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Foreword

This Symposium marks the inauguration of the Program for Law, Medicine and the Health Care Industry at the Indiana University School of Law — Indianapolis. The primary mission of the program is to conduct scholarly research on health law issues of concern to the state of Indiana and to the nation. The Program has undertaken research on a variety of legal issues affecting the health care industry ranging from reform of the administrative appeals procedures for the Medicare program and medical malpractice to the thorny bioethical issues emerging in the treatment of individuals with AIDS. The program is also dedicated to improving teaching and enhancing the law school curriculum in the field of health law. Finally, the program is committed to serving as an information and educational resource for the health care community.

In this Symposium, entitled *Financing and Regulating Health Care Services: Hard Choices and Ethical Dilemmas*, the Program joins the *Indiana Law Review* in drawing together several disparate voices in a discussion of the implications of adjusting the financing and regulation of health care services to accommodate diminishing resources for and increasing constraints on the health care system. The Symposium opens with an article by Randall R. Bovbjerg of The Urban Institute and William G. Kopit of Epstein Becker Borsody & Green, Washington, D.C. entitled *Coverage and Care for the Medically Indigent: Public and Private Options*. In this comprehensive examination of the problem of “uncompensated care,” the authors evaluate alternative ways of organizing and financing coverage or care for the medically indigent. The authors bring to this topic significant expertise in health policy. Mr. Bovbjerg has conducted extensive research on insurance and health policy issues and served as a practicing insurance regulator and health specialist at the Massachusetts Insurance Department. In addition to representing a number of hospitals and hospital associations, Mr. Kopit served on the Task Force on Indigent Care of the District of Columbia Hospital Association and chaired its subcommittee on financing indigent care.

In the second article, Carl T. Schramm, former chairman of the Maryland Health Care Cost Review Authority and a leading scholar of hospital rate-setting issues for the last decade, examines the political process underlying state efforts to reform hospital financing mechanisms. In

State Hospital Cost Containment: An Analysis of Legislative Initiatives, Professor Schramm identifies the interested parties and describes the position each party is likely to take, the dynamics of various legislative tactics, and the likely outcomes of state rate-setting initiatives.

Two articles by Clark C. Havighurst of the Duke University School of Law follow. In the first, *Liver Transplantation in Massachusetts: Public Policymaking as Morality Play*, Professor Havighurst and Nancy M.P. King present the story of Jamie Fiske as a case study of how a centrally-controlled health care system faces difficult choices concerning health care and health care technology. In the second, *The Lithotripsy Game in North Carolina: A New Technology Under Regulation and Deregulation*, Professor Havighurst and Robert S. McDonough examine how one state handled the distribution of a costly and highly sophisticated new technology in two contrary contexts — regulation and deregulation.

Even though the federal government no longer mandates health planning and certificate of need, many states have retained these strategies to control distribution of health care facilities and services. In *Full Circle: The Return of Certificate of Need Regulation of Health Facilities to State Control*, James B. Simpson, the Director of the Legal Resources Program at the Western Center for Health Planning, recounts the changes that have evolved in the scope of coverage of state certificate of need programs from their origins to the present.

In *Reform Revisited: A Review of the Indiana Medical Malpractice Act Ten Years Later*, James D. Kemper, Myra C. Selby, and Bonnie K. Simmons of Ice Miller Donadio and Ryan, Indianapolis, describe one state's attempt to address the medical malpractice "crisis" of the 1970's. These authors, leading health law practitioners in the state of Indiana, consider in turn the original purpose of the Indiana Act, the impact of recent amendments, the functioning of the medical review panel, constitutional challenges to the Act and the impact of federal cost containment measures on state malpractice law.

These articles, with their focus on state law issues, emphasize the critical development of health policy in the 1980's: the flow of financial and programmatic responsibility for government health programs to the states. This development has resulted in increased state interest in addressing the pressing health policy issues of today, i.e., paying for care for the medically indigent, controlling hospital costs, mitigating the threat of medical malpractice to access to and cost of medical care, and the ever present pressure to impose rationality on the distribution of health care resources through planning and regulation.

The final three articles address health policy issues arising at the federal level. Throughout the 1980's, the federal government has retained the dominant role in the public financing of health care services through the Medicare and Medicaid programs and, since 1980, has adopted a radically different system for paying for hospital services under the Medicare pro-

gram — the prospective payment system with prices based on patient diagnosis. In *Making Hard Choices Under the Medicare Prospective Payment System: One Administrative Model for Allocating Medical Resources Under a Government Health Insurance Program*, Eleanor D. Kinney, Director of the Program for Law, Medicine and the Health Care Industry, analyzes the administrative model by which the federal government and also hospitals and physicians make decisions about the allocation of hospital services to Medicare beneficiaries under the Medicare prospective payment system. In *Bowen v. American Hospital Association: Federal Regulation Is Powerless to Save Baby Doe*, Dennis Cantrell of Bingham Summers Welsh & Spilman, Indianapolis, explores the Reagan Administration's effort, born of a profound commitment to the preservation of fetal life, to regulate treatment of severely handicapped newborns through federal civil rights laws, and the Supreme Court's response. The Symposium closes with a student note on how the predominant federal economic policy of promoting competition in the marketplace through the antitrust laws plays out with respect to one aspect of the health care system. In *Denying Hospital Privileges to Non-Physicians: Does Quality of Care Justify a Potential Restraint of Trade?*, the author proposes heightened judicial scrutiny of a hospital's claim that quality of care concerns justify its denial of staff privileges to a group of competitors.

Our foreword to this Symposium would be incomplete without acknowledging the numerous people who assisted in this endeavor. Specifically, we would like to thank the editorial board and staff of the *Indiana Law Review*, particularly Gayle Reindl and Debra McVicker. We would also like to recognize the support and encouragement of Gerald L. Bepko, former Dean of the law school and now Vice President of Indiana University-Purdue University at Indianapolis. Finally, we would like to thank Mabel K. Hart of the Program staff and law students Kimberlie L. Forgey, Barbara A. Knotts, Marilyn Wilder, and Michael D. Wright for their invaluable assistance in the production of this Symposium.

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