

The Myth Regarding the High Cost of End-of-Life Care

Authors Melissa Aldridge and Amy Kelley in an article in the *American Journal of Public Health* question the data set from which the current discussion on high-cost health care populations derive. They claim the “evidence is biased...in that most studies have examined only Medicare expenditures and, therefore, only the Medicare population.” The authors’ “estimates draw upon a combination of data from existing national data sets (including the Medical Expenditure Panel Survey [MEPS] and the Health and Retirement Study), the peer-reviewed literature, and published reports.” These sources estimate the total expenditure for health care in 2011 as \$1.6 billion. Of this, “13 percent, or \$205 billion, was devoted to care of individuals in their last year of life.” On further examination, the numbers reveal that from the individuals who make the top 5 percent of total annual health care spending, only 11 percent were in their final years. This leads the authors to discover the three “broad illness trajectories” which, when combined, make up the highest spending population:

- 1) individuals who have high health care costs because it is their last year of life (population at the end of life); 11 percent
- 2) individuals who experience a significant health event during a given year but who return to stable health (population with a discrete high-cost event); 49 percent
- 3) individuals who persistently generate high annual health care costs owing to chronic conditions, functional limitations, or other conditions but who are not in their last year of life and live for several years generating high health care expenses (population with persistent high costs); 40 percent.

Based on their findings, the authors conclude “the need to focus on those with chronic serious illnesses, functional debility, and persistently high costs” and that programs aimed at these subgroups will be better able to contain and reduce the highest cost population. Melissa Aldridge and Amy Kelley, “The Myth Regarding the High Cost of End-of-Life Care,” *American Journal of Public Health* 105:12, Dec. 2015. <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2015.302889>

2016 Will Bring in a Flurry of New Rules and Regulations Affecting Healthcare

In the January 2016 edition of *Modern Healthcare*, the publication included a timeline for upcoming new rules and regulations for 2016. The list is broken down by month and contains over two dozen changes. These changes include:

- 1) This year, all employers with at least 50 full-time-equivalent employees must offer affordable health insurance or face penalties under the Affordable Care Act, which would be a minimum of \$2,000 per full-time employee. Previously, the rule applied only to companies with 100 or more FTE employees.
- 2) In March the Office for Human Research Protections at the U.S. Department of Health and Human Services and 15 other federal agencies will issue a final rule updating the “Common Rule” governing research on human subjects.
- 3) In mid- to late-2016, the FDA is expected to issue rules for electronic cigarettes that could require the agency to regulate e-cigarettes as drugs or devices.
- 4) In November the CMS will issue a rule requiring health care providers to develop discharge plans for all Medicare inpatients and certain outpatients.

A complete list of upcoming rules and regulations is contained in the article. “2016 Will Bring in a Flurry of New Rules and Regulations Affecting Healthcare,” *Modern Healthcare*, Jan. 2015.

<http://www.modernhealthcare.com/article/20160102/MAGAZINE/301029961>

Will Year of Mercy Offer New ‘Opening’ On Abortion?

In his September letter outlining reasons for proclaiming a Year of Mercy, Pope Francis “expressed his closeness to post-abortive women, and others who shared responsibility for the direct killing of an unborn child.” He offers “all priests for the jubilee year the discretion to absolve of the sin of abortion those who have procured it and who, with contrite heart, seek forgiveness for it.” This is comforting news to a population that has felt exiled from their faith community. Marianne Luthin, director of the Archdiocese of Boston’s Pro-Life Office and its Project Rachel ministry, reports a surge of calls from women who said “they felt comfortable coming forward because they trusted the Pope. They had been living in the shadows; and now they felt they could receive absolution.” For some U.S. Catholics the announcement brings canonical confusion as local bishops could already grant permission to priests to absolve the sin of abortion. The pope’s pronouncement brings the practice worldwide and signifies his desire to bear witness to God’s great mercy: “The forgiveness of God cannot be denied to one who has repented, especially when that person approaches the sacrament of confession with a sincere heart in order to obtain reconciliation with the Father.” Joan Frawley Desmond, “Will Year of Mercy Offer New ‘Opening’ On Abortion?”, *National Catholic Register*, Dec. 2015.

