The Powers Report Podcast

Episode 12

The Contradiction of Freedom and Equality in Health Care

Welcome to The Powers Report Podcast. I am your host, Janis Powers. The show brings you candid, unique and data-driven perspectives on the health care industry. I believe that any solution that is going to positively impact the American health care system has to satisfy two major criteria: financial viability and behavioral incentive alignment. In other words, access to high quality care can only be achieved if we can afford it, and if we behave in ways that optimize our health. Please subscribe to our show on iTunes or on your preferred podcasting platform and connect with us on social media. Again, this is Janis Powers, and welcome to The Powers Report Podcast.

As the 2020 presidential election approaches, we will be hearing some familiar terms on the campaign trail. We'll hear politicians mention one of my favorites, the American Dream. I'm partial to this one, because my book that proposes an overhaul of the health care system is called *Health Care: Meet the American Dream*. But we'll also hear a lot about freedom and a lot about equality – two values intrinsic to the American spirit.

In this podcast, I will talk about freedom and equality in the health care system. What does it mean to have freedom in health care? To have equality in health care?

This is critical to discuss because I believe that freedom and equality *cannot* co-exist in our health care system. Yet we, as Americans, support both freedom and equality. We're going to have trouble figuring out a way forward for health care if we don't start considering this rarely discussed contradiction. Which is more important? Do we really understand the ramifications of striving for either freedom or equality in health care?

So let's get into it.

We Americans love, and better yet, expect, freedom of choice. When the Affordable Care Act was designed, there was hope that buyers on the health insurance exchanges would have choices. The exchanges were called marketplaces for a reason. People were expected to shop for their insurance, and the marketplaces were supposed to make it easy to compare prices.

We've subsequently learned that shopping just on price for health insurance doesn't allow consumers to make informed choices because the products vary considerably by coverage and access. One plan may offer the same pricing as another, but your doctor may not be included in one of them. So the products aren't equal, even if the pricing implies that they are.

In fact, our love of choice is creating a conflict with regard to support for a single payer system. Take Democratic presidential candidate Kamala Harris's view. In an interview with CNN at the end of January, she said she backed Medicare-for-All and stated that she would be willing to eliminate private insurance

to do it (1). But most people want to keep a private insurance option, because, for one of many reasons, it offers choice. Days later, she walked back her commitment to eliminating it.

Bernie Sanders, a leading contender in the Democratic presidential candidate's race, favors completely abolishing private insurance. While one can admire his passion and vision, it simply doesn't line up with what Americans want, at least with regard to choice.

Where Senator Sanders does a good job vis-à-vis promoting Medicare-for-All is that he emphasizes the equality aspect of the plan. In a single payer system, everyone gets the same things. There are no short-cuts for the rich, you can't pay to get to the front of the line and the care quality is the same for everyone. That's the pitch, and it resonates with people.

The fact of the matter is that the wealthy will always have more choice because they will find providers who will take their money – either in America or abroad. Now Bernie Sanders's plan may make it illegal for providers to accept direct-to-provider payments. The details haven't been firmed up. Most likely, providers taking government money on his plan may be prohibited from engaging with patients outside the government program. Most providers would ostensibly become employees of the government.

But what if the provider doesn't want to take government payments and would rather go strictly direct-to-consumer? What if a medical practice or an ambulatory surgery center or a hospital prefers to opt out of a government program and get paid at the market rates they want to charge? Then we would have a two-tiered system. A government program, and a separate system for the wealthy.

The only way around this two-tiered system would be a requirement that every provider in America become an employee of the government. My view: that's never happening.

So the irony of the extreme, no insurance, Medicare-for-All program that seems to promote equality and fairness is that it will do the exact opposite. We will have one health system for the rich and a government-run system for everyone else.

And by the way, the system for the rich will be better. It will be better because it will pay providers more money than the government will. That will attract better talent. It will also allow the providers to invest in the best technology and equipment and facilities. That will improve the quality of care for those patients. Think about it. You could get an MRI that provides better images that can help detect disease sooner and more accurately. You could get access to the latest surgical procedure for your torn ACL, increasing your odds of a full recovery while also reducing your recovery time.

You can see why talking about freedom and equality are important.

Now let's talk a bit about the downsides of freedom. Our health care system, for the most part, does not penalize people for some of the bad behavioral choices they make. For example, people are free to smoke. A woman who is pregnant is, by law, allowed to smoke and allowed to drink alcohol, even though engaging in either of these activities can have serious negative repercussions on her unborn child. She has the freedom to engage in such activities. It's America.

