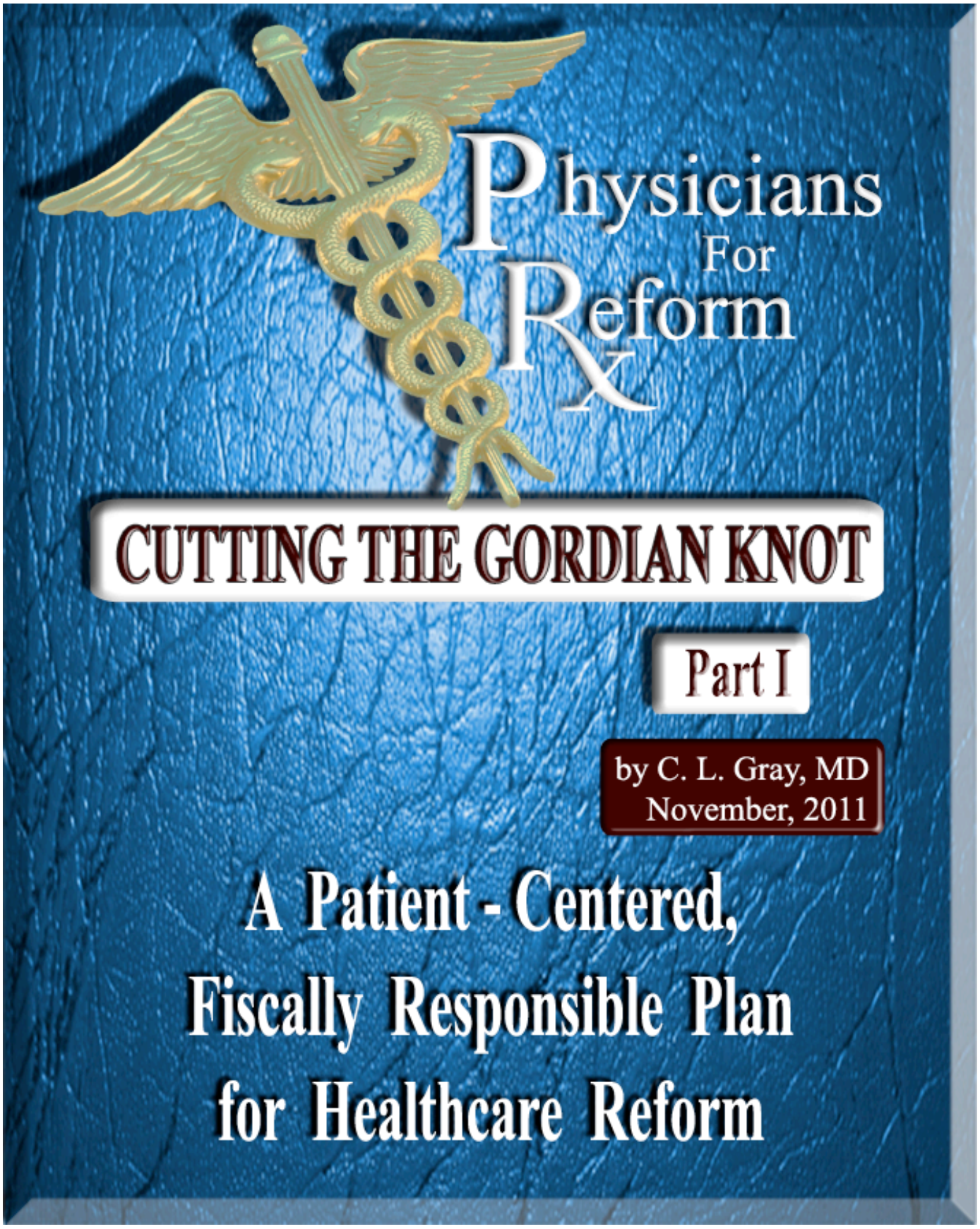
Physicians For Reform
CUTTING THE GORDIAN KNOT
Part I
by C. L. Gray, MD
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A Patient - Centered, Fiscally Responsible Plan for Healthcare Reform

Physicians for Reform

CUTTING THE GORDIAN KNOT

A PATIENT-CENTERED, FISCALLY RESPONSIBLE PLAN FOR HEALTHCARE REFORM

Part I:
Stabilizing Medicare for Seniors by Reforming Medicaid
November, 2011

Part II:
Primary Reforms (#2 - #9)
January, 2012

Part III:
Secondary Reforms
March, 2012

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This series of white papers is a working document and
will be updated periodically to reflect advances in healthcare policy.

