

Health Law Disruption: ***2030 and Beyond***

Anticipated Trends for the Health Care and Health Law Industries



The 2030 Task Force of the American Health Law Association was created in July 2019 to research anticipated changes in the health care and health law industries over the next ten years. This White Paper is based on and expands the Task Force's analyses and findings, and is being shared with the public and the entire health law community to educate and facilitate a constructive dialogue among all stakeholders involved in the continually evolving health care industry.

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—From a declaration of the American Bar Association

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Health Law Disruption: 2030 and Beyond

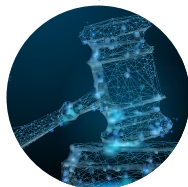
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Executive Summary

In July 2019, the American Health Law Association formed the 2030 Task Force to research and analyze trends in the health care and health law industries. The Task Force found that “disruptive innovators,” such as new providers, new care delivery models, new technology, and increased access to health law resources are likely to feature prominently. At the same time, however, they found that a very active innovation and evolution process was taking place in how health care is being delivered, and how health law is being practiced. Influencing that evolution and innovation are the following top trends that we anticipate will occur in the health care and health law industries over the next ten years:

Health Care Industry Trends

1. Changing demographics and ongoing financial pressures will continue to fuel consolidation in the health care industry and the drive to value-based contracting.
2. Despite the impact of financial pressure on traditional health care providers, significant financial resources will be deployed to take advantage of innovations in the health care delivery system. Key areas of focus will be creating more access to health care through telehealth; increasing ambulatory platforms; the use of data to drive how care is delivered; and the use of technology to address a workforce shortage.
3. Federal health policy will continue to have a significant impact on the health care industry, with a particular focus on initiatives to contain cost.

Health Law Industry Trends

1. With an evolving health law workforce, increased complexity in the health law industry, the expansion of efficient technology, and cost containment pressure, there will be an increased demand for lower cost but more qualified health law professionals who can immediately service the client.
2. There will be a substantial increase in the competition to provide health law services. The expansion of those providing health law services will not be limited to lawyers—use of technology/artificial intelligence will increase, and barriers to the practice of law by non-lawyers may potentially be reduced. This trend will be fueled by the growth in health law education programs not limited to lawyers; continued growth of consulting firms providing legal services; the increased availability of technology to perform lower level tasks; and the possible evolution of regulations governing the unauthorized practice of law.

Health Care Industry Trends in the Next Ten Years

Demographics, Financial Pressures, Consolidation, and Value-Based Contracting

Anticipated Trends Over the Next Ten Years

1. Continued financial pressure on hospitals due to changing demographics, rising cost of care, and more pressure on reimbursement, including value-based purchasing requirements.
2. Continued consolidation of the health care delivery system, including health systems, pharmacies, and payers.
3. Continued efforts to move to value-based contracting by shifting risk to providers.

Changing demographics and ongoing financial pressures will continue to fuel consolidation in the health care industry and the drive to value-based contracting. Each of these industry disruptors are discussed in greater detail below.

The Impact of Changing Demographics

At the macro level, the health care industry continues to be one of the fastest growing and most consistent segments of the U.S. economy. In 2007, the health care industry accounted for 16.4% of gross domestic product (GDP) at \$2.3 trillion. By 2022, it is anticipated to account for 19.9% of GDP at \$5 trillion.¹

Enrollment in Medicare has increased from 19 million to 51 million over the past 40 years. From a demographic perspective, it is anticipated that the number of people

over age 50 will grow from 109 million to 132 million by 2030.² The population of people age 65-74 will nearly double from 21.7 million in 2010 to 38.6 million by 2030, and as shown in Figure 1, the U.S. Census Bureau is estimating that those 65 and older will reach 94.7 million by 2060. While the population is aging, the birth rate is declining,³ and health care costs are rising overall—from 2012 to 2016, the cost of health care rose across all age groups.⁴

