would continue to increase. With broader and more comprehensive coverage, we lose the benefit of proportionate risk and the resulting financial savings. We end up paying for our ever-expanding concept of healthcare on the installment plan yet we question why our premiums continue to increase.

Recently, John Mackey, CEO of Whole Foods Market, submitted an Op/Ed piece in the *Wall Street Journal*. Whole Foods Market has been named among the 100 Best Places to Work in the United States by *Fortune* magazine consecutively for twelve (12) years. Mr. Mackey attempted to address several issues affecting the national healthcare system and the costs of providing medical care. He offered several suggestions based on his experience as CEO of a company, which employs over 54,000 people nationwide. One proposal included the wider adoption of High Deductible Health Insurance Plans in conjunction with individual Health Savings Accounts. (Think "major medical" insurance.) The idea is to provide a lower cost alternative to comprehensive health insurance and to provide the employee a vehicle within which to accumulate funds for paying routine medical and wellness costs. Instead of welcoming

his experience and input to the existing debate, Mr. Mackey was chastised and castigated by proponents of the public option for even suggesting that there could be any solution other than a new government program implementing a single-payer system.

How did we move from Personal Choice to a Moral Imperative?

The two basic issues are: (i) What is an appropriate level of healthcare for an individual or family? and (ii) How is one to pay for that healthcare? The payment options include: Self-pay, insurance, government benefits, or some combination. Traditionally, individuals have made healthcare decisions for their families and themselves based upon personal preferences, access to services, and ability to pay. Admittedly, this results in an unequal distribution of care; however, similar disparities exist in all aspects of our lives including: Food, shelter, clothing, transportation, *etc.*

The disparity in care loses significance when we acknowledge that much of the need for healthcare is entirely within the control of the patient. The vast majority of chronic illnesses are directly related to poor diet and lifestyle choices. This is not news. All of us have long known that stress contributes to hypertension, that obesity contributes to adult-onset diabetes, that inactivity leads to poor health, and that smoking causes or contributes to respiratory diseases. Despite this knowledge and repeated warnings, many of us fail to apply the knowledge to our daily lives and fail to heed the warnings. We often act in direct derogation of our own best interests. This is true despite the fact that the consequences and costs fall directly on our shoulders.

At some point, personal decisions based upon individual responsibility took on the tone of moral imperatives with the designation of “rights” and “entitlements.” However, calling something a right does not relieve one of the responsibilities of providing for himself and his

family. Designating something an entitlement does not assure that the resources to fund and provide that entitlement are immediately forthcoming.

What do we learn from experience?

Looking at existing government programs, analogies can be made to the proposed healthcare initiatives. The federal government currently provides healthcare services through the Veteran's Administration and at military hospitals for the benefit of service personnel. VA hospitals are rarely, if ever, held up as bastions of cutting-edge patient care, and throughout our recent military conflicts numerous shortcomings and failings have been identified relating to care of wounded soldiers in military hospitals. Do we reasonably expect that a similar government bureaucracy is going to function any more efficiently or assure higher quality services?

We are all participants in two broad-based entitlement programs: Social Security and Medicare. The financial crises, which are looming for those programs, are well documented. We hear of the "Social Security Trust Fund." Normally, a trust fund or account represents segregated and protected funds for the benefit of a particular person or group. However, there exist no such accounts or funds for the payment of Social Security and Medicare Benefits. The money paid by recipients over the years has been "borrowed" (some would say "converted") by the federal government to pay for other programs, and the "Trust Fund" is nothing more than an I.O.U. from the federal government promising to tax to the extent necessary to pay benefits.

There is an adage that, "One definition of insanity is doing the same thing over and over again but expecting a different result." I would like to believe that reasoned positive changes could be made in the provision of healthcare and the containment of costs for that care, including health insurance. However, if the objective of reform is the implementation of either a "public

option” or “single-payor” system, we must consider what changes must accompany such programs.

For these options to be successful, the government, all citizens, and healthcare providers would have to change current behaviors and work collectively toward an agreed objective. The government, at all levels (federal, state, and local), would have to demonstrate a level of cooperation, management expertise, and efficiency that is foreign to such gargantuan bureaucracies. The federal government would have to demonstrate a level of fiscal restraint and financial stewardship that has heretofore never been exhibited. Insurers, medical providers, and pharmaceutical companies would have to abandon some profit objectives. Individuals likely would have to accept less choice of providers, higher demands for services, and potentially less input into their healthcare decisions. After all, “He who writes the checks makes the rules.”

Even if one were confident in the ability and commitment of the existing government and current administration to adapt to the daunting responsibilities in managing healthcare, remember this is a lifelong commitment. Inevitably, there will changes in Congress and future administrations that may not have the same objectives. Should we be willing to trust healthcare to the whims of the political winds? Moreover, what if the changes fail to produce the desired results? Once something is designated a “right” or “entitlement,” it is unlikely that it can ever be removed or even significantly altered or amended.

