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Op-Ed

ObamaCare—The Way of the Dodo

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If you are reading this, chances are good you have traded the luxury of newspapers for medical texts, 24-hour shifts, and chronicling every nanosecond of your day. So let's recap what's going on in the world.

The U.S. government is borrowing roughly 40 cents of every dollar it spends, creating a budget deficit of \$1.3 trillion [1]. Uncle Sam has been at this for some time; he is now \$10 trillion in the hole. That equals roughly two-thirds of everything the United States produces in a year [2]. If we extend current federal tax and spending policies into the future, the size of the federal debt becomes cataclysmic. Think "Greece." Few recognize the extent of the danger, because Congress has cleverly cooked the books to make future debt levels appear merely horrifying.

Let's pick one of Congress's accounting frauds at random: the "sustainable growth rate" (SGR) formula.

This little gremlin cuts Medicare payments to physicians every year on January 1. Or it would, except every year these cuts have come due, Congress has postponed them. But so long as hundreds of billions of dollars of *future* cuts remain on the books, future deficits and debt appear that much smaller.

Everyone knows Congress is going to postpone those cuts when docs and seniors start complaining. But by pretending that it won't, Congress makes the federal government's finances look better. (The real genius of the SGR is that the cumulative effect of pushing all postponed cuts into future years both preserves the SGR's debt-concealing power and ensures that physicians will grow increasingly desperate to make campaign contributions with each passing year.)

Returning to current events, the unemployment rate has been stuck above 8 percent since January 2009 [3], despite numerous government stimulus packages. Since World War II, American voters have ousted every president who presided over an election-day unemployment rate above 7.2 percent [4]. It is now 9.1 percent [5]. The current White House occupant recommends another government stimulus package.

Stimulating both the federal debt and the unemployment rate is the Patient Protection and Affordable Care Act of 2010, better known as "ObamaCare," a moniker even its namesake now embraces.

During the initial debate over ObamaCare, House Speaker Nancy Pelosi (D-CA) famously said, "We have to pass [it] so you can find out what's in it" [6]. One irreverent heir to Hippocrates quipped, "That's what I tell my patients when I ask them for a stool sample" [7]. The similarities scarcely end there.

Shortly after the signing ceremony, the *New York Times* noticed that ObamaCare actually bars members of Congress from participating in the Federal Employees Health Benefits Program, throwing them out of their health plans and leaving them with no coverage [8]. Oops. The Obama administration quietly ignored this inconvenient part of the law, thereby holding the political class harmless and allowing President Obama to keep his promise that every American would be able to keep his or her current health plan.

Or at least, every member of Congress. Things ended differently when the law pushed carrier Principal Financial Group (PFG) to exit the market, curing nearly one million ordinary Americans of the preexisting condition known as being able to keep your health plan [9]. Quite unlike how it responded when the law

threatened members of Congress, in this case the Obama administration did not suspend, or even bother to discern, the responsible provisions of the law. Evidently, health care “reform” is only for the little people.

The most likely culprit behind PFG’s exit was ObamaCare’s minimum “medical loss ratio” rule, which requires health insurance carriers to spend at least 80 percent of premium revenue on medical care and quality-improvement activities (as opposed to “administrative costs”) or issue rebates to their customers. A study sponsored by the Robert Wood Johnson Foundation and published in the *American Journal of Managed Care* estimates this one requirement will impel so many carriers to leave the market that hundreds of thousands more Americans will lose their current health insurance. That includes 155,000 or so seriously ill Americans, who were protected against premium spikes by their current health plans, but may not be able to afford coverage through any other carrier. Since that study looked only at Americans who buy their own insurance (just 10 percent of the private market) and excluded California (home to America’s largest “individual” market), the actual number of seriously ill Americans who lose their coverage may be higher [10].

This 2,000-page congressional emanation also creates two new entitlement programs. The Obama administration confessed that one of them, a new long-term care entitlement known as the “Class Act,” is “totally unsustainable” [11]. The Department of Health and Human Services (HHS) shut down the office responsible for implementing the Class Act, reassigned its staff elsewhere, and asked Congress not to fund it. When reports emerged that HHS was scuttling the Class Act, the agency naturally denied the charge [12]. Shortly thereafter, HHS announced it was scuttling the Class Act [13]. ObamaCare supporters were quick to cite the Class Act’s spectacular failure as evidence that the law *works* [14]. Naturally, the White House opposes repeal [15].

ObamaCare’s other new entitlement program offers considerable subsidies to low-income workers who migrate into ObamaCare’s health insurance “exchanges.” It creates even larger incentives for employers to lend a hand, whether by dropping their health benefits or by firing these workers and rehiring them as contractors. Those (perverse) incentives, plus the threat of ObamaCare’s employer mandate, plus the added labor costs stemming from the law’s coverage mandates, have left employers wary of hiring until either the Obama administration reduces the uncertainty by assigning values to these variables, or Congress or the Supreme Court reduces the uncertainty by eliminating them. This entitlement will also prove unsustainable when its cost turns out to be higher than projected, yet still fails to make ObamaCare’s mandatory health insurance affordable (see below).

