



Joint Economic Committee

Republicans

Senator Sam Brownback *Ranking Member*
Representative Kevin Brady *Senior House Republican*

Republican Staff Commentary

Rationer-in-Chief: *The Confirmation Hearing That Wasn't*

July 19, 2010

On July 7, while Congress was away on a five-day district work period, President Obama wielded his recess-appointment power to install the controversial Dr. Donald Berwick as Administrator of the Centers for Medicare and Medicaid Services, thereby circumventing the traditional Senate confirmation process and avoiding uncomfortable questions about the nominee's avid support of British-style health care rationing.¹

As a public service, we present this "transcript" of the "confirmation hearing that wasn't," using Dr. Berwick's own words in response to the questions that Congress wasn't allowed to ask. All of Dr. Berwick's "responses" below are taken verbatim from statements he has made in various forums over the years.

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Opening Statement

Chairman: Welcome, Dr. Berwick. Thank you for appearing before our committee. If confirmed as Administrator of the Centers for Medicare and Medicaid Services, CMS, you will be in charge of the health care of more than 100 million Americans, nearly one-third of our population. You will oversee a budget exceeding \$800 billion, one-third of our health care sector. If CMS were a separate nation, it would be the 16th largest economy on earth. On top of all this, you will also be the chief implementer of \$529 billion in Medicare cuts under the new health care reform law. And doubtless, too, you will be a key player at the table as the Obama Administration makes important decisions about how to implement that law. Clearly, doctor, if you are confirmed, your power, challenges, and responsibilities will be enormous. Now, each Senator will have five minutes to question the nominee.

Dr. Berwick's own words, in response to the questions that Congress wasn't allowed to ask.

"Britain, you chose well."

"You place the politicians between the public served and the people serving them."

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M.P.P., F.R.C.P. (London),
F.R.C.P.S. (Glasgow),
K.B.E.¹*

"That Is For Leaders To Do"

Senator A: Thank you, Mr. Chairman. I too welcome our distinguished nominee. Let's start with the elephant in the room. Dr. Berwick, do you support health care rationing?

Berwick: "The decision is not whether or not we will ration care. The decision is whether we will ration with our eyes open."

Rethinking Comparative Effectiveness Research," An Interview with Dr. Donald Berwick, Biotechnology Healthcare June 2009, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2799075/pdf/bth06_2p035.pdf

Senator A: I see. And who in your opinion is in the best position to do the rationing? Faceless bureaucrats, from the top down? Or individual patients, acting as consumers, from the bottom up?

Berwick: "I cannot believe that the individual health care consumer can enforce through choice the proper configurations of a system as massive and complex as health care. That is for leaders to do."

"A Transatlantic Review of the NHS at 60" by Donald Berwick, speech at NHS Live, July 1, 2008.

Senator A: What about the idea, touted by many economists, of making patients more cost-sensitive, as a way to help slow the relentless growth of health care costs?

Berwick: "I do not believe that making the individual patient more 'cost-sensitive' has any rationale in science, ethics, or evidence. I don't think that incenting individual consumers is a lever of efficiency. I think what it drives is inequity. Sick people are poor, and poor people are sick. That's the fundamental problem of the economics of health care."

"A Deficiency Of Will And Ambition': A Conversation with Donald Berwick," Health Affairs Web Exclusive, 2005, p. W5-4.

"Any health care funding plan that is just, equitable, civilized, and humane must -- must -- redistribute wealth from the richer among us to the poorer and less fortunate."

"A Transatlantic Review of the NHS at 60," by Donald Berwick, speech at NHS Live, July 1, 2008.

"Such a Seductress"

Senator B: Doctor, your admiration for Britain's National Health Service, or NHS, is well known. Even though the NHS is a government-run, single-payer system, you still thoroughly approve of it, and have even worked with it as an advisor for many years?

Berwick: "I am romantic about the NHS; I love it."

"A Transatlantic Review of the NHS at 60," by Donald Berwick, speech at NHS Live, July 1, 2008.

