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America's Health Care: Which Road to Reform?

Introduction

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The statistics are chilling, and often sensational: the United States spends more on health care than any other nation (over 13% of GNP),[1] but over thirty-seven million people go uninsured;[2] its infant mortality rate is higher than any other industrialized country's; its citizens die sooner and get sick more often than counterparts in Europe and Japan. But the numbers, which have become so depressingly familiar, tell only part of the story.

Millions of sick, uninsured Americans live in desperation and despair, waiting for their luck or money (if they even bother to seek treatment) to run out. The thought of crossing the street, or catching a cold strikes fear in the hearts of millions more, who know full well that an accident, or serious illness, will send them on a one-way trip to the poorhouse.

Even those who have insurance live in dire fear of losing it. Employer-based insurance leaves workers who are laid off or unemployed out in the cold. Private insurance is an option; but it is an increasingly expensive one. Privately insuring a family of four often costs over $400 a month. With the economy mired in recession and white-collar jobs disappearing, even middle-class and upper-middle-class families are feeling the frightful pinch.

Children, society's most vulnerable members, are paying an especially high price. Increasingly, employers are requiring workers to pay higher premiums and deductibles to cover spouses and children. Or they are not covering dependents at all. Nearly a quarter of uninsured children live with parents who are insured; by decade's end, the number will be close to half of *all* children.[3] Twelve million children under 18 had no health insurance in 1989 (the figure is likely much higher today);[4] simple medical problems, left untreated, often lead to serious illness. The plight of America's sick, uninsured children will only grow worse.

1. *Selected Opinions for Expanding Health Insurance,* CONG. BUDGET OFF. STUDY (July 1991).
2. HOUSE COMM. ON WAYS AND MEANS, GREEN BOOK (1991).
3. Claire Spiegel, *Uninsured Children Pay Price,* L.A. TIMES, June 22, 1992, at A20.
4. *Id.* at A20.

Misery on this scale demands action. The United States is the only country in the industrialized world, except for South Africa, that does not guarantee children basic care. How can a just, moral nation guarantee its citizens the right to legal counsel, but deny their seemingly more fundamental right to basic medical care?

Americans want fair and affordable health care that empowers and serves *patients,* not doctors, hospitals, or fatted health-care bureaucracies. Pennsylvania's voters sent a clear message to Washington when they elected me to the United States Senate last November: Do something about America's spiralling health-care crisis—and do it *now.* A Kaiser Family Foundation Poll, conducted just after the election, found that health care was an important issue for two out of every three voters—and four out of every five Wofford voters.[5]

The President and Congress are sitting up and taking note. The national battle has now begun in earnest over *what* to do about health care. Three months ago, a much quieter discussion centered on *whether* we should do anything at all.

Of course, ours was not a single issue campaign. We made a strong case for middle-class tax cuts, an expanded student loan program, an industrial policy that protects American jobs, extended unemployment compensation benefits, and—an idea very close to my heart—voluntary national or community service for young men and women. But health care seemed to transcend these issues. It seemed to capture and epitomize, in voters' minds, the federal government's failure to respond to—or even address—domestic woes. Moreover, problems relating to the escalating crisis in health care pervade nearly all aspects of American life.

As Pennsylvania's Secretary of Labor and Industry, I had the chance to witness first-hand how medical issues were poisoning labor-management relations, demoralizing workers and managers alike. I attended labor disputes that turned more on who would pay for benefits than on wages or working conditions. I witnessed single young mothers on welfare passing up job training opportunities and entry-level jobs, for fear of losing Medicaid coverage. I saw families and businesses alike struggling to keep up with breakneck costs, only to be priced out of health insurance markets altogether.