Today, we have the options of changing doctors and insurance companies. However, it is not possible to fire the federal government. Consider that nearly everyone recognizes that the current Social Security and Medicare systems are broken. Most estimates place the unfunded Social Security entitlement obligations in excess five trillion dollars. The financial fate of Medicare is equally grim. Despite these realities, it is political suicide to propose any

substantive changes. Will universal healthcare coverage be yet another sacred cow, full of good intentions but lacking financial viability?

Consider these questions in light of a “public option” or “single-payer” system:

- Are we likely to be more or less conscientious if our medical costs are borne by the federal government or other taxpayers rather than ourselves?
- When determining the appropriate level of benefits, do those of us who take reasonably good care of ourselves get better benefits or less costly coverage than the moribund obese chain smoker?
- If the benefits and costs are the same, is there not some disincentive for one to maintain a healthy lifestyle and similarly little incentive for adopting a healthy lifestyle?
- What incentives are there to controlling costs and considering the true costs of a particular lifestyle, including raising a family and having multiple children?
- Do such programs encourage irresponsible behavior in which individuals have little regard for the personal and financial consequences of their actions (*e.g.* “Octo-mom”)?

Is Trillion the new Billion?

Senator Everett Dirksen said, “A billion here, a billion there, and pretty soon you’re talking about real money.” We long ago grew calloused to federal budgets and deficits measured in billions. That word “trillion” has been bandied about in recent months with such regularity that its import has been lost or misunderstood. To put it in perspective, one billion seconds ago was just over 31.5 years. That is just more than a generation, an appreciably long but comprehensible span of time. One trillion seconds ago was more than 31,500 years. That period is longer than the entire length of recorded human history. The projected deficit spending of the United States is measured in tens of trillions of dollars.

As of September 1, 2009, the National Debt of the United States was approximately \$11,740,000,000,000. Yes, that is nine zeroes, and the number is quickly approaching twelve trillion dollars. The share of this debt attributable to a family of four is over \$150,000 and growing. This amount does not include the additional trillions of unfunded Social Security and Medicare obligations, and it does not include additional amounts brought about by new healthcare programs or anticipated future deficits.

Polling is all a matter of how you ask the question. Ask any person, “Should every citizen have available to him or her the highest quality of healthcare?” The answer will likely be a resounding, “Yes.” Ask that same person, “Are you personally ready, willing, and able to pay more than \$225,000 on behalf of you and your family, in addition to all of the taxes that you already pay, to assure that the federal government remains financially solvent in order to provide entitlement programs, including healthcare, to all persons?” Regardless of their personal and political beliefs, few will have the ability or inclination to step forward and write that check.

Congress is being pressed to pass a healthcare bill without any demonstrated ability to manage and pay for the programs being proposed. This is analogous to a parent guaranteeing his child just entering the first grade that the child will graduate with a professional degree from a top-tier private university without any consideration of the child’s aptitude or work ethic, and without any thought given to or provision made for funding that education. At best, it is wishful thinking or an empty promise. At worst, it is deceitful and disingenuous.

Who will foot the bill?

Gerald Ford stated, “A government big enough to give you everything you want is strong enough to take every thing that you have.” Even if you believe government to be inerrantly altruistic and benevolent, it is important to understand that governments do not create wealth.

Governments can only tax or impress the wealth created by its citizens. The idea being that the accumulation of these taxes can be utilized for the public good in a manner that would be impossible by an individual citizen or group of citizens.

Few of us would deny the benefit of public projects like roads, bridges, and infrastructure for utilities, or public services like military protection, and education. It is harder for most of us to appreciate and accept the use of the government's taxing authority for the purposes of wealth redistribution.

The myth of Robin Hood has been a popular one for centuries. From English folklore, we are told that Robin Hood stole from the rich and gave to the poor. His is a romantic character playing on the seeming inequities of a static feudal class structure, in which those persons of nobility and privilege benefited from the wealth and labors of the lower classes.

We can certainly empathize with persons who suffer needlessly while others hoard that which is bestowed upon them. However, ours is not a society limited by class. Each person is afforded opportunities to better himself and improve his station in life. It is incongruous for America to be seen as the land of opportunity by the rest of the world and for our own citizens to bemoan a lack of opportunity and limitations for advancement.

The current administration has openly advocated a tax on the "rich" in order to pay for its proposed healthcare initiatives. Similar proposals have been made to raise the Social Security wage cap well in excess of \$100,000 in order to pay for shortfalls in Social Security. Those paying these increased taxes would not receive reciprocal increases in benefits. When government seizes one person's property, for the purpose of giving it to another, that is something inherently "un-American."

What happened to Self-reliance?

