



**Your on the  
Street Reporter**



**Uyless Black**

**Health Care Issues**

## Assessment of a List of Criticisms of the House Health Care Bill<sup>1</sup>

July 26, 2009, January 16, 2016

Hello from Your on the Street Reporter. During the past few days, I've received from several of you a list of 48 observations about the House health plan bill. (I do not know who created the list.) Obviously, it has been widely circulated. Some of my readers have asked me to write on the health plan issue, similar to the ones I did on the financial meltdown. Some of you asked for my comments on this list.

### January 17, 2016 Sidebar

The number of pages in the Senate and House bills is overwhelming. I do not have the expertise to come close to commenting intelligently on the bill. I made that statement when I wrote this article in 2009. I say it with more emphasis now. However, since that time, it has become obvious America's insurance health plan system (with or without Obama Care) is in shambles. Of course, I count myself among the lucky ones, because I am on Medicare. If I were not, I would be in financial trouble, given my medical problems.

I have come to the conclusion that America missed the boat by not going to a single-payer system, one in which the government, rather than private insurers, pay the costs. That idea has little chance of becoming a reality in America. But I have used these systems in five other countries. They work. My detractors tell me it would take me months to get to see a specialist under the single-payer system in another country. Really? Just like I must wait several months in America to see such a specialist. Other detractors say they do not trust government to do this job. Really? Have you seen the recent movie *The Big Short*? Private industry essentially raped the financial soul of America. Fine, then there is the broadband Internet carrier industry in America, one of the worst performing systems in the industrialized world.

Anyway, the original purpose of this article was to evaluate the list several of you sent me. So, here goes a partial attempt. By the way, the last part of this article deals with the beacon of truth and intellect, Sarah Palin, discussing the issue of "pulling the plug on grandma." If you are not easily repulsed, this material will still test your disgust-index.

I have written about the current Medicare system and offered suggestions (taken from experts, not me) on how to fix it. I hope you will go to my blog ([blog.UylessBlack.com](http://blog.UylessBlack.com)) and click on the link to download "Is America on the Financial Skids?" Segment 3 of this report offers ideas about Social Security and Medicare.

For the list, I looked at the first four items. I compared this person's assertions to the bill itself. Here is my assessment. (If you don't want to read the Bill passages, please first read the claims of the anonymous writer, skip the technical jargon, and read my comments, which follow the Bill's text.)

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<sup>1</sup> The image in the Reporter's thought cloud on the cover is sourced from *Time* magazine, August 17, 2009, 35. Image is for personal use only; copyright permission required for commercial use. My thanks to *Time*.

Statement from anonymous writer:

Page 16: “States that if you have insurance at the time of the bill becoming law and change (your plan), you will be required to take a similar plan. If that is not available, you will be required to take the gov option!”

Here is page 16 (and an associated part on page 17). Again, my comments follow the bill’s text:

**SEC. 102. PROTECTING THE CHOICE TO KEEP CURRENT COVERAGE.**

(a) GRANDFATHERED HEALTH INSURANCE COVERAGE DEFINED.—Subject to the succeeding provisions of this section, for purposes of establishing acceptable coverage under this division, the term “grandfathered health insurance coverage” means individual health insurance coverage that is offered and in force and effect before the first day of Y1 if the following conditions are met:

(1) LIMITATION ON NEW ENROLLMENT.—

(A) IN GENERAL.—Except as provided in this paragraph, the individual health insurance issuer offering such coverage does not enroll any individual in such coverage if the first effective date of coverage is on or after the first day of Y1.

(B) DEPENDENT COVERAGE PERMITTED.—Subparagraph (A) shall not affect the subsequent enrollment of a dependent of an individual who is covered as of such first day.

(2) LIMITATION ON CHANGES IN TERMS OR CONDITIONS.—Subject to paragraph (3) and except as required by law, the issuer does not change any of its terms or conditions, including benefits and cost-sharing, from those in effect as of the day before the first day of Y1.

And page 17:

(3) RESTRICTIONS ON PREMIUM INCREASES.—

The issuer cannot vary the percentage increase in the premium for a risk group of enrollees in specific grandfathered health insurance coverage without changing the premium for all enrollees in the same risk group at the same rate, as specified by the Commissioner.

**Comments:**

I’m not certain what this means in regard to requiring a citizen to take a government plan. Like most non-lawyers, I have difficulty reading legal, technical jargon. What I think this part (Paragraph (1-A)) of the bill says is that a health insurance provider is not allowed to enroll a **new** customer after the plan goes into effect. I think the intent is to prevent the provider from using an old plan that is not in conformance with the new law. But Paragraph 1-B does allow this to be done if the new customer is a dependent of someone that is enrolled in a plan.

