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Disparities in Health Care: The Pandemic's Lessons for Health Lawyers

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American Health Law Association Health Law Watch 2021

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Abstract

Population-level disparities in health and health care came to the forefront of U.S. public consciousness in 2020. As the racial, ethnic, and socioeconomic stratification of COVID-19 infection and death rates emerged with chilling clarity, the Black Lives Matter protests of the summer focused millions of Americans on the complex, structural nature of inequity and its long-lasting effects.

Access to quality health care is a "social determinant of health," meaning that it is one of the "non-medical factors that influence health outcomes . . . the conditions in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life." Although it may seem obvious that differential access to high-quality care results in differential health outcomes, less obvious are the ways that multiple factors—including facially neutral laws and organizational practices—interact over time to produce population-level disparities in care and outcomes.

In 2021, all U.S. health lawyers should monitor and consider the following key developments affecting equitable access to health care:

• The ongoing pandemic response and the disparate access to U.S. health care systems that it reveals;

• The ongoing expansion of Medicaid eligibility under the Patient Protection & Affordable Care Act (ACA) and the legality of exceptions to federal requirements granted to state Medicaid programs;

• The continuing evolution in publicly-funded health insurance toward payment models that reward positive health outcomes (and punish poor ones); and

• The ongoing debate over federal law preventing discrimination in health care eligibility and delivery of care.

Differences in health outcomes between populations—defined not only by differences in race, ethnicity, and socioeconomic status, but also by disability status, age, geographic location, language, immigration status, gender, gender identity, and sexual orientation—are not new. Nor are group differences in access to care, insurance coverage, and quality of care that closely align to social, economic, and/or other environmental disadvantage. But, with intensifying and warranted attention to health inequity and its financial and social costs, U.S. health lawyers across the system should be alert to the ways that facially neutral organizational practices and policies reinforce health care disparities and thereby contribute to disparate health outcomes.

Keywords: health, health law, health disparities, health justice, health equity, social determinants of health

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