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Highlights of the New Health Care Reform and its Impact on the Legal Industry

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AGENDA

- Reasons Behind the Health Care Reform Legislation
- Components of Health Care Reform Legislation
- Reform Legislation – What's Next?
- PPACA

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THE REASON FOR HEALTH CARE REFORM

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How the Health Care System Works Now

- Health care in the U.S. is provided by the **public and private sectors**
- The **private sector** includes: private hospitals, independent physicians, and private insurance
- The **public sector** includes: government-run programs such as Medicare (for the elderly and/or disabled), Medicaid (for the poor and/or disabled), the Veteran’s Administration, and public hospitals and clinics

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How the Health Care System Works Now

- Approximately 85% of Americans have health insurance:
  - ►Nearly 60% obtain it through an employer
  - ►About 9% purchase it directly
  - ►Various government agencies provide coverage to about 28% of Americans (there is some overlap in these figures).

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Why is Private Insurance So Expensive?

- **Market forces**: People need and want insurance and are willing to pay more for it, so the price keeps going up.
- Your alternative is to be uninsured → 62% of all **personal bankruptcies** in the U.S. are the result of medical debt.

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The Uninsured

- 15% of U.S. is uninsured (45 million people)
- Among the uninsured population, some 37 million were employment-age adults (ages 18 to 64), and more than 27 million worked at least part time.
- About 38% of the uninsured live in households with incomes over $50,000.

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The Uninsured

- Nearly 36 million of the uninsured are legal US citizens. Another 9.7 million are non-citizens, but the Census Bureau does not distinguish in its estimate between legal non-citizens and illegal immigrants.
- It has been estimated that nearly one fifth of the uninsured population is able to afford insurance, almost one quarter is eligible for public coverage, and the remaining 56% need financial assistance (8.9% of all Americans).
- An estimated 5 million of those without health insurance are considered "uninsurable" because of pre-existing conditions.

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The Underinsured

- In addition to the 15% of the U.S. that is uninsured, another 35% are underinsured. Underinsurance means they are not able to cover the cost of their medical needs.
- In other words, **HALF** of Americans' health insurance needs are not being meet under the current system. That's 150 million people!

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Argument for Health Care Reform

- The US pays twice as much yet lags behind other wealthy nations in such measures as infant mortality and life expectancy.
- Currently, the U.S. has a higher infant mortality rate than most of the world's industrialized nations. The United States life expectancy lags 42nd in the world, after most rich nations, lagging last of the G5 (Japan, France, Germany, UK, USA) and just after Chile (35th) and Cuba (37th).
- The World Health Organization (WHO), in 2000, ranked the U.S. health care system as the highest in cost, first in responsiveness, 37th in overall performance, and 72nd by overall level of health (among 191 member nations included in the study).
- The Commonwealth Fund ranked the United States last in the quality of health care among similar countries, and notes U.S. care costs the most by far.

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Argument for Health Care Reform

- According to the Institute of Medicine of the United States National Academies, the United States is the "only wealthy, industrialized nation that does not ensure that all citizens have coverage" (i.e. some kind of insurance).
- The same Institute of Medicine report notes that "Lack of health insurance causes roughly 18,000 unnecessary deaths every year in the United States.“ while a 2009 Harvard study published in the American Journal of Public Health found a much higher figure of more than 44,800 excess deaths annually in the United States due to Americans lacking health insurance. More broadly, the total number of people in the United States, whether insured or uninsured, who die because of lack of medical care was estimated in a 1997 analysis to be nearly 100,000 per year.

