

## POLICY NOTE

### The failure of Hillarycare in Washington state:

*Former health care committee chairman explains lessons learned from the failure of health care reform in the 1990s and how a bipartisan approach repaired the state's health insurance market*

By Phil Dyer, Former state Representative, 5<sup>th</sup> Legislative District,  
and former Chairman of the House Healthcare Committee

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#### Introduction by Roger Stark, MD, FACS

Recently *The Seattle Times* featured an article that purported to describe lessons policymakers today could learn from Washington state's failed effort to enact health care reform in the 1990s. The front-page article relates that, because the Republican-controlled legislature repealed some parts of the law and kept others, the entire reform effort collapsed. Former state representative Phil Dyer, who at the time served as Chairman of the House Health Care Committee in the legislature, disagrees. He notes that Republican amendments to improve the law were rejected, that the 1990s reform was passed with one-party control, and that the article fails to tell the whole story.

Mr. Dyer finds that, based on his direct experience, the Affordable Care Act of 2010 failed nationally for the same reason state-level reform in Washington failed in the 1990s; the inability or unwillingness of the party in power to work with the other party in passing reasonable, balanced and durable public policy.

However, unlike our recent national experience, Mr. Dyer explains that, years later, when the inevitable collapse of Washington state's individual insurance market was imminent, both parties and the Democratic governor were able to come together and pass workable repairs that kept the state's health insurance market functioning. Details are provided in former Representative Dyer's letter to the editor to *The Seattle Times*, which is below.

#### Letter by Phil Dyer

I am responding to your January 12th front page story titled, "Dismantling of state's health reforms in 1993 may offer lessons for Obamacare repeal."<sup>1</sup> I welcome your effort to learn from lessons past.

However, the lesson is much more profound, in the goal of seeking bipartisan solutions. Your original premise failed to provide context and facts surrounding the passage of House Bill 1046, "An Act Relating to health care reform improvement," which passed both the Democrat-controlled Senate and the Republican-controlled House and was signed into law by Democrat Governor Mike Lowry in 1995. Your story and some of the quotations appear to support the concept that this "dismantling" was inappropriate and damaging, there is much more to the story that refutes that conclusion.

1 "Dismantling of state's health care reforms in 1993 may offer lessons for Obamacare repeal," by David Gutman, *The Seattle Times*, January 12, 2017, at <http://www.seattletimes.com/seattle-news/politics/dismantling-of-states-health-reforms-in-1993-may-offer-lesson-for-obamacare-repeal/>



I was the prime sponsor of HB1046 as Chairman of the House Health Care Committee and drafted, negotiated and stewarded the legislation to final passage and enactment into law. I remain proud of our work in 1995 as bipartisan and open to amendment and negotiation. This was very different from the process that occurred in 1993 when Senate Bill 5304 was enacted into law, with no Republican votes in the state Senate or in the state House. Interesting to note that at the time, the state House had 65 Democrats and 33 Republicans, and the Senate had 28 Democrats and 21 Republicans.

It is also relevant to today's headlines, in that the Washington law titled the "Health Services Act" was in fact a derivative of the parallel work of the Clinton administration with proposals of the same name in 1993. Major provisions included new and additional taxes, creation of five new bureaucracies, employer and individual mandates, a government-defined health insurance package that everyone was required to buy, mandatory managed care, government caps on insurance premiums, and health care purchasing cooperatives. It was also a byproduct of Governor Booth Gardner's 1988 Health Commission, for which I was a technical advisor.

SB5304 passed with bipartisan opposition, like Obamacare, not bipartisan support. In 1993, I offered nearly 100 amendments to SB5304 in the House and all of them were rejected. I was truly attempting to correct and adjust provisions, yet faced uniform one-party opposition (in legislative parlance, the bill was "locked" from above). There was no latitude at all allowed for accepting amendments. Not unlike the unfortunate heavy-handed tactics that forced passage of the ACA in 2009.

The most glaring lack of context in your article of January 12th is shown by no mention of the ongoing and imminent inability of the 1993 reforms to be carried out, due the failure of the State of Washington to secure an ERISA (Employee Retirement Income Security) waiver from the federal government – key to the mandates. This required us to excise the unworkable provisions in the vehicle of the Healthcare Reform Improvement Act.

With the inability to enforce the mandate, the Washington state insurance market then faced unworkable and costly community rating, a regulatory artificial cap on premiums, and a vending machine mechanism of enrollment without restriction (guaranteed issue), and a state-mandated benefit design. It is also relevant that given the unworkable provisions, when additional legislation was proposed to adjust the mechanism of community rating and guaranteed issue, these efforts were strongly resisted by then-Insurance Commissioner Deborah Senn, who, newly elected in 1993, was an attorney with no previous insurance background.

She was successful in rallying Democrats and Governor Lowry to oppose these additional repairs. Ironically, years later when the problems became even worse, her opposition was gratefully ignored by Governor Gary Locke, and these additional repairs were ultimately adopted, albeit too late, since by then the fatal marketplace damage had already been done.

Clearly, the lessons of Washington health care reform of the early 1990s is the intransigence of one side of the political equation in not being willing to working in a bipartisan fashion to craft useful and durable public policy. In the case of the ACA, this fragility was compounded by continued absolutism by President Obama to any legislation to repair or prevent problems. At least here in Washington state, we had a chief executive (Governor Locke) who was willing to amend and adjust signature legislation in the face of realistic hurdles.

I would also add that your headline of “Repealing unpopular parts of the state’s health-care law led to the collapse of the insurance market” is unfortunate. In reviewing the details and the context of what occurred in Washington state in 1995, it was not a case of what was “popular” or not, it was a matter of necessity.

*More information about patient-centered reforms to replace the Affordable Care Act are available in the study, “Health Care Reform after the Election,” by Roger Stark, MD, FACS, Washington Policy Center, January 2017.*

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