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Recent Health Care Reforms: Liberal Doses of Snake Oil

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Between the minute-to-minute tactical maneuvering, partisan role-playing to the media, and legal-semantic battles at the Supreme Court level, serious thinkers can easily be seduced away from policy and outcomes to focus solely on the score in the game of politics. In health care, this might result in losing sight of what matters (the welfare of our nation) for what doesn't – today's winner.

This seems to be the case with self-styled Healthcare Reform, i.e., the PPACA (Patient Protection and Affordable Care Act of 2010), pejoratively called Obamacare. Between following which states will or won't set up health exchanges; the almost daily increases in insurance premium rates; and predicting what the Supreme Court will decide about the individual mandate to purchase insurance, what is happening to We The Patients seems to have been lost.

Health care (two words) is a service relationship between a provider and a patient for the benefit of the patient. Healthcare (one word) is a system that is supposed to a) help providers care for individual patients; and b) make our nation more competitive by having a healthier, more long-lived, and more productive population.

Most individuals are healthy. Some are sick, even critically ill. Healthcare, the system, is dying. The doctors currently caring for Healthcare are dosing this patient with snake oil. Sick things – whether people or systems – need cures, not sedation, palliation, and other forms of snake oil.

Snake oil was a homeopathic liquid sold in the late 19th century U.S. by smooth-talking salesmen claiming it could instantly cure all sorts of medical conditions, from abdominal colic through "men's complaint" (erectile dysfunction) to rheumatism. Snake oil had no medicinal properties at all. It was a scam.

Medicare was sedative snake oil. It lulled us in thinking we could get more care while paying less for it (to paraphrase Robert Moffitt of the Heritage Foundation.) This early form of snake oil was sold as assured health care in our old age by putting the necessary funds away in a lockbox while we were working.

A funny thing happened on the way to our golden years. Medicare turned in to snake oil. First, twelve million people instantly demanded benefits when they had put no money into the system. A 1990 GAO study showed that Congressional accounting projections made in 1965 were just a little "off" – 854% underfunded.

Congressional doctors-for-healthcare such as former House speaker Nancy Pelosi want to expand Medicare to cover the whole nation. Further, as Medicare is approaching bankruptcy, they plan to save it by cutting its costs. Of course, this directly translates to cutting services for patients. Congress will save a Medicare system that will eventually provide care to…no one.

Both HIPAA and UMRA were palliative snake oil. They temporarily made us feel better about chronic, painful problems, while doing nothing to solve them.

HIPAA (Health Insurance Portability and Accountability Act) was supposed to make health insurance portable (the "P") between jobs. It did no such thing. Firstly, people lost their jobs and couldn't find new work. Second, health insurance became even more unaffordable than before. Third, now with self-styled Healthcare Reform – the PPACA, Patient Protection and Affordable Care Act – it is cheaper for employers to accept the Federal penalty than provide insurance for their workers.

As for the unintended, adverse consequence of HIPAA, ask anyone who works in health care about this Act. They will probably turn and spit, then tell you how HIPAA dominates their lives, wastes billions of dollars, constrains communication between providers and makes learning nearly impossible.

UMRA (Unfunded Mandate Reconciliation Act) was an advanced form of snake oil. It was supposed to solve the problem of unfunded mandates. The Federal government mandates that certain hospitals must provide care to patients even if those patients have no funding source. By law, these hospitals have to provide care, usually very expensive care, for free.

While the care may be free to the patient with no insurance, the hospital and providers incur huge expenses providing that care. They either "find" the money by making profit on insured patients (called revenue-shifting), or they go out of business. There is no third option.

Like HIPAA, UMRA was snake oil. It promised a cure, while fixing nothing. The mandates remain in force, the care is being provided, and hospitals that survive continue to revenue-shift. It should be noted that with insurance premiums up, numbers of insured patients down, and reimbursements for insured patients way down, hospital closings will increase.

For your sense of perspective, in 2007, my own institution spent $125,000,000 on mandated-but-unfunded care. That represented 16% of that year's total budget. Can you name any business on earth that can stay in business suffering, *by law*, a 16% loss each and every year?

Interestingly, there is one big difference between the snake oil of the 1890's and modern snake oil. In the old days, the snake oil salesmen rode out of town before their mendacity led them to the hanging tree. Today's salesmen, our Congressional Representatives, stay in place, remain unscathed, while selling us more and more.

The latest form of snake oil – PPACA – is the opposite of its self-touted quality reform (change that makes things better.) The PPACA, with which Washington is liberally and forcibly dosing America, is snake oil exacerbation. It makes health care (and us) sicker.

The reputedly active medicinal ingredients in PPACA snake oil are: the health [insurance] exchange; the individual purchasing mandate, and the IPAB.

Health Exchanges

Health exchanges are touted as the use of market competition to reduce costs and to improve access. The "American Experiment," called the U.S., proved that in a free market, consumers can get better or cheaper, usually both.

Look at what free market competition did for Lasik (corrective eye) surgery. Availability went up. Prices plummeted. The success rate now approaches 100%. The Washington salesmen promised We The Patients the same results from the health exchanges: better and cheaper.