America's health-care system is sick, and in need of radical surgery. Staggering insurance costs put American companies at a competitive disadvantage in the world economy (Chrysler estimates health-care costs add an extra $700 to the price of American cars, compared with $250 for Japanese cars).[6] Money sucked into the health-care system cannot be spent to rebuild our post-Cold War economy, nor to gird ourselves for the economics battles

5. ROBERT BLENDON, HARVARD/KRC POST-PENNSYLVANIA ELECTION POLL (Nov. 8, 1991).
6. WALL ST. J., Apr. 5, 1991, at A2.

of the future. Even the White House's own budget director, Richard Darman, acknowledges the growth in medical spending is "simply unsustainable."[7]

The Pennsylvania election has galvanized lawmakers. Since November 5th, even Republicans in Congress and the President have joined the fray. And none too soon: with the American public clamoring for change, and the crisis deepening every day, frank, genuine debate over America's medical priorities can—and must—begin. But we will only succeed in forging lasting solutions if we move beyond rhetoric and partisan posturing, and confront the harsh realities of America's spiralling health-care crisis head on.

The fundamental problem is simply this: a stampede of forces—like a herd of cattle—are driving up health costs at every level. Instead of building a single, sturdy fence, the President seems to think he can lasso each cost individually, with a voucher or tax credit scheme that counts on free markets to work painless wonders.

The lesson of the past few decades should by now be clear: unfettered markets do not work wonders with health care. Market forces alone, particularly within the structure of our current health-care system, often do little to restrain prices. Those who have the power to control costs (doctors, administrators, insurers) have little incentive to do so. Those who have every incentive (consumers and patients) have no power.

What little competition there is only drives costs up further. Providers and hospitals buy glitzy, high-tech equipment to attract patients from hospitals across town boasting the same expensive machines. The pressure to "go high tech," and to buy excess equipment makes big winners out of medical equipment manufacturers and Wall Street investors who own large shares in the bullish health-care stocks. But patients, who must eventually foot the bill, lose—and lose big.

Vouchers and tax credits are curious solutions anyway. Instead of curbing spending, they pump more money into a system that needs discipline, not fuel for the raging fire. Moreover, they are likely to cost billions of dollars. Where will the money come from? The Bush Administration rules out new taxes, and suggests financing the scheme by taking a bite out of Medicare and Medicaid funding. *But do not be deceived: "solutions" that do not fundamentally restructure America's ailing health-care system, but merely tinker with the current structure to control costs, are not adequate.*

Pennsylvanians, and Americans everywhere, remain a step ahead of the Administration. The doomsayers' argument—that national health care will spawn a wasteful bureaucracy, and lead to ever higher taxes—rings hollow in the ears of Americans struggling to cope with the current system's avalanche

7. Richard Darman, Comprehensive Health Reform: Observations About the Problem and Alternative Approaches to Solution, Address Before the House Committee on Ways and Means (Oct. 10, 1991).

of paper and bills. Most families are just scraping by. For millions of Americans, rationed care, long waiting lines, lack of access to preventive medicine, and few (if any doctors) to choose from, are already the rule, rather than exception.

How might a national health-care program work? Any plan we consider must satisfy at least two conditions. It must:

(1) Make coverage available to everyone, throughout the course of their lives, regardless of where (or whether) they work and where they live. It must *guarantee* access.

(2) Effectively control costs (as almost all other developed nations do) by setting a national budget for health-care spending. Since government has obvious difficulties adhering to budgets, the plan must provide enforcement mechanisms—an independent national regulatory board, for example—that keep outlays and expenditures in line.

National health care is not, as some would suggest, intrinsically "unAmerican" (nor should it be confused with "socialized medicine"). During our campaign, I outlined a concrete, seven-point plan for achieving universal access to medical care within the framework of established American institutions and traditions. In broad terms, I argued that we should:

—Eliminate unnecessary insurance company expenses (marketing, underwriting costs and the like);

—create a medical expenditures board to control spiralling health-care costs inflation. The board (the "Health-Fed") would be to the health-care system what the Federal Reserve board is to the banking system, and it would be responsible for setting the national budget for health care;

—reform the insurance industry, so as to establish a system of qualified insurance carriers who accept all Americans seeking coverage. Carriers would also be required to scrap experience rating, agree not to cancel policy holders who get sick, and abolish the pre-existing condition rule (which threatens millions of Americans, including my wife Clare, and myself);

—require all insurance carriers to providers comprehensive benefits, including long-term care benefits;

—put an absolute limit on out-of-pocket expenses, so that accident or illness never again becomes a one-way ticket to the poorhouse;

—require all employers to participate;

—create a new kind of agency—independent of government—to administer the system, and deal directly with private insurance companies.

