



Health Care: Working the Refs, Attacking the Refs and Hiring the Refs

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As if Scott Brown's victory in Massachusetts wasn't a big enough blow to the Obama Administration's hopes for overhauling the health care system, there was another disclosure last week that eviscerated some of the Administration's key claims related to cost savings.

It was revealed that last June the Department of Health and Human Services (HHS) had awarded a no-bid contract worth nearly \$300,000 to MIT professor Jonathan Gruber, the Administration's star witness for the superior cost-containment features of health care reform. Obama Administration officials, and most of the journalists celebrating Gruber's findings, had neglected to mention this detail when trumpeting his supposedly independent confirmation of the Administration's policy arguments.

This episode has brought considerable criticism down upon Dr. Gruber as well as the White House, which had held him up as an impartial witness. It is, however, merely the latest revelation of the Administration's failure to respect the appropriate processes for independent, non-partisan evaluation of legislation.

A review of the events of the last year shows a clear pattern. Soon after taking office, the Administration first tried the tactic of bypassing the official scorekeepers from key agencies such as the Social Security Administration (SSA), the Centers for Medicare and Medicaid Services (CMS), and the Congressional Budget Office (CBO). When that failed, there were episodes of attempting to

first influence, and later to discredit, these same scorekeepers. When that too failed, they simply produced their own favorable analyses – sometimes in-house, and sometimes by contracting out.

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These tactics have drastically eroded the credibility of the Administration's claims for the fiscal benefits of health care reform.

For decades, the Chief Actuaries within the SSA and CMS have been tasked with trying to gauge how Social Security and Medicare would be impacted by various legislative proposals. More recently, CBO has developed models exploring many of the same issues to help in projecting the effects of legislation.

It has long been understood that the independent analyses of these offices will deviate from the analyses produced elsewhere in an Administration. The Office of Management and Budget (OMB), for example, contains many dedicated, non-partisan career staff. It is understood nevertheless that OMB documents represent the subjective policy positions of the President. It is rare for OMB's analytical assumptions to be identical to those generated independently within SSA, CMS and CBO.

Past Administrations, however, have nevertheless respected the independent scorekeepers' findings.



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For example, when the Bush Administration pursued Social Security reform, the SSA Chief Actuary wrote the memorandum on its projected fiscal effects. So, too, did the SSA Actuary produce an independent analysis of the Clinton Administration's Social Security proposal.

This stands in stark contrast with the Obama White House's treatment of the scorekeepers. In arguing early last year that health care reform would "bend the cost curve down," the White House relied for months simply upon substantiation by assertion. They merely stated that there would be cost savings but had no hard evidence to back up their claim.

Outside experts called upon the Obama Administration to request a CMS analysis of its assertions. Administration officials conspicuously declined to do so. Instead, they repeated the mantra of bending the cost curve without any supporting findings from CMS.

For a while, it seemed as though this tactic of analytical avoidance might work. But while the Administration could try to keep the CMS Actuary silent, they couldn't do the same with CBO. And as health care legislation moved forward in the Congress, CBO began to throw cold water on the White House's unsubstantiated claims.

On June 15, 2009, CBO produced a report with a preliminary finding that the Senate Labor Committee's health care bill would add roughly \$1 trillion to deficits over the next decade – a far cry from "bending the cost curve down."

The Obama Administration's reaction appears to have been immediate and quite unconventional. Only four days after the CBO report was issued, Gruber was awarded a \$297,600 contract by HHS to offer "technical assistance in evaluation options for

national health care reform." HHS justified the no-bid contract by saying that there is only "one responsible source and no other supplies or services will satisfy DHHS requirements." Apparently, not even the CMS Actuary's office could do the job.

In explaining the rationale for the no-bid contract, HHS cited Gruber's "proprietary statistically sophisticated micro-simulation model" as well as his "ongoing work" to "help inform the Office of Health Reform" – notably, within the White House.

Indeed, the very reason for CBO's existence is to provide for independent analysis wholly within the legislative branch so that Congress need not rely on Administration pronouncements.

While this contract largely escaped public notice, another White House tactic did not. On July 20, the director of the CBO was summoned to the White House for a health care discussion. Critics likened the action to inviting the umpire into a baseball team owner's box during a critical game.

The July White House meeting violated protocol in a number of respects. Not only is the CBO supposed to be a neutral arbiter, shielded from the influence inherent in an Oval Office meeting, but CBO is supposed to report to the Congress – not to the President.

Indeed, the very reason for CBO's existence is to provide for independent analysis wholly within the legislative branch so that Congress need not rely on Administration pronouncements. Former CBO director Doug Holtz-Eakin noted that the White House had done current CBO director Doug Elmendorf "a terrible disservice," creating the impression that he was being subjected to inappropriate White House pressure.

CBO, however, continued to produce analyses



that the White House found inconvenient. The Administration then shifted from attempting to work the refs to critiquing them. In his blog entry of July 25, OMB Director Peter Orszag attacked CBO's work, saying that it had "overstepped," and had fed perceptions of "exaggerating costs and underestimating savings." While having the head of OMB publicly critique CBO is rare, these jabs were particularly notable, given that Orszag was the CBO director before taking the OMB job last year.

