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One step forward, a couple sideways
By John D. Blum
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With the passage of the 2,500-page Patient Protection and Affordable Care Act and the accompanying 150-page congressional reconciliation, we have now entered into the era of post-health reform.

By now the outlines of the reform legislation are well-known, including provision of health-care coverage to 32 million; creation of state-based health exchanges; provision of subsidies to low-income individuals; closing the Medicare doughnut; expansion of Medicaid, insurance reforms, such as a ban on pre-existing coverage exclusions; and individual insurance mandates.

Few of the major elements depart from President Obama's campaign pledges, with the exception of the politically toxic public option. It is a remarkable testament to political power, a Democratic majority and the alignment of health lobby groups that allowed for this unique moment in the history of social policy to occur.

Like any massive piece of legislation, the health reform bill of 2010 is only the beginning of what will be a very long and complex process, taking us well into the 21st century. Health reform raises a number of challenges, some driven by the legislation and others related to persistent and long-standing matters in our highly complex and layered health delivery system.

It is important to appreciate what the health reform law is not.

Clearly the legislation, regardless of how broad it is, does not set out a new paradigm for health delivery. The bill may touch on most aspects of health care, but there is no core vision presented of health in the future, or, more specifically, what our system will look like going forward.

The process of health reform will emerge in the marketplace, and how that market will be affected and capture health reform is an unknown. Although during the political posturing leading up to the law it was very popular for politicians to speak about health as a right, not a privilege, the law does not establish health as a fundamental right, but extends it as a type of entitlement.

It is quite clear that the 8 million undocumented residents are excluded from the law, and any indication on the part of elected officials that this population would be covered as a matter of human rights became a toxic position.

The other major thing this bill does not do is contain costs in any meaningful way. The coverage extension in the bill is not capped or limited, and the mantra of high quality, low costs is left to a series of incidental legislative efforts that only forestall future pain.

No doubt the biggest hurdle for health reform legislation was cost and the projections of the Congressional Budget Office that the legislation will reduce the deficit by $1.3 billion proved critical to passage. It is, of course, an artful and artificial projection.

If the history of federal health programs teaches anything, it is a recurring lesson that cost projections are always far below reality. Medicare is the classic example of a program that has consistently been more expensive than even the most pessimistic estimates.

The cost realities driven by the new and ongoing public obligations will necessitate significant immediate and long-term cuts. While Medicaid has been expanded, states like Illinois on the verge of bankruptcy will be taxed by Medicaid expansions and may have to drastically reinvent their programs.

Related to cost is the fact that virtually none of the politicians who voted for health reform will be around to live with its financial consequences; all of this fits into the hallmark of American politics: passing big problems along to future generations.

Fundamentally, health reform is underpinned by the very basic issue of how communitarian we are as a society. Simply put, how much will Americans be willing to spend on health reforms over the long term, and will the working class put up with the swelling cost burdens for elder care that lie on the near horizon?

A very real concern in the health reform context is the capacity of federal regulators to respond to this massive legislation in a measured and skilled manner.

There are currently over 1,200 vacancies in the Centers for Medicare and Medicaid Services (CMS), the agency with primary responsibility for legislative implementation. By all accounts, a 2,500-page bill will result in considerable new regulation, layering onto what is already a very heavily regulated sector.

Take the current Medicare and Medicaid fraud and abuse laws as a case in point. What we have seen in fraud and abuse is a regimen of layered mandates that reach deep into the bowels of health-care operations in a way that could only delight the soul of a corporate lawyer.

If each legislative provision of HR 3590 sparks multiple pages of rule-making, it will empower bureaucrats, employ legions of lawyers and befuddle the delivery system for years to come. There needs to be serious focus on altering the course of administrative law, and alternative regulatory strategies will need to be explored.

On the practical side, it is debatable whether the federal government can effectively regulate health insurance, as the insurance side of HIPAA demonstrated a profound lack of capacity in this area.

The key to the success of HR 3590 will ultimately be how this law is absorbed into the fabric of the health-care market.

No doubt the legislation will shape the future health market, but it will also be controlled by it. The goals of sparking a revolution in prevention and nutrition are laudable, but those very long-term challenges must find resonance in the marketplace if they are to be realized.

Similarly, new and emerging care models such as medical homes and accountable care organizations must be feasible not only conceptually but in an operational sense as well.

Where the challenge of health reform will be most extreme will be in cases where long-standing providers will be forced, due to reform economics and regulation, to close their doors; will such evolutions be allowed to occur in the face of strong public and political opposition?

At the end of the day, health reform will be a boon to America, but the challenges of implementation go well beyond the pages of the law and will require a remake of the entire delivery system.

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