

Ethics and Politics

What should ethicists worry about in 2017?

The Affordable Care Act

The future of health care reform – and the progress we’ve made in access and coverage – is the biggest question. It is hard to know what Donald Trump really thinks about health care reform. In 2015 he referred to the Affordable Care Act, saying, “So it really does have to be changed...and, ideally, repealed and replaced...” Getting rid of it was a major theme of his campaign. But in 2015, he also said, “I want health care for everyone... You can't let the people in this country that are poor people, the people without the money, without the resources, go without health care. I just can't even imagine that you're sick and you can't even go to a doctor.” Later he said that he wanted to get rid of all of the ACA except pre-existing conditions and coverage for children until age 26. This would create a major problem for insurers who could not accept added risk without a broader premium pool.

Congress tried dozens of times to repeal Obamacare during the last four years, but their attempts were frustrated by presidential veto. This time, however, will be different. It is likely that the Affordable Care Act will be scuttled early in the 2017 Congressional term. *Replacing* the ACA will be a

much bigger challenge. “There is currently no consensus around alternative health policies to enact as the ACA is repealed,” says Linda Blumberg and colleagues of the Urban Institute.¹

Speaker of the House Paul Ryan and others have proposed various alternatives, but they are not comprehensive plans as much as an a la carte menu of various provisions, e.g., getting rid of the insurance mandate, offering private insurance across state lines, expanding the use of medical savings accounts, and replacing insurance premium subsidies with some kind of tax credit. Most of the proposals favor fee-for-service over bundled or episodic payments. Some propose “balance billing” which would allow physicians to bill patients for amounts over what Medicare and Medicaid pay. It is understandable why this would be helpful to physicians, but it would not be helpful to the poor, most of whom have trouble coming up with a co-pay.

Tom Price, Trump’s nominee for secretary of health and human services, is a long-time foe of the Affordable Care Act. In 2009 he sponsored an “Empowering Patients First Act” which proposed expanding medical savings accounts and tort reform, and allowing individuals to opt out of Medicare, Medicaid, TRICARE and Veterans’ benefits and purchase private insurance using tax credits.

Price also opposes many of the innovation elements of the ACA, especially “demonstration projects” that experiment with different methods of payment designed to increase quality and lower cost. He says bundled payment for joint replacements and restriction on payment for PSA tests in prostate cancer screening are attempts to commandeer clinical decision making. “Stop these mandatory demonstration projects,” he said bluntly.

These proposals all run counter to Catholic health care’s commitment to lower cost, greater access and higher quality. If the new Congress chips away at value-based purchasing and comparative effectiveness studies, there will be ethical problems of stewardship. Some of the proposals have the appeal of enhancing physician freedom and payment, but they would do so at the expense of progress we have made in population health and preventive medicine. They also tend to commodify health care in a way that we find objectionable because we do not see health care as a proprietary good that is distributed only according to market rules.

Other Ethical Issues

With regard to abortion, there is uncertainty about funding as well as legalization. The Hyde Amendment has prohibited federal funding for

abortions and the Weldon Amendment prohibits discrimination (in funding) against covered entities that refuse to provide abortions. The Democratic platform called for elimination of the Hyde Amendment, but Trump has said he would not allow federal funding for abortions, and that even though he thinks Planned Parenthood has been helpful to many women, he would not fund it because of the “abortion factor.” On Jan. 24, the House passed the No Taxpayer Funding for Abortion and Abortion Insurance Disclosure Act of 2017. The Act makes the Hyde Amendment permanent. A companion bill has been introduced in the Senate.

Trump has said he is pro-life and that he will appoint pro-life Supreme Court justices. He also said he would like to see *Roe vs. Wade* reversed and return authority on abortion to the states. However, given his vacillation on this and on other issues (including party affiliation) in the past, we will have to remain vigilant and see how his promises play out.

Many people voted for Trump because of his supposedly pro-life stance. However, even if he is sincere and even if he appoints Supreme Court justices who reverse *Roe v. Wade*, our problems would not be over. In fact, we would then have 50 problems rather than just one, since each state would become a battle ground. In addition, I do

not believe legal interdiction is the best approach. Making abortion illegal does not mean there would be no abortions. We would still have the reality of non-surgical abortion (RU-486 [mifepristone and misoprostol]) now readily available in prescription form. We would also face the problem of illegal abortions anew.