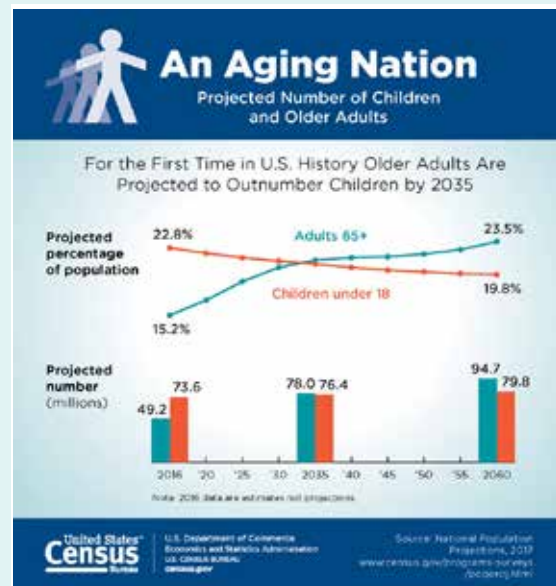


Figure 1. An Aging Nation: Projected Number of Children and Older Adults

“Disruptive innovators” in the health care and health law industries are driving evolution and fueling innovation.

Other Significant Health Care Challenges

We anticipate that the health care industry will be influenced by significant additional health care challenges, including but not limited to behavioral health issues, the ongoing opioid epidemic, antibiotic resistance, cancer, other chronic medical conditions, large-scale public health crises (e.g., COVID-19), and the health care disparities and social determinants of health brought to the forefront by COVID-19.

It is anticipated that by 2025, the U.S. will have a shortage of 236,880 mental health professionals⁵ due in large part to an increased need for mental health services and aging mental health professionals who are retiring at a faster rate than younger mental health professionals are able to replace them. It is estimated that over the past decade, more than 1 million people died as a result of drug overdose, alcoholism, and suicide. If the current trends continue, approximately 2 million additional lives could be lost over the next five years.⁶

The Centers for Disease Control and Prevention (CDC) published an infographic on the “Future Health of our Nation.”⁷ The document identified three significant anticipated trends by 2030: (1) cancer will overtake heart disease as the #1 cause of death; (2) the number of Hepatitis C-related deaths may grow as much as three times the current rate; and (3) Alzheimer’s may become the fourth leading cause of death at over 150,000 death per year. In addition, the World Health Organization issued a report in April 2019, finding that if no action is taken to address antimicrobial resistance by 2050, we could experience 10 million deaths each year, and by 2030, antimicrobial resistance could force up to 24 million people into extreme poverty.⁸

During the spring of 2020, the impact of the COVID-19 pandemic on minority communities and racial justice protests following the death of George Floyd heightened attention on the nation’s stark health care disparities and the systemic failures to address the social determinants of health.

The disproportionate toll of COVID-19 on minority communities, including increased risks of infection, severe illness, and mortality,⁹ has brought new urgency and focus to ongoing efforts to find ways for health care system stakeholders to work with local communities to address this critical public health challenge. For example, in June 2020, 36 health care organizations in Chicago took a first step by pledging to work together to improve access to care and eliminate racial biases that contribute to poor outcomes.¹⁰ Diversity and inclusion initiatives

Due to COVID-19, half of U.S. hospitals will have negative margins without additional federal funding.

that address gaps in the health care workforce also are a priority for health care systems seeking to better serve increasingly diverse patient populations.¹¹

At the forefront of these efforts is growing recognition of the need to address social determinants of health, which the CDC defines as conditions in the places where people live, learn, work, and play—such as housing, food security, transportation, and education—that affect a wide range of health risks and outcomes.¹² The federal government, through changes in Medicaid and Medicare reimbursement policies, and commercial payers are increasingly focusing on addressing social determinants toward improving clinical outcomes and reducing health care costs overall.¹³

Health lawyers will play an integral part in establishing and operationalizing policies for advancing health equity¹⁴ and addressing the social of determinants of health.

Continued Financial Pressures

In spite of the impact that changing demographics is anticipated to have on the nation’s health care system, financial analysts see many positive signs due in part to the aging population and its increasing need for health care services.¹⁵ However, different sectors within the health care industry will be impacted in different ways—some are faring/will fare better than others. For example, operating margins for hospitals have decreased from 5.5% in 2015 to 1.8% in 2018. This decrease has equally impacted top credit-rated hospitals, with “A” credit-rated hospitals experiencing a decrease in operating margins from 3.9% in 2015 to 2.2% in 2018.¹⁶ In fact, the recent COVID-19 pandemic has highlighted the vulnerability of thin hospital margins. A July 2020 KaufmanHall report found that half of U.S. hospitals will have negative margins without additional federal funding.¹⁷ With increasing financial pressure on inpatient admissions, data supports hospitals’ continued focus on shifting more care to the outpatient setting.¹⁸ On the other hand, margins are more favorable for pharmaceutical companies (10.94%); health information technology companies (9.55%); and health care product companies (5.80%).

