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## Foreword

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## FOREWORD

SIDNEY D. WATSON\*

Each spring, the *Saint Louis University Journal of Health Law & Policy* and the School of Law's Center for Health Law Studies host a Health Law Symposium featuring leading scholars and experts in the field. Spring 2019 marked the 31st Annual Symposium with *The Struggle for the Soul of Medicaid*.

Medicaid was the “sleeper provision” when Congress created Medicaid in 1965. Today, it is the workhorse of the U.S. health system, covering nearly half of all births, one in three children, and two in three people in nursing homes. Medicaid now provides coverage to one in five Americans, with enrollment soaring to more than seventy-six million people since 2014 when the Affordable Care Act expanded eligibility to include all low-income working age adults. It is both the largest source of federal revenue to states and the second largest item in state budgets after education. The 2019 Symposium and the articles in this Issue explore the future of Medicaid and the competing visions that struggle to define its future.

Professor Sara Rosenbaum delivered the Symposium's Keynote Address, *A Program for All Seasons*,<sup>1</sup> which documents Medicaid's remarkable success at not only providing coverage for the poor but also evolving to meet new challenges. Professor Rosenbaum credits this success to Medicaid's soul as a public health program rather than an insurance model. Professor Rosenbaum is the Harold and Jane Hirsh Professor of Health Law and Policy at the Milken Institute School of Public Health George Washington University. She is an expert on Medicaid who has advised six presidential administrations and fifteen Congresses. This is the third time in thirty-one years that the annual Health Law Symposium has focused on Medicaid, and we are honored that Professor Rosenbaum presented all three keynote addresses.

At the live Symposium, MaryBeth Musumeci spoke about Medicaid's role as the nation's largest payor for long term care. The past and future of Medicaid are defined by the unique role it plays in providing long term services and supports for seniors and people with disabilities. Ms. Musumeci is the Associate

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1. Sara Rosenbaum, *Medicaid: A Program for All Seasons*, 13 ST. LOUIS U. J. HEALTH LAW & POL'Y 5 (2019).

Director for Kaiser Family Foundation Program on Medicaid and the Uninsured, where she concentrates on Medicaid for people with disabilities. We are pleased to present a written version of her presentation, *Medicaid's Role for Seniors and People with Disabilities: Current State Trends*,<sup>2</sup> as part of this Symposium Issue.

Professor Dayna Bowen Matthew's article, *Justice and the Struggle for the Soul of Medicaid*,<sup>3</sup> theorizes that Medicaid is vulnerable because our nation's vision of justice in health care remains uncertain. Her article traces how three theories of justice—egalitarian, utilitarian, and libertarian—struggle to define the past and future of Medicaid. She concludes that an egalitarian view of justice originally motivated Medicaid and should set Medicaid on a course toward a future in which Medicaid not only provides medical coverage but also funds interventions to address the social determinants of health—conditions like poor housing, food insecurity, and toxic stress—that contribute mightily to poor health and bad outcomes. Professor Matthew, in addition to holding two endowed chairs, is founding Director of The Equity Center at the University of Virginia School of Law.

Finally, Jane Perkins' article addresses one of the most contentious issues about the future of Medicaid: work requirements. *The Administration's Medicaid Waivers: Exploding in the Guise of Experimenting*<sup>4</sup> argues that not only are Medicaid work requirements bad policy, but they are unlawful. Ms. Perkins, who is Legal Director for the National Health Law Program, is also counsel for plaintiffs in a series of lawsuits challenging the Trump administration's approval of Section 1115 waivers that allow states to impose work requirements as a condition of Medicaid eligibility. Her article discusses the district court opinions in these cases and explores in depth two foundational legal questions raised by these cases that will have far-reaching impact on the future of Medicaid and administration law in general: (1) Is the Secretary's authority to approve Section 1115 waivers reviewable, and (2) if so, what level of deference, if any, should courts give the Secretary's decision to approve a Section 1115 waiver?

On behalf of the Center for Health Law Studies, I want to thank all of the authors who wrote for this Issue and Matt Salo, Executive Director of the National Association of Medicaid Directors, who spoke at the Symposium. Their thoughtful examination of the issues confronting Medicaid make an important contribution to this ongoing discussion. Thanks, as always, to Cheryl

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2. MaryBeth Musumeci, *Medicaid's Role for Seniors and People with Disabilities: Current State Trends*, 13 ST. LOUIS U. J. HEALTH LAW & POL'Y 17 (2019).

3. Dayna Bowen Matthew, *Justice and the Struggle for the Soul of Medicaid*, 13 ST. LOUIS U. J. HEALTH LAW & POL'Y 29 (2019).

4. Jane Perkins, *The Administration's Medicaid Waivers: Exploding in the Guise of Experimenting*, 13 ST. LOUIS U. J. HEALTH LAW & POL'Y 53 (2019).

Cooper, Program Coordinator of the Center for Health Law Studies, and Amy Sanders, Associate Director of the Center, whose dedicated work made the day-long symposium such a great success. A special thanks to Nathan Gardner, the Managing Editor of this Issue, and to the other *Saint Louis University Journal of Health Law & Policy* students who scoured law, history, medicine, philosophy, and health sciences in search of sources, facts, and public policy.