Paragraphs (2) and (3) prevent a provider from changing rates, etc.

I don’t read in this part of the plan that citizens are required to take out a government plan. If any of you can clarify, please let me know, and I’ll post it to our mailing list. If I have failed to understand page 16, I will jump in the middle of this issue. I am very much opposed to having to give up my choice and be *forced* to go with a government plan. That stated, if my take is correct, then the person who created this list needs to be taken behind the barn.

Statement from anonymous writer:

Page 22: “Mandates audits of all employers that self-insure!”

Here’s what the report says on page 22 (and I include parts of pages 21 and 23, as the material is related to the point:

**(b) STUDY AND REPORTS.—**

**(1) STUDY.—**The Commissioner, in coordination with the Secretary of Health and Human Services and the Secretary of Labor, shall conduct a study of the large group insured and self-insured employer health care markets. Such study shall examine the following:

**(A)** The types of employers by key characteristics, including size, that purchase insured products versus those that self-insure.

**(B)** The similarities and differences between typical insured and self-insured health plans.

**(C)** The financial solvency and capital reserve levels of employers that self-insure by employer size.

**(D)** The risk of self-insured employers not being able to pay obligations or otherwise becoming financially insolvent.

**(E)** The extent to which rating rules are likely to cause adverse selection in the large group market or to encourage small and midsize employers to self-insure

**(2) REPORTS.—**Not later than 18 months after the date of the enactment of this Act, the Commissioner shall submit to Congress and the applicable agencies a report on the study conducted under paragraph (1). Such report shall include any recommendations the Commissioner deems appropriate to ensure that the law does not provide incentives for small and mid-size employers to self-insure or create adverse selection in the risk pools of large group insurers and self-insured employers. Not later than 18 months after the first day of Y1, the Commissioner shall submit to Congress and the applicable agencies an updated report on such study, including updates on such recommendations.

**Comments:**

First, the word “audits” should be singular. The writer apparently wants us to think this part of the bill has an on-going “Big Brother” aspect to it. It stipulates a one-time study. Second, the study includes both group insured and self-insured. Third, the report must be submitted to Congress for any kind of action. Fourth, the intent of this study is protect the consumer. I infer from the original quote that the person who wrote it is trying to distort what this part of the bill actually states.

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Statement from anonymous writer:

Page 29: “Admission: your health care will be rationed!”

Here’s what the report says on page 29 (with related material from pages 28 and 30):

**(REQUIREMENTS RELATING TO COST-SHARING AND MINIMUM ACTUARIAL VALUE.—**

(1) NO COST-SHARING FOR PREVENTIVE SERVICES.—There shall be no cost-sharing under the essential benefits package for preventive items and services (as specified under the benefit standards), including well baby and well child care.

(2) ANNUAL LIMITATION.—

4 (A) ANNUAL LIMITATION.—The cost-sharing incurred under the essential benefits package with respect to an individual (or family) for a year does not exceed the applicable level specified in subparagraph (B).

(B) APPLICABLE LEVEL.—The applicable level specified in this subparagraph for Y1 I \$5,000 for an individual and \$10,000 for a family. Such levels shall be increased (rounded to the nearest \$100) for each subsequent year by the annual percentage increase in the Consumer Price Index (United States city average) applicable to such year.

(C) USE OF COPAYMENTS.—In establishing cost-sharing levels for basic, enhanced, and premium plans under this subsection, the Secretary shall, to the maximum extent possible, use only copayments and not coinsurance.

**Comments:**

This part of the plan says nothing about rationing health care. It deals with paying for the care, not receiving it. The term “cost-sharing” refers to paying for benefits. None of the text makes any mention about “rationing” health care. I don’t know if the plan speaks to “rationing,” but this part of it does not.

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Statement from anonymous writer:

Page 30: “A government committee will decide what treatments and benefits you get (and unlike an insurer, there will be no appeals process).”

Here’s this part of the bill:

SEC. 123. HEALTH BENEFITS ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established a private-public advisory committee which shall be a panel of medical and other experts to be known as the Health Benefits Advisory Committee to recommend covered benefits and essential, enhanced, and premium plans.

**Comments:**

The committee is advisory only; it is not a decision-making body.

I skip some parts and continue:

(5) PARTICIPATION.—The membership of the Health Benefits Advisory Committee shall at least reflect providers, consumer representatives, employers, labor, health insurance issuers, experts in health care financing and delivery, experts in racial and ethnic disparities, experts in care for those with disabilities, representatives of relevant governmental agencies. and at least one practicing physician or other health professional and an expert on children’s health and shall represent a balance among various sectors of the health care system so that no single sector unduly influences the recommendations of such Committee.

