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THE JOURNAL OF  
LAW, MEDICINE & ETHICS  
C O N T E N T S

VOLUME 44:4 • WINTER 2016

Symposium Articles

SYMPOSIUM

**Health Reform:  
Assessing the  
Affordable  
Care Act  
and Moving  
Forward**

Guest Edited by  
Sara Rosenbaum  
and Jane Hyatt  
Thorpe

**527**  
*Letter from  
the Editor*

Cover image ©Getty Images

**533**

**INTRODUCTION**

**The Affordable Care Act at Six:  
Reaching for a New Normal**

*Sara Rosenbaum and Jane Hyatt Thorpe*

**538**

**Early Experience with the ACA:  
Coverage Gains, Pooling of Risk, and  
Medicaid Expansion**

*Linda J. Blumberg and John Holahan*

We provide an overview of the characteristics of those who have gained insurance coverage due to the ACA as well as the characteristics of the remaining uninsured. We also describe the implications for the broader sharing of health care risks required under the law, and how they vary by individuals' health status. Finally, we assess the implications of state decisions to expand or not expand Medicaid eligibility under the law, how those decisions affect state finances, health care providers, residents, and how the effects may vary for those states using waivers to expand eligibility using strategies designed to be more broadly politically acceptable.

**546**

**Making Health Care Truly Affordable  
after Health Care Reform**

*Timothy Stoltzfus Jost and  
Harold A. Pollack*

The Affordable Care Act (ACA) is an essential first step toward making health insurance more affordable for lower and moderate income Americans. It has accomplished historic reductions in the proportion of Americans who are uninsured. The number of Americans reporting delaying medical care for financial reasons has declined by approximately one-third since 2010. Medicaid expansions, in particular, have significantly reduced financial burdens and accompanying anxieties experienced by low-income Americans in states that have embraced this opportunity.<sup>4</sup> Consistent with these findings, one recent analysis of credit report data finds that Medicaid expansion was associated with between a \$600 and \$1000 decline in collection balances among individuals who gained coverage. Notwithstanding these gains, premiums and cost-sharing are still too high for many Americans. And cost-sharing has continued to edge higher for the majority of Americans who have coverage through employer-based plans. Measures to address these challenges must build on the ACA to provide greater protection to millions of Americans and to address continued dissatisfaction with

our health care financing system among middle-income Americans.

**555**

**Health Reform in a New Presidency:  
The Challenge of Finding Common  
Ground**

*Gail R. Wilensky*

Finding "common ground" to fix some of the policy problems with the ACA was never expected to be easy. How challenging depends on the election outcome. With split government or even same party control of the Congress and White House but without a supermajority in the Senate, fixing identifiable problems requires remedies that might garner bipartisan cooperation. Some potential strategies that might meet this requirement are described.

**559**

**Minding Ps and Qs: The Political and  
Policy Questions Framing Health Care  
Spending**

*William M. Sage*

Tracing the evolution of political conversations about health care spending and their relationship to the formation of policy is a valuable exercise. Health care spending is about science and ethics, markets and government, freedom and community. By the late 1980s the unique upward trajectory of post-Medicare U.S. health care spending had been established, recessions and tax cuts were eroding federal and state budgets, and efforts to harness market forces to serve policy goals were accelerating. From the initial writings on "managed competition," through the failed Clinton health reform effort in the early 1990s, to the passage of the Affordable Care Act in 2010, the policy narrative of health spending acquired a superficial consistency. On closer examination, however, it becomes apparent that the cost problem has been repeatedly reframed in political discourse even during this relatively brief period. The clearest transition has been from a narrative centered on rationing necessary care to one committed to reducing wasteful care – although the role of accumulated law and regulation in perpetuating waste remains largely unrecognized and the recently articulated commitment to population health seems an imperfect proxy for explicitly developing social solidarity with respect to health and health care in the United States.

569

**It's the Prices, Advanced Capitalism, and the Need for Rate Setting — Stupid**

*David M. Frankford*

Competition cannot stem the rise of health care expenditures because it leaves agency diffuse and transferred in part to the institutions of advanced capitalism, which excel in generating demand for their services. The United States should turn to state rate setting to concentrate purchasing power.