Given that seven out of ten Americans are overweight or obese, most of us are engaging in activities that are not good for our health (2). Some argue that because they can pay for their health insurance, they have the right to do what they want. If they can pay for it, it doesn't impact anyone else, so they are free to drink excessive alcohol, and eat lousy food and, you know, fill in the blanks.

Of course, there are a number of problems with this manifestation of freedom. First is that over half of Americans get their health insurance through their employer (3). So anyone who claims that they can do what they want as long as they're paying for their health care expenses, better mean that they're buying insurance on the open exchange, 100% out of their own pocket. Most people don't do that. Most people have some other party – be it the employer or the government – paying for part of their health insurance.

Now, even if someone is paying for all of their medical costs, if they are using a significant amount of services, their negative behavior actually does affect everyone else. That's because if they go to the doctor a lot, or use telemedicine services a lot, or get more X-rays than normal … they are driving up demand. Assuming the number of providers offering these services is stable, then when demand increases, prices should go up. Now people have to pay more for their care.

Let's say prices don't go up, because more providers enter the market or prices just stay stable. Someone using the "I'm paying for it so it doesn't affect anyone else" logic can still have a negative impact on the system. With more and more people driving up utilization, providers have to make choices about who gets access to care.

Take this example. It's from the CEO of the Mayo Clinic during a speech in 2017 (4). "We're asking ... if the patient has commercial insurance, or they're Medicaid or Medicare patients and they're equal, that we prioritize the commercial insured patients enough so ... we can be financially strong at the end of the year to continue to advance, advance our mission." This happens all the time in health care. People with private insurance get priority access – appointments sooner, access to higher quality doctors, etc., It's just that in this case, the former CEO of the Mayo Clinic, Dr. John Noseworthy, was caught on the record saying it.

One of the biggest downsides in the American health care system with regard to freedom to make poor behavioral choices relates to health insurance coverage requirements mandated under the ACA. One of the most popular aspects of the Affordable Care Act is the inability for insurers to discriminate against individuals who have pre-existing conditions. Prior to the ACA, insurers could do more cherry-picking of members, excluding those who were unhealthy and excluding those who had been sick, but weren't anymore. This practice denied access to care for those who really needed it. Talk about inequality.

So today, insurers must cover anyone, regardless of their health status. That creates a perverse incentive to *not* care about being in good health. That's because an individual can get coverage pretty much without regard for their behavior. Not only do they get coverage, they have access to the same plans that someone who's engaging in healthy behaviors does. Healthy individuals subsidize the cost of care for those engaging in poor behavioral choices. Talk about inequality.

So how do we rationalize the need for Americans to do what they want, but the unfortunate downside that doing what they want – embracing their freedom – makes an unequal situation for someone else?

I've thought about this a lot. As many of you may know, I have designed an alternative health care system that pretty much eliminates health insurance. My view is that we are learning so much about our genetic predispositions and we have tools to incorporate the impact of external factors (behavior, environment, etc.) that we can predict the diseases and conditions that we will develop. Once we have a

good projection of an individual's future health needs, there's no need for insurance (except for unexpected stuff, like being struck by lightning).

My view is that instead of paying an insurance company, individuals should invest their money in their own investment accounts that I call Longitudinal Health Care Plans, or LHCPs. My company, Longitudinal Health Care, is positioned, at some point in the near future, to help individuals by offering these predictive and investment services (5).

One of the best aspects of the LHCP is that the program is dynamic. Every year our customers come back and we will do a physical, find out if key issues in their lives have changed, update behavioral changes and then re-run our projections. We'll share these with the customer, and it tells them how their behaviors today are affecting their outcomes tomorrow. And…it shows them how much it costs. It connects personal accountability with financial responsibility. The LHCP promotes longitudinal wellness in a way that nothing on the market currently does.

I've had a variety of reactions to such a system. Some people absolutely love the concept, and those folks are generally young. This is no surprise because many young folks have a distrust for the health care system and many are very open-minded to new ideas (6).

I've also had people tell me that such a system is only for the rich and, better yet, that it's unethical. In the context of what we're talking about, that interpretation characterizes the LHCP as less about promoting equality in health care and more about freedom. Now any suggestion that it's only for the rich or that it's unethical are ill-informed. In order to make a judgment on the LHCP, we have to understand the basic inequality that's already built into our current system, and how uncorrectable these inequalities are, based on our cultural behaviors.

Let's talk about the rich part first. Let's say we do a work-up on an individual, Joe Smith, and given Joe's genetic make-up and his external determinants of health – not just his behaviors, but where he lives, what his education level is, etc., he doesn't have an income level that would allow him to qualify for the plan. Joe happens to be overweight, a smoker, and a heavy drinker. One view is that the plan would be discriminatory based on the fact that Joe's income level is disqualifying him from access to health care.

