HEALTH POLICY

Oregon Becomes a Test Case For Health Care Reform

Earlier this month, Oregon's pioneering health care rationing plan, which would provide health insurance for all Oregonians at the expense of not covering some expensive procedures, was rejected by the Bush Administration on surprising grounds. Secretary of Health Louis Sullivan told the state he could not approve its proposal because, the Administration contends, the Oregon plan violates the 1990 Americans with Disabilities Act (ADA). But that hasn't ended the story. For one thing, Oregon's health planners, refusing to give up, intend to hold intensive meetings with the Administration to see if the obstacles can be overcome. For another, the Administration's position could have disastrous effects on a number of plans now being drawn up in other states, according to health care reformers across the country.

SOME STATE HEALTH CARE REFORMS

STATE	STATUS	WHAT THEY'RE DOING
Oregon	Minimum benefit package is defined; plan ready for implementation	Extending health insurance to the working poor; waiting for federal waivers.
Colorado	In the exploration stage	Developing benefit packages and seeking new sources of revenue. Federal waivers are expected to be required.
Minnesota	Augmenting a state insurance plan for the uninsured	Subsidies for plan being raised via taxes on health care providers and cigarettes; federal waivers not required.
New Mexico	Planning to establish a health care plan for the working poor	Designing the program and the minimum benefit package; federal waivers required.
Washington	Plan being developed	Defining minimum benefit package; Federal waivers may be required.

"Sullivan's linking the denial to the ADA is alarming on several fronts," says Trish Riley, executive director of the National Academy for State Health Policy in Portland, Maine. "If his interpretation of the ADA is correct, then the ADA and health care reform are on a collision course." Adds Daniel Callahan, a bioethicist and director of the Hastings Center in Briarcliff, New York, "the link to the ADA was a shot out of the blue. I'd heard plenty of other criticisms of Oregon's plan, but never that one before. To me, it is a misguided, strained reading of the [disabilities] act."

Under Oregon's plan, a list of 709 medical procedures were ranked according to costs and benefits. Those falling below item 587 would no longer be covered by Medicaid. Examples of treatments that easily made the cut were childhood vaccinations and prenatal care. On the other hand, strenuous therapies for AIDS where the patient is expected to live less than 6 months did not. The savings generated by excluding such procedures would be used to expand the state's Medicaid rolls, making Oregon the first state to provide insurance for all residents below the poverty level. The Oregon plan deviated from federal Medicaid laws in several ways—those laws, for instance, mandate that every Medicaid recipient under 21 is eligible for all medically necessary services. As a result, the plan needed waivers from the Health Care Financing Administration (HCFA).

It didn't get them. Sullivan argued that the plan violated the disabilities act in two ways. First, he said, the plan made decisions "not to cover a treatment based entirely on the existence of a disabling condition, where similarly situated individuals without the condition would receive treatment." As an example, he cited the fact that alcoholics with cirrhosis of the liver who were not in alchoholism treatment programs would not be eligible for liver transplants, whereas people who weren't alcoholics would be.

Furthermore, Sullivan said, some surveys of Oregonians that were used to rank the procedures included biases against the disabled. The rankings, he said, "were based in substantial part on the premise that the value of the life of a person with a disability is less than the value of the life of a person without a disability. This is a premise which is inconsistent with the ADA." The surveys had asked residents to rank various conditions (for example "being able to go anywhere and participate in all activities but having bad burns over a large area" of one's body) on a scale measuring "quality of well being." The scale, Sullivan—along with other critics of the Oregon program—contends, was biased against the disabled.

State officials in Oregon say they were stunned by this reasoning. Part of their amazement stemmed from the fact that they claim Oregon applied for HCFA waivers more than a year ago and in that time the Bush Administration never mentioned the disabilities act as a possible problem. Furthermore, they say, Sullivan's reasoning is flawed because the survey he objected to was largely discounted in the final ranking of medical treatments. Says Jean Thorne, the state's Medicaid director: "Treatments are not low on the list because they affect one's quality of life; they are low because they are not effective."

In spite of the recent turn of events, Oregon officials are not about to throw in the towel. "We need to find out more precisely what their objections are before we press ahead," said Thorne. "But we find it appalling that they've decided to say no to 120,000 poor Oregonians, rather than discussing their objections with us beforehand." Thorne and other state officials will meet with attorneys from Sullivan's and other federal offices next week to clarify the Administration's position, though Thorne is not sanguine about the outcome. "I don't think that the ADA is the real issue," she said, suggesting, as have others, that politics lay behind the refusal.

In particular, Thorne and others note that several advocacy groups, including the National Right to Life Committee and the Oregon Catholic Conference, have lobbied against the plan almost since its inception—in part, some believe, because abortions would continue to be funded. Oregon's plan is also controversial because under it, health care is explicitly rationed—something President Bush has said his proposed health care plan would not do.

"Yes, it is health rationing," says Howard Leichter, professor of public health and preventive medicine at the Oregon Health Sciences University. "But what we have now is stealth rationing. Just ask the 120,000 people who don't have insurance now whether some coverage is better than no coverage. The answer is obvious."

But those who were critical of the plan to begin with applaud the Administration's action. "Hopefully, the Administration's decision sets it out clearly to everyone that as we

move ahead in health care reform we must pay attention to civil rights and cannot discriminate against people based on their medical condition," says Joseph Liu, a senior health associate with the Children's Defense Fund, which lobbied against Oregon's plan.