Growing Health Care Facility Debt and Credit Rating

While the projected revenue growth of the overall health care industry is viewed favorably, the increase in hospital and health care facility debt is concerning. Hospitals and other health care facilities are significantly leveraged with debt. In fact, this portion of the health care sector's debt has increased 308% since 2009, which is ten times faster than the growth in GDP.¹⁹

The increased debt, coupled with a decrease in revenue growth and operating margins, led Moody's, Fitch, and Standard & Poor's Global (S&P Global) to issue a negative rating for the U.S. not-for-profit and public health care sector over the past few years.²⁰ 2017 was a particularly difficult year for health systems, as many reduced their workforce and reorganized to adjust to the financial pressures.²¹ In December 2019, Moody's, Fitch, and S&P Global upgraded the ratings of the U.S. not-for-profit and public health care sector to stable status for 2020. This more favorable outlook was based on an expected 2%–3% growth in operating cash in 2020 driven by a higher Medicare reimbursement rate,²² a slight increase in commercial rates, tighter expense controls, and an increase in patient volume.²³ Three months later

in March 2020, Moody's revised its forecast to a negative outlook due to the impact of COVID-19.²⁴ Given the current COVID-19 pandemic, there is a high likelihood that patient volumes will continue to be depressed, causing additional financial pressure beyond the systemic economic challenges normally experienced within health care systems.

Consolidation of Sectors Within the Health Care Industry

Consolidation continues to be a significant trend in many segments of the health care industry (see Figure 2). The pharmacy industry, for example, has experienced significant consolidation with 70% of retail drugstore purchases controlled by the four largest retail pharmacy chains. By contrast, the five largest health insurers control 44% of the insurance market, and the five largest multi-hospital systems control 10% of the hospitals and 9% of total hospital revenues.²⁵

Value-Based Contracting

While changes to the reimbursement system from fee-for-service to value-based has been a consistent topic over the past 15 years, we believe the push to value-based reimbursement and increasingly shifting risk to providers will continue and, in some cases, be significantly advanced. We do not think a seismic event will occur that suddenly transforms the entire industry to a value-based reimbursement model, but some sectors will be better positioned to make this transition while others will not have the infrastructure to achieve it.

Consolidation continues to be a significant trend in many segments of the health care industry.

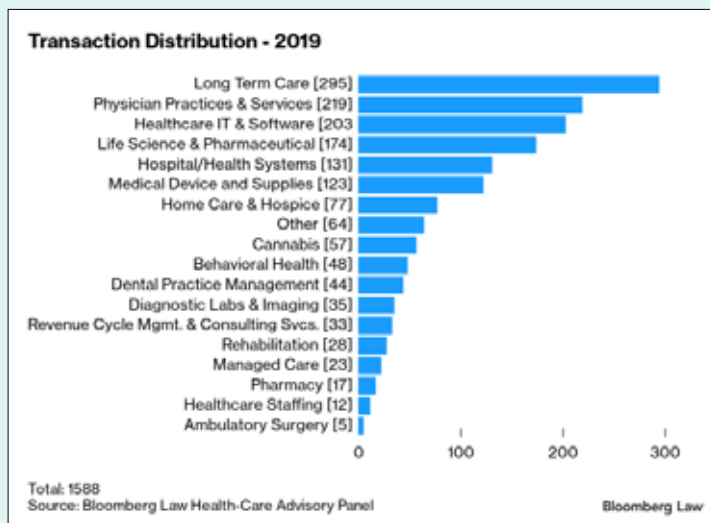


Figure 2. Transaction Distribution-2019²⁶

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Innovations in the Health Care Delivery System – Telehealth, Data, and Technology

Anticipated Trends Over the Next Ten Years

1. Significant investment in health care technology will improve access to care and supplement the current workforce.
2. Demand for data will remain high. With more available funding, there will be better opportunities to take advantage of the data. We anticipate that payers will be the most significant force in terms of collecting and effectively using data.
3. We anticipate significant legal issues regarding whether technology is “practicing” medicine; the evolution of the corporate practice of medicine; data use and privacy laws; and the expansion of health care industry partnerships between technology companies and health care providers.