As a society, we have developed and maintained a standard of living, which is the envy of most of the world. Collectively, our society has amassed more wealth than any other in the history of mankind. These accomplishments were not the results of bureaucratic mandates and government intervention.

America has always been known for the self-sufficiency of its citizens and the reliance on individual fortitude and initiative. Are we as a society truly prepared to throw up our hands in defeat and abandon to government bureaucracy something so intimate and personal as healthcare? Have we become so dependent on the government that we are incapable of accepting the responsibility to provide healthcare for our families and ourselves?

Hardly anyone would question the need for programs such as Medicaid, to provide medical care for the needy, and Social Security Income Supplements, to provide income assistance to the infirmed and disabled. Such programs protect and care for those incapable of caring for themselves. There is also a place for limited government welfare programs. Despite the fact that government welfare programs are sometimes cited as perpetuating a cycle of poverty among its recipients, the programs are touted as a temporary fix to allow persons the opportunity to lift themselves out of poverty. Social Security and Medicare are theoretically “self-help” programs by which a taxpayer’s contributions (and those of his employer) are accumulated, saved, and returned in the form of benefit payments upon reaching an age that the recipient can no longer maintain gainful employment. None of the existing social programs are intended to provide lifetime benefits to a large segment of the population.

There used to be some stigma about being on the public dole. Respect and rewards came to those who worked hard and were committed to self-sufficiency. Today, even our most

venerable public companies and financial institutions are gorging at the federal trough. Never before in the history of this country have we as a society voluntarily abandoned our self-reliance and self-sufficiency and sought to place ourselves at the mercy of the government.

Where do we go from here?

This is where I am obliged to identify certain proposals and points of discussion. I would offer that there is no one answer or one program that is going to “fix” healthcare. There is no edict that will result in universal healthcare without affecting the provision of healthcare for everyone and imposing costs for the increased services. Nevertheless, there are changes that can and should be considered to address major symptoms of a weakened system:

1. Remove the moral imperatives from the debate. There is no more a guaranteed right to a \$200,000 medical procedure than there is a right that each person lives in a McMansion or drives a Ferrari.
2. Enact laws to increase the availability and portability of health insurance, and the deductibility of healthcare costs. Encourage competition among insurance companies to reduce costs and allow meaningful choices. Assure that coverage can be moved between employers or from an employer policy to individual coverage, without unnecessary restrictions and lapses. Provide reasonable coverage and conscionable restrictions on preexisting conditions. No one believes it would be appropriate to purchase automobile insurance the day after an accident. It is no more reasonable to expect an insurance company to pay for costly chemotherapy or surgery for a formerly uninsured patient, who purchased insurance after his cancer diagnosis.
3. Forget the one-size-fits-all approach to health insurance and healthcare. There always will be disparity in the availability of any commodity or service. Those that have the

ability and willingness to pay are able to secure a particular product or service not generally available. Encourage the development of varied insurance products (*e.g.* high deductible health insurance) that allow persons to choose a cost effective alternative to comprehensive health insurance. Encourage personal responsibility in maintaining a healthy lifestyle and making prudent financial decisions. Assure that there are efficient programs and services available for those that are truly incapable of securing medical care or insurance for themselves.

4. Curtail healthcare costs and provide for transparency in billing. Abolish tiered billing in which insurance companies negotiate lower prices for services that are fractions of what self-pay patients are charged. Healthcare is likely the only area in which those who are least capable of paying are charged the most for the product or service. Provide mechanism for discussing and evaluating with patients costs and benefits of alternative treatments and procedures.
5. Provide for tort reform that allows fair but reasonable damage awards in medical malpractice actions. There are undoubtedly patients who are injured as a result of medical negligence and who deserve compensation. However, doctors and medical providers are not insurers of one's health, and recovery should be allowed only where negligence truly exists. One possibility is to provide for a fixed schedule of recovery and damages similar to Worker's Compensation in cases where the showing is no greater than "mere negligence." Where there is "gross negligence" or where conduct is "reckless" or "willful and wanton" then consideration could be given to additional damages, including potentially punitive damages. This accomplishes two things: (i) Doctors and medical providers can decrease the reliance upon "defensive" medicine" in which costly tests and

procedures are undertaken with limited efficacy or benefit just to preclude an argument that the highest and best services were not provided; and (ii) Doctors and medical providers would not be burdened with exorbitant insurance premiums, which are ultimately passed along as costs of services or which discourage the provision of certain services.

There are no easy answers. As individuals, we want certain things. As a society, we hope for a certain standard of living. Nevertheless, as individuals and collectively as a society we must act reasonably and prudently in determining our goals and expectations. For every goal, there is sacrifice and a price. Those willing and able to pay the price and make the sacrifices usually achieve the goal, but even then it is not assured. It seems that many persons expect to enjoy the benefits of healthcare reform without incurring the cost or sacrifice. Such expectations are unreasonable.

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