

## The “Right” to Health Care: A Question of American Values

By Deane Waldman, MD MBA

In his 2012 state of the Union address, President Obama referred to fairness as a basic American value. Though we would like to see ourselves as a fair people, what is considered “fair” (equitable, honest, legitimate), by one good American might be seen as unfair by another. Fairness is value judgment, not a basic American value.

Freedom is an American value. Freedom, one of the most frequently used words in the writings of our Founding Fathers, could be considered THE American value. Is a right to health care another American value? Should it be? Might the right to be free be incompatible with a right to health care?

### A singular American right

The United States of America (abbreviated here as America) was started as an act of rebellion against centralized authority. America was founded on freedom – the individual’s right to choose. Being free meant that you were in charge of and responsible for you, and no one else was.

The value of the individual, the ability to control one’s own destiny, and the acceptance personal responsibility all started in the Age of Enlightenment. Many people credit John Locke (1632-1704) with enunciating the political significance of these concepts. Locke was one of the founders of a movement called Liberalism, derived from *liberalis* (Latin) meaning “of freedom.”

Liberalism’s prime directive was that the individual was in charge, not the King, the Priest, or the President. The individual had the right to choose. The individual gained the benefits and suffered the adverse consequences of choosing. The idea of a right without a corresponding responsibility was inconceivable to original liberals.

Original liberals believed that a free man not only *could* choose, but as Hobbes said in his book Leviathan, a free man *had* to choose and accept the consequences – that was the essence of being human.

Original liberals based decision-making on dialogue. They encouraged, in fact demanded, open, often contentious sometimes cantankerous discussion of diverse views so that decision-makers could make informed decisions.

A time-honored homily says that after the Golden Rule, the rest of the Bible is simply commentary. The golden rule of America is a singular right – to be free. The Declaration of Independence and the Bill of Rights are simply explanatory.

Start with the Declaration's most famous words, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and the pursuit of Happiness."

The right to life meant that the government should not kill you. It was never intended as a right to life *extension*, for instance in an ICU on a ventilator at \$5000<sup>+</sup>/day. Liberty meant that the government should not imprison you. Liberty did not include a right to enter your neighbor's house and eat his dinner. That violates your neighbor's freedom.

You are entitled – you have a right – to pursue happiness. Neither another person nor the central authority has a right to stop you from seeking your bliss. The right to pursue happiness carries no guarantee that you will ever find or acquire it.

Rights give you freedom to act. They do not carry any guarantee of outcome, fair or otherwise. America was founded on the right to BE something – free – not to HAVE anything, such as property, money, or even life, and certainly not the right to demand service from another individual, viz., health care.

The first ten Amendments to the American Constitution – the Bill of Rights – is not a list of rights, but rather constraints against the Federal government that protect the singular American right: to be free. The first three Amendments prevent state control of: religion, free speech; gathering of citizens; personal firearms; and quartering troops in private homes. The other seven Amendments are additional prohibitions against central authority (government). The Bill of Rights is not a list of entitlements that the government should provide. Indeed, there are no natural American entitlements other than one: freedom.

Clergyman Francis Hutchinson, a philosopher and contemporary of John Locke, wrote in 1725, "Unalienable rights are essential limitations in all governments." Thus, it is contradictory to the original American value (freedom) for any politician or ethicist to claim that Americans have a right to health care and that the government is responsible to provide it. American "unalienable rights" prohibit government action: they do not require it.

### **Is there moral justification?**

There are two moral constructs that have been used to justify a right to health care: collective protection and fair opportunity.

A government is constituted primarily in order to protect citizens from dangers against which they cannot protect themselves. Thus on our behalf, government employs firefighters, crime fighters, and soldiers. Such action by the government is justified as collective protection.

Supporters of a right to health care see protection against illness as an extension of collective protection. They reason that since we cannot protect ourselves from illness, then we are entitled to government-provided health care.

What about those with self-inflicted illnesses such as complications from smoking or over-eating? Since these people could have protected themselves, they cannot claim collective (government) protection and therefore would have no right to health care.

