Editorial:

# Time to Stop Tyranny in Medicine

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Oppressive power exerted by the government upon medicine is, by definition, tyranny. It is inflicted upon patients and physicians alike by hundreds of thousands of pages of laws, rules, regulations, and regulatory public-private partnerships administered by unaccountable government bureaucracies that have sent "hither Swarms of Officers to harass our People, and eat out their substance."[1]

**ObamaCare—Keystone in the Arch of Socialism and Socialized Medicine**

No American president has been more destructive of medicine than Barack Hussein Obama. His "signature accomplishment," ObamaCare, is merely a planned transition phase to fully socialized medicine. As government coverage mandates increase, the cost of health insurance premiums will increase. Despite Obama's promise that health insurance premiums will decrease and become more affordable under ObamaCare, many people have already experienced double-digit increases in their health insurance premiums. And this is before most of the provisions of ObamaCare have been implemented.

Insurance companies are charging higher premiums now so as to brace for the anticipated, likely planned financial crisis of ObamaCare. When the increased cost of government-mandated coverage confronts strict caps on insurance premiums imposed by ObamaCare, many insurers will face insolvency. And, when insurers go out of business or leave the government-run medical insurance market, a true crisis will develop. Socialists, of course, love a crisis, because a crisis to them presents an opportunity to inject more poisonous socialist policies into government. As private insurers fail in their ability to provide coverage, socialists will offer to "save the day" with a government-run single-payer system.

The Independent Payment Advisory Board (IPAB), established by ObamaCare, is a socialist instrument of power wielded by the president, who appoints 15 members who will determine what medical care each citizen will receive or not receive. As noted by health policy analysts Diane Cohen and Michael F. Cannon:

> IPAB's unelected members will have effectively unfettered power to impose taxes and ration care for all Americans, whether the government pays their medical bills or not. In some circumstances, just one political party or even one individual would have full command of IPAB's lawmaking powers…. It wields power independent of Congress, independent of the president, independent of the judiciary, and independent of the will of the people.[2]

While no one knows at this point which specific healthcare rationing schemes IPAB will implement, we do know that the Complete Lives System of rationing care[3] has already been published and is available to use. The idea that some bureaucrat or group of bureaucrats would sit in judgment over citizens to assess their potential to achieve a "complete life" should cause all of us to shudder in fear. The Complete Lives System rations medical care by age, and in some cases by the individual's perceived social usefulness to society or "instrumental value." The authors of the Complete Lives System article describe the healthcare rationing scheme as follows:

> Many thinkers have accepted complete lives as the appropriate focus of distributive justice: "individual human lives, rather than individual experiences, [are] the units over which any distributive principle should operate…." Adolescents have received substantial education and parental care, investments that will be wasted without a complete life…. [P]oor adolescents should be treated the same as wealthy ones, even though they may have received less investment owing to social injustice…. In a public health emergency, instrumental value could also be included to enable more people to live complete lives…. When implemented, the complete lives system produces a priority curve on which individuals aged between roughly 15 and 40 years get the most substantial chance [of receiving a medical intervention], whereas the youngest and oldest people get chances that are attenuated (figure).[3]

Indeed, the figure referenced in the article shows that past age 50, one's probability of receiving a medical intervention under the Complete Lives System declines precipitously.

Public-private partnerships like the American Medical Association (AMA), which supported and continues to support ObamaCare, have unfortunately assisted in furthering the tyranny from which we suffer in medicine today. In 1983 the AMA entered into a little-known agreement with the federal government in which the AMA's CPT coding system would become the exclusive coding system for all government medical programs.[4] That agreement provides millions of dollars in revenue to the AMA every year at the expense of practicing physicians.

On May 16, 2012, the *Journal of the American Medical Association* published a theme issue on global health. An article in the issue, "A Framework Convention on Global Health: Health for All, Justice for All," authored by attorney Lawrence O. Gostin, stated:

> If the bold vision of a Framework Convention on Global Health does become a reality, WHO [World Health Organization] must be at the center of global governance for health, providing evidence-based innovative solutions, steering the health sector, influencing multiple sectors, and becoming a passionate voice for "health for all, justice for all."[5]

ObamaCare also creates a feudal system called Accountable Care Organizations (ACOs), whereby the "lords" (hospitals and other entities) will be provided with global bundled payments for care, which they will then dole out in small portions to the physician "serfs" who actually provide the care.