<https://www.ncregister.com/daily-news/will-year-of-mercy-offer-new-opening-on-abortion/>

New Guidelines for Heart Transplantation Candidacy Issued

The International Society for Heart and Lung Transplantation has published in *The Journal of Heart and Lung Transplantation* new guidelines to “to help physicians determine which patients may be suitable candidates for heart transplantation.” This updates the previous guidelines created in 2006. Some of the major changes include which diseases will no longer disqualify a potential recipient. The “ISHLT now states that patients with human immunodeficiency virus (HIV), hepatitis, Chagas disease or tuberculosis can now be considered suitable transplant candidates, provided they meet other criteria.”

The new version also addresses a concern in the previous stipulation of the 2006 edition which required heart failure patients to reduce their Body Mass Index down to 35. The new revision requires doctors to ensure “such patients reach a BMI of 30 or less...” Another revision examines the social support of the patient to determine whether they will have the ability to adhere to the necessary outpatient care requirements. Additional changes to the guidelines are contained in the article. Honor Whiteman “New Guidelines for Heart Transplantation Candidacy Issued,” *Medical News Today*, Jan. 8, 2016.

<http://www.medicalnewstoday.com/articles/304757.php>

Questions and Answers About Obama’s Executive Plan on Guns

According to an AP article by Josh Lederman, the primary approach for President Obama’s executive action regarding guns is to “clarify who is ‘in the business’ of selling firearms and has to get a federal license.” Currently, only licensed dealers are required to perform background checks. Meanwhile, guns sold

by private individuals, at flea markets and gun shows, as well as online are not required to do so. Another part of the action is to increase the number of examiners, hired by the FBI, to process these background checks.

The article addresses questions by potential gun sellers and citizens who are concerned about the effect of the measure. It also explains the legality of such an executive action. The article is timely for health professionals who are concerned about the necessity of gun laws for the protection of public health.

Lederman, Josh. "Questions and Answers About Obama's Executive Plan on Guns," *Associated Press*, January 6, 2016.
http://hosted.ap.org/dynamic/stories/U/US_OBAMA_GUNS_QA?SITE=AP&SECTION=HOME&TEMPLATE=DEFAULT

A Doctor's Dilemma: How to Treat the Angry Patient

Sarah Poggi, MD, an obstetrician from Alexandria, Va., wrote a commentary for the *Washington Post* after recently taking an annual online course from her medical system on "workplace violence." She quips about the recommendation to throw coffee at an armed assailant, or a stapler since her floor does not allow food or drink in the hall. Dr. Poggi describes scenarios of patients yelling profanities, assaulting staff members, and forcefully deterring certain medical procedures. However, she, and her fellow staff, did not believe these actions warranted mentioning to the security department of their hospital: "Did I report any of these "behaviors of concern"? No. I justified every case, empathizing with the patient."

What the dilemma comes down to for Dr. Poggi and her fellow staff is the mixed message: "On one hand, we are told to watch for angry behavior and to report

it. On the other, we are incentivized to excuse the same behavior and even accommodate it." With the rise of social media and mass consumer review, doctors and nurses are keenly aware of the effect a negative remark online can have on their career and practice. But, this doctor is tired "of the concept that 'the customer is always right' when a patient displays a 'behavior of concern.'" She desires an honest conversation on the fear such patients bring to a medical facility, and a concerted effort by the administration to put safety above rankings.

Poggi, Sarah. "A Doctor's Dilemma: How to Treat the Angry Patient," *Washington Post*, January 1, 2016.
https://www.washingtonpost.com/opinions/a-doctors-dilemma-how-to-treat-the-angry/2016/01/01/01ebdfa6-ae4c-11e5-b711-1998289ffcea_story.html?postshare=591451816871290&tid=ss_mail

Students from the Saint Louis University School of Law Center for Health Law Studies contributed the following items to this column. Amy N. Sanders, assistant director, supervised the contributions of health law students Erin E. Grant (J.D./M.H.A. anticipated May 2018) and Abigail Wood (JD anticipated May 2017).