Ironically, in Oregon, some advocates for the disabled strongly support the plan, saying it will benefit more people with disabilities than it will harm. "We don't believe that there was any intention to discriminate against the disabled in the plan," says Janna Starr, executive director of the Arc of Oregon, an organization for people with developmental disabilities. "Under the system we have now, there are many things, including preventive medical and dental treatments, that no one gets, whether you're disabled or not. But under the new plan, these would be funded for everybody."

If the Administration's position is unchanged, Oregon state officials plan to rework their plan and resubmit it for an HCFA waiver. Indeed, an HCFA waiver would seem to be an essential element of health care reform because almost all state plans now under consideration break many of the same Medicaid regulations that the Oregon plan does. "Every state knows that it's just a matter of time before they're knocking at HCFA's door, asking for a waiver [on Medicaid]," says Alan Weil, a health policy adviser to Colorado's Governor Roy Romer. Colorado is exploring ways to alter its Medicaid program and offer coverage to uninsured citizens.

But if the ADA is a legitimate argument against Oregon's plan, many states may also be disappointed. "Everyone in health care reform is concerned [about the rejection]," said Janet Rose, executive director of New Mexico's Health Policy Commission. With the highest percentage of uninsured citizens in the United States, New Mexico is also in the process of revamping its Medicaid program—and like Oregon, it is looking at a method of defining a minimum benefits package. "It was our understanding that the federal government would work with states experimenting with reform plans, but we wonder now if HCFA will ever relax its rules."

Because of the HCFA snare, Minnesota carefully designed its own plan for the uninsured so that the waivers were not required. "We consciously addressed that issue," said Mary Jo O'Brien, the deputy commissioner for Minnesota's Department of Health. "We had a vision of what we wanted, and we wanted to get things going before the federal government had a chance to get in and muck around." By subsidizing premiums for the poor via taxes on health care providers and cigarettes, Minnesota's uninsured citizens will have access to primary care.

While Oregon officials plan for their meeting with the Administration's attorneys, officials in other states are mostly waiting to see how the Oregon drama plays itself out. But some of them aren't just waiting—they're seeking ways to remove federal obstacles to health care reform. Colorado's Romer, who is also chairman of the National Governors' Association, is leading the association's effort to make it easier for states to get Medicaid waivers. And 2 weeks ago, Senators Patrick Leahy (D–VT) and David Pryor (D–AR) introduced legislation that would remove the many federal roadblocks (from Medicaid and Medicare waivers to possible problems with the 1974 Employee Retirement Income Security Act) that now stand in every state's way.

Whatever the fate of that legislation, "health care reform is a train going down the tracks that no one can stop," says Howard Leichter from the Oregon Health Sciences University. "It may take a little while longer now in this state before something happens, but Oregon has committed itself, and its plan won't die."

–Virginia Morell

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CONFLICTS OF INTEREST

Dingell Launches a New Investigation

Master chef John Dingell (better known in the academic community as the Michigan Democrat who has been terrorizing universities over research fraud and indirect costs) is at it again, blending together the ingredients for scandal stew. This time, he's following a tried-and-true recipe: Take two prestigious northern California universities still reeling from the after-effects of the indirect cost scandal. Stir in a self-proclaimed watchdog named Paul Biddle, who as a government auditor blew the whistle on indirect cost abuses at Stanford and now investigates government programs as a private citizen armed with the Freedom of Information Act. Add investigators from Dingell's oversight subcommittee and a handful of research-related conflict of interest allegations, cover well, and simmer all summer. Come late September, gather the media and serve up generous portions. If the stew is to the media's taste, the academic community could end up with another severe problem on its hands.

Dingell's new investigation, which was first reported by the *San Jose Mercury News*, is still at an early stage, so details are somewhat scarce. But one Dingell aide, who spoke on condition of anonymity, says the primary focus is on possible conflicts of interest of researchers who have ties to industry. The subcommittee is looking for potential conflicts ranging from direct abuse of federal funds—for example, a researcher "using government money to manufacture widgets that are then sold for [his own] personal benefit" the aide says—to more subtle problems such as scientists with industry ties serving on federal advisory panels. So far, investigators have concentrated mainly on grants funded by NASA at Stanford and the University of California, Berkeley. But the probe will almost certainly expand to include grants from other agencies—in particular, the Department of Health and Human Services—and universities nationwide.

Conflicts on campus? Rep. John Dingell.

At the same time, the committee is continuing its probe of indirect costs, with some assistance from Biddle. After running an unsuccessful campaign for Congress earlier this year, Biddle began investigating the University of California—his curiosity piqued, he says, by the lucrative separation package the university said it would award its president, David Gardner, when he retires this October. By combing through public documents, Biddle says, he put together a picture of what he calls "significant abuse of the federal reimbursement process." He says he forwarded his findings to Dingell's staff, which is pursuing them.

The universities themselves are reacting to news of Dingell's new probe much as they did to early reports of indirect cost abuse. Administrators complain that they were largely in the dark about Dingell's work—until the *Mercury News* broke the story, officials weren't even aware the subcommittee staff was looking into possible problems on their campuses. Spokespersons at Stanford and the University of California, Berkeley, insist that Dingell's staff is unlikely to turn up any horror stories, emphasizing the stringency of their accounting and their detailed conflict of interest policies. "I know we're saying everything we've got is sound, and we'll stand by it," says a University of California spokesman. But to judge from Dingell's track record, the universities may end up with indigestion from the congressman's scandal stew.

–David P. Hamilton