(b) DUTIES.—

(1) RECOMMENDATIONS ON BENEFIT STANDARDS.—The Health Benefits Advisory Committee shall recommend to the Secretary of Health and Human Services (in this subtitle referred to as the “Secretary”) benefit standards (as defined in paragraph (4)), and periodic updates to such standards. In developing such recommendations, the Committee shall take into account innovation in health care and consider how such standards could reduce health disparities.

**Comments:**

Once again, this body can only make recommendations. As well, it’s way past time that we analyze and monitor (and manage!) a program that is rapidly consuming our resources.

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**Conclusions:**

The author of this list is either grossly misreading the bill or lying. The person is either supremely stupid or supremely unethical, maybe both.

As mentioned, the list I received has 48 items. I looked at the first four (as described above). I’m not certain of the first one, but I can’t find anything in the jargon that states a citizen must take on a government plan. From all the statements I’ve read, that is not the intent of the bill (If it were, it would never pass in the first place.)

For the next three assertions, the author has clearly misled us....or attempted to.

I won’t bother with the other items on the list. If my initial analysis had uncovered unambiguous faults in the bill (in consonance with the author’s assertions), I would have been very happy for someone to have done such a stupendous feat of research and analysis. It would have helped all of us to get through what are almost indecipherable documents. I examined the first four, and found them lacking and/or misleading.

We’ve enough problems dealing with the realities of the issue. The bills being created may be poor or great, but to trash them with inaccuracies is to do all of us a disservice. I’m tempted to go through the complete list, but I don’t have the time. I’m trying to understand the bills themselves; I don’t want to understand someone’s misconstructions of them. I hope you feel the same, and will let others know.

If we don’t solve our health care costs problems (and soon), we are headed for deep financial trouble. We’ve been squandering our wealth for several decades. Health care reform (its costs) will not be solved without all of us making some sacrifices. There’s no free lunch here. But the least we can do is have honest assessments and reporting about this issue.

Thanks for reading. Please pass it on.

## **Pulling the Plug on Grandma**

August 13, 2009

Hello from Your On the Street Reporter.

I received many comments about my July 26 report regarding the falsities and inaccuracies of the first four items in a list of 48 that were compiled by an anonymous person. Each item in the list criticizes the House bill. Again, I am not defending or supporting any of the health care bills; I don't know enough to make a judgment. My attempt in these reports is to try to warn you of charlatans who are misrepresenting both sides of the issue.

Today, I was watching Fox news and a segment about the "death panel" provisions in this bill; in effect, it supposedly authorizes the government the right to "pull the plug on grandma." Fox news was reporting on a Republican Congressman, who in a town meeting, was accused of supporting this provision in the bill. He responded that he would not vote for a bill that would "pull the plug on Grandma." Fox news is not a big fan of Obama or the Democratic Congress, but even their commentators wondered why the Congressman did not clarify this supposed misconception. I say "supposed" because I had not read this part of the bill.

Just a moment ago, I logged onto the Net and came across a report that Sarah Palin has placed an entry in her blog about this issue. Here's part of this report:

ANCHORAGE, Alaska (Aug. 13) - Former Alaska Gov. Sarah Palin claims President Barack Obama is making light of concerns over what she has called "death panels" determining or denying care in the Democratic health care proposal.

Palin made the claim in a Facebook posting Wednesday evening.

President Barack Obama said Tuesday that Democratic health care legislation wouldn't create "death panels." The provision in question, he said, would only authorize Medicare to pay doctors for end-of-life counseling if wanted. On Facebook, Sarah Palin has claimed the "death panels" would let bureaucrats play God with the elderly or disabled.

Obama on Tuesday said the Democratic health care legislation would not create "death panels" to deny care to frail seniors — or "basically pull the plug on grandma because we decided that it's too expensive to let her live anymore," as the president put it.

Rather, Obama contends the provision that led to such talk would only authorize Medicare to pay doctors for counseling patients about end-of-life care if they want it.

But Palin, the former Republican vice presidential candidate, said the provision reads otherwise and will lead to health care rationing. In an earlier posting, Palin charged that federal bureaucrats would play God, ruling on whether ailing seniors or children with Downs syndrome — such as Palin's son Trig — are worthy of health care. Palin called the proposal "downright evil."

We continue to hear a “death panel” provision is in the bill by the bill’s opponents and that it is not in the bill by the bill’s supporters. Is it or isn’t it?