6th GOP Debate: What Each Candidate Said About Health Care

The GOP candidates once again faced off on stage in North Charleston, SC, in preparation for the upcoming Iowa caucuses less than three weeks away. Each of the candidates stressed health care as an important issue they would address. Each proposed different approaches. Donald Trump, calling our health care system a "horror show," expressed that he would repeal the Affordable Care Act (ACA) but ran out of time before sharing how he would "fix" the system. Jeb Bush drew attention to mental health issues, calling for bipartisan solutions to prevent the mentally ill from accessing guns. Senator Marco

Rubio promised to repeal President Obama's executive orders and to get "rid of" Obamacare, calling the ACA a "certified job killer." Senator Ted Cruz proposed repealing a number of taxes enacted under the ACA, an action that would correspond with his proposed flat tax plan. Dr. Ben Carson also suggested a flat tax system that would prohibit people from "taking advantage" of others, as well as a cutback in spending. Governor Chris Christie called for entitlement reforms that would save Social Security and Medicare, while Governor John Kasich promised to freeze all federal regulations for one year, except for health- and safety-related regulations.

Emily Rappleye, *Becker's Hospital Review*, Jan. 15, 2016 <http://www.beckershospitalreview.com/hospital-management-administration/6th-gop-debate-what-each-candidate-said-about-healthcare.html>

State Reinforcements Join the Health Insurance Merger Investigations

After news broke this summer of the possible mergers between Aenta and Humana, as well as Anthem and Cigna Corp, the U.S. Department of Justice immediately commenced an investigation. The House and Senate subcommittees also held investigative hearings to understand the implications of the mergers on the U.S. health care system. Now, at least 15 state attorney generals have decided to join the DOJ in investigating the negative implications of these mergers for health care. Thomas Greaney, co-director of the Center for Health Law Studies at Saint Louis University School of Law, said it was not surprising that state attorneys general would want to join the inquiry since attorney generals can weigh in on local market conditions, which will be important to the Justice Department's ultimate decision on the mergers. Greaney previously served as assistant chief in charge of health care antitrust enforcement at the Justice Department. "They may also have some input into settlement negotiations," Greaney said. Now the

fate of the U.S. health insurance industry awaits reports from both state and federal authorities. Lisa Schencker, *Modern Healthcare*, Jan. 12, 2016 <http://www.modernhealthcare.com/article/20160112/BLOG/160119967>

Law on Ultrasounds Reignites Abortion Battle in North Carolina

In North Carolina, a new state law has sparked outrage in the abortion debate. The law, which has faced staunch opposition, requires that doctors who perform an abortion after the 16th week of pregnancy provide an ultrasound to state officials. This requirement was designed to ensure that doctors complied with existing North Carolina law, which bans abortions after 20 weeks with exceptions only for medical emergencies. Critics of this law argue that its purpose was to intimidate women and physicians and to construct hurdles in access to health care services. The new law, similar to legislation passed in Louisiana and Oklahoma, requires doctors performing abortions after the 16th week of pregnancy to verify the "probable gestational age" of the fetus through an ultrasound that shows the measurements taken of the fetus. These measurements must be sent to the North Carolina Department of Health and Human Services. The law became effective Jan. 1, 2016. Richard Fausset, *The New York Times*, Jan. 10, 2016 http://www.nytimes.com/2016/01/11/us/law-on-ultrasounds-reignites-abortion-battle-in-north-carolina.html?ref=health&_r=0

Illinois Non-profit Hospital Tax Exempt Status on Shaky Ground

On Tuesday Jan. 5, 2016, an Illinois appeals court ruled that part of a 2012 Illinois law that allows hospitals to avoid taxes is unconstitutional. The case was brought to the court by the Mayor of Urbana, Ill., a city of approximately 41,000 people, against Carle Hospital. Mayor Prussing claims that Urbana

has lost 11 percent of its assessed tax value since Carle was relieved of paying \$6.5 million a year in property taxes. In 2012, Illinois hospitals were given relief when state lawmakers passed legislation that simply required a non-profit hospital's charitable services to exceed its property tax liability to qualify for tax exemptions. This new decision invalidates that legislation as being unconstitutional. The questioning of non-profit hospital tax exempt status appears to be a growing trend. In 2015, Morristown New Jersey Medical Center agreed to pay \$26 million to settle a dispute over its tax exempt status. Illinois is not the first nor will it be the last state where non-profit hospital tax exempt status might be questioned. Ayla Ellison, *Becker's Hospital Review*, January 08, 2016 <http://www.beckershospitalreview.com/finance/hospital-tax-exemptions-under-fire-in-illinois.html>