Now let's consider a situation where another individual, Rob Williams, applied for the LHCP program and Rob had all the same indicators as Joe who could not qualify…except that Rob wasn't overweight, he didn't smoke and he drank alcohol in moderation. Rob, by virtue of the fact that he had made good choices, *did* qualify for the program.

The way I see it, it's not Joe Smith's income level that is impeding his ability to participate in the LHCP. It's the fact that he's made poor choices.

What I would like to be able to do is enroll Joe Smith and people like him in the LHCP program on a contingency basis. I would like to work with Joe and set up some health goals that, if are achieved, will enable him to join our program. Joe would be accountable for these goals and we would direct him to utilize some tools (nutrition instruction, weight loss programs, therapy, whatever) to achieve them. Such an approach would enable more people to enjoy the lifetime benefits of managing their own health as a Longitudinal Health Care customer. I think that's a much fairer system than we have today.

In fact, I would argue that the LHCP can enable better access to care for the people who really need it. Right now, we have too many people in the system driving up costs because of bad behaviors. But we have very limited ability to determine who is unhealthy because of behavioral choices versus those who are unhealthy because of major issues with which they must overcome. It's important to consider that when trying to solve a complex problem – like how to fairly provide health coverage – one must separate the knowns from the unknowns. The LHCP enables us to identify a set of Americans who are unhealthy and shouldn't be. It provides many of them with the incentives and guidance they need to get healthy. And that clears the way enable us to better pinpoint the folks who are unhealthy and need more directed assistance.

I think a more concerning issue relates to the perception that a system that uses genetic information to determine health coverage may be unethical. Mark my words. Genetic information will be used either directly or indirectly to determine health care coverage, insurance, payments, whatever. The information is too powerful to ignore. Just calling it "unethical" is a reflection of a resistance to change. And we can all agree that the American health care system is in dire need of change.

We need to better understand the limits of what genetic information is telling us and we must design a system to best use this revelatory information.

Unquestionably, there are some folks who are born with a bad lot. They may be born disabled or they may develop disease very early in life. Our Medicaid system is designed to provide support for the disabled. Medicaid is not perfect. It needs an overhaul. But we as a nation acknowledge that those with disabilities should have access to health care coverage. (And if you want my thoughts on Medicaid, please listen to Podcast #6, Pros and Cons of Medicaid Expansion (7).)

There are different types of genetic tests and they don't tell us the same thing (8). An individual may have a predictive genetic test that indicates that there is a possibility that they could develop a disease or a condition. It's not a guarantee. And many of the reasons why a person may or may not develop the disease are a function of their behaviors. So two people could be born with the same risk for prostate cancer. But one person is overweight, smokes and doesn't get the regularly recommended prostate cancer screenings. He develops the disease. The other person engages in positive health behaviors, follows clinical recommendations and does not get the disease.

And of course, the opposite it true. Engaging in healthy behaviors doesn't guarantee that you won't get something. Think of the life-long smokers who never get lung cancer. Or the marathon runners who do.

Much of the genetic testing out there tells us about probability. We should embrace this information because it informs us of the preventive things we can do to forestall or even eliminate the development of disease. Importantly, we need to understand what's being tested and work with a genetic counselor and a physician to make sure that we're doing everything we can to better manage our health and mitigate risk.

There are ten new genetic test that come to market every day. We're testing for all kinds of things and we're just getting started. The fact of the matter is that every single one of us has pre-existing conditions and every single one of us a genetic proclivity to develop something. Some of us are born with a better lot than others. So what does this mean?

We can never have equality in health care because we are not born "equal."

In the realm of health care, such native inequality poses real ethical questions about how to create a fair health care system. If we want equality in health care, where everyone gets the same access, then the first thing we have to do is level-set the health of all Americans. We have to spend more on those who have genetic challenges, which means that these individuals get a lopsided financial benefit from society.

Now, if I have freedom of choice and I want to decide how I spend my money, I may not want to give more to certain people. Personally, my view is that as members of a society, we have a responsibility to help those who cannot help themselves. But the issue relates to defining how much help any one of us deserves. To what standard are we trying to raise the health of all Americans?

Well, we're going to have a hard time agreeing on that because from the moment someone is born, she or he is immediately impacted by his or her environment, social status, economic status. Infants cannot help being in these situations. But adults have varying ability to control these factors and that, in turn, impacts their children.

Low income kids can qualify for Medicaid, but the coverage may or may not address all the needs that the child has. Maybe the doctors accepting Medicaid fail to diagnose an infant's problems. Maybe, for reasons mentioned earlier, the Medicaid baby can't be seen soon enough to optimally treat a medical condition. And if the parent doesn't enroll the child or take them to doctor appointments or give them the appropriate medications or, critically, provide them with a good diet and a safe environment, they'll never level up.

