Dynamic Chiropractic

POLITICS / GOVERNMENT / LEGISLATION

Breaking Down the Barriers to Equal Access

NONDISCRIMINATION: IS IT TIME FOR A "BIG HONKING LAWSUIT" TO ADVANCE INTEGRATIVE MEDICINE AND HEALTH?

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Two years ago, I was part of an invitational, strategic meeting of integrative medicine leaders that included an impromptu exploration. We considered the resistance of hospitals and insurers to embracing integrative medicine and health.

These institutions claim to be "patient-centered." Yet they are slow to uptake the practices and disciplines associated with the popular movement for health-focused, whole-person approaches.

Among us was an executive of a good-sized business. He was neither familiar with the discussion nor part of the health care industry. As a successful investor, he immediately recognized a key misalignment. The financial drivers in U.S. medicine to do more expensive procedures are a mismatch with high-touch, low-tech, human-centered integrative approaches.

Suddenly, he interrupted: "Isn't there a big honking lawsuit here someplace that can shift things?"

Good question. What's called "integrative medicine" these days began as a grassroots movement for alternatives to conventional treatment. Other successful popular movements in the U.S., are associated with major lawsuits. For desegregation, *Brown v. the Board of Education*. For a woman's right to choose: *Roe v. Wade*. For the environmental movement: Karen Silkwood. A door that opened the "integration" era was the decade-long *Wilk v. the American Medical Association*, in which the AMA was found to be engaged in restraint of trade.

Is there a big lawsuit that will propel the nation to blow past the misalignment and drop the barriers to integrative health?

A few of us kicked around ideas, then let the subject drop. Besides, who wants to spend large amounts of a movement's few dollars on a potentially polarizing effort?

Jump forward two years. The Obama administration has passed the Affordable Care Act. The act includes Section 2706, entitled Non-Discrimination in Health Care. The core of the short section is this: "A group health plan and a health insurance issuer offering group or individual health insurance coverage shall not discriminate with respect to participation under the plan or coverage against any health care provider who is acting within the scope of that provider's license or certification under applicable State law."

U.S. Senator Tom Harkin (D-Iowa) and his integrative health supporter colleagues authored Section 2706. They'd been in discussion with representatives of the American Chiropractic Association, the Integrative Healthcare Policy Consortium, optometrists and others. It was passed to ensure that these practitioners were not excluded.

The law was hailed as a breakthrough for integrative treatment. Consumers could access licensed acupuncturists, massage therapists, naturopathic doctors, chiropractors and home-birth midwives. Medical specialists could more comfortably refer for complementary services knowing that doing

so would not require patients to pay cash. A critical barrier keeping patients, doctors and systems from exploring *optimal* integration via inclusion and referrals would be history.

The historic importance was underscored when attorney and former Washington State insurance commissioner Deborah Senn told attendees of a September 2010 policy meeting that she viewed Section 2706 as parallel to the also-historic "Every Category of Provider" law in Washington State. That law made that state the most integration friendly in the United States. Consumers and practitioners each have more choices in the care plans they follow or recommend.

I was close to the implementation of that law as a consultant to diverse Washington stakeholders and as a writer observer. Senn's interpretation of Section 2706 as similar to the Washington law, while hopeful, conjured battles. The Washington experience taught us that insurers will squirm mightily to avoid such a requirement. They sought to postpone enforcement. They tried to scare the public and legislators with a horror of cost increases. Business organizations fronted for them. They urged the legislature to overturn the law. To the point here, insurers fought repeatedly in the courts to overturn or limit the law's impact.

Senn, perhaps the most consumer-oriented of insurance commissioners in the last half-century, battled on every front. Backed by the legal staff in the state attorney general's office and the budget of the state of Washington, she parried insurer end-runs in multiple suits. Eventually, she secured a U.S. Ninth Circuit Court of Appeals decision which upheld her interpretation of the law. The U.S. Supreme Court denied the insurer's appeal.

Bookmark this: the horrors never came to pass. As research shows, the cost-related outcomes range from marginally more to frank savings. Patient experience is extraordinary, as we know from Group Health Research Institute examinations.

Knee-jerk antagonism to the potential value in Section 2706 from mainstream health care institutions is to be expected. *Guess who's coming to dinner?* Pollyanna thoughts were quickly dissolved in the acid of an AMA resolution against Section 2706 within 90 days of the Affordable Care Act's passage.

Section 2706 will be the law of the land in 2014. Yet in state after state, entire categories of integrative medicine and health practitioners face active discrimination under plans shaping the emerging payment and delivery system. Despite the fact that these practitioners provide covered services like treatment of back pain and help with various chronic conditions, they are typically being excluded from state lists of essential health benefits.

Some states would appear to be trying to do the right things. Yet the promise to the nation of Section 2706 is at great risk. Removing payment barriers to appropriate use of these licensed integrative health practitioners is threatened by limiting interpretations every day.

Are we witnessing a goodbye to nondiscrimination for another generation? Or, to repeat the businessman's question, do we need to explore the strategy of a "big, honking lawsuit" to break down this discrimination and change the face of U.S. health care forever? And if so, who pays?

Millions upon millions have been invested by wealthy U.S. citizens to advance integrative medicine and health in the past 15 years. The goal is to transform health care and improve the health of the public through integrative medicine. Boatloads of cash established integrative centers, supported research, enabled a project from the Institute of Medicine, expanded media interest, and built infrastructure.

All good. But why leave the transformational lever of legal action in the toolbox? Maybe it's time to

take off the gloves. Section 2706, broadly interpreted, could help us meet the Triple Aims of better patient experience and better outcomes at a lower cost. The highest and the best use of the next big investment in integrative health and medicine may be to ensure justice is done in upholding the law, currently on the books, to ban discrimination in health care.

The avenue merits vigilance and serious exploration as we roll toward January 1, 2014, when the era of nondiscrimination in health care officially begins.

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