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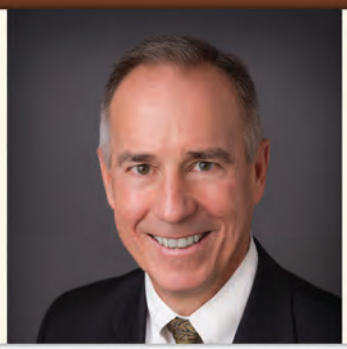

Searching for Affordability in the Affordable Care Act

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J. Fred Earley, II joined Bowles Rice in January 2017 and is the leader of the firm's Health Care Team. With nearly 30 years of experience in the health care and insurance industries, his legal practice focuses on health care and government relations work for clients ranging from hospitals and health maintenance organizations to physicians and long-term care facilities.

Earley served as President of Highmark Blue Cross Blue Shield West Virginia from 2009 to 2016, with responsibility for all market-facing functions of the company, including sales and marketing, government and public relations and provider contracting and reimbursement. During his tenure, he oversaw the transitional period during the implementation of the Affordable Care Act. His career with Highmark first began in 1989, and included roles in compliance, operations, legal and administration.

He earned his law degree from Washington & Lee University, and holds an undergraduate degree in business administration from West Virginia University. He serves on the board of directors for Highmark Blue Cross Blue Shield West Virginia and the West Virginia Health Information Network. He also serves on the Board of Governors for the West Virginia School of Osteopathic Medicine.

Notwithstanding the broad array of topics that generate significant differences of opinion in the current political environment, it would be difficult to find a more controversial, or highly debated, topic than the Patient Protection and Affordable Care Act, which is commonly referred to as the "ACA" or Obamacare. And despite fervent campaign promises and a long list of attempts to repeal/repeal and replace the ACA by its opponents – the most recent of these being the failed Graham-Cassidy legislation in September – it remains intact as the law of the land.

As a result, it appears the variety of ways by which the ACA increased access to health care coverage shall remain intact for the foreseeable future. These include the dramatic changes to employer-sponsored health insurance, with the list of prescribed "essential health benefits" and the mandatory offering of coverage by employers with 50 or more full-time employees, the guaranteed issue, community rating and purchase mandate for individuals not otherwise covered and the significant expansion of Medicaid coverage in those states, including West Virginia, which opted to do so. Recent statistics indicate that the uninsured rate for West Virginia was reduced by more than half, to less than nine percent, meaning that approximately 10 percent of the state's total population gained access to health care coverage under the ACA.

Based on these statistics, and those for the nation as a whole, perhaps the ACA would have been better named the Accessible Care Act, rather than the Affordable Care Act. Many would assert that the ACA has done very little, if anything, to address the affordability of health care and health insurance. This includes employers, individuals, health care providers, insurers and even government officials, all of whom are struggling to get a grasp on the ever-increasing cost of health care in America, which now accounts for 18 percent of gross domestic product.

Without question, affordability and the future funding of the health care delivery system have emerged as critical issues which must be addressed. This is particularly significant in West Virginia, partially due to its rural nature, and more significantly due to the high percentage of the population covered under government programs such as Medicare, Medicaid and the Public Employees Insurance Agency (PEIA). These programs, including the portions that are administered through private payers, often represent 80 percent or more of the patient volume for West Virginia health care providers, with reimbursement levels less than the actual cost of providing care. This, in turn, places additional burdens on non-government payers, both employers and individuals, which could ultimately threaten the sustainability of the health care delivery and financing systems.

But while the ACA fails to address the affordability concerns (and in some ways increases them, e.g., through the expansion of Medicaid), it has created an environment where other health care stakeholders are keenly focused and motivated to do so. Health care providers and payers are engaging in efforts to deliver on what is known as the "triple aim" in health care, providing the right care, at the right place and at the right time, in order to maximize quality of care and health outcomes, as well as cost efficiency.

These efforts recognize that the revenues available to pay for the delivery of services will

not be able to keep up with the current rates of growth and cost. All stakeholders will need to maximize efficiencies in order to survive. To do this, payers and health care providers must transform from the current fee-for-service reimbursement models toward those focused on outcomes, such as population health, chronic condition management and evidence based medicine.

To achieve this, payers and providers are beginning to align incentives toward achieving the same end results. The sharing of data among the stakeholders is key to achieving the triple aim. Health care is quickly becoming a data and information business, and its future success will be determined by those who develop models that best provide the necessary data to achieve the desired outcome most efficiently.

Depending on the market, different models are likely to emerge. In some, such as Pittsburgh, the financing and delivery of health care services are integrating under single corporate structures. In other markets, payers and health care providers may remain as separate entities but are developing stronger contractual relationships to achieve the necessary alignment of interest and data-sharing, which will ultimately lead to the sharing of gains and risk, thus achieving the triple aim.

Clearly, the stakes are high for these models to be successful. The health care industry is, and will continue to be, both exciting and rapidly evolving during the next three to five years, and beyond. West Virginia's stakeholders need to be ready to meet this challenge.