Stricter Rules for People Enrolling on HealthCare.gov after Open Enrollment

Insurers have argued that the rules for special enrollment periods on HealthCare.gov are too broad. Their argument is that people can wait until they are ill to enroll in insurance on HealthCare.gov that, in turn, raises overall premiums and health care spending because these sicker people are costlier. Andy Slavitt, acting administrator of the Centers for Medicare and Medicaid Services, said that some “bad actors” had been taking advantage of the special enrollment period and thus they are responding by tightening some of the requirements for special enrollment periods. He also said that the agency has created an enforcement task force to ensure that people are being honest when applying for special enrollment. However, consumer groups are pressing for additional exceptions that could allow more people to apply for special enrollment. Between Feb. 23 and June 30, 2015 around 950,000 consumers selected a health plan during a special enrollment period on HealthCare.gov. Mr. Slavitt was not specific about

what requirements will be eliminated or changed to ratchet down the special enrollment periods. Stephanie Armour and Louise Radnofsky, *The Wall Street Journal*, Jan. 12, 2016 <http://www.wsj.com/articles/health-law-enrollment-periods-to-be-tightened-1452573856>

New Guidelines Support Patients' Access to their Medical Records

The Obama administration released new guidelines for patient's rights under the Health Insurance Portability and Accountability Act (HIPAA) to access their health information. Jocelyn Samuels, the director of the Office for Civil Rights at the Department of Health and Human Services stated that, “Based on recent studies and our own enforcement experience, far too often individuals face obstacles to accessing their health information.” The guidelines, issued this month, state that doctors and hospitals cannot require patients to state a reason for requesting their records. Health care providers cannot require patients to pick up their records in person if they ask for the records to be sent via mail or email. Health care providers can also not deny a request for medical records because a patient has not paid their medical bills. There are certain exceptions to the rules for psychotherapy notes and health information that might endanger the life or physical safety of a patient or other person. The goal is to enable patients to take an active role in their medical care. Robert Pear, *The New York Times*, Jan. 16, 2016 http://www.nytimes.com/2016/01/17/us/new-guidelines-nudge-doctors-on-giving-patients-access-to-medical-records.html?ref=health&_r=0

Drug Prices Continue to Rise Despite Criticism

Drug prices continue to rise. Pfizer Inc., Amgen Inc., Allergan PLC, Horizon Pharma PLC, and others have raised U.S. drug prices for dozens of branded drugs since late Dec. 2015. The increases ranged between 9

percent and 10 percent, according to equity analysts. These increases are on the list prices of the drugs before any discounts or rebates offered by the manufacturers. Some pharmaceutical companies such as Pfizer state that they offer considerable discounts off the list prices to patients and depending on income level some patients can receive free medication. However, politicians, health care payers, doctors, and patients have all criticized drug pricing for making medication out of reach for many low-income patients. According to the Centers for Medicare and Medicaid Services, U.S. prescription-drug spending rose 12.2 percent in 2014, accelerating from 2.4 percent growth in 2013. Pharmaceutical companies argue that the rise in drug prices helps to offset the high costs of bringing new drugs to the market. Advocates argue that the U.S. needs a regulatory mechanism to control prices similar to those seen in other countries. Peter Loftus, *The Wall Street Journal*, Jan. 10, 2016, <http://www.wsj.com/articles/drugmakers-raise-prices-despite-criticisms-1452474210>

IRS Again Delays Minimum Essential Coverage Reporting Requirement, and Other ACA Developments

Under the Affordable Care Act (ACA), large employers and providers of minimum essential coverage, such as self-insured employers, insurers, and government programs, must report to the IRS that their beneficiaries have the minimum level of required coverage. The deadline for the first scheduled reports, initially set for early 2015, was delayed by the IRS on Dec. 28, 2015 after the Department of the Treasury concluded that some providers needed additional time to adapt to the new systems and to gather, analyze, and report information. Final forms are now due to the IRS by May 31. Penalties will not be imposed on entities who attempted to comply with the initial deadline but provided incomplete, inaccurate, or no information due to reasonable cause.