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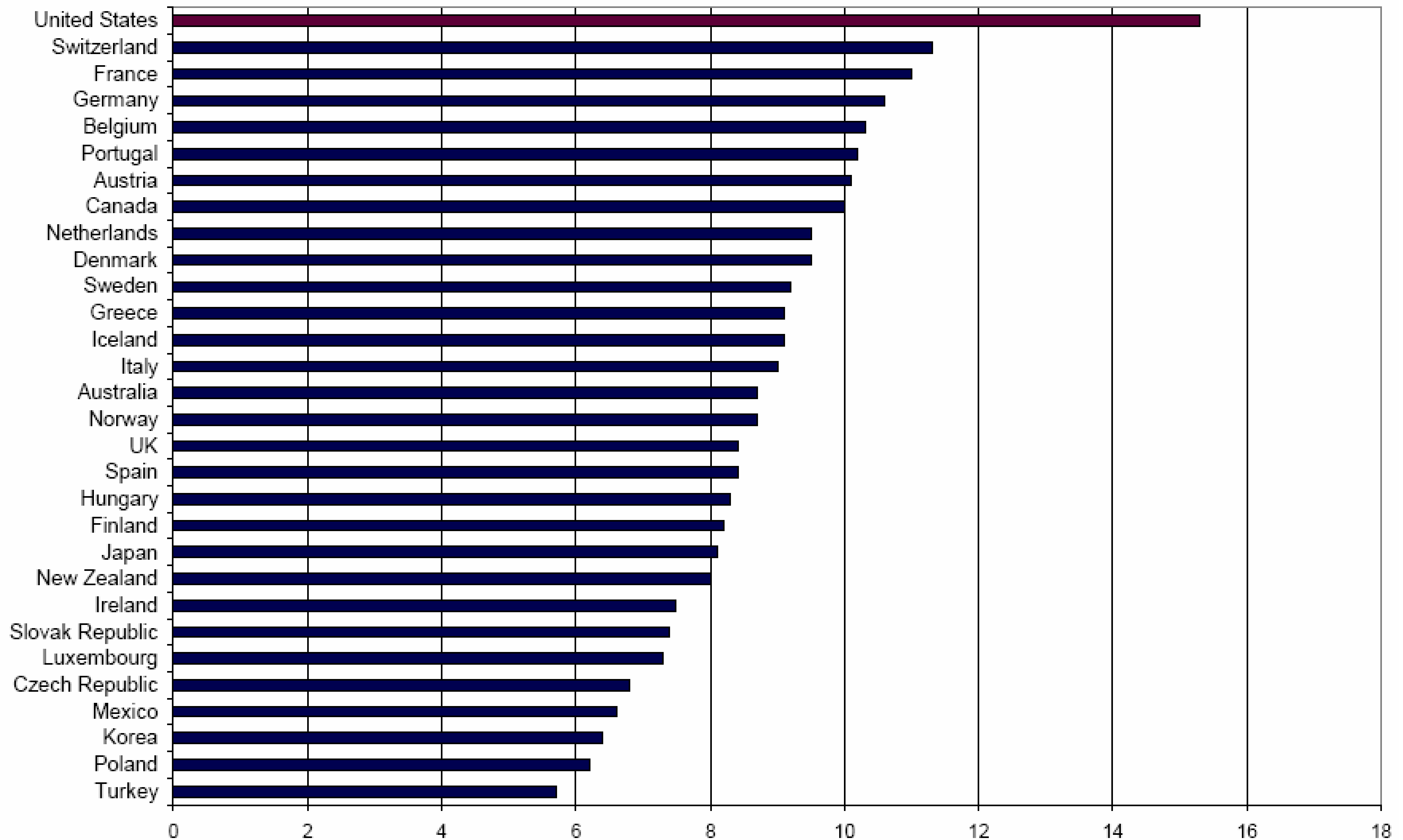
Healthcare Spending as % GDP



Source: Organization for Economic Cooperation and Development, OECD Health Data, 2008 (Paris: OECD, 2008).
Note: For countries not reporting 2006 data, data from previous years is substituted.

