

**FOREWORD:
THE NEW INFRASTRUCTURE OF MEDICARE**

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The architects of the landmark Medicare Modernization Act of 2003 (MMA) were nothing less than shrewd in casting the law's sweeping changes to the nation's fifty-year-old healthcare program as "modernization." Beyond conveying a forward-looking message that undoubtedly scored well with focus groups, the word carried multiple layers of meaning. Most straightforwardly, "modernization" signaled the Act's addition to Medicare of prescription drug coverage, a benefit contained in most private health insurance plans for many years, as well as some other new services such as limited preventative care. "Modernization" also implied that important program features of "old" Medicare needed updating (or "rehabilitation," as one of the bill's sponsors put it), including implementing e-prescribing, revising the way it pays providers, and changing the contribution it expects of beneficiaries. Finally, for those who were looking for fundamental change in a program deemed out of step with private market approaches to healthcare, the word "modernization" subtly conveyed a shift away from entitlement and social insurance models toward a model more closely tied to private insurance, at least as health insurance was conceptualized at the turn of the century.

Extraordinarily complex and multifaceted, the MMA did all that and more. Although the addition of a new prescription drug benefit garnered the most public attention, the new law wrought important change in the design and, perhaps, the philosophy of the program. Somewhat overlooked in the MMA's intricate design was an attempt to move the nation's largest healthcare program toward reliance on market mechanisms and significantly enhance the role of the private sector. To accomplish these goals, the law spends liberally: it provides generous subsidies to managed care organizations, establishes new incentives for beneficiaries to switch from old Medicare, and generously rewards providers and pharmaceutical companies to elicit their support for and participation in Medicare's new world order. In addition, the MMA made important changes in the

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infrastructure of the program, altering the vital role of contractors that administer the program, privatizing many decisions about the benefits, payments, and delivery of services, and reconfiguring the relationship between the states and federal government in paying for seniors unable to meet the financial obligations that the program places on them. These important changes in the program's infrastructure provide the focal point for this Issue's review of the MMA's impact.

It is quite fitting that this, the inaugural issue of the *Saint Louis University Journal of Health Law & Policy*, should tackle the topic of the impact of Medicare reform. The central goal of the new *Journal* is to harness multi-disciplinary approaches to critically examining healthcare issues of vital concern to the legal, medical, and policy communities. Examining Medicare, which in many respects acts as the central nervous system of the healthcare system, fits the goal perfectly. Medicare plays a central role in the financing and delivery of healthcare, covering 37 million elderly and 7 million disabled citizens¹—one in seven Americans—and provides some 30% of hospital revenues² and a substantial share of many physicians' fees. Though less-appreciated, two other features of the program are that it serves to finance public goods such as medical education and research and is a critical component of the nation's safety net, as it supports indigent care through hospital payments. Further, as the dominant payer in the health marketplace, Medicare policy strongly influences provider market structure and what services providers supply, while also shouldering much of the burden of monitoring the system for fraud and quality problems.

This Symposium examines a number of topics stemming from the MMA reforms that concern the evolving Medicare infrastructure: its organization, the movement toward "privatization," changes in federal-state responsibilities, and the impact of new economic incentives and subsidies. To address these issues, the Center for Health Law Studies enlisted a stellar group of authors with backgrounds in the legislative and regulatory branches of government, academics, public interest advocacy, and private law practice. Our contributors cement our commitment to a multi-disciplinary path for the new *Journal* as they ably represent the fields of health services research, economics, political science, and law.

1. THE HENRY J. KAISER FAMILY FOUND., MEDICARE: A PRIMER 1 (Mar. 2007), *available at* www.kff.org/medicare/upload/7615.pdf (last visited Feb. 07, 2008).

2. See Memorandum, MedPAC, Relationships among Medicare Inpatient, Overall Medicare and Total Margins for Hospitals (Aug. 7, 2003), *available at* www.medpac.gov/publications/other_reports/Aug03_hosp_marg_2pgr_AW.pdf (last visited Feb. 7, 2008) (noting that "Medicare is the largest single purchaser of hospital services, on average accounting for 30 percent of hospital revenues in 2001").

Although a new undertaking for the *Journal of Health Law & Policy*, the Saint Louis University Health Law Symposium has a long and rich history. Since 1978, the Symposium has been an annual event and its contributors' articles have been published each year in the *Saint Louis University Law Journal*. The Symposium has consistently produced noteworthy scholarship from leading academics, government officials, and industry representatives on a rich array of health law and policy topics.³ Henceforth, the *Saint Louis University Journal of Health Law & Policy* will continue this tradition, publishing our annual Symposium Issue.

I want to express my gratitude to our Dean, Jeffrey Lewis, whose encouragement and support enabled us to bring this *Journal* to fruition. Primary credit for planning and implementing the new *Journal* is owed to my Co-Director of the Center for Health Law Studies, Nicolas Terry, who, as always, brought vision, persistence, and organizational skills to make the project work. My sincere thanks to Kelly Dineen, Assistant Director of the Center, for her tireless work in helping organize and publicize the Symposium and bring together the new *Journal* staff. Much appreciation to Mary Ann Jauer, Center Program Coordinator, who, once again, made the Symposium run smoothly and to Susie Lee, who helped finalize the Issue and coordinate its publication.

Finally, I wish to congratulate our new *Journal's* outstanding editorial staff. This Issue is the product of a dedicated group of lead and staff editors who did a superlative job editing these articles. The leadership of Emily Ripp, the Managing Editor of this Issue, and her fellow Managing Editors, Emily Simpson, Kristen Ratcliff, and Katie Rose Fink, enabled this excellent team to work well together. Finally, the faculty advisors offer heartfelt thanks to Natalie Kean, the inaugural volume's Editor-in-Chief, who not only oversaw the production of this Issue but also engineered a seamless transition for the new editorial board. No one could have done a better job or set the bar higher for future editorial staff.

3. The topics covered by the Saint Louis University Health Law Symposium over the past decade are as follows: Shifting Professional Relationships in Contemporary Health Care: Privileges, Labor, Employment, and Contract (1996); Antitrust and Health Care: Current Antitrust Issues For The Health Care Provider (1997); Medical Necessity: Fraud, False Claims, and Managed Care (1998); Academic Medical Centers (1999); Taking the Pulse of Medicaid (2000); E-Health: Structural, Legal, and Ethical Implications (2001); Beyond a Patient's Bill of Rights: The Future of Managed Care (2002); Unequal Treatment: Racial and Ethnic Disparities in Health Care (2003); Administrative Law Meets Health Law: Inextricable Pairing or Marriage of Convenience (2004); Sports Medicine: Doping, Disability, and Health Quality (2005); From Risk to Ruin: Shifting the Cost of Health Care to Consumers (2006). For more information, please visit the Center's Web site: <http://law.slu.edu/healthlaw>.