St. Thomas Aquinas refers to this when he asks whether human law should forbid all vice. It cannot he says, “because human law is framed for a number of human beings, the majority of whom are not perfect in virtue. Therefore human laws do not forbid all vices, from which the virtuous abstain, but only the more grievous vices, from which it is possible for the majority to abstain; and chiefly those that are to the hurt of others, without the prohibition of which human society could not be maintained; thus human law prohibits murder, theft and such like.” (ST 1-2, 96, 2). Of course, we see abortion as murder, but the problem is that many others do not. We do not even have consensus on the moral status of the early embryo. Therefore overly restrictive laws which the majority of people will not respect end up bringing about even worse evils.

The point is that law depends on human understanding and assent. We should not invest all energy in the possibility of change in federal law.

We must also continue to work to build a consensus around the value of human life.

EMRs

The ACA required significant spending on electronic medical records and penalized hospitals that had not achieved “meaningful use.” If the new administration sees this as a “big government” mandate, it could be in trouble. This would raise questions of stewardship since we have already spent a great deal on software and training. There may be ethical questions about privacy, but it is important to remember that EMRs are not just about having the latest electronic gadgets. EMRs enhance portability of medical records and enable us to collect unprecedented amounts of patient data that will help us assess outcomes and see correlations among genomics, behavior and disease. The potential of electronic data is perhaps the most important, if least known, aspect of the Affordable Care Act.

Balancing Public Health, Individual Choice and Profit

Trump has not said much about scientific research and funding for same, but has indicated that he is concerned about “throwing money at” federal

research. This may sound good to fiscal conservatives, but if government spends less on research others will spend more. That in turn means private ownership of life-sustaining drugs and higher prescription drug prices. We must be vigilant that research that has such impact on the common good does not become solely proprietary. This applies equally to genomic research, which is moving ahead quickly and often in a less-than-transparent way.² Are we willing to risk outsourcing the human genome? Should there not be greater public scrutiny of schemes to develop for profit therapies based on human genetic information?

We all know about Trump's skepticism on climate change. Rolling back environmental regulations and the EPA itself could have serious consequences for public health. Vaccines are another area in which public health clashes with individual freedom. In the past Trump said he thought vaccines were connected to autism. Today he says, "I am NOT anti-vaccine, but I am against shooting massive doses into tiny children. Spread shots out over time." Who knows what that would mean in policy terms?

Focus on the Social and Organizational Aspect of Ethics

As the Trump administration continues to organize the various departments in the federal bureaucracy,

I do not see much in their sketchy policies that would impact clinical ethics. It seems that our bigger concerns will be with policy questions, e.g., the contraception mandate, assisted suicide, and transgender policies. Even though some observers think the administration will favor strong religious and conscience protections, I don't think we should take anything for granted.

The immediate issues we face involve social and organizational ethics – especially justice and the common good. For example, what are the best ethical arguments we can make as we confront the efforts to repeal the Affordable Care Act? How do we persuade voters – and legislators – that reduced insurance coverage is in no one's interest? It is clear that ethicists will need to spend more time working with our policy and advocacy teams to clearly articulate our principles. We must also improve our efforts to educate the public (especially Catholics, nearly 40 percent of whom voted for Trump) about the threat to our moral values. Given the complexity of the structure of health care and health financing, this is no small challenge.

¹ Linda J. Blumberg, Matthew Buettgens and John Holahan, "Implications of Partial Repeal of the ACA through Reconciliation" (Dec. 6, 2016). Available at <http://www.urban.org/research/publication/implications-partial-repeal-aca-through-reconciliation>

² See Robert Weisman, "4 Companies Band Together in Fight over Gene-Editing Tool that Could Help Cure Diseases,"

Boston Globe (Dec. 16, 2016). This partnership will attempt to leverage CRISPR-Cas9, a gene-editing tool, to develop therapies. In a variation on the public/private financing of new drugs, see Matt Richtel and Andy Pollock, “Harnessing the U.S. Taxpayer to Fight Cancer and Make Profits,” *The New York Times* (Dec. 20, 2016), Science section. The article points out that the owners of a new immunotherapy drug are using government research, but privatizing ownership of the drug. This kind of collaboration between public and private is good in theory, but it could also result in taxpayers getting stung twice – first in financing research and development, then in high consumer prices.

-Charles Bouchard, O.P.