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Obamacare Criminalizes Medicine

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The president's health-care plan is one big entrapment scheme, argues Shikha Dalmia of Reason Foundation—one that will turn both patients and providers into criminals, pushing some families to fudge their tax reports to receive better care.

There are a great many things wrong with Obamacare, but the biggest is perhaps one that neither party is paying any attention to: It is one huge entrapment scheme that will turn patients and providers into criminals. The most blatant example of this is in the “doc fix” that Congress passed with major bipartisan support earlier this month, saving doctors from a nearly 23 percent cut in Medicare reimbursement that they would have otherwise faced this year. Congress has been passing this fix every year since 1997, but this time, in an effort to offset its \$20 billion price tag, it has included a little twist to squeeze working families called “exchange recapture subsidy.” Under this provision, the government will go after low-wage families to return any excess subsidies they get under the Patient Protection and Affordable Care Act.



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When the government hands out subsidies, it will use a household's income in the previous year as the basis for guessing what the household is qualified to get in the current year. But if the household's income grows midyear, the subsidy recapture provision will require it to repay anywhere from \$600 to \$3,500, compared to the \$450 that the law originally called for.

This will make it very hazardous for poor working families to get ahead. In the original law, the loss of subsidy with rising income already meant absurdly high effective marginal tax rates—the implicit tax on every additional dollar of income earned. How high? The Cato Institute's Michael Cannon puts them at 229 percent for families of four who increase their earnings by an amount equal to 5 percent of the federal poverty level or \$1,100. In other words, a family

that added this amount to an income of \$44,700 would actually see its total income *fall* by \$1,419 due to the loss of subsidies.

The subsidy recapture provision—essentially a tax collection scheme—means that low-wage, cash-strapped families will have no escape from these perverse tax rates. Many of them will find themselves owing the government thousands of dollars in back taxes. Since it is unlikely that they will have this kind of money sitting around, they will face a massive incentive to either fudge their returns or work for cash to avoid reporting additional income. Either way, Uncle Sam will come after them, just as it does with recipients of the Earned Income Tax Credit, the negative income tax scheme that is the inspiration behind Obamacare's subsidies. In 2004, EITC recipients were 1.76 times more likely to be audited than others, no doubt because it is easier for the government to recover unpaid taxes from poor people than "lawyered up" rich people. In other words, Obamacare will first create the temptation for low-income families to commit fraud, and then penalize them when they do.

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in back taxes.

But just because Obamacare sticks it to families doesn't mean that physicians will have it good. They'll face their own—even more draconian—crackdown. Indeed, just as Obamacare goes after working-class families to pay doctors, it goes after doctors to pay working-class families, putting everyone at war with everyone else.

The government loses about 10 percent of its total health-care spending—or about \$60 billion—to "fraud" annually. Some of this is genuine fraud involving physicians—or people posing as physicians—submitting claims for services or equipment never delivered and indefensible therapies that have nothing to do with patient care. But the most common fraud allegedly involves "overbilling" by providers. Medicare's billing codes are a complicated, convoluted mess and deciphering them can sometimes be more art than science. Naturally, doctors try and interpret them to extract the best possible payment from Uncle Sam. Both Republicans and Democrats huff and puff against "waste, fraud and abuse" in Medicare. And they have already enacted Stasi-style laws such as the False Claims Act offering nurses, patients and other whistleblowers 15 percent to 30 percent of any money recovered if they report improper billing practices by providers. But the Obama administration has attacked the matter with renewed zeal because it is a key element in funding Obamacare's generous new entitlements.

It has created a new interagency task force called HEAT (Health Care Fraud Prevention and Enforcement Action Team) under which health-care officials will collaborate with the FBI to go after Medicare fraud. In addition, it has expanded to several cities the Medicaid Fraud Strike Force that authorizes FBI and Drug Enforcement Agency agents to jointly analyze Medicare claims data in real time to detect and investigate irregularities by area doctors.

More chillingly, however, the administration is defining Medicare fraud down to include "unnecessary" and "ineffective" care. And to root this out, it plans to make expanded use of private mercenaries—officially called Recovery Audit Contracts—who will be authorized to go to doctors' offices and rummage through patients' records, matching them with billing claims to uncover illicit charges. What's more, Obamacare increases the fine for billing errors from \$11,000 per item to \$50,000 without the government even having to prove intent to defraud.

This is utter insanity. And it has been caused by the transformation of health care into a government-controlled industry where the natural, self-regulating forces of the market have been badly subverted. There is nothing left but the coercive apparatus of the state to keep patients and doctors in line. This would be unimaginable where the customers receiving or contracting for services are actually the ones paying for it. If Whole Foods "overbilled" its shoppers, they would just go to Trader Joe's. No one would think of summoning the police. If a mechanic submitted unjustified bills to All State Insurance for car repairs, All State would contract with someone else. There would be no need for an FBI stakeout.

Obamacare is pushing America down the road to serfdom, but neither its opponents nor advocates seem to have noticed. It is time for civil libertarians in both parties to wake up and strangle it before it strangles what's left of

American freedoms.

Will Obamacare turn patients into criminals?

- Yes
- No

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