



Written by [Joe Wolverton, II, J.D.](#) on February 13, 2010

Gingrich Offers Healthcare Reform Advice

Newt Gingrich, architect of the “Contract with America,” and John C. Goodman, founding president of the National Center for Policy Analysis, wrote an op-ed column for the Wall Street Journal offering suggestions to President Barack Obama, who seems desperate to find ways to garner bipartisan support for his push for healthcare reform.



In their missive, Messrs. Gingrich and Goodman proceed to provide the president with 10 of the “best ideas out there” for overhauling the American healthcare system and doing so in a manner that would please his political rivals.

Despite being soi-disant conservatives, the advice given by these two eager counselors instructs the president to do this or that, none of which is at all provided for in Article II of the Constitution, the article that defines the powers granted to the president. That said, none of these pointers would be constitutionally possible for Congress either (see Article I of the Constitution).

Never one to allow the Constitution and its enumerated powers to get in the way of a good scheme, however, Gingrich and company offered the following slate of ideas, all of which do nothing but construct a stable around a Hobson’s choice of broken down health care horses:

Make insurance affordable. The current taxation of health insurance is arbitrary and unfair, giving lavish subsidies to some, like those who get Cadillac coverage from their employers, and almost no relief to people who have to buy their own. More equitable tax treatment would lower costs for individuals and families. Many health economists conclude that tax relief for health insurance should be a fixed-dollar amount, independent of the amount of insurance purchased. A step in the right direction would be to give Americans the choice of a generous tax credit or the ability to deduct the value of their health insurance up to a certain amount.

This sounds fine at first blush and isn’t so much a project for the President as a directive to Congress, but it nonetheless proposes changes to a tax scheme whose every mandate is another crime against the Constitution and the restrictions placed therein on the Congress’s power to tax citizens. Gingrich and his fellows would be wise to recognize that no matter how much they love England and our shared history, in America we are citizens, not subjects and we will not be taxed whimsically.

Make health insurance portable. The first step toward genuine portability — and the best way of solving the problems of pre-existing conditions — is to change federal policy. Employers should be encouraged to provide employees with insurance that travels with them from job to job and in and out of the labor market. Also, individuals should have the ability to purchase health insurance across state lines. When insurers compete for consumers, prices will fall and quality will improve.

How do the authors of these tips justify such a step? Under what theory of constitutionality is this



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suggestion the bailiwick of Congress? The solution to cutting the tethers on health insurance is to restrain Congress by the shackles of the Constitution. That is to say, health insurance policies will become more portable in direct proportion to the limits placed on Congress's unchecked exercise of illegitimate taxing powers. If left free of stifling government red tape, the marketplace will respond to the needs and desires of workers. Under the current environment, however, employers are fearful of re-designing their models and offering enhanced benefits that might draw the attention of congressmen anxious to skim a few coins off the top of any new pot of gold.

Meet the needs of the chronically ill. Most individuals with chronic diseases want to be in charge of their own care. The mother of an asthmatic child, for example, should have a device at home that measures the child's peak airflow and should be taught when to change his medication, rather than going to the doctor each time.

Having the ability to obtain and manage more health dollars in Health Savings Accounts is a start. A good model for self-management is the Cash and Counseling program for the homebound disabled under Medicaid. Individuals in this program are able to manage their own budgets and hire and fire the people who provide them with custodial services and medical care. Satisfaction rates approach 100%, according to the Robert Wood Johnson Foundation.

We should also encourage health plans to specialize in managing chronic diseases instead of demanding that every plan must be all things to all people. For example, special-needs plans in Medicare Advantage actively compete to enroll and cover the sickest Medicare beneficiaries, and stay in business by meeting their needs. This is the alternative to forcing insurers to take high-cost patients for cut-rate premiums, which guarantees that these patients will be unwanted.

Again, take the hands of government out of the pockets of Americans and you instantly alleviate the federally applied financial pressure that restricts the ability of working Americans to put aside money for their own healthcare. When insurance companies conspire with congress, then the consumer is stuck between the devil and the deep blue sea, drowning under wave after wave of constricting clauses and confusing conditions.

Allow doctors and patients to control costs. Doctors and patients are currently trapped by government-imposed payment rates. Under Medicare, doctors are not paid if they communicate with their patients by phone or e-mail. Medicare pays by task—there is a list of about 7,500—but doctors do not get paid to advise patients on how to lower their drug costs or how to comparison shop on the Web. In short, they get paid when people are sick, not to keep them healthy.

So long as total cost to the government does not rise and quality of care does not suffer, doctors should have the freedom to repackage and reprice their services. And payment should take into account the quality of the care that is delivered. Once physicians are liberated under Medicare, private insurers will follow.

Re-tooling Medicare is not the answer to controlling costs. The answer to controlling costs (as well as to controlling every other instance of government malfeasance) is to insist that those representatives already in office restrain themselves and legislate within the narrow and explicit boundaries drawn by the Constitution. Then, in state after state and district after district, elect only those candidates committed, genuinely, demonstrably committed, to serving according to the dictates of our founding document.