Now this coverage issue, meaning what is covered under an individual's health plan vis-à-vis what they need given their native genetic state, isn't just a problem for low-income people. It's a problem for everyone. That's because there is a significant variation in health care coverage in America. I mentioned this earlier when I talked about buying insurance. Premiums of two plans may be the same, but which doctors are on a plan and what is covered can vary.

The Affordable Care Act tried to address this issue by setting standards of what must be included in every insurance plan, called the Ten Essential Benefits. These coverage aspects, which include inpatient care, emergency care, rehabilitation, some preventive screenings and mental health services, are mandatory whether people want them in their plans or not. In order to make the plans more equal, it imposed restrictions on others' freedom of choice.

One of the biggies relates to something relatively inexpensive: providing coverage for birth control. Many Christian organizations object to this so-called contraceptive mandate, citing that it violates their religious freedom. That issue went all the way to the Supreme Court in *Burwell v. Hobby Lobby Stores, Inc.* (9) The 2014 ruling favored corporations with religious objections, providing them with exemptions from providing coverage.

Consider the benefits that many employers get when their employers provide them with insurance. They may get free telemedicine visits. And clinics on site. And wellness programs. And free gym memberships. And coverage for chiropractic services. These individuals may get all kinds of things that no plan on the ACA marketplace offers. That's not an equal system.

Then there's the fact that when you're sick – regardless of your income – you pay more for health care. A sick person and a healthy person may be on the same health insurance plan. They may pay the same

amount in premiums. But when the sick person goes to the emergency room, she pays a co-pay and may pay a percent of charges for the visit. When a sick person needs medications, he pays a co-pay for those. When a sick person goes to a doctor or has a surgery or gets hospitalized…she's paying out of pocket for co-pays, satisfying deductibles which can be very high, etc. A healthy person could have none of those expenses during the year. That's not an equal system.

Then there's this idea that a universal coverage Medicare-for All system will provide everyone with the same thing and everyone will pay the same, regardless of their medical condition.

Well, Medicare doesn't work that way now. For one thing, Medicare outlines a sliding payment scale based on income for Medicare Part B, which is the outpatient doctor visits and things like that. People who can't afford to pay for these premium payments get coverage through Medicaid to make up the difference. In addition, people who have higher income pay more in Medicare payroll taxes than others. So the wealthy pay more for Medicare today. That's not an equal system.

And then there's something else related to the inequality of health care that we don't think about much at all. The cost of health care is a function of the therapies and procedures and medications that are available to treat the condition. If there's no cure for a disease, then the cost of care relates to the support needed to enable the person to live a meaningful life.

For example, there's no cure for deafness. If you're born or become deaf, there are ways that you can still engage with society, hold down a job, have meaningful relationships…but these services don't cost $750,000.

What does cost $750,000? Precision medicine treatments that dial-in your genetic profile to create a therapy that cures a rare type of cancer. Such a treatment didn't exist ten years ago. Decades ago cancer treatments were experimental at best.

Look at it this way. If you were born deaf in 1950 you were probably more of a financial burden to society than the person who developed the rare form of cancer. That's because there was no treatment for that cancer. The opposite it true today.

It really does get confusing. So to clear things up, I will refer to the Declaration of Independence. Here's a quote we all know by heart. "We hold these truths to be self-evident, that all men are created equal…" Well, they didn't have genetic testing in 1776.

But seriously, we have to update these words based on today's norms as well as discount them a little based on historical context. Jefferson referred to men as being equal; today it's men and women. We're all equal, whatever that means. And when Jefferson wrote men, he meant white men, and more likely land-owning white men, men of influence. Further, Jefferson's words have taken on a touch of hypocrisy because Jefferson was a slave-owner.

Nonetheless, the tenor of the phrase, "all men are created equal," was to assume that we all, as citizens, have the "…certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." My take on this is that we can each have an equal ability to pursue liberty. And liberty is oftentimes a proxy for freedom of choice.

Where am I going with all of these historical musings? Well, I am looking at the document that informs so many of our ideas about what it means to be American and I am prioritizing the notion that we can

pursue freedom over the fact that we are all equal. Because we're not equal. We'll never know what Jefferson was thinking when he wrote the document, but it's clear that he didn't view all humans as equal.

I think today we're spending too much time trying to make a system that's equal and we're embracing all the wrong aspects of freedom of choice. We need to reward people for making positive choices and incent those who are not doing so as a means to improve the overall health of the American community. Doing so lowers overall health care costs and then enables us to use the funds we have to provide the care to those who really need it. Our system will only become more equal if we all do our best to be as healthy as we can be.

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