WASHINGTON – On the eve of the one-year anniversary of the enactment of the $2.6 trillion health law, U.S. Senator Orrin Hatch (R-Utah), Ranking Member of the Senate Finance Committee, outlined how severely the law is burdening states with additional costs and mandates they can’t afford, and made the case for putting states back in the driver seat to being the laboratory of innovation. Hatch spoke at an event on health care at the Hudson Institute today.

Below are Hatch’s remarks as prepared for delivery to Hudson Institute, 3/11/11:

Ken, thank you for having me here today. Thank you so much for that kind introduction. I really appreciate being here and I love this institution and appreciate all that you do. Thank you for having me here today, the kind introduction and your generosity in providing this venue. The Hudson Institute is well regarded as one of the most fair, and dare I say, most balanced think tanks in Washington. I’ll try my best to live up to its reputation.

Also, I’d like to say that you made a great pick in bringing Tevi Troy on board at Hudson. There are few people in Washington that know as much about health care, and most importantly, the problems with our nation’s health care system as Tevi does. He understands the essential point that the primary problem with our nation’s health care system is that it is already dominated by government, not that it suffers from inadequate governmental intervention.

Now, as you may have heard, we are coming up on an anniversary. On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act. To the uninitiated, that would be Obamacare.

To celebrate, Families USA, the advocacy group that promoted the health care law, is delivering Obamacare birthday cakes to Members of Congress.
I would not be surprised if the cake comes cash-on-delivery, much like the law it is celebrating.

The health care law was sold as necessary to reduce health care spending. But the real bill came due upon delivery.

You might recall that one of the essential turning points in the life of this legislation — one of the key moments that brought supposedly reluctant Democrats on board — was the securing of a carefully massaged score from the Congressional Budget Office showing that if all the Democrats’ assumptions held true — no matter how unrealistic — Obamacare would save money.

These scores were trotted out to provide cover for Democrats who felt they had to look fiscally responsible. The funny thing is, that the more Democrats in Washington said that spending $2.6 trillion on a new entitlement will reduce the deficit, the less the American people believed it.

After the bill was passed, we have continued to see the facts come out on its true cost. I suppose then-Speaker Pelosi was right after all. We would have to pass the bill to find out what was in it.

So as we approach the one-year anniversary of Obamacare, it is worth revisiting this law. What exactly was in it? And where should we go from here?

In the end, the fight between progressivism and conservatism is a fight about the ability of government to manage the economy.

Conservatives understand that markets might be messy, but with some exceptions, if left alone, they create optimal outcomes.

Obamacare is another in a long line of progressive efforts to interfere with free markets and restructure the economy in ways that professional bureaucrats deem rational.

The problem is that these bureaucrats have little understanding of how businesses and markets work, and in their desire to bring greater rationality they create inefficiencies and higher costs.

The ink was barely dry when the significant and unexpected costs of the health care law — costs not anticipated by the progressive legislators and staffers who sought to control one-seventh of the American economy — became clear.

First out of the gate was the impact of eliminating the tax break for the Part D premium assistance for businesses.

As required by law, following President Obama’s signing of the health law, a number of large corporations announced significant write-downs in response to the elimination of the Part D subsidy deduction. Over a billion dollars in losses for businesses.
This was not the type of message Democratic legislators were anticipating just weeks after Obamacare became law.

So what was the response of the health law’s supporters? Naturally, it was not the government’s fault. For progressives it is never the government’s fault. Rather, It was the fault of these businesses for telling the truth.

The Secretary of Commerce, Gary Locke, went on television and said that these write-downs — which again were required by law — were “irresponsible.” The Democratic controlled House Energy & Commerce Committee announced a hearing that would look into these write-downs. It was only when the committee realized that a hearing would embarrass those who supported this proposal to begin with that they pulled the plug on it.

But this skirmish was only the beginning. With its rolling effective dates, Obamacare was loaded with a series of time bombs set to go off.

Next came the debate over the provision — one enacted in the mad scramble for dollars to pay for the health law’s coverage expansions —requiring businesses to report all payments in excess of $600 for services or merchandise to the IRS on a 1099 form.

It soon became clear that this would be an enormous, and unnecessary, burden on American businesses.

Though bipartisan majorities in Congress agree that this provision should be repealed, it remains law today. The difficulty of repealing even this one onerous provision is worrisome given the much bigger issues that remain to be addressed in the health law. And there are many of them.

