

THE UNIVERSITY OF MEMPHIS  
INSTITUTE FOR HEALTH LAW & POLICY  
4TH ANNUAL SYMPOSIUM

# UNCERTAIN CARE

THE FUTURE OF THE  
AFFORDABLE CARE ACT

FRIDAY, MARCH 31



## POLICY PRIORITIES

### *Afternoon Panel: Leading Community Health Lawyers & Compliance Officers*

Transparency as required in law is generally a good thing, although compliance creates major burdens. Policy should also make it easier for physicians to understand health care prices.

Much of the ACA is within executive discretion (i.e., “the Secretary shall”), so there remains great power to amend approaches via the new Administration. This creates uncertainty, which is a difficult environment for providers. It seems that once providers achieve some level of regulatory compliance, regulations change. Greater certainty and clarity within policy, and by policymakers, would help.

There is growing endorsement of value-based healthcare models, which are generally positive. We all aspire to provider better quality care at lower cost to more people. However, this is challenging when so much of health care is outside the regulated health system. Policy leaders should consider how to incentivize participation by non-traditional providers, and beyond the formal health care system, in efforts to advance health. Law may need greater flexibility to allow such participation, and law should not penalize existing providers for health outcomes beyond their control.

The ACA’s emphasis on value-based outcomes has also motivated alternative payment models, which incentivize performance through new health care provider models. These new approaches, however, run up against existing fraud and abuse laws. The ACA, and health care reform generally, favors efficiency plus quality; existing law frustrates certain alliances and approaches to achieve this efficiency. Laws should be amended to allow flexible design and piloting of innovative models that help achieve goals. Policymakers should also continue support of voluntary bundled payment reform.

The new administrative push of “2-for-1,” i.e., for every regulation proposed, two should be removed, appeals to calls for mitigating regulatory complexity. However, within the health care realm, such efforts may in fact increase complexity by creating greater uncertainty as to what regulations apply vs. have been or might be withdrawn. Regulators should be as clear with intentions as possible, and be in discussion with providers to breakdown regulatory bottlenecks.

Efforts to repeal or replace the ACA should not be rushed; all should take time to read the full proposals and consider unintended consequences.



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