Professor Tom Beauchamp of the Kennedy Institute of Ethics wrote, “We certainly expect the FDA (Food and Drug Administration) and NIH (National Institutes of Health) to protect our health in various ways including sponsorship of drug research, but we do not expect the federal government to provide us with the drugs” that our illnesses require.

Where collective protection focuses on the individual’s well being, the fair opportunity rationale is based on an egalitarian view of justice – everyone should be equal.

A fair opportunity defense of a right to health care claims that denial of health care creates great harm, which is considered unjust. Justice requires that all persons be given the opportunity to have equal health, presumably by access to whatever care they need in order to achieve equal health status.

It is vital to remember that equal *opportunity* is not the same as equal *outcome*. Health status is inherently unequal, unjust. The lottery of life is not fair. Some people have bad genes. Some are simply in the wrong place at the wrong time. Some behave in unhealthy ways. But even when you treat your body well, luck can play cruel tricks. Dana Reeve, wife of deceased actor Christopher Reeve (*Superman*) and a life-long nonsmoker, developed lung cancer at the age of 44 and died. No right to health care or philosophical posture could change her fate to a “fair” one.

In addition, we cannot all have a fair opportunity to the care we think we need or that our doctor prescribes. There are serious resources limitations. When New Zealand and Great Britain deny health care to people over a certain age, their governments are saying that opportunity is not fair, as it must be denied to some, by law. When Canadians die while waiting for approved care, fair opportunity is superseded by reality.

What about the morality of enslaving a small group, even for the betterment of the larger group? If health care is a right, then a patient can demand service from a provider. Does this not contravene the provider’s freedom?

A patient’s right to health care – dictating service by one for the welfare of another – must take away the freedom of providers. Rand Paul, formerly a physician and now U.S. Senator, said in a public debate in Vermont that a right to health care “means you have a right to come to my house and conscript me. It means you believe in slavery.”

### **Is health care presently a right in America?**

Clarifications of the words healthcare and right are necessary before answering, “Is health care presently a right in America?” Health care as two words refers to a *service relationship* between two individuals – patient and provider. Healthcare as one word refers to a *system* that is intended to facilitate two words – health care, the *service*.

The common meaning of a right is an entitlement that is without limit, free (no personal expense), that requires no pre-qualification, and that is available to all. Thus, the singular American right – to be free – has no limits, costs you nothing, requires no identification card or travel permit, and is open to everyone.

Is health care – the service – presently a right in America?

Using the definition above, health care both is and is not a right in the USA. Federal law mandates that hospitals provide urgent or emergent care, regardless of ability to pay, to all who need care, whether a citizen or here illegally. Thus, health care might satisfy the definition of a right.

However, for the vast majority, those who do not need an Emergency Room, you either pay the insurance premium (plus deductible), pay the bill yourself, or you do not get care. Under these circumstances, health care is a commodity service, not a right.

Following passage of the ACA (originally PPAHCA, Patient Protection and Affordable Health Care Act, also called “Obamacare”) insurance premiums are rising, making insurance even less affordable. Further, many businesses have calculated that it is cheaper to pay the penalty than provide insurance for their employees. Meanwhile, government has further reduced Medicare reimbursement schedules, which cuts services. These events have made health care – the service – available to fewer and fewer Americans.

Recall the functional definition of a right: unlimited, free entitlement, available to all. When health care in America is strictly limited, costly not free, and is not available to all, there is no “right” to health care.

### **Is Health Care Presently a Right Anywhere?**

A right to health care seems implicit in the phrase universal health care. People who line in universal health care countries such as Australia, France, Germany, Great Britain, Italy, New Zealand, and Spain have all experienced modern healthcare realities. They do not get whatever care they need, at a quality level and time they need it, for free. They do not enjoy the benefits of the “right to health care.”

Great Britain denies kidney dialysis or heart surgery over certain ages. Italy has literally decimated what was once a vibrant indigenous pharmaceutical industry. Dr. Ciaran McNamee is suing the Province of Alberta, Canada showing data that government health care allocation policies are killing people. A New Zealand blogger who developed breast cancer wrote an article titled, “If I stayed in New Zealand, I’d be dead now.”

