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# ANNALS OF HEALTH LAW

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*The article examines two primary policy proposals for how the U.S. should allocate its limited health care dollars: a centralized model in which a commission establishes rationing guidelines, and a decentralized model in which rationing decisions are made by health care providers on a case by case basis. The author finds significant advantages with each position, leading the author to assert that a combination of each is key to an effective rationing policy: a centralized control of structure coupled with decentralized physician-level decision making. While mindful that formal rationing guidelines alone are unfeasible to effectuate cost-effective care, the author introduces two decentralized policies to control costs: the limitation of resources at physicians' disposal and elimination of physicians' personal incentive to provide high-cost care.*

**Government-Sponsored Reinsurance** ..... MARK A. HALL 465

*Many measures to reform health insurance markets include various types of government-sponsored reinsurance. This article explains the purposes and types of private and public reinsurance, and reviews available evidence about their performance. The author concludes that government-sponsored reinsurance inherently cannot reduce total costs, but it can shift costs from the private to the public sector. Also, reinsurance can help transition to a new government program or market structure that creates uncertain risks. Whether reinsurance is the best way to accomplish these goals depends greatly on the details.*

**Charter Rights & Health Care Funding: A Typology of Canadian Health Rights Litigation** ..... COLLEEN M. FLOOD 479  
AND Y.Y. BRANDON CHEN

*Canadian health consumers have increasingly relied on the Charter of Rights and Freedoms to demand certain therapies and reasonably timely access to care. Organizing these cases into a 5-part typology, we examine how a rights-based discourse affects allocation of health care resources. First, successful Charter challenges can, in theory, lead to courts granting and enforcing positive rights to therapies or to timely care. Second, courts may grant a right to certain health services; however, subsequently government fails to deliver on this right. Third, successful litigation may create negative rights, i.e. rights to access care or private health insurance without government interference. Fourth, consumers can fail in their legal pursuit of a right but galvanize public support in the process, ultimately effecting the desired policy changes. Lastly, a failed lawsuit can stifle an entire advocacy campaign for the sought-after therapies. The typology illustrates the need to examine both legal and policy outcomes of health right*

*litigation. This broader analysis reveals that the pursuit of health rights seems to have caused largely a regressive rather than progressive impact on Canadian Medicare.*

**Retail Medical Clinics: Increasing Access to Low Cost Medical Care Amongst a Developing Legal Environment . . . . . KRISTIN E. SCHLEITER 527**

*Retail medical clinics are an innovation in health care with the potential to increase access to low-cost basic health care services while changing the delivery model for routine, non-urgent medical care. However, the few states that attempted to directly regulate retail medical clinics have been met with criticism by the FTC due to the proposed legislations' anticompetitive undertones. The relationship between retail medical clinics and the host stores or pharmacies that house them has the potential to spark fraud and abuse concerns. Retail medical clinics must abide by state-specific regulation on scope of practice of the various mid-level practitioners who work for the clinics, particularly to minimize exposure to litigation and keep within the clinics' intended purpose of a supplement to primary care physician offices. The author concludes that the consumer benefits of cost and convenience, combined with the potential for growth and expanded consumer base from a retailers' perspective, make the legal challenge inherent in running a retail medical clinic well worth the effort.*

**Mental Health Courts: Serving Justice and Promoting Recovery . . . HON. GINGER LERNER-WREN 577**

*This article begins and ends with a call for more empirical research to understand the connection between societal views of mental illness and the legal system. The author asserts that changing social perceptions of mental illness certainly affect legal outcomes and commitment levels, but the degree remains unknown. This article explores the above two topics through the framework of the Circuit Court 'split' regarding the Constitutional rights of persons committed to state mental health institutions. A main facet of the 'split' is centered on the Circuits' disagreement about whether or not all mentally ill patients committed to institutions deserve the same Constitutional protections.*