There are no free market forces in PPACA health exchanges. They are further expansions of central control and actively suppress competition.

Free market competition, emphasis on "free," means that various sellers of a product or service are allowed unrestricted competition based on various qualities such as benefits, features, and price. In a free market, consumers pay their own, hard-earned money for goods or services. Consumers decide for themselves what is their best value. By choosing some sellers over others, they decide on winners and losers in the market.

A health [insurance] exchange is the exact opposite of what was described in the previous paragraph.

- Sellers (of insurance) cannot compete based on benefits. They are strictly regulated as to what benefits they can and cannot offer.
- Sellers (of insurance) are forbidden to compete across State lines. Imagine Ford and Chrysler competing for the sale of their products under these circumstances.
- Sellers (of insurance) cannot compete on what they pay their suppliers (doctors). They follow the Medicare Reimbursement schedule. Thus, they cannot compete by lowering prices to consumers.
- Consumers (of health care) have no data on which to judge the value of goods and services they are buying. Imagine purchasing a car without knowing what mileage it gets, how much the maintenance schedule will cost, or what the resale value will be, what features the car has, or even what it will cost! The insurers – the largest of which is the Federal government – simply say, "Trust us." What is Congress' current approval rating?
- Consumers (of health care) do not control (spend) their own money. Thus, the moral hazard applies.
- Consumers (of health care) cannot choose among competing insurance sellers. The sellers do not compete (see above). Most Americans get their insurance through their employer, which gives the workers a very short list of insurance options. For the unemployed, there is no "market" of competing insurers.

Since there is no free market competition, how can We The (consuming) Patients get better and/or cheaper? Answer: we can't and won't. We will get the opposite – less access and more expenses. We are starting to get these undesirable consequences already.

Wisconsin studied the PPACA exchange concept and found that it constrains competition, makes consumers pay more for insurance, and 100,000 of their residents "will be involuntarily dropped from employer sponsored health insurance" (Press Release of August 24, 2011). No wonder Governors Walker (WI) and Susanna Martinez (NM) rejected implementing a health exchange.

PPACA exchanges effectively expand government control, not free market activities. Each State must follow Federal rules and regulations that virtually eliminate any real competition. Governor Haler Barbour said on national television that PPACA would destroy a vibrant competitive market that already exists in his State of Mississippi.

Throughout the nation, private insurance premiums – already beyond many citizens' ability to pay – are escalating an additional 30% or more. Employers are being forced to drop health coverage for employees.

So much for "cheaper" (from health exchanges.) What about "better?"

The bureaucratic costs of health exchanges are enormous, both for the States and for the Federal government. At the same time as it spends money (Medicaid grants) for set-up, Washington "saves money" by reducing payments to providers. Set up as a zero sum game, the government takes healthcare money away from patient care in order to pay for its bureaucracy.

Writing in January 2012, Jaime Leopold, the Director of the Arizona Breast Cancer Society wrote, "We have had over 45 people since September [2011] that have had their coverage cut mid-treatment." That means money is being taken away from treating cancer patients to pay for new bureaucrats. To whom should we complain about this grotesque parody of Healthcare Reform? The people with power, our Representatives in Congress, are in fact the snake oil salesmen.

The Mandate to Purchase Health Insurance

When a computer doesn't work properly, a programmer applies a patch. Then another problem pops up and a second patch is applied. Eventually, the whole computer system collapses, weighed down by patches on top of patches. All those patches were needed because the operating system was poorly designed in the first place. Our healthcare system is the same.

What we call our healthcare "system" is no system at all. It does not work to accomplish what we want, so we apply patches. Medicare was a patch: people who were no longer in the workforce could not afford health insurance. So, we created a patch that promised them old age insurance. (As we have seen, the patch was poorly conceived and stealthily applied, resulting is a "fix that doesn't fix," a common expression among system thinkers.

The legal obligation to provide care regardless of payment source, called unfunded mandates, was a patch intended to assure that all people who really needed health care would get care. This patch did not work. Hospitals and doctors had to resort to theft to pay for the unfunded care, and people did not behave responsibly. So, a patch on top of this patch was applied.

The individual mandate component of PPACA is a new patch on top of all the other patches. By law now, all Americans to purchase health insurance, whether they want to or not. Supposedly, when everyone is insured, mandated care will be funded, by definition – there will be no patients without payment source. Expensive but unnecessary emergency room care as well as costs of the entire system will plummet according to healthcare expert Harry Reid.

Ignore for a moment the issue of constitutionality that will be decided by the Supreme Court. Consider only functionality. Will this mandate-to-purchase work? Will it perform as advertised?

In a word (okay three), not a chance!

The GAO reported in 2009 that 24% of the estimated 45 million uninsured Americans were illegal residents. Many qualified for government assistance programs that existed long before PPACA but refused to enroll. Whatever their reasons, why would they now identify themselves to the government in order to purchase insurance?

A watch-cry of British colonists in the Thirteen Colonies during the 1750s and 1760s was, “No taxation without representation.” History repeats itself two and a half centuries later. In 2010, over half of the country opposed the imposition of PPACA. Today, even more people resent a government that forces them to spend their own hard-earned money to buy, well, anything.

