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Philip K. Howard

Nov 11 2009, 12:57PM

The Case for a Cost Containment Commission



The big story of the health reform debate is not what the bills provide, but what they don't provide--no liability overhaul and no serious effort at cost-containment. American healthcare may bankrupt the country unless the waste and inefficiency--an **estimated 30% to 40% of total costs**--is wrung out of the system. The waste is **\$700 billion to \$1 trillion** every year. There can be no greater domestic priority.

Building a coherent new framework, however, is almost impossible in our political system. Devising a new healthcare system through hundreds of separate negotiations, with 535 members of Congress each trying to do the bidding of different constituents, is like constructing a building without any ability to make sure the walls and other elements fit together.

Containing costs requires changing the rules for all participants. Underlying incentive structures conspire to drive doctors and hospitals to do what they will be reimbursed for, not what is needed. Providers spend their days in a bureaucratic maze, focused on compliance and avoiding legal risks. Patients have no incentive to be prudent in their demands on healthcare providers, or in their personal habits.

Studies indicate that the largest drivers of waste, with rough percentages each contributing to unnecessary costs, are these: **fee-for-service incentives** for unnecessary care (50%), the **lack of consumer responsibility** (40%; see [here](#) and [here](#) also), **defensive medicine** (20%; see [here](#) also), **excess bureaucracy** (20%), and **fraud** (10%). The numbers total more than 100% because the skewed incentives overlap--a doctor orders expensive tests because it is profitable, provides a potential defense in a lawsuit, and the patient has no financial incentive to question the decision. Fraud thrives in a dense bureaucratic thicket with no patient incentive to check the false invoice.

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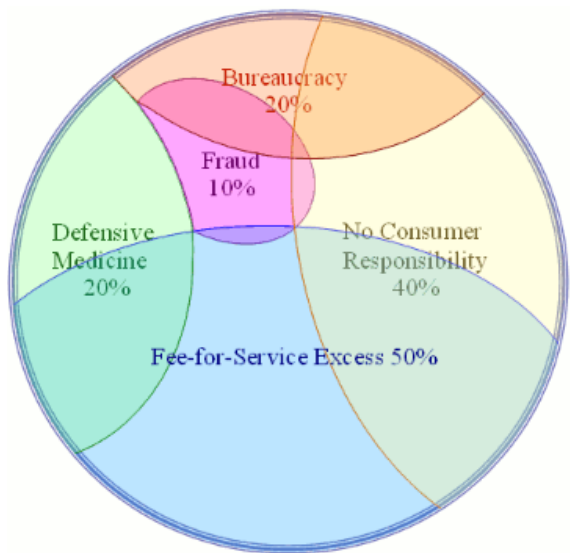
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A Circle of Waste



Because the skewed incentives reinforce each other, no reform is likely to be effective without overhauling the entire structure. A new structure should be better for most participants, liberating providers and patients alike from suffocating bureaucracy and legal fears. But the grinding gears of political deal-making in Congress make it impossible to create a coherent new structure. Piecemeal negotiations will always fail because special interests cling to their entitlements, fearful of letting go lest they find themselves in an even worse position.

The American Medical Association, for example, recently made a pact with Democratic leadership that it would stop advocating liability reform if Congress would not reduce Medicare reimbursement rates for doctors. The AMA then contacted other physician groups, urging them to stop agitating for malpractice reform, at least for the time being.

This political deal would have the effect of maintaining wasteful habits. The AMA is correct that costs can't be contained by simply reducing reimbursement rates--that's like trying to fix an inefficient machine by giving it less fuel. But retaining the current system is also not an option--we can't afford to pay doctors for unneeded services. And trading away liability reform, as doctors know better than anyone, just guarantees wasting billions in defensive medicine.

The AMA's logic was that it was engaged in an exercise of realpolitik. Senate leadership had informed them that there were not 60 votes for liability reform--mainly due to the influence of trial lawyers. But that just further illustrates the dysfunction of special interest politics. Whom do the trial lawyers represent? Liability overhaul is supported by every legitimate constituency, including consumer and patient safety groups, as well as by an overwhelming 83% of voters, according to a recent national survey by Common Good and the Committee for Economic Development.

What usually happens in Congress is a descent to the lowest common denominator. When special interests collide, Congress maintains the status quo. That's what happened here--the AMA's political deal got voted down on the Senate floor. The process then played itself again in the House--with the doctors supporting an unaffordable deal because it maintains reimbursement levels. But that deal won't hold up in conference.

It's very hard to move, forward or backward, in a process dominated by special interest politics. The exceptions are new programs that spend money--there's not a special interest for fiscal prudence.

This political process is incapable of creating a new comprehensive structure to contain health care costs. Congress must delegate the responsibility to a group that has neither the debilitating political pressures nor the balkanization of responsibility.

The best model is probably a "base-closing commission," in which a group recommends a plan which Congress can either vote up or vote down--but not alter. In healthcare, such a "cost-containment commission" would be given the task of recommending overhauls that would address the core components of waste.

