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## Access to Health Care: A Conference Introduction

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# *SYMPOSIUM ARTICLES*

## **Access to Health Care: A Conference Introduction**

By John Blum\*

The issue of health care access presents policy makers with a complex and conflicting array of choices. Federal and state governments, as well as private employer health plan sponsors, are struggling with the task of maintaining their commitment to offer health insurance programs which provide a comprehensive array of services in the face of an ever expanding—and technologically evolving—health care delivery system. The realities of cost have caught up with the abilities of health plan sponsors and regulators alike to balance fiscal pressures with consumer demands. As such, we have witnessed a continual reinvention of health care financing strategies, which, in turn, has sparked both macro and micro changes in virtually all facets of health care delivery and organization. At present, government attention has been directed to Medicaid and a variety of proposals have emerged at the federal and state level that attempt to contain program costs while simultaneously meeting the needs of the poor and middle-class elderly. With the dramatic expansion of Medicare through the added prescription drug benefit legislated in 2003,<sup>1</sup> that program is guaranteed to be locked into a long-term struggle to find cost savings that must result in benefit restrictions of some sort. In the private arena, the health care solution “de jure” is the adoption of health plans, which empower the individual consumer by allowing for more choice in selection of services and providers.<sup>2</sup> Armed with consumer friendly data on cost,

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<sup>1</sup> Medicare Prescription Drug, Improvement, and Modernization Act of 2003, 42 U.S.C. §§ 1395w-101—1395hhh (2004).

<sup>2</sup> Gail R. Wilensky, *The Growing Challenge of Medicare*, HEALTHCARE

quality, and outcomes, the individual will use his or her purchasing power to make selections, and, in the process, trigger a more competitive marketplace.<sup>3</sup> From a structural standpoint we are seeing the evolution of the so-called consumer driven health plan, which is based on consumer choice and is a structure germinating ideas that are attractive to federal health plan sponsors as well.

Synchronized with the ongoing access and cost containment struggles seen in public and private health plans is the growing reality of an ever-increasing number of individuals who lack health care insurance. It is estimated that 45 million Americans do not have health care insurance, encompassing a rather diverse group of people, both employed and unemployed, adults and children, urban and rural residents, as well as undocumented individuals. Those without health insurance are forced to pay for health services out of pocket, often at rates considerably higher than what insurance plans are required to pay. The many uninsured who cannot afford out-of-pocket health care charges are forced to rely on a strained safety net of hospital emergency rooms and community clinics that suffers from being both disjointed and under-funded. While the issue of the uninsured has become a perennial topic of discussion in Washington and state legislatures across the country, the ability to address the problem is limited by politics and more so by economic realities of governments running sizeable deficits. As yet, a comprehensive solution to expanding coverage for those without health insurance and controlling costs in health programs remains a conflicting and illusive goal.

In recognition of the significance of the access to health care issue, the Loyola Institute for Health Law and the Loyola Consumer Law Review, with the generous support of the law firm of Goldberg Kohn and the Loyola Elder Law Initiative, sponsored a program on March 18, 2005 to explore key issues in this area. The conference was organized into three parts, with Part I dealing with how the law can be used to facilitate access to care. Specifically, speakers made presentations on charity care and the ongoing administrative and judicial actions to force nonprofit hospitals to meet their community benefit obligations. A recently decided federal court case, *Memisovski v. Illinois*, concerning the failure of the state of Illinois to meet the equal access provision for Medicaid and EPSDT services for

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FINANCIAL MANAGEMENT, Apr. 1, 2005, at 34.

<sup>3</sup> Barbara Martinez, *Health Plan That Puts Employees in Charge of Spending Catches On*, WALL ST. J., Jan. 8, 2002 at B1, available at <http://www.weinsurehealth.com/CuttingCostsonEmployerPlans.pdf>.

children, was discussed.<sup>4</sup> Rounding out the first part of the conference was a discussion on the efforts of consumer groups to get state governments to spend the 1997 Attorneys General Master Settlement Agreement in the state tobacco litigation on health care matters, as was intended by the agreement.<sup>5</sup> Part II of the conference focused on current and future mechanisms to address the access to health care issue. One presentation concerned the federal legislative—and now administrative—efforts to promote health savings accounts (“HSAs”), an idea central to the notion of the empowered consumer and seemingly a vehicle that can address the challenges of small employers and self-employed individuals in securing health care coverage. In reference to future approaches to access, one presentation focused on e-health and how the Internet can be used as an affordable means of technology to both educate consumers about health issue, and in some cases, act as a medium for the delivery of services. Part III of the conference focused on the elderly, specifically addressing some of the difficulties this population has in accessing health care services. One speaker focused on the recently enacted Illinois Older Adults Services Act,<sup>6</sup> which encourages more accessible health services for elders through the development of community based options as opposed to residential facilities. Another speaker discussed the difficulties that minority elders have in accessing nursing home services, focusing on the need for changes in administrative law to better address equity issues.

What follows in this issue of the Loyola Consumer Law Review are three articles which capture the spirit of the March 18 conference, and provide the reader with some sense of the diversity and complexity of the access to health care issue.

The first article, contributed by Fred Cohen, an attorney from Goldberg Kohn in Chicago, concerns the significance of the *Memisovski v. Maram* case, a decade-long litigation that was the first to successfully challenge a state’s failure to provide children’s health care services on the basis of the Medicaid equal access provision.<sup>7</sup> The second article, by Jack Hanson, concerns the work of the Service

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<sup>4</sup> *Memisovski v. Maram*, 2004 U.S. Dist. Lexis 16772 (N.D. Ill. Aug. 23 2004).

<sup>5</sup> Master Settlement Agreement, at [http://www.naag.org/upload/1109185724\\_1032468605\\_cigmsa.pdf](http://www.naag.org/upload/1109185724_1032468605_cigmsa.pdf).

<sup>6</sup> 320 ILL. COMP. STAT. 42/25 (2005).

<sup>7</sup> *Memisovski v. Maram*, 2004 U.S. Dist. Lexis 16772 (N.D.Ill. Aug. 23 2004).

Employees International Union (“SEIU”) Union’s Hospital Accountability Project, which is a multifaceted project that has utilized the courts and the media to address the issue of charity care obligations of nonprofit hospitals. The Hospital Accountability project has generated considerable attention and controversy in the Chicago area, and its work has recently moved from challenges based on failures of nonprofits to provide requisite charity care, to a novel challenge based on racial discrimination in the free care area. The third article, written by Sidley and Austin attorney Jennifer Razor, entails a critique of the federal health savings account program, detailing the origins of the concept and the current challenges in the idea’s implementation.

All three articles—moving from the uninsured, to the publicly insured, to those struggling to obtain private coverage—present important perspectives on a diverse and complex area affecting all American consumers, insured and uninsured alike. The topic of access to health care coverage is central to domestic policy, and these issues are likely to be with us for years to come.