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COMPONENTS OF HEALTH CARE REFORM LEGISLATION

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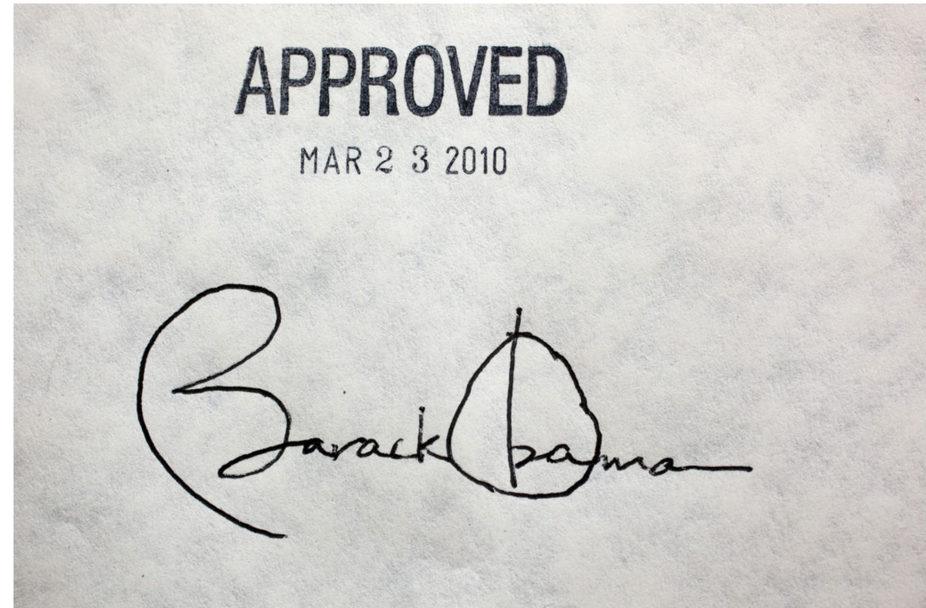
Health Care Reform

•On March 23, 2010, the **Patient Protection and Affordable Care Act** became law, providing for major changes in health insurance procedures.



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Health Care Reform

- The Act is 906 pages long; however, the changes made by the Act are not that complicated.
- The changes made by the plan will be enacted over the next 8 years; some changes are being implemented as we speak.
- The big and controversial changes will not take affect until 2014.

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Changes Implemented in 2010

- Insurance companies are barred from dropping people from coverage when they get sick, **ending the practice of rescission**. Lifetime coverage limits have been eliminated and annual limits restricted.
- **Young adults** are able to stay on their parents' health plans until **age 26**. Many health plans currently drop dependents from coverage when they turn 19 or finish college.
- Uninsured adults with **pre-existing conditions** will be able to obtain health coverage through a new program that will expire once new insurance exchanges begin operating in 2014.

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Changes Implemented in 2010

- A temporary reinsurance program was created to help companies maintain health coverage for **early retirees** between the ages of 55 and 64. This also expires in 2014.
- A **tax credit** becomes available for some **small businesses** to help provide coverage for workers.

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Changes Implemented in 2011

- Medicare provides 10% bonus payments to primary care physicians and general surgeons.
- Medicare beneficiaries will be able to get a free annual wellness visit and personalized prevention plan service. New health plans will be required to cover preventive services with little or no cost to patients.
- A new program under the Medicaid plan for the poor goes into effect in October that allows states to offer home and community-based care for the disabled that might otherwise require institutional care.
- Employers are required to disclose the value of health benefits on employees' W-2 tax forms.
- An **annual fee** is imposed on **pharmaceutical companies** according to market share. The fee does not apply to companies with sales of $5 million or less.

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Changes Implemented in 2012

- Companies will be required to issue 1099 forms to any vendor of services or rental property to which the business has paid more than $600. Form 1099 is also sent to the IRS. Under the existing law, businesses issued the Form 1099 only to individuals who provided services or property to a business. The healthcare law included the same form be issued to corporations as well, and that the form be issued to individuals and corporations that provide property to the business. Only business related payments are reportable, personal payments not. There is number of exceptions, for example: payments for merchandise, telephone, freight, storage, payments of rent to real estate agents are excepted. The health care bill mandate aims to **collect lost revenue** from companies that **under-report** on their tax returns. The provision is expected to raise **$17 billion over 10 years.**

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Changes Implemented in 2013

- A national pilot program is established for Medicare on payment bundling to encourage doctors, hospitals and other care providers to better coordinate patient care.
- The threshold for claiming medical expenses on itemized tax returns is raised to 10% from 7.5% of income. The threshold remains at 7.5% for the elderly through 2016.
- The **Medicare payroll tax is raised** to 2.35% from 1.45% for individuals earning more than $200,000 and married couples with incomes over $250,000. The tax is imposed on some investment income for that income group.
- A 2.9% excise **tax** in imposed on the sale of **medical devices**. Anything generally purchased at the retail level by the public is excluded from the tax.