The question of personal responsibility in health care and healthcare is possibly the most contentious of all. Whatever your position, one thing is clear. By requiring everyone to purchase insurance, the government takes over individual responsibility, telling us what we must do in our own best interest, because it knows best. This suppresses not enhances personal responsibility.

Costs will go up. Indeed, they already are. Look at your new latest bill for insurance premiums. Check out the bureaucracy that is being created to implement and oversee compliance with the individual mandate, from the new IRS inspectors, to whole new federal agencies.

All those new complex organizational charts, with newly hired bureaucrats sitting in their boxes will cost lots of money, your money. Estimates for the cost of PPACA range between $1 and $2.7 trillion. Even Everett Dirksen would call that “some real money.” While the government is spending our money hiring new bureaucrats, regulators, and overseers, they keep cutting Medicare reimbursements.

Being over 65 myself, I have numerous friends in the Medicare age range. Most complain that they cannot find a doctor who will care for them. It is not that doctors do not “care.” But if they provide care at Medicare payment rates, the doctors cannot cover their costs and they go broke. One cannot practice medicine if one cannot pay the rent, the liability insurance, and the staff.

The individual mandate is just more snake oil.

IPAB

IPAB stands for Independent Payment Advisory Board. It is modeled after another equally disingenuous abbreviation, NICE (National Institute for Clinical Excellence), which advises the National Health Service (NHS) in Great Britain.

While both Washington and London have vigorously denied the following assertion: evidence confirms that IPAB and NICE are government agencies that ration health care.

The Obama administration claims that the IPAB will review all clinical data and make recommendations about which treatments are cost effective and which are not. The problem with this rhetoric is clear to anyone who understands how health care works, or anyone willing to look at what the NHS has actually done.

IPAB recommendations are not made to the patients or to the doctors. They are made to third party payers, both private and government. These recommendations relate to populations, not to individuals. The result will be, as it has been in Great Britain, a government that will pay for certain procedures in certain patient groups and not for others.

For example, the NHS has determined that kidney dialysis over 55 years of age is not cost effective. They don't pay for it. So, if a 68 year-old man, say an editor for a British newspaper who is also my English brother, were to go into kidney failure, he would simply…die.

IPAB recommendations become *de facto* rationing decisions that are based on population statistics but are applied to individual patients. IPAB is another form of snake oil.

Will we buy the snake oil?

The State of Utah has set up a health exchange as required by the PPACA. One hundred thousand Utahans were eligible to sign up for "free insurance." Five thousand did. Apparently, Americans know snake oil when they see it and want none of it.

What should we buy?

Since we are not buying snake oil, what should we "buy?" What should we do? Politicians, healthcare economists, and policy experts have made various recommendations, some with merit. Rio Grande Foundation and Cato Institute have suggested repealing ACA; expansion of HSAs (health savings accounts); alteration of financing and accounting rules; more transparency to consumers; and insurance competition across State lines.

All the above suggestions have merit. All are palliative rather than curative. None addresses the root causes of WHY healthcare financing doesn't work in the U.S.

Those root causes are: a) Decision-making without evidence by Congress; b) A centrally controlled "market" in healthcare, which is of course an oxymoron; and c) Expansion of the bureaucracy at the expense – both literally and figuratively – of We The Patients.

To cure these root causes and thereby fix healthcare requires the Public to make three demands of our Representatives.

1. We want control of our money. “Father” (government) does not know what is best for us. We do. The reason the U.S. is the most successful, productive nation on earth is a combination of individual freedom, the work ethic of our people, and the existence of truly free markets (something we do not have in healthcare.)

2. We demand that Congress must show hard evidence of root causes as well as proof of-effect before passing any legislation or regulation. Imagine if that had been a requirement before the ACA was passed.

3. All current as well as future healthcare Rules and Regulations must show a positive long-term cost/benefit ratio. Without that, they go into the scrap heap. Imagine if that had been a requirement before Congress passed HIPAA.

Believe it or not, those three demands would cure the financing sickness of our healthcare system. We The Patients should “buy” them, not snake oil.

About the Author

Deane Waldman MD, MBA, is a Board member of and Adjunct Scholar for the Rio Grande Foundation. Waldman was educated and trained at: Yale, Chicago Medical School, Mayo Clinic, Northwestern, Harvard, and Anderson Management Schools. He has been Chief of Section at San Diego Children’s, University of Chicago and University of New Mexico, as well as a practicing pediatric cardiologist for over 35 years. He has authored over 100 academic publications and more than 200 lay articles and blogs on the practice of medicine as well as the management of and strategy for health care.

In his book, Uproot U.S. Healthcare, Deane shares insights into the root causes of why the healthcare system consistently fails patients, providers, and our country alike. Most important, the book shows why the Public *and only the Public* can and must fix healthcare.

End Notes

1. PPACA, Patient Protection and Affordable Care Act, Signed March 23, 2010, http://www.ncsl.org/documents/health/ppaca-consolidated.pdf.
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