"I fell in love with the NHS . . . [T]o an American observer, the NHS is such a seductress."

"Celebrating Quality 1998-2008" by Donald Berwick, speech at London Science Museum, September 30, 2008.

Senator B: Thank you. In fact, I understand you were given an honorary knighthood by the Queen for your work with the NHS. Is it safe to say that -- like many on the Democratic side of the aisle -- you're a supporter of a British-style, single-payer health care system for the United States?

Berwick: "I admit to my own devotion to a single-payer mechanism as the only sensible approach to health care finance I can think of."

Foreword to Quality in the Veterans Health Administration: Lessons from People Who Changed the System (Jossey-Bass, 1996) by Donald Berwick, p. xi.

Senator B: And what exactly in your opinion makes the UK's system so sensible?

Berwick: Allow me to read my address to the NHS, celebrating its 60th birthday in 2008:

"You cap your health care budget, and you make the political and economic choices you need to make to keep affordability within reach. You plan the supply. You aim a bit low. Historically, you prefer slightly too little of a technology or service to much too much. And then you search for care bottlenecks, and try to relieve them. . . . You could have [had] a monstrous insurance industry. . . . You could have protected the wealthy and the well. . . . [But instead,] Britain, you chose well."

A Transatlantic Review of the NHS at 60," by Donald Berwick, speech at NHS Live, July 1, 2008.

"What the NHS does [is] an example for health care worldwide."

A Transatlantic Review of the NHS at 60," by Donald Berwick, speech at NHS Live, July 1, 2008.

"At \$5,000 per person per year, we [Americans] leave 45 million souls without health insurance. At under \$3,000 per person per year, the United Kingdom leaves no one out -- no one -- not even illegal immigrants."

"Plenty," speech to 14th annual National Forum on Quality Improvement in Health Care, December 2002, in Escape Fire: Designs for the Future of Health Care by Donald Berwick (Jossey-Bass, 2004), pp. 293-94.

Senator B: How do they do achieve that, structurally?

Berwick: "[They] place the politicians between the public served and the people serving them."

"A Transatlantic Review of the NHS at 60," by Donald Berwick, speech at NHS Live, July 1, 2008.

Senator B: So you're depicting the politicians as defending the patients against the bureaucrats. Wouldn't it be more accurate to say that in Britain they insert the politicians and the bureaucrats between the patients and their doctors?

Berwick: "The British NHS isn't just technical -- it's political. . . . It is a stage on which the polarizing debates of modern social theory play out: between market theorists and social planning, between enlightenment science and post-modern skeptics of science, between utilitarianism and individualism, between the premise that we are all responsible for each other and the premise that we are each responsible for ourselves, between those for whom government is a source of hope and those for whom government is hopeless. . . . The NHS is a bridge -- a towering bridge -- between the rhetoric of justice and the fact of justice."

"A Transatlantic Review of the NHS at 60," by Donald Berwick, speech at NHS Live, July 1, 2008.

"Those are my observations from far away -- from an American fan, distant and starry-eyed about the glimpses I have had of the NHS's remarkable social project."

"A Transatlantic Review of the NHS at 60," by Donald Berwick, speech at NHS Live, July 1, 2008.

Senator B: Does the NHS have any failings?

Berwick: "There is less progress in the UK in some areas, especially by comparison with other European systems, such as in specialty access, cancer outcomes, patient-centeredness, life expectancy, and infant mortality for socially deprived populations."

"A Transatlantic Review of the NHS at 60," by Donald Berwick, speech at NHS Live, July 1, 2008.

"Put Not Your Trust in Markets"

Senator C: What do you say to opponents of single-payer who believe consumer choice and market forces can both improve the quality of care and lower costs?

Berwick: "Please don't put your faith in market forces. Do not trust market forces to give you the system you need. A politically accountable system must act in the harsh and, admittedly, sometimes unfair, daylight of the press, public debate, and political campaigning. Britain could have let an unaccountable system play out in the darkness of private enterprise, but instead chose the [light]."