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Changes Implemented in 2014

- State health insurance exchanges for **small businesses** and **individuals** open.
- Individuals with income up to 133% of the federal poverty level qualify for **Medicaid coverage**.
- Health plans no longer can exclude people from coverage due to **pre-existing conditions**.
- Employers with 50 or more workers who do not offer coverage face a **fine** of $2,000 for each employee if any worker receives subsidized insurance on the exchange. The first 30 employees aren't counted for the fine.
- Health insurance companies begin paying a fee based on their market share.

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Changes Implemented in 2014

- The “**Big One**:”
- Healthcare tax credits become available to help people with incomes up to 400 percent of poverty purchase coverage on the exchange and a premium cap for maximum "out-of-pocket" pay will be established for people with incomes up to 400 percent of FPL. The subsidy will be provided as a advanceble, refundable tax credit (according to a formula). A refundable tax credit is a way to provide government benefit to people even with no tax liability (example: Child Tax Credit).

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Changes Implemented in 2014

Income	Premium Cap as a Share of Income	Middle of Income Range (family of 4)[a]	Avg Annual Enrollee Premium	Premium Subsidy (share of premium)	Avg Cost-Sharing Subsidy
100–150% of federal poverty level	2.1–4.7% of income	$30,000	$600	96%	$3,300
150–200% of federal poverty level	4.7–6.5% of income	$42,000	$2,400	83%	$1,800
200–250% of federal poverty level	6.5–8.4% of income	$54,000	$4,000	72%	0
250–300% of federal poverty level	8.4–10.2% of income	$66,000	$6,100	57%	0
300–350% of federal poverty level	10.2% of income	$78,000	$9,200	44%	0
350–400% of federal poverty level	10.2% of income	$90,100	$14,100	35%	0

Note: In 2016, the FPL is projected to equal about $11,800 for a single person and about $24,000 for family of four.

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Changes Implemented in 2014

- The "**Controversial One**:"
- Impose an annual penalty of $95, or up to 1% of income, whichever is greater, on individuals who do not secure insurance; this will rise to $695, or 2.5% of income, by 2016. This is an individual limit; families have a limit of $2,085. Exemptions to the fine in cases of financial hardship or religious beliefs are permitted.
- In other words, if you can afford insurance and you don't buy it, you will be fined.

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Changes Implemented in 2018

- All *existing* health insurance plans must cover approved **preventive care and checkups without co-payment**.
- A new 40% excise tax on high cost ("Cadillac") insurance plans is introduced. The tax (as amended by the reconciliation bill) is on the cost of coverage in excess of $27,500 (family coverage) and $10,200 (individual coverage), and it is increased to $30,950 (family) and $11,850 (individual) for retirees and employees in high risk professions. The dollar thresholds are indexed with inflation; employers with higher costs on account of the age or gender demographics of their employees may value their coverage using the age and gender demographics of a national risk pool.

