



Medicare and Menendez: Imperfect together

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After the events of last year, you'd think Medicare would be a bit of a sore subject for our senior senator. But on Monday, Bob Menendez spoke at a press conference in Trenton at which a number of Democratic leaders attacked Republicans on health care.

"They fought to privatize Medicare; they fought to end Medicaid by block grants," Menendez said of his GOP counterparts.

He's right on that. Many people have indeed done so - and not just Republican politicians.

Ever since our single-payer health-care systems began 53 years ago, critics have lamented the lack of mechanisms to keep costs under control, particularly in Medicare. An unscrupulous doctor can exploit its many loopholes to receive payments far out of proportion to any care patients receive.

At the moment, the reigning champion in that regard is none other than the senator's friend and recent co-defendant in a federal bribery trial, eye doctor Salomon Melgen.

That case forms the centerpiece of the book "Overcharged: Why Americans Pay Too Much for Health Care" by Charles Silver and David Hyman published by the free-market Cato Institute.

In the foreword, the former dean of Harvard Medical School, Jeffrey S. Flier, writes that "Medicare and Medicaid are dishonest, the former serving as an intergenerational Ponzi scheme."

When it comes to dishonesty, the authors found the most prominent such example in the behavior of Melgen, the Florida ophthalmologist who showered the New Jersey senator with hundreds of thousands of dollars worth of luxury travel and other favors.

The trial last year of Menendez and Melgen on corruption charges ended in a hung jury. But in a separate trial, Melgen was convicted of overbilling Medicare \$73 million for eye treatments that were unnecessary.

How could a mere solo practitioner run up such bills? I put that question to Hyman, who is a medical doctor. He said the answer lies in a fundamental flaw in Medicare, the lack of a so-called "gatekeeper" to determine which services should be reimbursed.

"Medicare doesn't have any real constraints on either patients or providers," Hyman said. "If the providers say you need Procedure X, then let's do it and someone else will pay the bill."

That someone is us taxpayers. And we can end up on the hook for some truly staggering sums.

Until recently, we had no way of knowing just how much. The book tells how back in the Carter administration a group of doctors won an injunction preventing Medicare officials from releasing the names of doctors and the amounts they billed.

When the injunction was finally lifted after a lawsuit by the Wall Street Journal, the public learned that "Dr. Melgen was Medicare's heaviest hitter, with \$21 million in payments in 2012 alone," the authors write.

If you're keeping score at home, that comes to more than \$400,000 a week.

Melgen cleverly exploited the lack of a gatekeeper to diagnose "almost every patient he saw" with a relatively rare eye disease that required expensive treatment, the book states. He compounded his income by stretching a \$2,000 vial of medicine meant for one patient to cover four - and then charging the feds \$8,000 for all four treatments.

The book details how Menendez ran interference for Melgen with officials of the Department of Health and Human Services and the Center for Medicare Services.

"A Menendez staffer also contacted a CMS official and allegedly pressured him to back off, stating, 'Bad medicine is not illegal. Medicare should pay these claims,'" the authors write.

Technically, that guy had a point, Hyman told me. Bad medicine is not only legal under Medicare, it's lucrative. And it's impossible to prevent. Medicare and Medicaid receive more than three billion claims a year. He likened the enforcement efforts to "trying to play Wac-a-Mole without enough hammers."

"The cure is to put patients in the driver's seat," he said. "Give them money and let them purchase what they value."

That's a debate we need to have, but it's hard to see how our senior senator is going to contribute to it.

If Menendez truly cared about Medicare, he'd be proposing reforms to prevent people like his friend from bankrupting the system. Because he didn't, he stands a good chance of losing in November to his Republican opponent, Bob Hugin.

Hugin is a former executive in the pharmaceuticals industry, which also comes under a lot of criticism in this book for its success in rigging the market.

"That's the irony of this race. Both people are complicit," said Hyman. "But only one has been tried and has been alleged to have committed crimes."

And only one has been "severely admonished" by the Senate Ethics Committee and ordered to pay back the cost of all the favors that went unreported.

That one would be wise to never bring up the subject of Medicare again.