**Government Control of Medicine by Punishment**

Government has usurped control of medicine by providing a few tiny "carrots" but mostly by wielding many big "sticks." The Sustainable Growth Rate (SGR) formula in the Medicare program, for example, represents a form of collective punishment of physicians not unlike that used in many prisons today. When two inmates fight in prison, all inmates are often punished. Likewise, under the SGR formula, when global targets for physician Medicare costs are exceeded, those physicians who contributed to the cost increase are punished along with all other Medicare physicians who did not contribute to increased costs in Medicare. The increasing costs in Medicare, of course, are largely due to a Medicare population that is growing larger and whose entitled beneficiaries are living longer—demographics that are not under the control of physicians.

Here are a few examples of the numerous physician punishments government uses to control the practice of medicine:

ICD10: If Medicare physicians are not compliant with ICD-10 by Oct 1, 2014, non-compliant physician fees will be cut by 100%! Medicare will not process their claims.

E-Prescribing: If Medicare physicians are not compliant with e-prescribing, non-compliant physician fees will be cut by 1.5% in 2013 and 2% in 2014.

Meaningful Use: If Medicare physicians are not compliant with Stage 2 Meaningful Use standards by Oct 14, 2014, non-compliant physician fees will be cut by 1% in 2015, 2% in 2016, 3% in 2017, 4% in 2018, and 5% in 2019 and beyond.

Physician Quality Reporting System (PQRS): If Medicare physicians are not compliant with PQRS based on 2013 reporting activity, non-compliant physician fees will be cut by 1.5% in 2015, and 2% in 2016 and beyond.

Maintenance of Certification (MOC): "[T]he Affordable Care Act explicitly recognizes the ABMS [American Board of Medical Specialties] MOC and establishes [it] as a pathway for satisfying federal requirements…. In 2016 there will be a reduction in Centers for Medicare and Medicaid Services-based fees if not enrolled in MOC."[6]

Plans to implement new onerous Maintenance of Licensure (MOL) requirements, which will make MOC mandatory for licensure in all states, are also well underway. Those physicians who fail to comply with new MOL requirements will be punished by losing their licenses to practice medicine.

**Government-Created "Gotcha" Culture**

Government has turned patients against their physicians by encouraging government-entitled Medicare patients (via notices on Medicare Explanation of Benefits, and Medicare Hotlines) to turn in their doctors to government authorities for any perceived irregularity.

Government also has created large armies of private bounty hunters, Recovery Audit Contractors (RACs), whose mission is to hunt down and claw back any payments made to physicians that might be construed as an "overpayment." The bounty hunters receive a portion of the money extracted from physicians. Meanwhile, Zone Program Integrity Contractors (ZPICs), who may receive tips from RACs, execute their mission, which is to charge Medicare physicians with crimes against the state. Even in cases in which government proves no Medicare fraud, physicians can still be sent to federal prison for a misstatement in an operative report that has no consequence for Medicare billing.[7]

**Government System of Payment Based on Marxist Labor Theory**

In 1992 the government implemented a new payment system in Medicare known as the Resource-Based Relative Value Scale (RBRVS). The new payment system, which also has been adopted by private payers, is based on Marxist labor theory. Government bureaucrats, who arrogantly presume to know the correct price for every medical service, set fees for all Medicare-covered services. However, labor has no intrinsic value outside of a market system. The value of labor is determined by what people are willing to pay for it. As a result of this socialist government price-fixing scheme, government never gets the price right. More often than not, the government underprices services, resulting in reduced availability of those services for patients dependent on the Medicare program.

**Government Intrusion and Interference in the Practice of Medicine**

Despite government's promise, as codified in Section 1801 of the Social Security Act (Medicare), that " Nothing in this title shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which Medical services are provided…," unlicensed, unaccountable, incompetent government Medicare bureaucrats now interfere with every aspect of the practice of medicine.