This week, the Wall Street Journal reported on the new restrictions on the purchase of over the counter drugs.

Again, in a haphazard effort to raise funds for coverage expansions, Obamacare required that individuals receive a prescription from their doctors prior to purchasing over the counter allergy medication with their Flex Spending or Health Savings Accounts. You now have the spectacle of mothers calling pediatricians, so they can get prescriptions for infant Motrin and diaper-rash cream.

And let’s not forget that this provision was included in a bill designed to improve access to primary care, reduce costs, and increase efficiencies. Given those goals, it is hard to conceive of a more counterproductive proposal.

And of course, we can’t forget the benefit requirements and so-called consumer protections.

Some of you probably recall that as this legislation was being developed, it occurred to its advocates that there were no goodies offered up front. So they inserted as Title I in the
law a host of new requirements that they could then sell to interest groups and constituents. The process of enacting these new requirements has been chaotic.

The departments involved have had to issue subregulatory guidance in the form of Releases, Notices, Frequently Asked Questions, and Model Notice Language Samples to clarify and revise previously issued rules. And after issuing all of these new regulations, the Administration still had to provide exceptions to these mandates.

Just recently, the Administration hit a real milestone. They have now approved 1,000 waivers of the benefit requirements in the health law. Apparently these requirements do not come without disruption and cost given that plans covering more than 2.6 million people have been exempted from these consumer protection requirements.

And these are just the issues that have emerged so far.

The real fun has not even started. The premium subsidies for the new health insurance exchanges have not even gotten rolling yet.

The IRS is already hiring agents to administer the billions in premium assistance that will be pushed out the door under Obamacare. I will be monitoring this closely because if history is any guide, these premiums subsidies will be rife with abuses and mistakes that will ultimately cost taxpayers billions of dollars.

Let me ask you a question. We have an educated group of people here — a group that has a sophisticated understanding of how government works. What about the operation of federal programs to date should give us confidence that the original estimates of the cost of these coverage expansions are not massive understatements?

Don’t take my word for it.

Just yesterday, the Congressional Budget Office concluded that “growth in health care costs will almost certainly push up federal spending significantly relative to GDP under current law.”

The CBO continued. “[S]pending for Social Security, Medicare, Medicaid, and other health care programs will grow from 9.9 percent of GDP in 2010 to 12.0 percent by 2021, driven largely by rapid growth in health care costs.”

Even the Obama Administration’s own Chief Actuary concluded that national health expenditures will increase due to Obamacare. Maybe this is why Doug Elemendorf, the Director of the CBO, testified last month that Obamacare would reduce the number of jobs in the labor market by 800,000.

In the end, the health law might be over 2,000 pages long, but it is not that complicated. A Democratic Congress, urged on by the President, passed a $2.6 trillion health care law, with massive new subsidies for coverage, without addressing the long-term costs of care.

And how did they “pay for” these new and expanded entitlements?
Obamacare increased taxes by at least $800 billion, and many of those taxes will just be passed on to patients in the form of higher health care costs.

They also cut nearly $530 billion from a nearly bankrupt Medicare program — not to make Medicare solvent, but to create and expand other unsustainable entitlements.

Obamacare is a sinking ship, and when it starts to go below the waves, the very groups and organizations that sought refuge in deals with the White House will be the first groups Democrats turn to for more money to fill the holes.

So first things first. We need to repeal the health law in its entirety. The House already voted to do so. And then, along with my Republican colleagues in the Senate, I voted to repeal Obamacare in its entirety.

Short of repealing Obamacare wholesale, we will do so retail through death by a thousand cuts. We will fight this until we win.

1099 repeal is a good start. But we are not going to stop there.

I have introduced a bill to repeal the $20 billion tax on medical device manufacturers that was included in Obamacare. This tax is a perfect example of the perverse consequences of the health law.

Recall that Obamacare was sold to the public as decreasing costs and improving economic growth.

Under this health law, medical devices ranging from surgical tools to bed pans will now get hit with a 2.3 percent excise tax. My bill would immediately repeal this tax, which is slated to take effect in 2013.

Medical device companies employ nearly half a million people and pay a salary that is nearly 40 percent higher than the national average. The industry is also one of the leading net-exporters in the U.S.