I thought the list of 48 criticisms would be a good place to start. I retrieved it and found what I think are the “death panel” provisions in the list creator’s comments.

Here are the statements from the anonymous writer:

Page 425: More bureaucracy: Advance Care Planning Consult: Senior Citizens, assisted suicide, euthanasia?

- Page 425: Government will instruct and consult regarding living wills, durable powers of attorney, etc. Mandatory. Appears to lock in estate taxes ahead of time.
- Page 425: Government provides approved list of end-of-life resources, guiding you in death.
- Page 427: Government mandates program that orders end-of-life treatment; government dictates how your life ends.
- Page 429: Advance Care Planning Consult will be used to dictate treatment as patient's health deteriorates. This can include an ORDER for end-of-life plans. An ORDER from the GOVERNMENT.
- Page 430: Government will decide what level of treatments you may have at end-of-life.

Here’s this part of the bill. I’ve included parts of page 424 for continuity. As before, you can read the bill, or skip to my comments which follow the bill. It might be a good idea to try to read the material, and note the parts I’ve placed in bold type.

Beginning on page 424 and continuing to page 430:

...the term ‘**advance care planning consultation**’ means a **consultation between the individual and a practitioner** described in paragraph (2) regarding advance care planning if, subject to paragraph (3), the individual involved has not had such a consultation within the last 5 years. Such consultation shall include the following:

- (A) An explanation by the practitioner of advance care planning, including key questions and considerations, important steps, and suggested people to talk to.
- (B) An explanation by the practitioner of advance directives, including living wills and durable powers of attorney, and their uses.
- (C) An explanation by the practitioner of the role and responsibilities of a health care proxy.
- (D) The provision by the practitioner of a list of national and State-specific resources to assist consumers and their families with advance care planning, including the national

toll-free hotline, the advance care planning clearinghouses, and State legal service organizations (including those funded through the Older Americans Act of 1965).

(E) An explanation by the practitioner of the continuum of end-of-life services and supports available, including palliative care and hospice, and benefits for such services and supports that are available under this title.

(F)(i) **Subject to clause (ii)**, an explanation of **orders** regarding life sustaining treatment or similar orders, which shall include—(I) the reasons why the development of such an **order** is beneficial to the individual and the individual’s family and the reasons why such an **order** should be updated periodically as the health of the individual changes; **(II) the information needed for an individual or legal surrogate to make informed decisions regarding the completion of such an order;** and **“(III) the identification of resources that an individual may use to determine the requirements of the State in which such individual resides so that the treatment wishes of that individual will be carried out if the individual is unable to communicate those wishes, including requirements regarding the designation of a surrogate decision maker (also known as a health care proxy).**

(ii) The Secretary shall limit the requirement for explanations under clause (i) to consultations furnished in a State—“(I) in which all legal barriers have been addressed for enabling orders for life sustaining treatment to constitute a set of medical **orders** respected across all care settings; and“(II) that has in effect a program for **orders** for life sustaining treatment described in clause (iii).

(iii) A program for **orders** for life sustaining treatment for a States described in this clause is a program that—“(I) ensures such orders are standardized and uniquely identifiable throughout the State;“(II) distributes or makes accessible such orders to physicians and other health professionals that (acting within the scope of the professional’s authority under State law) **may sign orders** for life sustaining treatment;“(III) provides training for health care professionals across the continuum of care about the goals and use of orders for life sustaining treatment; and (IV) is guided by a coalition of stake holders includes representatives from emergency medical services, emergency department physicians or nurses, state long-term care association, state medical association, state surveyors, agency responsible for senior services, state department of health, state hospital association, home health association, state bar association, and state hospice association.

(2) A practitioner described in this paragraph is—(A) a physician (as defined in subsection (r)(1)); and (B) a nurse practitioner or physician’s assistant who has the authority under State law to sign orders for life sustaining treatments. (3)(A) An initial preventive physical examination under subsection (WW), including any related discussion during such examination, shall not be considered an advance care planning consultation for purposes of applying the 5-year limitation under paragraph (1).

(B) An advance care planning consultation with respect to an individual may be conducted more frequently than provided under paragraph (1) if there is a significant change in the health condition of the individual, including diagnosis of a chronic, progressive, life-limiting disease, a life-threatening or terminal diagnosis or life-threatening injury, or upon admission to a skilled nursing facility, a long-term care facility (as defined by the Secretary), or a hospice program.

(4) A consultation under this subsection may include the formulation of an **order** regarding life sustaining treatment or a similar order.

