Op-Ed

Hidden Cross Subsidies, Planned Obfuscation, and Purposeful “Overselling”: Business as Usual or Issues Worthy of Debate?

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JONATHAN GRUBER’S UNWISE AND WIDELY QUOTED COMMENTS about the “stupidity” of the American voter and the deliberate use of obfuscation to secure passage of the Affordable Care Act (ACA) should serve as an important lesson for those who have never been appointed to public policy positions, for the advisers of elected or appointed officials, and for those in elected or appointed positions: No meeting is ever “off the record.” Flippant comments can (and often do) come back to haunt you.

But Gruber’s comments also raise several issues that are worthy of more serious consideration.

The specific portions of the law on which Gruber focused involved the use of tax law complexities to obscure the effects of placing a 40% excise tax on insurance companies rather than limiting how much of an employer’s contribution to an employee’s insurance premium could be excluded from the employee’s taxes (the “Cadillac” tax). The law also used insurance regulations to mask some of the cross subsidies contained in the legislation, such as limiting variations in insurance premiums across different age groups to 3:1 when the actuarial value suggests a difference of 5:1.¹

Minimizing fiscal transparency in proposed legislation is not limited to the Obama administration or the ACA. But it is particularly relevant here because of the unusual complexity of the legislation, the highly partisan nature of the legislation’s passage, and the forced scramble to recover from portions of the legislation that oversold what would or would not result from its passage—such as the promises that “if you like your plan, you can keep your plan” and “if you like your doctor, you can keep your doctor.”

It is Gruber’s comment that such obfuscation was critical to the legislation’s passage that raises the most troubling issues.² If he is

right—and I think at least some of that is debatable—it raises the question of whether “it’s OK” to engage in obfuscation if it produces a “highly desired goal.” It also raises the questions of whether engaging in similar practices is part of the reason that the ACA remains so unpopular and, if so, whether legislation passed in this manner is sustainable.

How Much Obfuscation Was There?

Most policy analysts certainly understood the impacts of the most frequently cited provisions. The notion that placing the 40% excise tax on insurance companies rather than applying the tax exclusion directly to the employees—because putting the tax on insurance companies has better “optics,” given the general unpopularity of insurance companies—was discussed as an option even before the ACA, but it was never included in previous legislation. The likely effect of the tax is not a mystery: Like other excise (or sales) taxes, the insurance tax will generally be passed on to the consumer, in this case, via the employer. This also is the likely outcome of the other taxes on insurance companies, on pharmaceutical companies, and even on medical device manufacturers, although how quickly and fully this will happen depends on the competitiveness of the industries involved and the alternatives available that are not taxed. The ultimate effect of the Cadillac tax on insurance companies should have been understood by any economics beat reporter—and I would hope most other savvy reporters as well—assuming they wanted to focus on this issue. Why they have chosen not to is another matter.

Similarly, limiting the variation in allowed premium charges to less than the variation that would reflect actual expected average use in the different income groups means that younger individuals will pay more so that the pre-Medicare population can pay less than their expected use would indicate. This is redistribution from young (and, on average, healthier) individuals to older (and, on average, sicker) individuals. Of course, it also makes it harder to convince younger individuals to buy insurance unless they receive substantial subsidies to offset its cost, some of which is artificially higher than it would otherwise be. I was quoted as making this point on several occasions, and other economists would (or could) have been quoted as well if reporters, again, had been interested in focusing on this issue.

The point is that these issues were not hidden from analysts and should have been widely discussed by the media. Whether it was adequately

discussed may reflect something about the media's biases as much as the structure of the legislation.

What is more complicated is the overselling of the legislation by the president. Simple, declarative sentences, such as "If you like your health plan, you can keep it" and "If you like your doctor, you can keep your doctor" are statements that ordinary people can easily understand. The problem is that these were promises the president couldn't possibly keep. Few plans purchased in the individual market would be able to meet the requirements for protection under "grandfathering" provisions. Otherwise, the individual plan would have to meet the ACA's new essential benefit requirements. Likewise, enrollees could keep their physicians only if the physicians chose to participate in a new plan and the insurer chose to include them.

In the fall of 2013, several reporters asked me whether I thought the president knew this when he made these promises; in other words, was he lying? I have no idea what the president knew (and wouldn't be so foolish as to guess), but I am sure his health advisers knew these were promises that were not the president's to make.

I don't know if the administration thought so few would be affected that it wouldn't matter or that people would be so happy to have insurance that all of this would be forgotten. But it was a mistake and, to my mind, a serious one. It has undermined people's confidence in the credibility of their politicians, which is never good for the public's well-being. And maybe it is one of several reasons why the Affordable Care Act continues to be unpopular.

References

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