"A Transatlantic Review of the NHS at 60," by Donald Berwick, speech at NHS Live, July 1, 2008.

Senator C: As you know, in Britain all of the doctors and nurses are salaried employees of the government -- bureaucrats, if you will. Does that have any negative effect on quality of care?

Berwick: "I do not believe that the way to get better doctoring and better nursing is to put money on the table in front of doctors and nurses. I think that is a fundamental misunderstanding of human motivation. I think that people respond to joy and work and love and achievement and learning and appreciation and gratitude -- and a sense of a job well done. . . . I think we need a national agenda to restore joy in work."

"A Deficiency Of Will And Ambition': A Conversation with Donald Berwick," Health Affairs Web Exclusive, 2005, p. W5-5.

"They Just Need More Morphine and Counseling"

Senator D: What could we do to reduce needless end-of-life medical spending?

Berwick: "Most people who have serious pain do not need advanced methods; they just need the morphine and counseling that have been available for centuries."

"Reforming Care for Persons Near the End of Life: The Promise of Quality Improvement" by Joanne Lynn, Donald Berwick, et al, Annals of Internal Medicine July 16, 2002, p. E-118.

Senator D: You're a vocal skeptic of costly new medical technologies. Why?

Berwick: "We have a learning disability in this country with respect to the difference between technologies that really do help and technologies that are only adding money to the margins of the companies that make them, without essentially paying their way in value. One of the drivers of low value in health care today is the continuous entrance of new technologies, devices, and drugs that add no value to care. If we had a national [comparative effectiveness] policy, it would allow us to know the difference."

"A Deficiency Of Will And Ambition': A Conversation with Donald Berwick," Health Affairs Web Exclusive, 2005, p. W5-7.

Senator D: And who, in your opinion, should determine which technologies really help?

Berwick: "The need to balance effectiveness against cost has shifted the burden of proof onto the shoulders of those who use or propose to use expensive technologies."

"Techniques for Assessing the Impact of New Technologies in the Neonatal Intensive Care Unit" by Donald Berwick, Respiratory Care June 1986, p. 524.

"As many as 80 percent of hysterectomies are scientifically unnecessary. So are more than a quarter of the drugs used for ear infections, most of the ultrasound tests done in normal pregnancies, and almost half of the cesarean sections in the United States. Isn't this, with all due respect, some form of assault and battery, however unintended?"

"Why the Vasa Sank," speech to 9th annual National Forum on Quality Improvement in Health Care, December 1997, in Escape Fire: Designs for the Future of Health Care by Donald Berwick (Jossey-Bass, 2004), pp. 129-130.

"Most metropolitan areas in the United States should reduce the number of centers engaging in cardiac surgery, high-risk obstetrics, neonatal intensive care, organ transplantation, tertiary cancer care, high-level trauma care, and high-technology imaging."

"Buckling Down to Change," speech to 5th annual National Forum on Quality Improvement in Health Care, December 1993, in Escape Fire: Designs for the Future of Health Care by Donald Berwick (Jossey-Bass, 2004), pp. 28-29.

"I Can Create a Mess"

Senator E: You're reputed to be a student of leadership. Effective leaders know their deficiencies. What are yours, and how do you address them?

Berwick: "I don't feel like a leader, so it's very hard for me to project myself into that situation. But inattention to detail is my biggest defect. I'm always leaning forward into something new. I can create a mess. Luckily, I have people who are willing to create the detail around the idea or, if they're really smart, know which ideas to ignore. The second defect is more personal uncertainty than you would probably believe. Every time I put an idea out, despite my enthusiasm, I'm very, very unsure about whether it's OK or not. And the third is that I want everyone to like me, and yet I'm aware that when you're pushing for change, that isn't always going to happen. To be more effective as a leader, I would probably want to thicken my skin."