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A few months thereafter, the Executive Branch's own independent scorekeeper – choosing nevertheless to act in the absence of a formal White House request – also reached conclusions contradicting the Administration's sales pitch. In early December, the Office of the CMS Actuary released a memorandum finding that the Senate bill would increase – not decrease – total national health expenditures.

Memoranda of the CMS and SSA actuaries are always written in scrupulously neutral language, enabling policy advocates on all sides to emphasize those aspects of the analysis favorable to their policy case. It is natural for a White House embroiled in a policy debate to do so.

The Obama White House, however, did something dramatically different. Instead of plugging the CMS analysis into their own messaging, they instead had their Council of Economic Advisers (CEA) office release, on December 14, their own conflicting analysis. CEA – surprise! – found that reform would bend the cost curve downward over the long run.

The CEA report set a destructive precedent for the future of federal policy analysis; if the White

House doesn't like the findings of the independent scorekeeper, they simply release an alternative analysis of their own construction.

Throughout this period, the White House regularly cited Gruber's work as evidence that health care reform legislation would bend the cost curve down. Bloggers have already substantiated the absurd opera bouffe that played out from late November through early December; the echo chamber included Ron Brownstein, Peter Orszag, Paul Krugman, Ezra Klein, Mike Allen, and countless others, with precious little examination of Gruber's methodology and no disclosure of his contract.

Without rehashing its full history, there are several points to make about the Gruber episode.

One is the varying levels of culpability. Those columnists and bloggers who credulously cited Gruber's findings were negligent rather than dishonest. Gruber has rightly been targeted for criticism for his failure to disclose his conflicts in the appropriate places. But the highest culpability rests with anyone within the Administration who knew of Gruber's HHS contract yet nevertheless represented his work as an independent outside confirmation.

The second troubling point is that the Administration chose to purchase an analysis from a figure long known to be close to Administration officials and sympathetic to their policy views, when the same analysis might properly have been sought from the neutral CMS Actuary. Even without \$300,000 changing hands, this would have rendered the analysis suspect.

Third, once the contract was awarded, there was no credible way for Gruber to explain his subsequent public position. The Brownstein article painted him as a convert, a "known skeptic" on cost containment



– that is, until he studied the Senate bill. But Gruber’s defense of his actions instead stresses the continuity of his views before and after the contract. (For example: “at no time have I publicly advocated a position that I did not firmly believe - indeed, I have been completely consistent with my academic track record.”)

Therein lies the problem. If Gruber had strong pre-existing policy biases and thus lacked the objectivity of the CMS Actuary, then it appears the Administration shopped for a sympathetic judge. But if Gruber’s policy views developed only after the contract, it creates the appearance of financial interest coloring policy views. Either way, he became the wrong source to cite despite his previously established reputation.

Fourth, much of the praise for Gruber’s analysis was bizarrely uncritical, given the minimal substantive content of his statements. The Brownstein article featured the peculiar gushing from Gruber that the Senate bill was “the best effort anyone has ever made. Everything is in here. . . I can’t think of anything I’d do that they are not doing in the bill. You couldn’t have done better than they are doing.” But Jim Capretta and others have noted that the Senate bill does little to fundamentally transform the skewed incentives at the root of health cost inflation. And given that the Senate bill preserves many of the basic building blocks of the existing health care system – such as the continuing tax preference for compensation in the form of health benefits -- Gruber’s statement should have been a red flag that he had shifted from analyst to advocate.

Moreover, the much-cited Gruber paper finding that the Senate bill would cut premium costs reflected none of the sophisticated modeling capability cited in the HHS grant announcement. It offered some simple

algebraic calculations based on publicly available figures. CBO’s much more rigorous analysis of actual premium effects was released a few days later, and should have immediately displaced any suggestion that Gruber’s back-of-envelope calculations were authoritative pronouncements.

The attempt to buy credibility by contracting with Gruber was simply the culmination of the Administration’s irresponsible approach to reforming the health-care system. In a typical, well-functioning debate, claims of cost savings would be based on specific legislative provisions -- and testable analyses thereof by the non-partisan scorekeepers. This, however, would have required the Administration to embrace a number of politically damaging constraints upon health care services. Unwilling to do so, the Administration tried the “argument from authority” – treating “reform” rhetorically as a cost-containment measure in and of itself, with Gruber’s authority as the sole substantiation required.

In hindsight, the season of hailing Gruber’s analyses reflects poorly on all concerned; on the White House, for failing to disclose the relationship, and on outside writers, too; for uncritically accepting the invocation of academic authority as by itself sufficient evidence of substantive worth. This is not how an informed discussion takes place.

It is time to end the season of working the refs, attacking the refs, and hiring one’s own refs. The U.S. government maintains a CMS Actuary and a CBO for a reason – to provide analysis that is objective (not perfect, but objective) in a way that OMB’s, CEA’s, and HHS contractors’ cannot be. Going forward, both Congress and the White House should return to the ethic of accepting the findings of the non-partisan scorekeepers, without outsourcing the analysis.