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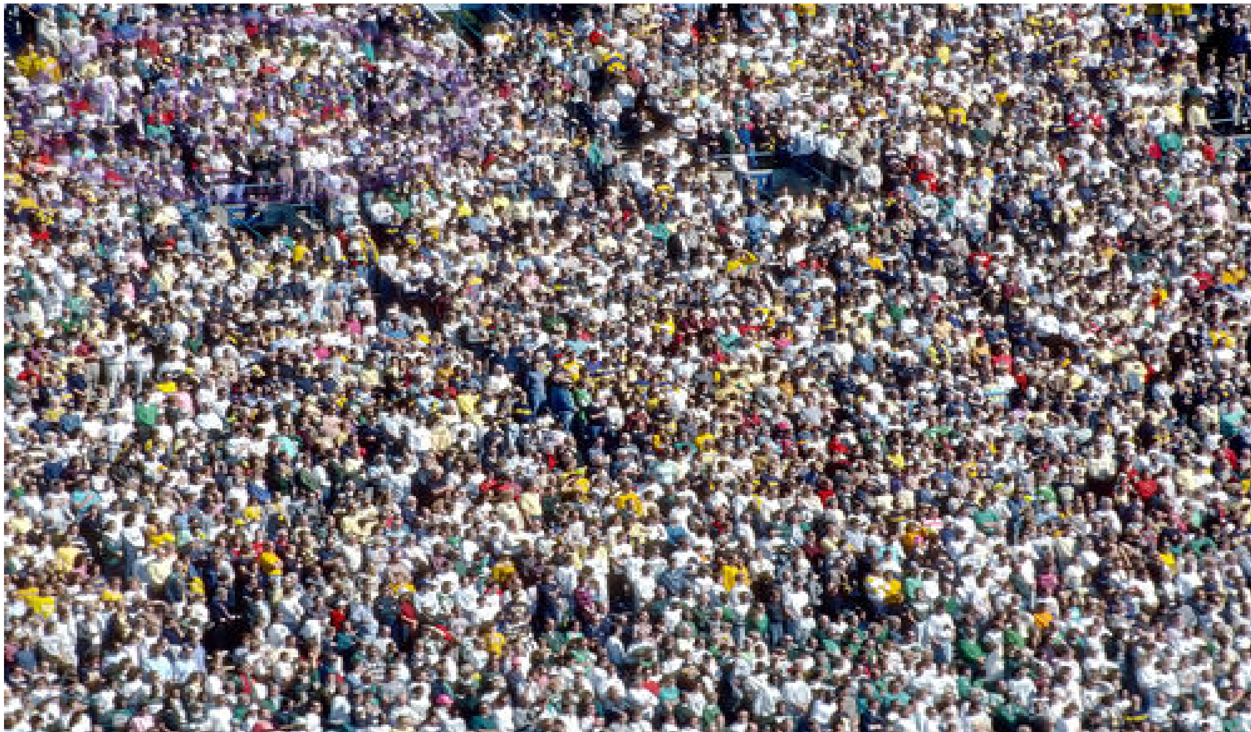
The Result in 2018

- **32 million** people who were uninsured will now be insured, leaving 13 million still uninsured.



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REFORM LEGISLATION – WHAT NEXT?

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The Patient Protection and Affordable Care Act is the most aggressive reform legislation since Medicare!

WHAT WE DON'T KNOW

- WHAT WILL HAPPEN IN 2014
- EFFECT OF ELECTIONS
- CONSTITUTIONAL CHALLENGES
- NEED FOR REGULATIONS
- STATUTORY REVISIONS ARE LIKELY; WITHDRAWAL UNLIKELY
- EFFECT OF CONGRESS' REFUSAL TO FUND

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IMPACT ON LEGAL REMEDIES

- EXPANSION OF LEGAL CLAIMS
  - Creates new violations of anti-fraud laws
  - Loosened restrictions on Qui Tam claimants
  - Extends False Claims Act jurisdiction
  - Enhanced employee protections
- POTENTIAL AREAS FOR NEW CLAIMS