This delay may affect some taxpayers, as individuals are not currently eligible for premium tax credits for any month during which they were offered affordable coverage or covered by an employer. However, some accommodations have been made for these individuals; if an individual is deemed eligible for a premium tax credit because employer coverage is unaffordable, but is later determined to have been eligible for employer coverage, the employee will still be treated as eligible for the tax credit. This delay will not affect individuals who have already received tax credits, did not enroll in the market, received employer coverage or coverage outside of the market, or who were otherwise ineligible for tax credits. Individuals who have already received premium tax credits will remain unaffected by the delay. Timothy Jost, *Health Affairs*, Dec. 29 2015 <http://healthaffairs.org/blog/2015/12/29/irs-again-delays-minimum-essential-coverage-reporting-requirement-and-other-aca-developments/>

Shedding Some Light on the Problem of Medical Data Loss

Health care is an industry notorious for its data breaches involving protected health information (PHI), or confidential health information that could be used to identify an individual. However, a recent study by Verizon Enterprise Solutions exposes the true extent of these breaches. According to the study, health care experienced the highest rate of security breaches of all industries studied. The study also indicated that actors within health care organizations were involved in 791, or approximately 43 percent, of these data breaches. The three primary reasons for data breaches were (1) physical theft of items containing secure information, such as laptops, or tampering with devices, (2) lost devices or mistakes such as emailing confidential information to the wrong person, and (3) misuse or abuse of privileged information by actors such as employees.

Unfortunately, data showed these breaches often took months or even years to detect. One method proposed to counteract this data breach has been more sophisticated tracking of individuals that would allow auditors to monitor employees' computer activity. Because this sensitive medical data often presents a vital key to timely diagnosis and treatment of disease, improvements in protecting this information remain imperative.

Heather Landi, *Healthcare Informatics*, Dec. 16, 2015
<http://www.healthcare-informatics.com/article/shedding-some-light-problem-medical-data-loss>

Why Are Many CO-OPs Failing? How New Nonprofit Health Plans Have Responded to Market Competitions

Along with its sweeping reforms designed to improve health care access, the Affordable Care Act (ACA) created the Consumer Operated and Oriented Plan (CO-OP) Program to allow customers to choose a nonprofit insurance option with strong customer focus. However, this program has experienced overwhelming failure; half of the 23 CO-OPs have shut down or will soon shut down, and all but two have failed to meet their expected enrollment or profitability. A new report by The Commonwealth Fund discloses some of the reasons behind these failures. First, to meet certain deadlines, CO-OPs were forced to outsource certain processes, limiting the CO-OPs' ability to control costs and manage the quality of these services. Second, a prohibition on use of federal funds for marketing placed some hindrances on CO-OPs' profitability. Additionally, several CO-OPs originally offered platinum plans; however, the lower out-of-pocket cost of these plans tended to attract consumers with significant health needs. The higher costs incurred eventually lead all CO-OPs to drop these plans. Another difficulty experienced by CO-OPs was the lack of historical data normally used

to estimate costs. Combined with unpredictable enrollment numbers, more than half of the CO-OPs did not have enough enrollees to cover expenses. Furthermore, though the ACA promised financial aid to help stabilize the smaller CO-OPs, this aid was much lower than anticipated and insurers had to wait more than twenty-one months for payment.

Though eleven CO-OPs remain, it is likely they will continue to face challenges to their sustainability. Some of these challenges stem from the nature of the health care industry; others result from political decisions. The failures of these CO-OPs merely highlight the difficult but necessary challenges faced in providing competitive choices in health care coverage, as well as the future investments required if the CO-OPs are to survive. Sabrina Corlette, Sean Miskell, and Justin Giovannelli, *The Commonwealth Fund*, Dec. 10, 2015

<http://www.commonwealthfund.org/publications/fund-reports/2015/dec/why-are-co-ops-failing>