Despite the impact of financial pressure on traditional health care providers, significant financial resources will be deployed to take advantage of innovations in the health care delivery system. Key areas of focus will be creating more access to health care through telehealth; the use of data to drive how care is delivered; and the use of technology to address a workforce shortage.

Creating More Access to Health Care Through Telehealth²⁷

The coronavirus pandemic pushed telehealth to the forefront almost overnight, and we anticipate that the substantial increase in the use of telehealth technology is here to stay. Many hurdles still remain in terms of improving the benefits of telehealth technology, in addition to any legal issues associated with privacy laws, private equity investment deals, intellectual property, regulations, and reimbursement. Despite these hurdles, the spike in telehealth use during the COVID-19 pandemic

COVID-19 pushed telehealth to the forefront almost overnight.

clearly demonstrated that it worked, and worked well, for low-acuity patient visits and follow-up appointments.

In 2017, over \$5.8 billion was invested in digital health care companies. Companies such as Amazon and Google continue to invest significantly in the health care industry. Technology advancements cover a wide scope of services and functions and are being used to increase access to health care services. We are already seeing changes with reimbursement to help compensate for emergency telemedicine services; numerous providers—as well as payers—are offering mobile health access for patients; and on-demand care is becoming more prevalent and will impact how and where patients receive care. Increasing use of mobile health and data analytic tools will allow health care providers to diagnose and treat patients remotely.²⁸ With an increased focus by health systems on the need for stronger ambulatory platforms,²⁹ technological advancements will help care for the patient outside traditional brick-and-mortar structures.

Use of Data to Drive How Care is Delivered

Venture capital (VC) and private equity (PE) funding in the health care industry has significantly grown over the past five years. A recent MorganStanley Research publication noted that as a percentage of total deals across PE and VC, health care grew from 13% in 2013 to 16% in 2018.³⁰ The MorganStanley publication also noted that “private equity managers currently have a record \$1 trillion in dry powder to deploy, which could mean an additional \$130-\$260 billion in health care deal capacity from current funds.” Investment capital in health care technology is focused on three broad areas: (1) data; (2) optimizing outcomes; and (3) driving efficiencies.

Investment capital in health care tech is focused on data, optimizing outcomes, and driving efficiencies.

One of the most interesting insights from the MorganStanley publication is that in their list of health care service disruptors, only 5% of the deals involve payers and yet, those deals account for 50% of the funding. The publication noted that “Payers have the potential to unlock the power of patient data, as companies that can leverage this data to driving insights and changes in behavior could, if successful, reshape the cost curve and transform the health care ecosystem.”³¹

Use of Technology to Address a Workforce Shortage

We do not anticipate that the development of health technologies and artificial intelligence (AI) will have a substantial impact on the health care workforce. Our analysis further contends that the health care industry will continue to operate at a substantial shortage in a number of patient care areas, such as nursing. The hope, however, is that technology will make nursing care, as well as other health care services, more efficient so that the impact of workforce shortages is softened and nurses’ burdens are lessened, which would expand their capacity for patient care.³² In Japan, robots are used to lift and move patients and alert nurses to the potential danger of a patient falling out of his/her bed.³³ In another example, one individual can serve as a one-to-one sitter for up to 12 patients through camera-video monitoring.

In some cases, there is a perceived vulnerability of certain medical specialties, such as radiology due to AI’s current ability to provide initial reads of imaging studies traditionally performed by a radiologist (Figure 3 lists the medical specialties that will likely be impacted by the growing use of technology in health care).³⁴ For an emergency department, these faster AI reads of a patient’s x-rays can be advantageous in terms of quickly implementing a care plan. While it does seem that certain specialties could see a significant change in workflow routine, it was noted that many of them—in this case, radiologists—will refocus into other areas

of service, such as interventional radiology, which is a health care service that cannot be performed by AI.

However, with the increase in technology to provide care, significant legal issues may arise regarding whether technology is “practicing medicine.” Other issues that will need to be addressed as technology use for patient care increases will concern the corporate practice of medicine, data and privacy laws, and expanding health care industry partnerships between technology companies and health care providers.