The important thing is not that Americans adopt *my* plan, but that they establish—and take part in—a national dialogue on health care. There are a wide range of proposals and plans to choose from, many of which meet the criteria I outlined for comprehensive reform. These plans differ in their assumptions about the roles of government and markets; but all share the same bedrock premise: our health-care system must be overhauled.

This issue of the *Yale Law & Policy Review* attempts to stimulate and strengthen the popular discourse on American health care. Empowering dialogue on great social issues is the essence—and greatness—of participatory democracy. Thus, Americans must weigh the costs and benefits (as well as the core philosophical assumptions) of each reform plan carefully, *then forge a consensus on how to refashion America's health-care system to meet the needs of all citizens*—whether rich or poor, sick or healthy, employed or unemployed.

I believe that we can find answers for the future by looking to and learning from the past. The lesson here is clear: Americans eventually rise to meet their most daunting challenges. When we faced the challenge of providing retiring workers with a social safety net, we created a social security system, which has worked remarkably well for over fifty years. When we faced the challenge of providing for elderly citizens' special medical needs, we created Medicare, and enjoyed another (somewhat qualified) success. It is only a matter of time before Americans rise up to meet their latest, possibly greatest challenge, and restructure health-care markets, so that *every* citizen's basic medical needs are met.

The success of Social Security and Medicare can serve as a guide. These programs are far from perfect, but they work. They help *all* Americans, spreading costs justly, and equitably. No one would suggest—if we were designing a social security system today—to ask employers to go it alone, and shoulder full responsibility for retiring workers. And yet that is exactly what we do when it comes to health care. I believe our challenge is clear: We must design and implement a simplified, comprehensive insurance plan available to all Americans.

We can afford to wait no longer. We need a universal health-care system, and we need it now. A simple plastic card should entitle all Americans, as it

does all Canadians, to basic medical care. Meanwhile, American industry must be freed to concentrate on products and productivity, instead of battles with labor over medical benefits.

This may be asking too much, in the short-term. The American political process encourages tentative, cautious walking, not running. But we must make sure we are headed in the right direction, if we are to walk, rather than run. The employer-based "play or pay" approach advocated by some of my Democratic colleagues (amended to strengthen cost-control measures and to guarantee long-term care benefits) can be an important first step. It establishes clear standards—universal coverage, for one—that insurance carriers, HMOs, and government programs would have to meet.

"Play or pay" may be as far as a Congressional majority is now willing to go. Election-year politics will make it doubly difficult for lawmakers to forge radical, comprehensive, bipartisan solutions. This is a shame. Medical costs will continue to rise relentlessly, without compassion for the millions of Americans who have no access to health care, or for the countless millions more who fear losing theirs. As more and more Americans are priced out of the private insurance market, the cry will become a clamor: We must do *something.*

We still have reason to be optimistic: health-care reform, along with job creation and deficit reduction, is likely to play a major role in determining the outcome of next month's presidential and congressional elections. The debate that began in Pennsylvania last Autumn will only intensify, as it spreads across the nation in months to come. But we cannot let the moment pass. The iron of change is now red hot; it will not cool until we work together to hammer out a uniquely American plan for universal health care.

Can we do it? For over two hundred years, Americans have fought long and hard against social injustices. Much obviously remains to be done: racism is not yet dead, the inner cities are decaying, the educational system is in decline. But just as women finally won the vote; just as the walls of segregation were finally torn down; and just as Social Security and Medicare built a safety net for the elderly, the day will come when all Americans—young and old, rich and poor—will have unrestricted access to basic health care.