576

**The Affordable Care Act's Day(s) in Court**

*Mark A. Hall*

This article reviews the primary avenues of judicial challenge to the ACA, focusing on those that have reached, or have the potential to reach, the Supreme Court. The review demonstrates how deep-seated public policy opposition can be expressed through litigation.

580

**Medicaid's Role in Health Reform and Closing the Coverage Gap**

*Diane Rowland and Barbara Lyons*

Medicaid coverage matters for millions of low-income Americans, and especially for those with ongoing and serious health challenges. A source of comprehensive and affordable coverage, Medicaid has long been a cornerstone of federal and state efforts to improve access and health outcomes for very poor and medically vulnerable populations. The Affordable Care Act (ACA) leveraged Medicaid's role in serving the poor to broaden the program's reach to millions of low-income uninsured adults, and positioned the program as a fundamental component of the newly established continuum of public and private coverage. Looking ahead, if more states embrace the Medicaid expansion, there is the potential to build on this progress to significantly reduce the number of uninsured Americans.

585

**After the Affordable Care Act: Health Reform and the Safety Net**

*Peter Shin and Marsha Regenstein*

Two major safety net providers – community health centers and public hospitals – continue to play a key role in the health care system even in the wake of coverage reform. This article examines the gains and threats they face under the Affordable Care Act.

589

**Who Do You Trust?**

*Maxwell J. Mehlman*

The ability of patients to trust physicians to act in their best interests is a critical aspect of a welfare-maximizing relationship. This commentary discusses physician trustworthiness within the framework of the Affordable Care Act and considers steps to reinforce trustworthy behavior.

592

**Show Us the Data: The Critical Role Health Information Plays in Health System Transformation**

*Jane Hyatt Thorpe, Elizabeth A. Gray, and Lara Cartwright-Smith*

Truly transforming the healthcare delivery and payment system turns on the ability to engage in the interoperable electronic exchange of patient health information across and beyond the care continuum. Achieving transformation requires a legal framework that supports information sharing with appropriate privacy and security protections and a trusted governance structure.

598

**Moving to the Next Phase of Reform**

*Stuart M. Butler*

Better health requires sectors like housing and education, and healthcare, to collaborate. That needs three strategies. Make full use of waivers to foster experimentation. Use techniques to encourage agencies at all levels to work together. And use new incentives to foster local partnerships.

## Independent Articles

602

### **Regulating Information or Allowing Deception? Pharmaceutical Sales Visits in Canada, France, and the United States**

*Roojin Habibi, Line Guénette, Joel Lexchin, Ellen Reynolds, Mary Wiktorowicz, and Barbara Mintzes*

Diverse legal and regulatory measures are used internationally to control the information provided during pharmaceutical sales visits. Little is known about the comparative effectiveness of these measures however. We analyzed the perceptions of regulators, pharmaceutical industry officials, health professionals, and consumer respondents concerning these approaches in Canada, France, and the United States using an empirical realist interests-based approach. Interviews focused on the aims and effectiveness of regulation, barriers and enablers to regulation and suggestions for improvement. An alignment was found in North America regulator and industry respondents' satisfaction with the status quo and their view that further intervention is unfeasible and unnecessary. Health professionals generally expressed a lack of confidence in the impact of regulations on sales visit information while consumer advocates voiced their disappointment in both regulators and health professionals for their failure to counteract the influence of pharmaceutical marketing. Regulator and industry respondents in France differed from their North American counterparts in their willingness to increase and diversify the scope of regulatory interventions. As the first international comparison of regulatory experiences in this sector, the findings highlight the universal need for more focused and inclusive discussions among groups about how to tailor regulations to achieve public health goals.

616

### **Struggles in Defining and Addressing Requests for “Family Balancing”: Ethical Issues Faced by Providers and Patients**

*Robert Klitzman*

This study – the first to explore how infertility providers confront several critical dilemmas concerning sex selection of embryos for nonmedical, social reasons – highlights key challenges and questions. Clinicians struggle, for instance, with how to define “family balancing”, when to offer it, and how to decide.

