

# TEMPLE LAW REVIEW

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## ESSAYS

### HEALTH CARE REFORM, THE LAW, AND ELIMINATING DISPARITIES

*Calvin B. Johnson \**

In many ways, the passage of the Affordable Care Act in March of 2010 signaled “A New Day for Health Care in America,”<sup>1</sup> but for both practical and political reasons, comprehensive health care reform will not occur overnight. The scope and complexity of the issues and the sheer number of stakeholders limit the likelihood that a single piece of legislation at a single point in time will adequately address all of the clinical, financial, operational, and regulatory needs of our health care system. However, it is clear that the starting place is with the law—legislation will be the vehicle to launch comprehensive health care reform in the United States. While this may seem obvious, the implications for health care disparities, which are a significant cause of increased costs in our system and the result of many of the failures of our system, may not.

Thus, the legal vehicle of health care reform may be just what the effort to eliminate disparities needs right now. While the headlines of health care reform have not been dominated by disparities references, some of the enacted changes have clear implications for impacting health disparities. Perhaps the most recognizable example with measurable impact is the effect of broader insurance coverage on disparities in access to care. There are many clear and powerful examples from the civil rights movement of how the legal system was used to change the social foundation and direction of this country. The law also has a place in the history of addressing disparities in health care delivery and research. For example, the legal system was the vehicle used to protect human subjects from abuse in research, most notably documented by the United States government’s

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\* Calvin B. Johnson, MD, MPH, is the former Secretary of Health for Pennsylvania.

1. HealthCare.gov, Understanding the Affordable Care Act, <http://www.healthcare.gov/law/introduction/index.html> (last visited Feb. 26, 2011).

Tuskegee Experiment. In the current U.S. health care environment, the legal system is poised to have a tremendous impact, not just through the vehicle of legislation that begins to codify comprehensive health care reform, but also as a tool that can be used to continually refine and improve the system as we go forward, ensuring accessible, affordable, high-quality health care.

One could argue that the new Act is really not a comprehensive system reform at all because it predominantly focuses on health insurance reform. What becomes important in the discussion around eliminating health disparities is how (or whether) this distinction will have a material impact on the efforts to address disparities in general, and whether health insurance reform in particular provides an opportunity to make progress in eliminating health disparities.

The size (\$200 billion) and scope (nearly 200 million covered lives) of the private health insurance industry, the lack of success in containing costs, and the failure to achieve large-scale health improvement among its subscribers arguably makes the insurance industry a worthwhile focus for initial health reform efforts. As payers for services, health insurance companies hold significant influence on how health services are allocated and utilized. Within the structure of our current health care system, there is significant opportunity and need for insurers to provide their customers with high-quality products (benefit packages and programs) that result in exceptional health care delivery and improved health outcomes. Health insurance reform itself is a huge undertaking, yet perhaps more realistic as a first step than comprehensive system reform. All of the major components of our health care system—clinical, financial, operational, and regulatory—connect in our current structure, in some way, to health care insurance.

For both true comprehensive health care reform and health insurance reform, a specific focus on reducing, even eliminating disparities is a necessary component. Along with coverage expansion, delivery system improvement, payment reform, cost containment, tort reform, quality and safety improvement, preventive health and wellness, and workforce planning and development, disparities reduction offers a comprehensive package of health care reform measures, most of which are readily and appropriately applicable to the initial step of health insurance reform. Disparities in health care delivery and in health status and outcomes contribute to the financial crisis in health care that has implications for insurers, providers, and patients alike.

There will be many measures used to assess the progress and successes of this most recent and perhaps most significant push toward health care reform. All eyes are watching. For some, political careers may depend on the success of health care reform legislation. For others, lives may literally depend on its implementation, with elimination of preexisting condition exclusions from insurance coverage and other measures that will allow access to care.

History has confirmed the challenge in realizing substantive health care reform. The long road to comprehensive health care reform starts with a first step. That first step that we are witnessing is health insurance reform. Each step requires careful preparation that must be strategic, evidence-informed, and politically astute. The implementation of system reform must be strategic as well, with the appropriate mix of legislation, administrative authority, interpretation of

existing policy to achieve meaningful change, and visible activity that will effectively drive the public agenda towards eliminating health disparities. Vigilance is necessary to see this through. Lasting health care reform will not likely happen in one single action, the passing of a single bill, no matter how complex it may be. Instead, comprehensive reform will likely occur over an extended period, with many more opportunities for change and improvements to our health care system in our future. And what remains is the ability of the law to change, maintain, sustain, and protect those elements of health care insurance reform and health care system reform that can ensure the inequities in those systems that result in health care and health status disparities are addressed.

In the years ahead, as reform of the U.S. health system occurs, the role that the law plays will have historic significance. And the role that the law can play, particularly in addressing health disparities, is full of possibilities.