A $20 billion tax hike on medical device manufacturers to fund Obamacare will cripple an important engine of opportunity, job growth and innovation, while hurting the advancement of technologies essential to improving patient care.

Furthermore, these tax hikes will only result in higher insurance premiums and increase the cost of medical devices. Rick Foster, the President’s own actuary, agrees. He stated in his analysis of the health overhaul law that the tax on medical devices will “generally be passed through to health consumers in the form of higher … device prices… with an associated increase in overall national health expenditures….”

The medical device tax might be an affront to our economy and to common sense, but the individual mandate is an affront to our Constitution.
I have introduced legislation to repeal the unconstitutional individual mandate. This one provision is the keystone to Obamacare and removing it will severely undermine the administration’s ability to exert full control over citizens’ healthcare.

I have also introduced legislation to repeal the employer mandate. In a time of record unemployment and extreme uncertainty about the burden of thousands of pages of new regulations coming out of the White House, the last thing employers need is another costly mandate.

What the Administration seems to have missed is that the employer mandate will not only harm the economy by forcing employers to lower wages and freeze hiring. It will also result in higher health care costs for employees. The health overhaul law provides large incentives for employers to drop coverage, leaving employees with the option of purchasing insurance through the exchanges.

When this happens, employees will see a dramatic increase in their premiums as they lose the tax advantages of employer sponsored health care.

If you think premiums are high now, just wait until 2014.

But once Obamacare is dismantled — and I am confident that it will be — what will emerge in its place?

We need to have a clear replace after repeal that lowers health care costs and fixes our unsustainable entitlement programs.

The bottom-line is that any solution needs to be state based.

Step one will be relieving states of the massive fiscal burdens imposed by a relentlessly expanding Medicaid entitlement.

Along with the 2009 stimulus package, the health law imposed new Medicaid eligibility restrictions on the states called maintenance of effort requirements.

The lack of flexibility that maintenance of effort imposes makes it especially challenging for states to solve their unprecedented budget crises. This is a typical case of an out-of-touch Washington making life unduly difficult for states and localities.

States are facing a collective $175 billion budget shortfall through 2013. California has a $25 billion budget gap to close on its own.

To put this in perspective, Democrats in the Senate balked this week at cutting any more than $4 billion from an omnibus appropriations bill of over $1 trillion.

Yet while facing this crisis, Washington has tied the hands of the states.

Medicaid consumes on average 22 percent of state budgets. States are simply asking for relief from federal mandates to better manage their Medicaid populations.
Under current law, the options of states are limited. Due to federal eligibility restrictions, states are limited to cutting benefits that are not federally required, reducing payments to providers, and raising taxes.

Due to Washington’s intransigence on maintenance of effort requirements, some states are now being forced to consider cuts of up to 20 percent to higher education.

The Administration’s response on this issue has been completely inadequate, and I will be introducing legislation easing federal Medicaid restrictions on state governments. The fiscal reality of the situation we are in demands that we do so.

And if you think what’s happening across the nation in places like Wisconsin and California is bad now, just wait until the Medicaid expansions in Obamacare kick in.

With at least 20 million individuals becoming Medicaid eligible in coming years due to the health law’s Medicaid expansion, the budget pressures on states due to Medicaid are only going to get worse.

By the estimates of the Senate Finance Committee Republicans and the House Energy & Commerce Committee, Obamacare’s Medicaid expansions will cost state taxpayers at least $118.04 billion through 2023.

Candidly, forcing states to do this is not just unrealistic and irresponsible. It is immoral.

And that is without even getting into the tremendous problems with access and the quality of care in the government program that is Medicaid.

That is not even getting into the unacceptable fraud, waste, and abuse problems with Medicaid.

Clearly, this government program is broken and it must be reformed.

In a compelling article in yesterday’s Wall Street Journal, Dr. Scott Gottlieb, a clinical assistant professor at the New York University School of Medicine, argued that government Medicaid coverage is worse than having no insurance at all.

More broadly, it is also critical that any replacement for Obamacare be state-based.

For all of the talk about flexibility, the health law provides a one-size-fits-all solution to coverage in the states.

The bottom-line is that Utah’s health insurance exchange will not exist under Obamacare. The coverage available in the existing Utah exchange will not meet the coverage requirements designed in Washington.