Pay for Performance (P4P) has become the socialist slogan of the day. What started out as payment for performance quickly morphed into payment for outcomes, and is quickly transitioning to payment based on cost containment.

A recent article in *The New York Times*, however, noted: "In practice, pay for performance does little to improve outcomes or to control costs."[8]

Those who promote centrally controlled, government-run, single-payer systems of medical care react with utter disdain to the fact that socialist principles in practice cannot overcome human nature and fundamental laws of economics: "Once you define performance, people manage toward those metrics and neglect other things that don't get counted," said the Princeton health economist Uwe Reinhardt. "New York doctors have a favorite, possibly apocryphal, story of medical providers gaming the system: Miami hospitals that use patient feedback as a

performance measure wait until spring to do their surveys, because that's when the cranky, hard-to-please New Yorkers go home from their winter refuge."[8]

A doctor at the Harvard School of Public Health, Dr. Ashish Jha, however, believes that government-administered P4P can work if only government would apply an effective psychological tactic: Jha also proposes a little experiment in behavioral psychology: give hospitals 100 percent of the bonus at the beginning of the year, but require them to send a refund at the end of the year to pay for any shortcomings. "Givebacks really focus the mind," he notes.[8]

The socialist system of medical care in Canada uses a "clawback" method of cost containment. If physicians work hard and earn beyond that which the government determines is reasonable for them to earn, government claws back some of what they have earned at the end of the year. As a result, highly productive physicians go on vacation once they have earned their government-allowed income, thus depriving patients of their services. Socialists just don't understand the concept that people are not happy to continue working for free.

ObamaCare includes payment for performance provisions that will link payment to hospitals to quality metrics determined by bureaucrats.

### The Tyranny of Physician Slavery in Medicare

Physician enrollment and participation in Medicare from its inception has always been voluntary. But recently government has taken the position that involuntary servitude by physicians in Medicare is mandatory. Government apparently has told physicians, in an unsigned but official-looking email cited by the AMA, in no uncertain terms: "a physician who treats a Medicare beneficiary…must either…enroll in Medicare…or…furnish the Medicare-covered services for free."[9] In CMS Transmittal 1588, the government cites the mandatory Medicare claims filing requirement under Section 1848 of the Social Security Act as the basis of its authority to create physician slaves in the Medicare program: "When returning a beneficiary submitted claim the [Medicare] contractor shall also inform the beneficiary, by letter, that the provider or supplier is required by law to submit a claim on behalf of the beneficiary (for services that would otherwise be payable), and that in order to submit the claim the provider must enroll in the Medicare program."[10] Dr. Susan Hansen has provided important references and discusses physician slavery in the Medicare program in more depth in this issue of the Journal.

Although our Constitution is frequently ignored or violated by those in power in our country today, the Thirteenth Amendment, outlawing slavery, was ratified on Dec 6, 1865, and is still law.

### Time to Fight Back Against the Government Oppressors

Physicians must stop supporting the very abuses from which we suffer. Physicians who participate in Medicare and other government-run medical programs are essentially encouraging and promoting tyranny in medicine by participating in these programs. Participation is viewed by the government oppressors as a clear sign of support of government healthcare. The high percentage of physicians who participate in Medicare is often cited as evidence that physicians are willing to accept increasing abuse, systematic underpayment for services provided, interference in the practice of medicine, and the annual threat by government to cut Medicare physician fees further by as much as 30%.

In the midst of government's war on physicians, too many physicians worry about offending the tender sensibilities of socialists by pointing out the historical truth that socialism does not work, and that socialist utopias do not exist. Appeasement of the oppressors for a "seat at the table" does not work. Our patients are not well served when physicians fail to stand up and vigorously fight back against government tyranny in medicine. Government rationing of care in ObamaCare or in any other centrally controlled system of care is inherently detrimental to patients.

Physicians have a professional ethical responsibility to fight against that which harms our patients. Physicians and other citizens have a clear right and duty to stop the tyranny:

> [W]hen a long Train of Abuses and Usurpations, pursuing invariably the same Object, evinces a Design to reduce them under absolute Despotism, it is their Right, it is their Duty, to throw off such Government, and to provide new Guards for their future Security.[1]

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