Figure 3. Technology’s Impact on Medical Specialties

Source: Dr. Bertalan Meskó, *The Medical Futurist*, medicalfuturist.com.

Investment in patient care technology can blunt the impact of workforce shortages.

Federal Health Policy

Anticipated Trends Over the Next Ten Years

1. Increasing financial pressure on certain sectors – Government programs are generally perceived to be less favorable payers for items and services than their commercial counterparts. If an increasing percentage of patients will be enrolled in government programs, and policymakers will seek to pay less for items and services furnished to these individuals, certain health sector stakeholders will be under increasing downward revenue pressure. This financial pressure may induce those stakeholders to control their cost of goods and services purchased, including legal costs. Stakeholders may seek to achieve this by bringing more capability in-house and seeking less costly external service providers.
2. Increasing transactional activity resulting from alignment and consolidation – Increasing downward revenue pressure will encourage health sector stakeholders to offset revenue losses through other sources (e.g., payer mix and expanded services) and reduce costs to maintain margins. These stakeholders may seek to consolidate with other stakeholders to increase market power (i.e., horizontal consolidation) or diversify services (i.e., vertical consolidation). Disruptors seeking improved ways of delivering items and services will enter markets. Stakeholder alignment and consolidation—and the emergence of disruptors—will require commercial transactions (e.g., contract arrangements, mergers, acquisitions, and joint ventures), and this transactional activity could lead to increased demand for legal services.
3. Increasing need for compliance and defense activity – Ever-changing regulatory environments and increasing transparency obligations will sustain demand for professionals with specialized health law expertise. Growing enforcement activity likewise will generate the need for professionals with specific knowledge of the industry and attendant regulatory environment.

Federal health policy will continue to have a significant impact on the health care industry with a particular focus on initiatives to contain cost, and five of those megatrends are discussed in greater detail below. We believe that while these megatrends will impact the health law industry in several ways, some of the most profound and anticipated implications will likely be the three described above—increasing financial pressure on certain sectors; increased transactional activity as a result of alignment and consolidation; and increasing need for compliance and defense activity.

Five Megatrends in Federal Health Policy

Federal health policy is, in many ways, directed by political parties and individual actors. U.S. Presidents (and their appointees) have federal health policy goals, and Congress has a substantial role in influencing federal health policy. House speakers, Senate majority leaders, and committee chairs all determine which legislation advances and, to varying degrees, exert pressures on federal agencies that influence action.

As new administrations come to power and biannual elections bring change in congressional leadership, federal health policy priorities change. Between now and 2030, the U.S. government will undergo three presidential elections and six congressional elections. The result of those elections and the precise course of federal health policy over the next decade is unknowable, but while the year-to-year zig and zag of policy direction may blur the edges, it is possible to identify durable high-level federal health policy objectives that are commonly held and shared by both parties and most political actors such that seeing a broad trajectory of federal health policy or megatrends from now to 2030 is feasible.

Federal Health Policy Megatrends:

1. Increased role of government programs
2. Increased focus on cost containment
3. Dynamic regulatory environment
4. Increased enforcement activity
5. Increased consumer empowerment

The 2030 Task Force consulted six individuals who hold or have held senior federal health policymaking positions. They remain actively engaged as business leaders observing and shaping federal health policy. They also represent bipartisan perspectives: three self-identified Republicans and three Democrats.

Informed by their experiences and insight, the Task Force identified five megatrends in federal health policy that have been consistently pursued in recent decades and that are very likely to be pursued for at least the next decade. The megatrends (detailed below) that will dominate an agenda at any given time—and specific policy proposals that those in power will use to advance those megatrends—will vary. Nonetheless, these five megatrends are likely to remain and be relatively constant over the next ten years, if not longer.