630

### **Food Labeling and Consumer Associations with Health, Safety, and Environment**

*Joanna K. Sax and Neal Doran*

The food supply is complicated and consumers are increasingly calling for labeling on food to be more informative. In particular, consumers are asking for the labeling of food derived from genetically modified organisms (GMO) based on health, safety, and environmental concerns. At issue is whether the labels that are sought would accurately provide the information desired. The present study examined consumer (n = 181) perceptions of health, safety and the environment for foods labeled organic, natural, fat free or low fat, GMO, or non-GMO. Findings indicated that respondents consistently believed that foods labeled GMO are less healthy, safe and environmentally-friendly compared to all other labels (ps < .05). These results suggest that labels mean something to consumers, but that a disconnect may exist between the meaning associated with the label and the scientific consensus for GMO food. These findings may provide insight for the development of labels that provide information that consumers seek.

639

### **Are Military and Medical Ethics Necessarily Incompatible? A Canadian Case Study**

*Christiane Rochon and Bryn Williams-Jones*

Military physicians are often perceived to be in a position of ‘dual loyalty’ because they have responsibilities towards their patients but also towards their employer, the military institution. Further, they have to ascribe to and are bound by two distinct codes of ethics (i.e., medical and military), each with its own set of values and duties, that could at first glance be considered to be very different or even incompatible. How, then, can military physicians reconcile these two codes of ethics and their distinct professional/institutional values, and assume their responsibilities towards both their patients and the military institution? To clarify this situation, and to show how such a reconciliation might be possible, we compared the history and content of two national professional codes of ethics: the Defence Ethics of the Canadian Armed Forces and the Code of Ethics of the Canadian Medical Association. Interestingly, even if the medical code is more focused on duties and responsibility while the military code is more focused on core values and is supported by a comprehensive ethical training program, they also have many elements in common. Further, both are based on the same core values of loyalty and integrity, and they are broad in scope but are relatively flexible in application. While there are still important sources of tension between and limits within these two codes of ethics, there are fewer differences than may appear at first glance because the core values and principles of military and medical ethics are not so different.

**Symposium articles** are solicited by the guest editor for the purposes of creating a comprehensive and definitive collection of articles on a topic relevant to the study of law, medicine and ethics. Each article is peer reviewed.

**Independent articles** are essays unrelated to the symposium topic, and can cover a wide variety of subjects within the larger medical and legal ethics fields. These articles are peer reviewed.

**Columns** are written or edited by leaders in their fields and appear in each issue of JLME.

*Next Issue:*

**Under Attack:**  
Reconceptualizing  
Informed Consent

A Symposium  
Guest Edited  
by Nanette  
Elster and  
Valerie  
Gutmann Koch

## Columns

652

### **CURRENTS IN CONTEMPORARY BIOETHICS**

#### **HIPAA Compliance and Training: A Perfect Storm for Professionalism Education?**

*Julie L. Agris and John M. Spandorfer*

The HIPAA Rules continue to support and bolster the importance of protecting the privacy and security of patients' protected health information. The HIPAA training requirements are at the cornerstone of meaningful implementation and provide a ripe opportunity for critical education.

657

### **PUBLIC HEALTH LAW**

#### **Mitigating Risks to Pregnant Teens from Zika Virus**

*Andrew D. Maynard, Diana M. Bowman,  
and James G. Hodge, Jr.*

Zika infection in pregnant women is associated with an elevated probability of giving birth to a child with microcephaly and multiple other disabilities. Public health messaging on Zika prevention has predominantly targeted women who know they are pregnant or intend to become pregnant, but not teenage females for whom unintended pregnancy is more likely. Vulnerabilities among this population to reproductive risks associated with Zika are further amplified by restrictive abortion laws in several Zika-impacted states. Key to prevention is enhanced, targeted public health messaging centered on teens nationally and particularly in certain high-risk regions.

660

### **CALENDAR**