Secretary Sebelius has incorrectly described Utah as one of the models for the state exchanges that will exist under Obamacare. In fact, Utah would be denied approval today if it were to ask Washington to certify its exchange.
Its request would be denied because it does not meet Washington’s standards. This is amazing.

The Utah exchange provides flexibility, and it’s an honest to goodness free market system that provides a portal for Utahns to shop for insurance. All carriers are welcome and benefit requirements are extremely limited.

This is the future of health care — freedom and choice, not government dictated standards for who can compete in the exchange and what products they can offer.

When Congress repeals the health law and replaces it with something more workable, it needs to make certain that the states are enabled to act as 50 laboratories of democracy.

Unfortunately, Obamacare sidelined the states.

Don’t let them fool you. The President’s recent embrace of a plan that would merely change the date on Obamacare’s state innovation provision from 2017 to 2014 does not put states back in the driver’s seat. It does not loosen the new federally dictated benefits requirements in the exchanges. States will still have to offer coverage at least as comprehensive as the federally mandated essential-benefits package.

A truly workable health care reform would be modeled on the bipartisan and highly successful welfare reform of the 1990s, which took ideas from the states — not just Washington — and gave them considerable flexibility to operate their own programs.

Frankly, this is what our Constitution of separated powers and sovereign states demands.

There is an enormous reservoir of expertise and experience in the states. And any federal reform of the nation’s health care system should take advantage of this state-based wisdom.

The states will be at the center of Republicans’ health care reform effort.

Let me also say a word about Medicare. The fact is, we do need to have a discussion about entitlements. If we want to preserve Medicare for future generations of Americans, we must get serious about ensuring its fiscal solvency.

Unfortunately, Democrats have shown time and again that they are not serious about reforming Medicare.

Rather than use health care reform as an opportunity to shore up an already vulnerable Medicare program, Democrats instead took $529 billion out of Medicare to fund new entitlement spending.

Our Medicare program is broken. It will cost $370 billion just for a 10-year doc fix.
But instead of taking this head on, to fund Obamacare’s new coverage expansion, Democrats brazenly stripped Medicare of billions of dollars, while claiming that they were putting the Medicare program on more solid footing.

Both the CMS Actuary and CBO agree that this double counting would not pass muster in a second grade math class. Yet this gimmick was central to the financing of Obamacare.

And now that seniors are realizing what the new health law truly means for the program, Secretary Sebelius is trying to divert their attention with false claims that the modest reductions in discretionary spending being proposed by Republicans would undermine seniors’ access to Medicare.

Let me be clear about this scare tactic. It is baseless.

This week, Secretary Sebelius argued in effect that H.R. 1 — the House-passed FY 2011 appropriations bill — would prevent HHS from carrying out the provisions of the Medicare Advantage program.

If that were the case, then the CBO score of H.R. 1 would have reflected the fact that Medicare would cease making payments to MA plans and paying other claims.

The fact that CBO made no such finding indicates that the Department's view of H.R. 1 is fallacious.

Despite Secretary Sebelius’s claims, H.R. 1 is intended to halt Obamacare’s harmful cuts to seniors in the MA program and stop implementation of an unaffordable new entitlement program. H.R. 1 is an appropriations bill that does not change the fact that Medicare is a mandatory spending program which means seniors are still entitled to their full benefits under the law.

Ultimately, any debate over entitlements requires presidential leadership. I believe that if President Obama had led — if he had done a Nixon goes to China on entitlements — he would have found Republican and Democratic support.

But he chose not to. This is unfortunate.

The Bowles/Simpson fiscal commission pointed the way toward meaningful reforms.

As an example, they would have paid for the Medicare doc-fix and CLASS Act repeal through proposals such as the establishing of a unified Medicare deductible. That proposal alone would save $110 billion through 2020.

But the Administration offered up nothing in its budget.

Believe me, Republicans are concerned about Medicare. And if the President is serious about addressing Medicare — the single biggest threat to our nation’s long-term fiscal health — he will find Republicans on the Hill who are willing to talk.
But we are still waiting for that call.

We face many challenges on health care, but ultimately I am hopeful.

The fact is, our nation can’t continue on its current course. Eventually something will have to give on both health care costs generally and Medicare more specifically.

My only hope is that we start down the road of real reform sooner rather than later.

Hudson Institute does a terrific job of getting ideas out. That’s one reason why I’m more than happy to be here today, and I hope I can come back on some other issues.

Thank you.

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