Cutting the Gordian Knot: A Patient-Centered, Fiscally Responsible Plan for Healthcare Reform

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Executive Summary

Who should control the personal and complex process of medical decision-making? You and your physician, or Washington? How America answers this question will ultimately decide which of two diametrically opposed solutions will prevail.

One solution transfers power to Washington. President Obama chose this path when he signed the 2,700 page Patient Protection and Affordable Care Act (PPACA). The PPACA increases government control over healthcare through the creation of numerous new taxes, subsidies, regulations, mandates, and oversight boards.

For example, section 3403 created a new 15-member panel called the Independent Payment Advisory Board (IPAB). To explain the purpose of the IPAB, paragraph (b) of section 3403 states, "PURPOSE—It is the purpose of this section to, in accordance with the following provisions of this section, reduce the per capita rate of growth in Medicare spending."[i]

The new healthcare law gives this unelected, unaccountable, 15-member board unprecedented authority. The recommendations of the IPAB become law unless Congress 1) Overturns the IPAB's recommendations, *and then* 2) Passes its own legislation cutting Medicare by an equal to or greater amount. Both of these provisions require a 60-vote majority in the Senate.

The "Patient Protection and Affordable Care Act" effectively transfers legislative power to fifteen unelected Washington bureaucrats—a gross violation of the governing principals laid out by our Founding Fathers. Rather than subordinating the board to Congress, the PPACA subordinates Congress to the board.*

Driven by this and other provisions in the bill, polling data over the past year reveals between 53 percent and 58 percent of likely voters favor the repeal of the Patient Protection and Affordable care Act.[ii] In light of the remarkable consistency of the law's unpopularity, every Republican presidential candidate has vowed to repeal Obamacare.

Then what? If Congress repeals Obamacare it must replace the legislation with alternative reforms that

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* The profound significance of Section 3403 is often overlooked. Historically, any piece of legislation requires 60 votes to *pass* cloture in the Senate and move forward. Otherwise, the legislation dies. The PPACA requires a 60 vote Senate majority to *stop* the IPAB's recommendations from becoming law.

Even more, the Senate must then find *another* 60 votes to pass alternative legislation with equal or deeper cuts to Medicare. Without this second 60-vote majority, the IPAB's recommendations still become law, even if overturned on the first vote.

In other words, rather than requiring 60 votes in the Senate to become law, the IPAB's recommendations require two 60-vote majorities to *prevent* them from becoming law. This stands the "tempering" affect of the Senate filibuster on its head.

control the growth of healthcare spending while addressing the rising number of uninsured. This series of white papers lays out such a plan.

When looking at any free market system, consumers consistently ask two questions that hold down cost: "How much does it cost?" and "How much am I willing to pay for this product or service?" These questions are missing from the current U.S. healthcare system. By returning power and responsibility to patients and their physicians, America can reduce healthcare costs without rationing care.

Several principals must guide any attempt to reform the U. S. healthcare system:

GUIDING PRINCIPALS

1) Craft of a series of reforms, each reform addressing one clearly identified problem in the current healthcare system.
2) Pass each reform separately.
3) Write each bill using an understandable format and keep it to a reasonable length.
4) Keep each bill clean, letting it pass or fail on its own merits. No pork, no payoffs.
5) Make the final language available to the public for seven days prior to voting.

In keeping with these principals, this series of three white papers lays out nine primary reforms followed by a series of secondary reforms.

Part I (this paper) details the first primary reform. It examines Medicare's Sustainable Growth Rate Formula and explains why the 29.5% physician cut scheduled for January 1, 2012 will devastate access to care for seniors. It then presents a solution based on the concept of state block grants for Medicaid.

Part II (release date: January, 2012) outlines the remaining eight primary reforms.

Part III (release date: March, 2012) outlines a series of secondary reforms.

Taken together, these three white papers lay out a comprehensive, patient-centered, fiscally responsible plan to restructure the U.S. healthcare system. In contrast to the PPACA, this plan keeps patients and physicians at the center of medical decision making while addressing the complex issues of cost containment and the rising number of uninsured.