In universal health care nations, the government is the balancer (rationer) of health care goods and services. The right to health care constitutes what the government says it is. The doctor is the adviser. The patient is the consumer. The government-as-payer-and-responsible-party is the decision maker, choosing what health care a person receives (or not), and when.

In both the self-styled universal health care nations and in America, the politically explosive question of *who* gets health care remains unanswered. By law, hospitals in the USA must provide urgent/emergent care regardless of payer status. Illegal residents, who are by definition not citizens, can enter an ER and access their right to care even though the hospital and providers will never be paid. Under the ACA, American citizens will be penalized for failing to purchase insurance. Illegal residents will not.

In the healthcare systems of Germany and most other E.U. countries, non-citizens are non-entities. As far as the system is concerned, they do not exist. A person who does not exist cannot have rights, such as government-provided health care. There are nearly two million people who emigrated from Turkey to work in Germany. They are there legally but were never afforded citizenship. Thus, they have no right to health care, universal or otherwise.

### **Why should health care NOT be a right?**

The functional consequence of health care as a right is that someone else, other than the individual, is responsible. That “someone else” is the government. The results are undesirable, to put it mildly.

When someone else is responsible for your health, you are off the hook. You do not need to take care of your body or mind. You can treat them badly and expect someone else to fix it.

If health care really were a right, wouldn't you expect people to be healthier? Consider Spain, a welfare state where article 43.1 in its 1978 Constitution expressly grants its citizens the right to health care and enjoins the “public authorities to take [all] necessary measures to protect their health.” By most measures of national health, Spain is sick: it has some of the highest rates of HIV, venereal diseases, TB, and drug addiction as well as infant mortality. Their right to health care seems to work against their health.

When health care is a right, you do not pay. “Someone else” does. As you are not responsible financially, you feel no need to economize. Neither does your doctor, indeed, quite the opposite. Is it any wonder that costs keep rising? How can they go down when neither the consumer nor the driver of cost – the provider – has any reason to minimize the expenditure of resources?

The technical term for this situation – one person spending another person's money – is a new oxymoron: the moral hazard. When the money you spend is not your own, you have no incentive to economize...and you don't. You have no reason to do cost/benefit analysis. You do not need to demand value for your dollar. Why should you? After all, “it ain't my money.”

When health care is a right and all your responsibilities (and freedom) are transferred to the government, it seeks to control, well, everything. Thomas Paine wrote in his 1776 book Common Sense, “Government even in its best state is but a necessary evil; in its worst state an intolerable one.”

The result of government responsibility for health care and therefore its need to control is an unending explosion of rules and regulations, followed by building bureaucracies to implement

and oversee these rules and regulations. The ACA creates no less than six whole new Federal agencies.

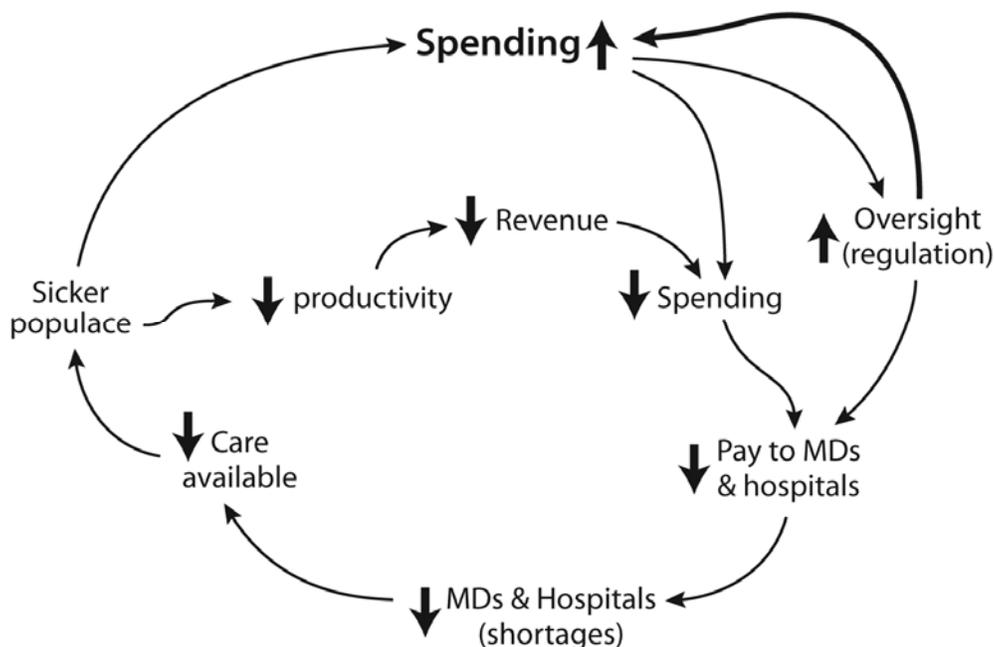
Government responsibility for health care costs money, more money than you can imagine. Roughly 40% of all, repeat all, dollars that go in to the healthcare system, do not come out...as health care, the service. These dollars, over \$1 trillion per year and rising, are consumed by the responsible party, who spends the money on itself, supporting its home team – the government bureaucracy.