"Seeding a Simple Dream: Do No Harm" by Avery Comarow, US News October 30, 2006, http://www.usnews.com/usnews/news/articles/061022/30Berwick_print.htm

"The Burden of Proof"

Chairman: Thank you, doctor. This has been an enlightening hearing. Last question. Senator.

Senator F: Thank you, Mr. Chairman. Dr. Berwick, the organization you founded and of which you serve as President and CEO, the Institute for Healthcare Improvement, has bestowed on you and your wife guaranteed health care coverage for life, in gratitude for your services to the institute.³ Congratulations, by the way. [Applause.]

Does your own health care plan ration 'with its eyes open,' as you advocate? And, if I can build on that question, if you were ever to become very sick, and needed care that was very costly, but it was your only hope, who in your opinion should decide whether you receive that care? Government bureaucrats, like those in your beloved NHS, enforcing a global budget cap, spurning costly new technologies, and relying on the latest scientific data on comparative effectiveness? Or you, the patient, in consultation with your doctor?

Berwick: "The need to balance effectiveness against cost has shifted the burden of proof onto the shoulders of those who use or propose to use expensive technologies."

"Techniques for Assessing the Impact of New Technologies in the Neonatal Intensive Care Unit" by Donald Berwick, Respiratory Care June 1986, p. 524.

Senator F: I see. So you think enlightened, highly trained, well-meaning, non-financially-motivated experts are in the best position to know which medical treatments a patient should have access to, even if that patient is yourself. All right. But what if it were your wife who needed the care? Would you still take the same position?

Berwick: "The need to balance effectiveness against cost has shifted the burden of proof onto the shoulders of those who use or propose to use expensive technologies."

"Techniques for Assessing the Impact of New Technologies in the Neonatal Intensive Care Unit" by Donald Berwick, Respiratory Care June 1986, p. 524.

Chairman: Thank you, doctor. This has been very informative for all of us. The committee stands adjourned.

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Post Script

The foregoing "transcript" is, of course, a parody. The Berwick confirmation hearing never took place. Our imaginary hearing may be in a satirical vein, but the Administration's decision to avoid a real one was a serious and disturbing violation of constitutional norms. As the Democrats' own Chairman of the Senate Finance Committee wrote, in objecting to Dr. Berwick's recess appointment: "Senate confirmation of presidential appointees is an essential process prescribed by the Constitution that serves as a check on executive power and protects . . . all Americans by ensuring that crucial questions are asked of the nominee—and answered."⁴ The Senate having been deprived of its opportunity to advise and consent, or not consent, to this critical appointment, we hope that our "transcript" at least provides readers with a better understanding of the policy views of the man who now serves as our nation's Administrator of Medicare and Medicaid. While the "questions" are invented, the responses are all too authentic, and may help to explain why the Administration chose to circumvent the proper constitutional process.

¹ Under the Constitution, recess appointments are temporary, expiring at the end of the Senate's next session. U.S. Const. art. II, § 2, cl. 3. Since sessions usually run for one calendar year, Dr. Berwick's commission will expire at the end of the first session of the 112th Congress, in late 2011. The President may submit Dr. Berwick's name to the Senate for proper advice and consent, and a non-temporary appointment, at any time.

² "A Transatlantic Review of the NHS at 60," by Donald Berwick, speech at NHS Live, July 1, 2008.

<http://www.infoandstats.wales.nhs.uk/page.cfm?orgId=781&pid=32953>

³ "In special deal, charity gives rationing advocate Berwick health coverage for life," by Byron York, *Washington Examiner*, July 14, 2010.

<http://www.washingtonexaminer.com/opinion/blogs/beltway-confidential/In-special-deal-charity-gives-rationing-advocate-Berwick-health-coverage-for-life-98403369.html>

⁴ Sen. Max Baucus (D-MT), "Baucus comment on the recess appointment of CMS Administrator Berwick," press release, Senate Finance Committee, July 7, 2010. <http://finance.senate.gov/newsroom/Chairman/release/?id=b8801280-9ae6-4f0d-be81-e82de0d55866>