PRIMARY REFORMS

1) Stabilize Medicare for seniors. Current Medicare law calls for a 29.5 percent cut to physician reimbursement beginning January 1, 2012. This cut will severely compromise access to care for seniors unless a budget solution is found. This cut can be prevented and paid for by fundamentally restructuring Medicaid. Converting Medicaid's current system of unlimited federal matches into a system of limited state block grants will save the federal government tens of billions of dollars annually. This savings can offset the massive Medicare cuts scheduled for January of 2012 and beyond.
2) Let individuals purchase insurance with pre-tax dollars regardless of where they purchase insurance. This increases portability and lets individuals customize their policies.
3) Encourage low cost, high deductible plans combined with a Healthcare Savings Account (HSA) for patients who are best served by this model. This model encourages preventative medicine while reducing the cost of healthcare.
4) Let individuals and businesses purchase insurance across state lines to escape burdensome state regulations and mandates.
5) Create small business pools to spread risk and decrease health insurance costs.
6) Incentivize states to pass patient-centered medical malpractice reform.
7) Create state run, high-risk pools for patients with chronic disease.
8) Put the Medicaid program on a budget and develop a sliding scale, premium support system to assist those who cannot afford health insurance. This accomplishes three things: 1) It enables states to create fixed Medicaid budgets, 2) It empowers individuals in this system to purchase the private coverage that best suits their needs, and 3) It creates opportunity for individuals on Medicaid to exit the system by gradually increasing their income.
9) Put Medicare on a budget and restructure Medicare into a premium support system where seniors can choose from a variety of competing plans. The system is structured so those who have fewer financial resources or more medical need receive more support. This reform empowers individuals to purchase the private coverage that best suits their needs. It would also dramatically reduce the tens of billions of dollars of Medicare fraud by giving seniors an incentive to get the best value for their healthcare dollar.

SECONDARY REFORMS

1) Encourage local healthcare communities to develop their own electronic medical records. This will decrease duplication of tests and radiographic studies without giving Washington access to, or control over, private medical records.
2) Develop a centralized and simplified electronic billing system to reduce physician and hospital overhead. This also can screen data in real time for fraud and abuse.
3) End the abusive physician and hospital RAC audits that needlessly burden healthcare providers. (This can be done once Medicare and Medicaid gain the ability to screen real-time data for fraud).
4) Link "best practices" in medicine to protection from frivolous litigation. This will encourage physicians to practice evidence-based, state-of-the-art medicine.
5) Encourage preventative medicine by structuring insurance policies to incentivize basic healthcare maintenance.
6) Incentivize smoking cessation and weight loss. This would be done through private insurance companies offering discounts for healthy living, not through a federal mandate.
7) Initiate an "ask about generics" campaign to help reduce pharmaceutical costs without penalizing pharmaceutical companies.
8) Encourage patients, physicians, and families to have end-of-life discussions. Patients and physicians must address this sensitive subject in order to prevent Washington from forcing itself into this exceptionally private conversation.

Introduction

The story of the Gordian Knot holds a key concept needed to solve America's healthcare dilemma:

According to mythology, an oracle of ancient Phrygia decreed the next man to enter its capital driving an ox-cart should be crowned king. The peasant farmer Gordias received the honor. In gratitude, Gordias tied his ox-cart to a post as a gift to the Phrygian gods. However, he used a knot of such complexity no one could undo its threads.

The knot of Gordias defied a solution until Alexander the Great took up the challenge. Instead of attempting to unravel the intractable knot, Alexander simply drew his sword and cut through it with one bold stroke. This novel approach, known as the Alexandrian Solution, reduced a complex problem to a simple one. Rather than letting the knot's complexity overwhelm him, Alexander reframed the problem to craft a solution.

The same holds true when approaching the Patient Protection and Affordable Care act (PPACA). The complexities of the 2,700 pages of legislation cannot be untangled. Even as construction of the Gordian Knot made it impossible to untie, the philosophy underlying the PPACA excludes the possibility of fiscally responsible, patient-centered healthcare. We must completely repeal the legislation and start afresh.

The PPACA must be repealed for seven major reasons:

1) President Obama assured Americans the PPACA would decrease the cost of healthcare. However, after its passage, both individuals and businesses continue to watch their healthcare costs expand at a record pace.

2) When President Obama presented the PPACA to the American people, he claimed it would cost $789 billion, bring healthcare spending under control, and reduce the deficit by $143 billion.[iii] However, these numbers assumed deceptively optimistic projections about future savings and hid major portions of healthcare spending.

For example, these numbers required ten years of taxes to cover six years of spending. Because the Congressional Budget Office uses a ten-year calculation, the cost appeared much lower than it actually was. A second example is the bill calls for a $575 billion cut to Medicare. A third example is the bill anticipates a cut of an additional $298 billion to physicians caring for patients on Medicare.

A fourth example is the section of the PPACA known as the CLASS Act (Community Living Assistance Services and Supports Act). This section of the legislation created a government-backed, long-term care insurance program. CLASS "reduced the deficit" by requiring patients to make five years of payments before the government began distributing benefits.