As more money goes to healthcare (one word), less becomes available for health care (two words). The result of a right to health care is rationing to the point of harming patients. The 2010 film *Sick & Sicker* by Logan Darrow Clemens documents these events in Canada. With their limited budgets, governments support the health of the bureaucracy at the expense of the health of the people.

A right to health care can produce subtle but dramatic opportunity costs. In 2009, when Secretary of Defense Robert Gates presented his Defense budget, Congress demanded that he cut his request. Secretary Gates asked which he should cut: fighter jets and armor for vehicles, or health benefits for 10 million military families (both active and retired).

Health care as a right produces a vicious cycle of spending and sickness. As spending rises, the payer and responsible party (government) must choose between paying providers and paying itself (bureaucrats). It is no surprise that reimbursements to doctors and nurses are cut. This reduces services and exacerbates shortages of personnel. As access to health care decreases, the population gets even sicker, becomes less productive, revenue generation suffers, and GDP falls. Increased regulation of healthcare is what systems thinkers describe as the “fix that fails or backfires.”

### A Vicious Cycle of Spending and Sickness



Increased spending generates a whole new vicious cycle, and thus, a positive feedback loop. As expenses go up, the government seeks to increase its control, producing more oversight, more rules and regulations. This increases spending even further at the same time as it degrades efficiency (more regulation = less efficiency).

A right to health care produces both a moral hazard and an ever-expanding bureaucracy. The result is a spending spiral that rises without surcease, until it bankrupts a nation. For proof, look at Greece, Spain, Italy and Portugal, maybe Ireland, and soon I fear, America.

Due to the lack of personal responsibility, with constantly rising costs, and an increasingly unhealthy workforce, the right to health care impairs a nation's competitiveness. Such a right harms both Americans and America.

This article posed two questions, which should be answered: yes and no.

- Is a right to health care incompatible with the primary American value of freedom? "Yes."
- Should health care *be* an American right? As both a staunch supporter of America and a committed healer of both sick persons as well as sick systems, this author's answer is, "No, and I hope it never will be."

### **Additional reading**

1. Gawande A. January 24, 2011. Can we lower medical costs by giving the neediest patients better care? *New Yorker Online*. Accessed March 7, 2011 at: [http://www.newyorker.com/reporting/2011/01/24/110124fa\\_fact\\_gawande?currentPage=all](http://www.newyorker.com/reporting/2011/01/24/110124fa_fact_gawande?currentPage=all).
2. Kerr S. 1975. On the folly of rewarding A While hoping for B. *Academy of Mgmt Journal* 18: 769-783.
3. Waldman JD. 2010. Uproot U.S. Healthcare. ADM Books: Albuquerque.
4. Wicks E. 2007. Human Rights and Healthcare. Hart Publishing: Portland, OR.
5. Waldman JD. 2012. Not Right! A Prequel to Uproot U.S. Healthcare. ADM Books: Albuquerque.

*Deane Waldman MD MBA is the author of over 300 articles, academic and lay public, on health care as well as healthcare, and three books. He is Tenured Professor of Pediatrics, Pathology, and Decision Science, and Adjunct Scholar for the Rio Grande Found*