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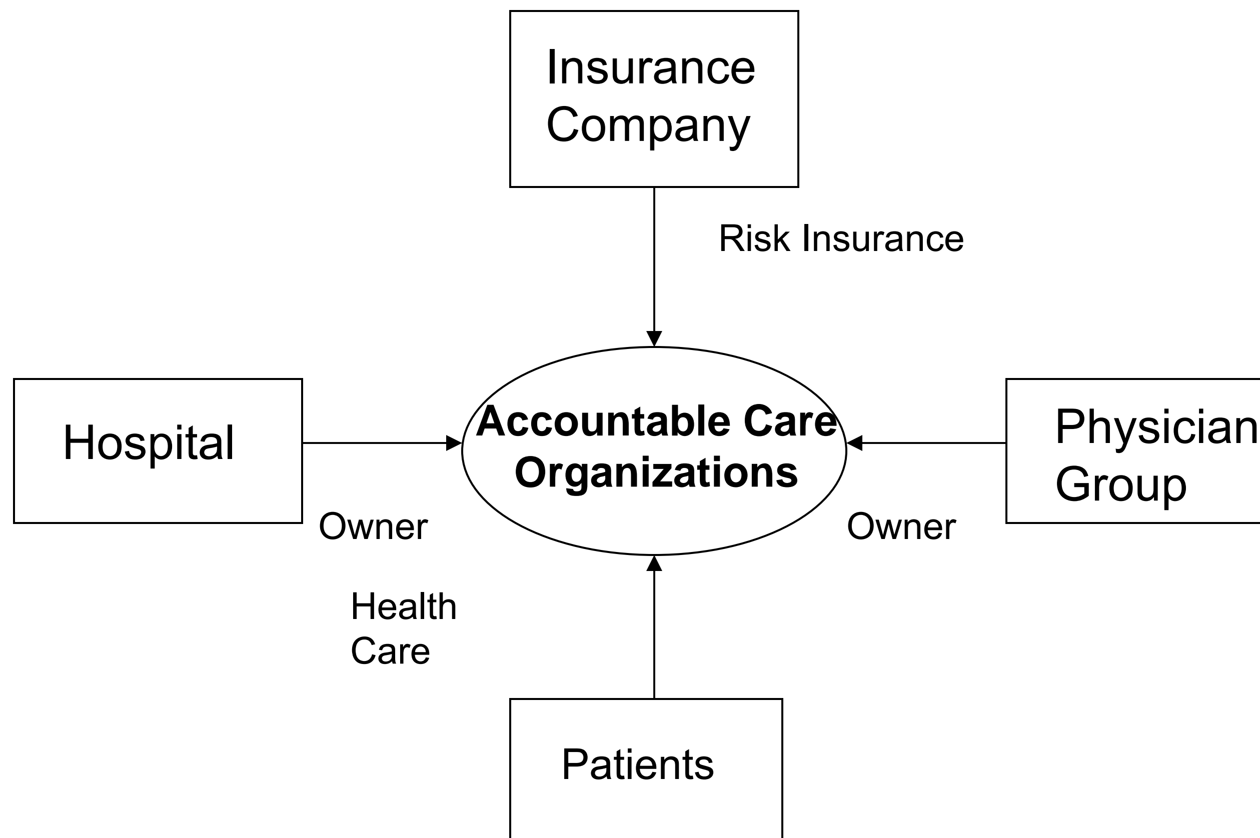
POTENTIAL PATHS TO NEW LEGAL CLAIMS: NEW STRUCTURE



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NEW CLAIMS/NEW DEFENDANTS

- More non-ERISA Policies without ERISA pre-emption – potential application of Chapter 88 Civ. Prac. and Remedies Code
- Insurers and Accountable Care Organizations – What Will They Look Like? What New Exposure Will We Find?
- Prompt Pay Defendants and Damages Expand

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NEW REQUIREMENTS/NEW LIABILITIES

- DTPA – Representing that an agreement confers or involves rights … which it does not really have
- New Standards of Care Will be Enforced
- Clinical Guidelines – Can Implicate New Theories of Negligence
- Disclosures of Physician Relationships With Drug, Device, Biological or Medical Supply Manufacturers (Sunshine Provisions on Potential Conflicts of Interest)

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RESTRUCTURING THE HEALTH CARE INDUSTRY – MORE TRANSACTIONS

- Consolidation of hospitals, providers and insurers
- Employment of physicians by hospitals and other large institutions

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THANK YOU – QUESTIONS?

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