

JUST GOTTA LEARN FROM THE WRONG THINGS YOU DONE

Dick Arme y

I have long had an interest in health policy. But I first became passionate about health care during the epic battle over Clinton Care in 1993 and 1994. I still regard that victory as one of the finest hours for Republicans in Congress. And I take a certain satisfaction in the role a certain chart played in that victory—the chart I created with my staff, depicting the plan’s dozens of new bureaucracies. We captioned it: “Simplicity Defined.” One of Mrs. Clinton’s comments after the defeat of Clinton Care was, “We never overcame the chart.”

People don’t realize how close we came to passing the Clinton Plan in the summer of 1994. What could have been a catastrophe for America turned out to be a catastrophe for the Democrats. The fact that they proposed it is the biggest reason we took control of Congress that year. Had it passed and become law, I doubt President Clinton would have been reelected two years later.

Winning the majority in 1994 gave us a chance to put our own stamp on health policy, and the Health Insurance Portability and Accountability Act (HIPAA) was the first health legislation we passed. It started out as a modest little bill, claiming to make coverage portable from job to job. It grew to become a whole package of reforms, most of them having nothing to do with portability.

The Unintended Consequences of HIPAA

HIPAA is a classic example of legislative panic. We passed it mostly as a way to make the political point that our new majority could govern and be compassionate at the same time. The fact is that HIPAA was a mistake. It was oversold. It had unintended consequences.

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It turned out that HIPAA did little to make insurance more portable, but it did set a dangerous precedent for the federal regulation of health insurance. We thought we were cracking down on Medicare fraud. Instead, we turned doctors into criminal suspects, with armed federal agents seizing their filing cabinets. We felt confident that we had guaranteed medical privacy and paperless billing, but HIPAA appears to have expanded bureaucrats' access to our medical records without a search warrant.

To be sure, we actually made HIPAA better than it might have been. We did manage to get Medical Savings Accounts (MSAs) attached to it. When we brought HIPAA through the House, I was seduced by the hope for MSAs. I voted for HIPAA, but I got too much HIPAA and too little MSAs. We need to try to go back and fix those things.

Looking back now, it seems undeniable that the first health care law after Clinton Care was, to some extent, the first installment of Clinton Care.

On the other hand, the Left learned its lesson in the wake of the defeat of Clinton Care. Since then, they have worked step by step to obtain what they could not get all at once. HIPAA, it turns out, was their first step. Next came Kid Care. Just last year, the Senate passed a so-called Patient's Bill of Rights that would vastly expand federal regulation of health insurance and swell the ranks of the uninsured. The liberals are so sure of that bill's eventual passage that they are waiting in the wings with their next steps. For instance, Senator Kennedy (D-Mass.) has unveiled a bill to let parents into Kid Care. And Rep. Pete Stark (D-Calif.) wants to put all kids on Medicare. It does not take a crystal ball to see where this process is headed.

It is ironic that the Democratic Party poses as the great enemy of HMOs, since it was Senator Kennedy who wrote the first federal HMO law in 1973. And it was Democrats who tried to herd all Americans into HMOs in 1994. This amazing turnaround is proof, as David Horowitz (2000) notes in his book, *The Art of Political War and Other Radical Pursuits*, that "the resurgence of the Democratic Party" has occurred largely "through its appropriation of Republican rhetoric and policy." Unfortunately, in health care, they have appropriated a lot more rhetoric than policy.

Patients Need a Declaration of Independence: They Need MSAs

We need to get on offense and work harder for free-market health reforms, because, as *National Review* advises, "If Republicans don't

reform health care themselves, the system will evolve in a socialist direction, while doing constant damage to the party of liberty along the way” (Ponnuru 2001).

Patients need more than a bill of rights. They need a declaration of independence. Yes, patients should be able to sue their HMO. But even more, they should be able to fire their HMO. This is America. Patients should have the right and the ability to take their business elsewhere.

That is why MSAs are so important. MSAs combine peace of mind with freedom of choice—affordable insurance with tax-advantaged savings. They eliminate third-party payment, except for major medical expenses. The existing pilot project under HIPAA has shown MSAs to be very attractive to the uninsured.

Senator Kennedy’s staff understood this. During the HIPAA negotiations, my good friend Bill Archer overheard one of Kennedy’s staffers whisper in the Senator’s ear, “We could live with *some* MSAs, but they’ll make it harder to get to national health insurance.”

Which is why Senator Kennedy has worked so hard to stop MSAs. Back in 1996, he forced us to accept a whole series of Luddite restrictions as the price of getting MSAs on the books. Well, I am happy to report that the House is likely to repeal those restrictions in *any* version of patient’s rights legislation that moves through Congress in the future. Once MSAs are made permanent, workable, and universally available, I am hopeful that a real market for sensible health care will form, MSAs will take off, and national health insurance will become significantly harder to enact.

Tax Reform

Long term, we must get serious about reforming the tax treatment of health care. It’s time to level the playing field so *all* Americans have access to insurance that’s portable, affordable, and tailored to their family’s needs. As it happens, my flat-tax bill would do just that. I believe we will get there.

We economists always believe we are going to reach the bliss point. But until that day comes, we can do the next best thing. We can pass refundable tax credits for the uninsured. The “Fair Care for the Uninsured Act of 2001” (H.R. 1331), which Rep. William Lipinski (D-Ill.) and I introduced last year, would give a family of four a certificate worth \$3,000 to purchase good private coverage. That would give you and me a reason to be willing to exercise the option to purchase our own insurance rather than rely on the employer-provided system. And thanks to online markets like *eHealthInsur-*

ance.com, such individual health insurance coverage is becoming more affordable all the time.

Give Workers More Choice and Control

Let me be clear. I do not think we should blow up the employer-based system. I think we should transform it from within, so that people have options to choose to go other ways. We should help job-based coverage evolve to give workers more choice and control. For example, we should end the use-it-or-lose-it rule on flexible spending account arrangements in the workplace. If workers could accumulate “flex cash” for medical expenses, they would basically have a job-based MSA without the Kennedy restrictions.

At the same time, we should promote a big new idea in health care: defined contribution plans. Just as 401(k) pensions have given millions of workers more choice and control, so could “401(k) health plans.” It would be a shame to let a patients’ bill of rights become law without using the opportunity to help American workers exercise greater control of their health care. Remember, nobody spends somebody else’s money as wisely as they spend his or her own money. When we’re involved more in managing our own health care finances, we will do a better job. When you can hire and fire your insurer, you’re much less likely to need or want to sue your employer.

We have got to help the American people understand that in health care, as with any aspect of your life, if you want the freedom, you must accept the responsibility. Too many Americans feel that if they have to go through the market rigors of examining, choosing, purchasing, and managing for themselves then the burden is too great. And too many other people are encouraging our citizens to believe that they are not up to the task.

But I can tell you right now that if you can figure out how to select a personal computer and how to make it burn a CD, you are quite capable of selecting your own health insurance and knowing before you get to the hospital the extent to which you are in fact covered by insurance. When you know that, you also won’t be bitterly disappointed by trying to rely on the presumption that you must have been cheated—simply because what you had imagined was in your insurance policy really was not there. We have to move beyond the compelling need to get a lawyer or scream out that great American distress signal, “There ought to be a law!”

In the immortal words of one of our great 20th century American

philosophers, Jimmy Buffet, sometimes you “just gotta learn from the wrong things you done.” The liberals have learned from their mistakes. Let’s learn from ours and get serious about patient power.

References

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