(5)(A) For purposes of this section, the term **'order regarding life sustaining treatment'** means, with respect to an individual, an actionable medical order relating to the treatment of that individual that—“(i) is signed and dated by a physician (as defined in subsection (r)(1)) or another health care professional (as specified by the Secretary and who is acting within the scope of the professional’s authority under State law in signing such an order, including a nurse practitioner or physician assistant and is in a form that permits it to stay with the individual and be followed by health care professionals and providers across the continuum of care; (ii) **effectively communicates the individual’s preferences regarding life sustaining treatment, including an indication of the treatment and care desired by the individual;**“(iii) is uniquely identifiable and standardized within a given locality, region, or State (as identified by the Secretary); and “(iv) may incorporate any advance directive (as defined in section 1866(f)(3)) if executed by the individual.

“(B) The level of treatment indicated under subparagraph (A)(ii) may range from an indication for full treatment to an indication to limit some or all or specified interventions. Such indicated levels of treatment may include indications respecting, among other items— “(i) the intensity of medical intervention if the patient is pulse less, apneic, or has serious cardiac or pulmonary problems; “(ii) the individual’s desire regarding transfer to a hospital or remaining at the current care setting; “(iii) the use of antibiotics; and “(iv) the use of artificially administered nutrition and hydration.”

#### **Comments:**

If all these passages are not read, the word “order” might be misunderstood as being an order from the state to pull grandma’s plug. That is not what I read. If you go back and read the bold type I’ve placed in the text, these two sets of passages stand-out:

...an **explanation of orders regarding life sustaining treatment or similar orders**, which shall include...(II) **the information needed for an individual or legal surrogate to make informed decisions regarding the completion of such an order;** and “(III) **the identification of resources that an individual may use to determine the requirements of the State in which such individual resides so that the treatment wishes of that individual will be carried out if the individual is unable to communicate those wishes**, including requirements regarding the designation of a surrogate decision maker (also known as a health care proxy).

And:

For purposes of this section, the term **'order regarding life sustaining treatment'** means, with respect to an individual, an actionable medical order relating to the treatment of that individual that....; (ii) **effectively communicates the individual’s preferences regarding life sustaining treatment, including an indication of the treatment and care desired by the individual;**

I’ve omitted passages that include the presence of doctors and government actions. I’ve not done it to misrepresent the bill’s contents. (If you have the time and stamina, just read it yourself.) I’ve

joined several clauses for these two sets of passages to make the claim that from my non-legal, non-medical mind, I cannot find anything that says the state can pull the plug on grandma. To the contrary, what I read is that grandma or her designated proxy tells the state and her doctor what to do, if anything, with the plug.

The second set of passages is especially telling. It clearly states an order about any possible plug pulling must communicate grandma's preferences.

If you read otherwise, please let me know what I am missing.

There may be text in other parts of this bill that deal with death panels. If someone can identify this text, again let me know, and I'll try to dissect it fairly. Make no mistake, I do not want the government anywhere near my grandma's plug (or mine).

But again, if I am correct about these additional attacks, then those who are doing it have purposely misled us in order to push their own agenda. As for any public official: God help us! If anyone should read the bill, it is they. And if they read the same pages as we just did, and come up with a death panel, how are we to trust them in the future?

I also looked at a public opinion poll. The question was, "Do you think Palin's "death panel" criticism is fair."

Response: Yes: 57%. No: 43%. (70,236 respondents)

I'm going out on a limb and predict that the text I found in the bill is the only significant text that deals with this issue. Even if it is not, the clauses I placed in bold seem to give grandma the right to the plug, and not the state.

Assuming I'm correct, thousands of folks who don't know a thing about the issue say they think Palin is correct. I'd bet my last Coors Light almost none of them has read the material in the bill pertaining to this critical issue. I'd bet my last rum bun Sarah has not read it either. Ms. Palin, if you can find some passages in the bill that back your assertions, please pass them to me, and I'll make sure they are posted to my mailing list. Otherwise, you owe your fans an apology, and you owe everyone else a retraction.

Small wonder the citizens are getting a bit unruly at town meetings. Who can possibly expect Joe Six-Pack to read a 1,000 page document that even lawyers who specialize in medicine have trouble understanding? They are rightfully fearful. Sadly, the fears are being stoked by miscreants who *should* read the bills and at least convey to their followers the facts. I watch those meetings and almost shudder. I recall an old saw, "Nothing is more terrible than ignorance in action." Yes, and even more terrible is the manipulation of the ignorant.

I hope anyone reading this report will let me know if there are passages in the House bill that deal with the "death panel." Otherwise, I hope you will pass this report to others.

Your on the Street Reporter