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Foreword

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The year of health care reform, 1994, has come and gone. The massive change in federal law to be ushered in by the 103rd Congress fell victim to political and economic realities. Despite this failure, the delivery of health care has profoundly changed, sparked in part by health reform initiatives and, even more so, by the evolution of market forces. Among the various forces that have coalesced to move health delivery into managed care, the law stands out as a pivotal factor. The infrastructure of managed care is rooted in contract law, and plan designs are heavily influenced by current and anticipated legal and regulatory considerations. It is difficult to identify any aspect of the new managed care scene that does not have legal implications. Like managed care, health law in 1995 is fluid and evolving, and while it can be characterized in positive or pejorative terms, it is anything but staid and dull.

Volume 4 of the *Annals of Health Law* continues the publication's tradition of presenting current articles, relevant to the health law practitioner. This particular issue includes five articles that reflect legal considerations that have arisen in the changing health care delivery environment.

James Dechene, in his piece dealing with preferred provider organizations (PPOs), explores various facets of this very popular managed care model. Dechene reviews PPO structures and contracting issues relevant to these structures. Jay Howard's article focuses on a troubling reality of the managed care business, namely insolvency. Howard explores the implications of state and federal bankruptcy law, and how these laws affect reorganization and asset liquidation of failed HMOs.

Three articles discuss more specific challenges faced by health care institutions. The article by Anthony Dennis concerns the use of the most favored nation clause in contracts between purchasers and providers. Although most favored nation clauses have withstood antitrust challenge thus far, Dennis illustrates the tenuous legal status of these frequently encountered clauses. Robert Louthian and Elizabeth Mills discuss the IRS' agreement with Hermann Hospital concerning physician recruitment. Louthian and Mills review and analyze the long-awaited IRS guidelines on physician recruitment released as part of Her-

mann Hospital's settlement, and then proposed in IRS Announcement 95-25. Robert Roth updates his article on the *Guernsey Memorial Hospital* decision, published in Volume 3 of the *Annals*, with an analysis of the United States Supreme Court's recent reversal of the Sixth Circuit's decision. Justice Kennedy, writing for the majority, held that the Secretary of Health and Human Services could use an accounting method other than the generally accepted accounting principles for determining the Medicare reimbursement for a provider's costs associated with an advance refunding transaction. Writing a sharp dissent, Justice O'Conner, with whom Justices Scalia, Thomas, and Sutter concurred, countered that the Secretary's reimbursement method, which was announced in a provider manual, contradicted federal regulations.

The notion of accountability in medical delivery is a theme that cuts widely across the health care landscape. Mark Bonanno's article focuses on the legal dispute between a family and a medical facility over an anecephalic infant in the widely publicized case of *Baby K*. The concept of accountability takes on a very different spin in the piece by David Ryan, who explores the application of the federal False Claims Act to fight the problem of health care fraud. Ryan explores the development and use of the qui tam action to enforce the federal law.

In keeping with the tradition of the former issues of the *Annals*, two papers appear in this volume in the area of comparative health law. The papers were presented in Nottingham, England at Loyola University Chicago's Fifth Annual Comparative Health Law Conference and address issues in the area of nursing law and policy. Suzie Linden-Laufer reviews the development of the nurse practitioner in Australia, focusing on the legal barriers that have impeded the development of this expansion of nursing practice. Steven Heasell's article also considers the role of nurse practitioners, but from a British perspective. Heasell points out the economic rationale for using nurse practitioners in the National Health Service, especially during a time of fiscal constraint.

This volume coincides with the Tenth Anniversary of Loyola University Chicago's Institute for Health Law, and I believe it is a fine reflection of the types of issues we have dealt with over the past decade. Our program continues to grow with the field, and in the next academic year we will begin the country's first health law and policy doctoral programs, a Doctor of Juridical

Science (S.J.D.) for lawyers and a Doctor of Law (D.Law) for health professionals. We look forward to another decade and our continued involvement in the myraid of health law practice issues yet to come!

Like any major endeavor, Volume 4 of the *Annals* is the result of the hard work of many individuals. I am particularly grateful to our Executive Editor Marilyn Hanzal and our Senior Editor Kimberley Elting for their monumental efforts in putting this volume together. I would also like to thank our peer reviewers who graciously contributed their time and valuable insights. I am most appreciative of the National Health Lawyers Association and its Executive Vice President Marilou King, who continues to provide us with help and support on the *Annals* as well as our other ventures. To you the reader, I hope you find this volume interesting and helpful, and I welcome your thoughts and comments. Finally, like the *New Republic*, I guarantee that this publication is 100% O.J. free.