Even if the official spending projections are correct, ObamaCare will add another \$1 trillion of new government spending during its first 10 years (actually during the first 6 [16]; another accounting gimmick). One thing it doesn’t spend money on: eliminating the SGR cuts. Congressional Democrats promised the American Medical Association *et alia* a permanent SGR fix in return for supporting ObamaCare [17]. That was 2 years ago. Reports that the deal included a bridge in Brooklyn have not been confirmed.

ObamaCare finances half of that \$1 trillion of new spending with tax hikes on everything from tanning beds to health insurance to pharmaceuticals. It increases the Medicare payroll tax—in the sense that it applies this tax to non-payroll income, and uses the revenue for things other than Medicare [18, 19]. It finances the other half-trillion dollars of new government spending with promised Medicare cuts that are as bogus as the SGR—but sure do make future deficits look smaller.

When ObamaCare’s first batch of mandates took effect in September 2010, carriers notified their customers how much premiums would be raised as a result of these mandates. One Connecticut insurer put the hidden ObamaCare tax in the range of 20-30 percent of premiums [20]. Naturally, HHS Secretary Kathleen Sebelius threatened carriers with bankruptcy if they continued furnishing cost estimates [21]. The notifications stopped.

Earlier this year, the chief Medicare actuary exposed another unknown and (one hopes) unintended feature of the law when he discovered it opens Medicaid to millions of middle-class early retirees [22].

More recently, observers found cracks in the new health insurance exchanges, which under the law may be established either by states or, should they decline, the federal government. With many states balking, *Politico* revealed that the law doesn't actually provide any funding for HHS to create exchanges [23]. And there is exactly zero chance of any such funding emerging from the GOP House.

Legal scholars discovered an even bigger glitch that could scuttle both the entitlement to premium assistance and the employer mandate. It turns out the law only authorizes premium assistance in *state-run* exchanges. It does not authorize such assistance to those purchasing coverage in a federally created exchange [24, 25].

There is more to this glitch than meets the eye. With the subsidies, six in ten people in Wisconsin's individual market will still see their premiums go up by an average 31 percent, according to MIT economist Jonathan Gruber, one of the law's biggest cheerleaders. (So much for those subsidies making coverage affordable.) But suppose a state refuses to create an exchange and HHS (somehow) creates one. Remember, the IRS has no legal authority to offer premium assistance in a federally run exchange. Gruber estimates that without the law's subsidies, *nine* in ten will see their premiums jump by an average of *41 percent* [26].

In what has become a recurring theme, the IRS says it will ignore what the law says and disburse those unauthorized subsidies anyway [24]. (Given the Obama administration's proclivity for doing whatever it pleases, regardless of what the law says, one wonders why it even waited for Congress to pass a health care law in the first place.) But even this power play may not be enough to save this second entitlement program.

Or the law's "employer mandate." If the Obama administration provides unauthorized premium assistance through federally created exchanges, then some of those subsidies will, under the law's employer mandate, trigger penalties against employers. Employers would then have standing to challenge the unauthorized subsidies in court [25]. In states that decline to create exchanges, those lawsuits could scuttle not only the unauthorized premium assistance but also the employer mandate.

In an ideal world, doctors would be looking over their shoulders at competitors who are innovating to drive down costs. That's how markets make health care affordable today for people who couldn't afford it yesterday. Instead, doctors are looking over their shoulders at federal bureaucrats, who may whack physicians-cum-employers with an employer mandate, and in particular at politicians, to whom doctors must pay tribute lest the politicians cut physicians' pay.

ObamaCare supporters are ignoring the federal government's dire fiscal situation; ignoring the law's impact on premiums, jobs, and access to health insurance; ignoring that a strikingly similar law has sent health care costs higher in Massachusetts [27]; ignoring public opinion, which has been solidly against the law for more than 2 years; ignoring the law's failures (when they're not declaring them successes); and ignoring that the law was so incompetently drafted that it cannot be implemented without shredding the separation of powers, the rule of law, and the U.S. Constitution itself. Rather than confront their own errors of judgment, they self-soothe: *The public just doesn't understand the law. The more they learn about it, the more they'll like it.*

Such behavior can only be explained by the fact that ObamaCare supporters are part of a political movement that has fought for more than a century to secure a government guarantee of access to medical care for everyone. They have suffered a century of disappointments, and have never been so close to achieving their goal—which, to be clear, is not so much *access to care* as it is *the guarantee*. They will cling to this achievement, such as it is, to the bitter end. To modify an old joke: What's the difference between an ObamaCare supporter and a Rottweiler? The Rottweiler eventually lets go.

This denial takes its most sophisticated form in the periodic surveys that purport to show how those silly voters still don't understand the law. (In the mind of the ObamaCare zombie, no one really understands the law until they support it.) A prominent health care journalist had just filed her umpteenth story on such surveys when I asked her, "At what point do you start to question whether ObamaCare supporters are just kidding themselves?"

Her response? "Soon..."

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