Don't cut Medicare. The reform bills passed by the House and Senate cut Medicare by



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approximately \$500 billion. This is wrong. There is no question that Medicare is on an unsustainable course; the government has promised far more than it can deliver. But this problem will not be solved by cutting Medicare in order to create new unfunded liabilities for young people.

For a conservative to suggest the continued care and maintenance of Medicare even while acknowledging it is on an unsustainable course is an insult to conservatism and the principles of good government it proclaims. Medicare should be no more well regarded than the thousands of other social programs draining the lifeblood of American might. Furthermore, it is laughable that Medicare be considered sacrosanct when its very existence violates our sacred Constitution.

Protect early retirees. More than 80% of the 78 million baby boomers will likely retire before they become eligible for Medicare. This is often the most difficult time for individuals and families to find affordable insurance. A viable bridge to Medicare can be built by allowing employers to obtain individually owned insurance for their retirees at group rates; allowing them to deposit some or all of the premium amount for post-retirement insurance into a retiree's Health Savings Account; and giving employers and younger employees the ability to save tax-free for post-retirement health.

Building a bridge to Medicare? Talk about your bridge to nowhere. This suggestion is merely a restatement of those before and susceptible to the same criticism. It is economically impossible and thus insulting to business to suggest that employers fund a deposit account from which health insurance policies for their retirees could be paid. Congress should not be asked to “allow” employers to make this change or that change in order to relieve the pressure on retirees, rather companies should insist that Congress comply with the Constitution's limits on its power and then all Americans would be the happy recipients of greater economic freedom.

Inform consumers. Patients need to have clear, reliable data about cost and quality before they make decisions about their care. But finding such information is virtually impossible. Sources like Medicare claims data (stripped of patient information) can help consumers answer important questions about their care. Government data—paid for by the taxpayers—can answer these questions and should be made public.

Once again it seems Messrs. Gingrich and Goodman are happy to let the tail wag the dog. Consumers would be abler to insist on clearer cost estimates if the greedy hands of lawmakers were restrained by the Constitution. Information will flow much freer and faster if the pipeline was clogged with viscous residue of Congressional overreaching.

Eliminate junk lawsuits. Last year the president pledged to consider civil justice reform. We do not need to study or test medical malpractice any longer: The current system is broken. States across the country—Texas in particular—have already implemented key reforms including liability protection for using health information technology or following clinical standards of care; caps on non-economic damages; loser pays laws; and new alternative dispute resolution where patients get compensated for unexpected, adverse medical outcomes without lawyers, courtrooms, judges and juries.

This recommendation actually contains a nugget of good sense. The authors cite the reforms made in Texas as an example of how the president and Congress could enact tort reform vis a vis medical malpractice. Perhaps if the authors read the 10th Amendment to the Constitution they would realize



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that the Lone Star lawmakers are doing precisely what they should do: legislate in areas lying outside the exclusive, explicit, and enumerated arena of the national government. It is duplicitous to highlight Texas's success in changing the law within a wider call for federal interference in a matter clearly outside its restricted province of power.

Stop health-care fraud. Every year up to \$120 billion is stolen by criminals who defraud public programs like Medicare and Medicaid, according to the National Health Care Anti-Fraud Association. We can help prevent this by using responsible approaches such as enhanced coordination of benefits, third-party liability verification, and electronic payment.

There's a great way to prevent the defrauding of Medicare: abolish it. You can't steal from an agency that doesn't exist and the same Congress that gave it life can refuse to fund a behemoth that is begging for euthanasia. If the states want to establish and fund health care systems, then so be it. The constitutionality of such a policy would be up to the citizens of those states to decide. On the federal level, however, there is no constitutional authority for the creation of a nationalized medical insurance provider.

Make medical breakthroughs accessible to patients. Breakthrough drugs, innovative devices and new therapies to treat rare, complex diseases as well as chronic conditions should be sped to the market. We can do this by cutting red tape before and during review by the Food and Drug Administration and by deploying information technology to monitor the quality of drugs and devices once they reach the marketplace.

This final proposition is the least constitutionally offensive of the lot. The elimination of red tape, especially the brand manufactured in D.C., is a worthy goal and should be pursued by all those whose aim is the retreat of the federal government back within its constitutional borders.

There is little wonder that men so inextricably bound to the Republican Establishment as Gingrich and Goodman would offer such predictable suggestions for altering the American health care infrastructure. Neither man is a conservative in the true sense. Both are "conservative," however, in the way that both are determined to conserve the status quo and perpetuate policies and partisanship that will eventually enervate the American middle class. There is hope, though, that by illuminating the unconstitutionality of these proposals, a fire may ignite under a soporific electorate and both branches of elective government (and, by extension, the judicial branch) may soon be populated by men and women zealous not for the accumulation of power, but for the ennobling re-enshrinement of our glorious Constitution and all its confining checks and delicate balances.

Photo of Newt Gingrich: AP Images



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