Last Update: NOV 11, 2009 8:45PM

VOICES

Andrew Sullivan

The Daily Wrap
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The Sort Of Thing That Makes Me Wish I Was 15...
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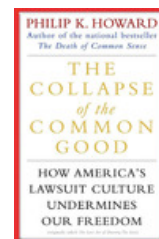
Jeffrey Goldberg

Hot Jew-on-Jew Action, Health Care Division
11.11.09 3:39 P.M.

PHILIP K. HOWARD

PHILIP K HOWARD is the author of "Life Without Lawyers" (Norton 2009), as well as the best-seller "The Death of Common Sense" (Random House, 1995) and "The Collapse of the Common Good" (Ballantine, 2002), and he is a periodic contributor to the op-ed pages of The New York Times, The Wall Street Journal, and The Washington Post. He advises leaders of both parties on legal and regulatory reform issues, and wrote the introduction to Vice President Al Gore's book "Common Sense Government". A practicing lawyer, Howard is a partner in the law firm Covington & Burling LLP. In 2002, Howard founded Common Good (www.commongood.org), organized to restore common sense to American public life. The Advisory Board of Common Good is composed of leaders from a broad cross-section of American political thought including, among others, former Senators Howard Baker, Bill Bradley, George McGovern and Alan Simpson. Howard is a civic leader in New York and is Chair-Emeritus of the Municipal Art Society, a leading civic group that spearheaded initiatives to preserve Grand Central Terminal.

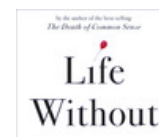
ALSO BY PHILIP K. HOWARD



THE COLLAPSE OF THE COMMON GOOD
BUY FROM AMAZON



THE DEATH OF COMMON SENSE
BUY FROM AMAZON



The bill proposed by the Senate Finance Committee has the germ of that idea in an independent "Medicare Commission," a body that would recommend changes in Medicare reimbursement. But its mandate is limited to details of Medicare payments, not overhauling the structure of healthcare for all participants.

The components of a comprehensive reform are not a secret. Experts have been discussing them for years, but without any authority to make the difficult balancing choices and without any mechanism to break through special interest politics. Thus, a comprehensive plan would likely involve:

1. New reimbursement models, with bundled payments and other ways of compensating providers based on overall effectiveness, not piecework payments;
2. A requirement that patients who can afford it contribute to their care, as other countries such as Switzerland do;
3. Models to improve reliability of justice, such as [special health courts](#) that strive for consistency in applying accepted medical standards; and
4. Radical simplification of health care bureaucracy, with common reimbursement forms and regulation based on goals and principles, not micromanagement.

(David Leonhardt discusses some of these components in [an essay about Dr. Brent James](#) in the Nov. 8 issue of *The New York Times Magazine*.)

The usual objection to special commissions is distrust--everyone fears that the deck will be stacked in favor of someone else. But the proposed independent Medicare Commission in the Senate bill provides a balanced appointment mechanism that ensures representation by experts recommended by both parties, and confirmation by the Senate.

The other objection to special commissions is that they make recommendations but nothing ever happens. Indeed, if Congress chooses to ignore the recommendations, then rising health care costs will continue to drive America towards a fiscal crisis. The pressures here work powerfully in favor of change. The one thing that we know won't work is 535 members of Congress coming up with a coherent plan. That's why America needs a special commission to do the job.

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- | Wes | November 11, 2009 4:27 PM |
|---|------------------------------|
| <p>Labeling "liability" or tort costs as "waste" is a profound mischaracterization. The damage that any individual's negligence causes another is necessarily an externalization of a real cost, the cost of avoiding risky behavior. In medical malpractice cases, this means that whenever a doctor takes a risk that any reasonable doctor would've known better than to take (and remember that in court, doctors themselves define what a reasonable doctor would do), that doctor is putting his or her patient at an unnecessary risk. The patient bears the brunt of the doctor's cost externalization, which sometimes results in damage to the patient. That damage not only includes hospital bills, but also the patient's lost earnings, potentially life-long pain or disability, and more.</p> <p>In other words, medical negligence inflicts massive costs on our health care system, and our society. Limiting damage awards to amounts well below the true price tag of damages, does not eliminate waste. It simply hides and even exacerbates the true cost of health care: burdening those individuals least able to bear that cost (the poor), while encouraging doctors to take risks by severely limiting the most important deterrent to risk taking.</p> <p>While medical insurance is expensive, the cost of tort reform is much higher. I prefer to keep my right to receive just compensation from those who take unnecessary risks at my expense.</p> | <p>REPLY</p> |

KennyBoy	November 11, 2009 7:51 PM
<p>This is a terrible article. Your links do not support your conclusions, one of them is to the PWC report</p>	



LIFE WITHOUT LAWYERS
BUY FROM AMAZON



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that they ginned up to support the Insurance industry. You don't actually come out and say it but the public option would do most of the things you say you think need to be done. Waste is \$700B to \$1T every year? No support for those figures in your links and people have been blaming massive fraud and waste for every problem since the Eisenhower administration and apparently have never managed (or tried) to eliminate it, what makes you think they'll get it right this time? Very disappointing.

[REPLY](#)

East

November 11, 2009 10:43 PM

The implied syllogism:

1. The medical system needs a philosopher king to regulate it
2. It just so happens....that's me!
3. Off I go to triumph....!

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