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Foreword: Emerging Issues in Health Care Reform at the Federal, State, and Local Levels

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Little is more important to the future of our country and each of our citizens than an affordable and accountable health care system. The country has embarked upon widespread reforms as a result of the Patient Protection and Affordable Care Act,[1] with its goal of containing costs without compromising care. However, scholarly debate over the Affordable Care Act has largely focused on the constitutionality of the "individual mandate" provision. The "individual mandate" debate has, in turn, diverted attention from other vital aspects of the Act and health care reform.

The reform of health care delivery is studded with issues that are properly complex and include such matters as configuring insurance marketplaces, determining which essential health benefits will be covered, delivering care for chronically ill patients, and securing privacy and safety in electronic medical records. Home health care, long-term care, and end-of-life care require careful consideration as well. These fundamental aspects of health care reform demand critical analysis aside from the "individual mandate" concerns.

The *Duquesne Law Review* is pleased to contribute to collective thought about health care reform through several essays and articles that offer insights about issues relevant, but too often overshadowed, in public and political discussions. While health reform is inevitable, solutions to concerns about cost containment and care coordination are not. In their essay, *The Inevitability of Health Reform*, Arthur S. Levine, Dean of the School of Medicine and Senior Vice Chancellor for the Health Sciences at the University of Pittsburgh, and Everette James, the Director of the Health Policy Institute at the University of Pittsburgh and a former Secretary of Health for Pennsylvania, draw on their experiences to

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1. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of 21, 25, 26, 29, and 42 U.S.C.), *amended by* Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (codified in scattered sections of 20, 26, and 42 U.S.C.).

unravel the correlation between health care outcomes, such as life expectancy, and the Affordable Care Act's cost containment and care coordination provisions. In doing so, the authors demonstrate why reform is necessary, given the services and burdensome costs that emphasize "economic forces stronger than politics or the law" and that compel ongoing attention to the "unsustainable costs of our health care system."

Offering a perspective shaped by regional considerations, Peter J. Kalis, Chairman and Global Managing Partner of K & L Gates LLP, and Judy J. Hlafcsak, K & L Gates partner and former chief legal officer for health systems in both Pennsylvania and Florida, suggest the need for health care systems and insurers to undertake both active and innovative reform. In *Healthcare Reform: Let's Act Locally*, they argue that payment reforms will ultimately determine "the viability of our entire health system" and maintain that "[w]ithout a material change in the way healthcare is delivered and financed, it is difficult to see how our system can be sustained." Using Pittsburgh and its locally-based UPMC and Highmark systems as a paradigm, the authors illustrate the valuable lessons that may be drawn and extrapolated to other areas of the country for delivery of health care.

Delivery of care is a cornerstone of the Affordable Care Act, and Wendy K. Mariner, Professor of Health Law at Boston University Schools of Law, Public Health, and Medicine, questions the appropriateness of using insurance plans for improving health. In her article, *The Affordable Care Act and Health Promotion: The Role of Insurance in Defining Responsibility for Health Risks and Costs*, Professor Mariner critiques the Act's provisions linking wellness incentives to insurance coverage and contends that these provisions could be more effectively achieved by not relying on insurance plans "to goad individuals to conform to behaviors that are believed to save money by preventing chronic diseases." Professor Mariner asserts that tying wellness to insurance plans will lead to categories of "certain disfavored conditions." She reasons that penalizing personal faults will likely produce prejudicial classifications that perpetuate socially-acceptable bases for discrimination based on one's health status and personal behavior. She advocates for disentangling incentives for improving health from cost reduction provisions that are central to insurance plans. Importantly, Professor Mariner provides us with ways to think critically about incentivizing personal responsibility for preventing risks, about considering a community-based approach for structur-

ing health promotion incentives, and about heeding states' inventive solutions for increasing preventive care.

My own contribution focuses on society's responsibilities to children and adolescents who suffer from life-limiting conditions. Thousands of children and adolescents die each year in hospitals throughout America. Yet relatively little is known, and less is articulated, about dying young and the precise concerns surrounding minors' medical care. News reports occasionally profile a cancer-stricken youth trying to refuse or even run away from unwanted medical treatment, and St. Jude Children's Research Hospital has raised the profile of seriously-ill children through fundraising campaigns. Still, the difficult and complex considerations related to minors' care are essentially hidden in plain sight. More to the point, their importance to states' health policy debates has been inconspicuous and overlooked. In *Noblesse Oblige: States' Obligations to Minors Living with Life-Limiting Conditions*, I make conspicuous relevant issues that have not been considered in the discourse surrounding health care reform, but raise the tone by being part of it.

Public opinion of health care reform remains deeply divided and divisions continue in and among federal, state, and local governments. For politicians, health care reform seems both a grist and a given; common ground can be elusive. Even so, health care reform represents opportunities for renewal and for rethinking issues that mean change and choice—and the chance to improve the quality of medical care. To this end, public discussions about health care reform must not flat line, but serve as a learning curve for federal, state, and local politicians as they continue to debate and to balance the trade-offs inherent in regulatory action. There is no turning back for the nation's health care system; change is coming regardless of states' challenges to provisions of the Affordable Care Act. Just as the health care system continues to evolve, ideas and discussions about improving it will also continue. The insights and views expressed in this issue of the *Duquesne Law Review* seek to enrich those ongoing discussions.