However, rather than saving these premiums for future CLASS expenses, Congress planned on using the money to

pay for the PPACA. While illegal for any private insurance company, this accounting scheme accounted $70 billion (nearly half) of the PPACA's "savings".[iv]

Congressman Paul Ryan, then House Budget Chairman Ranking Member, estimated the true, ten-year cost of the bill at approximately $2.3 trillion.[v] When stripped of its accounting gimmicks, President Obama's healthcare legislation significantly *adds* to our national debt—it does not "reduce the deficit."

3) When the 2,700 pages of legislation are examined closely, much of the bill does not detail how the new healthcare law will actually work; it simply transfers power to the Secretary of Health and Human Services (HHS). As a result, the Washington bureaucracy has already written nearly 10,000 of pages of additional regulation—with more to come.

This much regulation not only centralizes power in Washington, it injects tremendous uncertainty into the business community. This uncertainty makes it impossible for business owners to anticipate their future expenses and stifles job creation.

4) Half of the people that gain insurance through the PPACA do so by enrolling into Medicaid. For many states this means the size of their Medicaid programs will increase by 50 percent. The marked expansion of Medicaid under the PPACA will exacerbate both federal and state budget shortfalls and force states to cut Medicaid reimbursement to physicians even further.

In many states Medicaid already reimburses less than the cost of delivering care. This means most of these "newly insured" patients will have "healthcare coverage," but will not be able to secure a primary care physician. When low reimbursement is combined with abusive government oversight, having Medicaid coverage can be worse than remaining uninsured. The Government Accountability Office recently reported that children on Medicaid have worse access to physicians than children with no insurance at all.[vi]

5) The PPACA fundamentally changes what it means to be a physician. Even more, it fundamentally changes what it means to be a patient. For example, Section 3007 of the PPACA gives the Secretary of HHS extraordinary power to review physicians' medical decision-making and grants the Secretary the power to financially punish physicians who do not comply with the "cost effectiveness" standards set by the Secretary. Physicians who do not comply risk being regulated out of private practice.

6) In addition to clearly violating individual liberty, the centerpiece of the legislation (the individual mandate) may not even be constitutional. The Supreme Court will rule on this matter next summer. Should the Court strike down the individual mandate, the entire piece of legislation comes undone.

7) Jobs, the economy, and healthcare are three of the most important issues facing America today. All are inextricably linked. Burdened by the skyrocketing cost of health insurance,

American companies struggle to compete on the world stage; the uncertainty of the new healthcare legislation makes American businesses reluctant to hire. Unless the U.S. contains healthcare costs, economic recovery will remain exceedingly difficult. This represents perhaps the most compelling reason why we must lay out a clear, fiscally responsible alternative for healthcare reform.

Most Americans and business owners are overwhelmed with the complexity of President Obama's healthcare reform plan, and understandably so. The 2,700 pages of the President's signature legislation have already created chaos, and most of the law's worst provisions have yet to be enacted. Even national healthcare policy experts do not fully understand what the future will bring. Indeed, the ultimate outcome of the legislation lies not with the patient, nor even with Congress, it rests on whims of the Secretary of HHS and the Independent Payment Advisory Board.

This series of white papers describes a clearly defined, alternative path forward. First, it briefly identifies two major structural problems that fueled the breakdown of our current system. Then it presents specific reforms that address these fundamental problems. In order to save America's Hippocratic tradition, Congress must repeal the PPACA then replace it with a series of patient-centered, fiscally responsible reforms.

[i] Patient Protection and Affordable Care Act, Section 3403 (b), Consolidated Print, page 387. April 23, 2010.

[ii] Rasmussen Reports, "56 percent Favor Repeal of Health Care Law," September 19, 2011. http://www.rasmussenreports.com/public_content/politics/current_events/healthcare/health_care_law

[iii] Congressional Budget Office, "Preliminary Estimate of Reconciliation Legislation Combined with H.R. 3590 as Passed by the Senate," March 20, 2010 www.cbo.gov/ftpdocs/113xx/doc11378/PreliminaryReconciliationTables.pdf

[iv] United States Congress-Republican Policy Committee, "CLASS' Untold Story: Taxpayers, Employers, and States on the Hook for Flawed Entitlement Program," Chairman John Thune, p. 1, September, 2011. http://thune.senate.gov/public/index.cfm/files/serve?File_id=f03d8200-bfa4-4891-8a4c-aa78a54e2de0

[v] Paul Ryan, *Wall Street Journal*, Opinion, "Dissecting the Real Cost of Obamacare," March 4, 2010.

[vi] U.S. Government Accountability Office, "Medicaid and CHIP: Most Physicians Serve Covered Children but have Difficulty Referring them for Specialty Care," GAO-11-624 June 30, 2011. http://www.gao.gov/products/GAO-11-624?source=ra