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The War on Health Care

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Throughout history, America’s methods of providing health care have always had an understated yet powerful impact on the way she chooses to wage war. And yet, this may be the first time that health care is itself under siege. Indeed, the specter of war has provided countless opportunities to test society’s mettle in battle, while forcing those in power to prioritize in terms of their country’s health care. As sides are drawn and campaigns evolve, the strategies of combat take shape in ways previously unforeseen. This is certainly true in contemporary America, though in our modern age of reform it is health care itself that has come under attack.

Medically speaking, advances in science, technology and the provision of health care have commandeered the new millennium, both in practice and politics. And yet, medicine’s inestimable progress since the Civil War is often largely taken for granted by both the decision makers and the recipients of a country that has come to expect state-of-the-art facilities and easy access to providers. A century and a half ago, the delivery of medicine was grossly misunderstood, frequently useless and often barbaric. “Civil War surgeons cleaned their instruments by periodically rinsing them with water, usually at the end of the day. . . . Typically, the operator wiped the blood and other material from his knife with a quick swipe across the front of his large apron, which was usually stained with blood and pus from prior sessions.”

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Such an abysmal depiction of health care in the middle of the nineteenth century serves to underscore the catastrophic losses endured by both North and South in the deadliest conflict on American soil, while highlighting the need for a potent, reliable and inclusive health care structure on which to rely. Dr. Jonathan Letterman, Civil War medical director of the Army of the Potomac, offered a wise analogy describing the relationship between the science of medicine and our ability to deliver it: “Without proper means, the Medical Department can no more take care of the wounded than the army can fight a battle without ammunition.”

Sadly, the lines in our nation’s recent health care struggle are not clearly drawn, and as a result, each faction is forced to pay a price. Today’s providers face attacks from industry-wide regulatory innovations designed to improve upon overall integrity, efficiency and performance. Such attempts have proven wide-sweeping, as federal encouragements toward bundling and the Medicare Shared Savings Program, more commonly referred to as accountable care organizations or ACOs, attempt to raze the infrastructure of our nation’s health care program just as General Sherman burned through Atlanta, Georgia. As if one revolution was not enough, federal legislation preceding the Affordable Care Act continues to push providers toward electronic health records, stages one, two and eventually three.

On the populist front, Americans under the age of 26 join forces with those determined to bring an end to the battle over preexisting conditions, both groups determined to keep such benefits under the Affordable Care Act. The two are likewise connected by a
coalition keenly focused on a new and improved community rating system that will soon exist within a competitive insurance exchange, fully devoid of lifetime limitations. This formidable alliance is ready to declare victory even before any such struggle officially begins in 2014.

During World War II, the 95th Evacuation Hospital at Casablanca treated wounded Allied troops away from the epicenter of battle by employing scientific advances coming four score years after the War between the States. As a result, the readiness of that war's health care providers saved countless lives that would have otherwise been lost. Such advances mark the progress behind medical treatments, but also emphasize the necessity of having a sound health care structure in place, be it in times of war or peace. While partisan politics continue to lay siege to the foundations of the 2010 Affordable Care Act, the legislation itself has spawned a veritable revolution within health care that may never be contained, even after a joint offensive from aligned branches of the Federal Government.

To promote the progress already made, the Federal Government has recently shown that it does not intend to give up its agenda of reform without a fight. Under the aegis of the Medicare Prescription Drug, Improvement, and Modernization Act\textsuperscript{6}, Congress directed the Federal Department of Health and Human Services (HHS) to conduct a three-year demonstration program using Recovery Audit Contractors (RACs) to detect and correct improper payments within Medicare. The Deficit Reduction Act of 2005 (DRA)\textsuperscript{7} took the partnership between the Federal Government and the states to a new
level by introducing RAC-like audits for Medicaid. The Medicaid Integrity Program (MIP) offers a unique opportunity to identify, recover and prevent inappropriate Medicaid payments. Medicaid Integrity Contractors (MICs) work with the Centers for Medicare & Medicaid Services (CMS) to carry out this edict. It is also designed to support the efforts of State Medicaid agencies through a combination of oversight and technical assistance. Recently introduced Medicare Administrative Contractors (MACs) conduct medical reviews to prevent improper payment of inpatient hospital claims, while Zone Program Integrity Contractors (ZPICs) look at billing trends and patterns in an attempt to uncover Medicare fraud and inefficiencies. CMS has organized the seven jurisdictional zones for ZPICs to comport with the multiple MAC jurisdictions, hoping that ZPICs will assist in preserving the integrity of Medicare.

Some time in June, America will learn firsthand if the pen is truly mightier than the sword, as the Supreme Court rules on the Constitutionality, and perhaps the very future, of the Affordable Care Act. A mere 16 words found in the Commerce Clause have unleashed verbal and written assaults in the thousands, on both sides of the aisle. The seemingly coordinated effort by District Court Judges, Appellate Court Justices and various “friends of the Court” has elevated the war on health care to new and unforeseen levels. In many ways, this method of partisan persecution packs a greater punch than the contents of any missile silo in Kansas.

For the challenges facing health care today, the lines are blurry, the objectives complex and the future uncertain. All wars must one day end, however, and when the dust finally
settles on the issue of reform, we as a nation can only hope there will be something or someone left to tend to the casualties that remain.


2 Dreese, at 122.

3 See *Patient Protection and Affordable Care Act* § 3023, Pub. L. 111-148.

4 See 42 C.F.R. Part 425.

5 See *Health Information Technology for Economic and Clinical Health Act* (HITECH); 42 C.F.R. Parts 412, 413, 422 and 495.


8 See generally *Medicare Program Integrity Manual*, Chapter 4 (Benefit Integrity).

9 *Id.*

10 U.S. Const., Art. I, § 8, Cl. 3.