SYMPOSIUM NOTE: THE HEALTH CARE INSURANCE MARKET'S MORAL HAZARD DILEMMA

Both panelists, Chris Robertson and Charles Silver, focused on the concept of moral hazard as a main driver of the health care market's exorbitant costs. The panel, *Health Insurance Studies*, was moderated by Professor Govind Persad, Associate Professor at the University of Denver, Sturm College of Law.[1]

University of Arizona, Rogers School of Law Professor and Associate Dean for Research and Innovation, Christopher Robertson,[2] began the panel discussion by explaining the concept of moral hazard as the proposition that health insurance incentivizes patients to consume more healthcare than needed. Proponents of moral hazard argue that because patients pay for treatment through third party insurance companies, they do not undergo a cost-benefit analysis as they would when paying for traditional market goods. On an individual level, this lack of analysis causes patients to choose to undergo unnecessary treatment and, on a macro level, this lack of analysis creates a system that increases health care costs without advancing patient health. Professor Robertson explained that moral hazard has been an obstacle to achieving universal healthcare in the United States for decades.

Professor Robertson continued by investigating whether the insurance market creates economic waste as the moral hazard concept argues, or whether the insurance market serves its intended purpose of creating access to health care. To disaggregate these two effects, Professor Robertson designed vignette experiments to study how individuals choose when to undergo expensive medical treatment when they had either no insurance, traditional insurance, or the kind of indemnity insurance common in car and home insurance schemes. Professor Robertson found that patients consumed more care when they had indemnity insurance versus when they were required to pay out-of-pocket. This revealed that having some kind of insurance increased a patient's access to care. However, the studies showed that there was little difference in patient choice to undergo care when a patient had indemnity versus traditional health insurance. These findings led Professor Robertson to conclude that insurance largely creates access to health care, and that while some patients may have opted for unnecessary treatments, moral hazard was undetectable with experimental controls. With this, Professor Robertson concluded that moral hazard is not a significant driver of wasteful spending in the healthcare market and

1. *Faculty Page of Govind Persad*, U. Denv. Sturm C. L., https://www.law.du.edu/faculty-staff/govind-persad (last visited Feb. 14, 2018).

2. *Faculty Page of Christopher Robertson*, U. Ariz. James E. Rogers C. L., https://law.arizona.edu/christopher-robertson (last visited Feb. 14, 2018).

that access to care is the key function of health insurance. Thus, cost barriers to care such as co-pays and deductibles, common in traditional health insurance policies, are doing more harm than good.

In contrast Professor Charles Silver[3] argued that there is rampant overuse of health care and that the health care system should be driven by market-based competition in order to drive down costs. Professor Silver asserted that overuse of care is evidenced by the weak correlation between health care treatment and patient health. Professor Silver used prostate cancer screenings and mammograms, which screen for breast cancer, as examples of wasteful treatments that also harm patients. Professor Silver stated that many tests result in false positives, which harm patients through further unnecessary treatment or expose patients to infection and adverse side effects. Further, Professor Silver stated that the health care industry causes an estimated one trillion dollars in unnecessary or ineffective treatment per year. Professor Silver found that financial security and other social determinants of health, rather than health care coverage, determine health status. He argued that in order to increase our population's health status, we should focus government spending on increasing the financial security of those living in poverty and he used Medicaid as an example of a government program moving in this direction. Professor Silver emphasized that Medicaid payments for nontraditional medical services such as housing and transportation are improvements, but for welfare spending to be truly effective, Medicaid should be converted to a cash transfer system. Professor Silver concluded that a cash transfer model of government spending would allow for effective patient spending on social determinants of health, thus increasing financial stability and ability to pay for necessary health care later on. Further, allowing Medicaid recipients to choose how to spend their welfare money will increase price competition in the health care market and ultimately drive down costs.

While the Professors' presentations came to different conclusions, both agreed that provider care is a significant driver of health care costs. Professor Silver and Professor Robertson stated that existing practice trends of over prescribing drugs and promoting expensive surgeries with low success rates are examples of medical practices in need of reform. Professor Robertson added that patients in his study often deferred to their doctor's recommendations, indicating that further work is necessary for determining whether supply side interventions would affect health care costs. Due to increasing health care costs and the persistence of incomplete insurance policies, the presenters concluded that policymakers will continue to grapple with the concept of moral hazard.

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3. *Faculty Page of Charles Silver*, U. Tex. Sch. L., https://law.utexas.edu/faculty/charles-m-silver/ (last visited Feb. 14, 2018).

* *Chelsea Kelleher*

* Staff Editor for the Denver Law Review and 2020 J.D. Candidate at the University of Denver Sturm College of Law.