1. Increasing Role of Government Programs

Federal policymakers are expected to seek new ways to decrease the number of uninsured and underinsured Americans. For most of the 20th century, federal leaders have sought to decrease the number of and extent to which Americans are exposed to the costs of medical care. President Harry S. Truman is largely credited with being one of the first U.S. presidents to pursue a federal health insurance program. President Lyndon B. Johnson realized that vision in 1965 with the enactment of Medicare and Medicaid, and nearly every U.S. President since has in ways large or small increased the scope of eligibility or benefits for those programs.³⁵ President Barack Obama signed the Affordable Care Act, which further narrowed the number of uninsured by 20 million people.³⁶

Pre-COVID-19, an estimated 27.9 million non-elderly were considered uninsured,³⁷ and another 44 million were considered underinsured.³⁸ However, the coronavirus pandemic changed the landscape in just a matter of months. Between February and May 2020, an estimated 5.4 million laid-off workers became uninsured due to the economic hardships caused by COVID-19.³⁹ Needless to say, extending health insurance coverage will be a major topic in the 2020 presidential election (as it was in the

2018 mid-term congressional election), and will be a goal that is likely pursued by whomever occupies the White House.

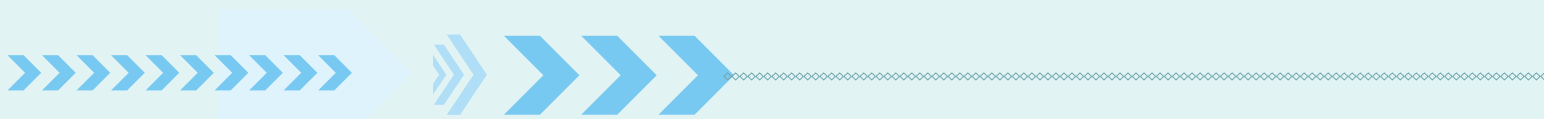
Specifically, how different leaders may pursue this goal will vary, but regardless of who is in charge, they likely will seek to leverage existing federal and state programs like Medicare, Medicaid, and the Affordable Care Act, among others. The net result will be an increasing percentage of individuals enrolled in, and payments coming from, government programs.

2. Increasing Focus on Cost Containment

There are many ways federal policymakers can and will seek to wrest control of the growing cost of health care. Typical and likely ways of doing so include the following:

- **Rate regulation** – One of the easiest ways to contain federal health care spending is to simply reduce the amount that the federal government pays for services. Recent examples include (1) site neutral policies that seek to eliminate disparities in the amount federal programs pay for similar services in different settings (*e.g.*, the 2015 law that directed Medicare to pay the same amount for certain services furnished in hospitals and physician offices); (2) targeted service-specific payment reforms or reductions (*e.g.*, the 2018 law reducing Medicare payment for physical and occupational therapy services to 85% of then current levels); (3) lower annual inflation adjustments (*e.g.*, the 2018 law that reduced annual inflation adjustments for physician services from 0.5% to 0.25 %); and (4) clawbacks (*e.g.*, the 2011 law that cut Medicare payments by 2% across the board).

- **Shifting risk from the government to the private sector** – Over the past four decades, the federal government has been steadily shifting risk to contracted payers and providers. The shift began with prospective payment systems, but is now increasingly reflected in the growing use of managed care programs in Medicare and Medicaid, larger payment bundles, value-based purchasing programs, and two-sided risk models, all of which are intended



to incentivize reduced utilization and cost. The Maryland all-payer model is one extreme example that conceivably could be extended to other states or regions.⁴⁰

► **Care alternatives** – Policymakers likewise are bringing new ideas and flexibility to the mode of care, allowing greater use of distant care through telehealth technologies, greater use of lower-skilled and lower cost providers (*e.g.*, nurses instead of physicians), and greater availability and use of preventive services.

3. *Dynamic Regulatory Environment*

Nearly every two years, Congress features at least one piece of substantial health care legislation (*e.g.*, the Medicare Access and CHIP Reauthorization Act of 2015 and Bipartisan Budget Act of 2018), and about once per decade, major legislation is enacted (*e.g.*, the Medicare Modernization Act of 2003 and the Affordable Care Act of 2010). These laws invariably spawn new and revised regulations. In addition, some administrations pursue increased regulation of the health industry, while others seek to deregulate. Under the Trump administration, for example, recently proposed sweeping changes to federal physician self-referral and kickback proscriptions are part of a larger deregulatory agenda.

Regardless of the particular legislative directive or objective sought by a given administration, this ebb and flow will create and prolong a dynamic regulatory environment, one in which health care regulations are frequently evolving and being re-written.

4. *Same or Increased Enforcement Activity*

In 2018, the most recent year for which data is available, the federal government recovered \$2.8 billion through federal enforcement activity.⁴¹ As the role of the federal government in paying for health care increases, the level of enforcement activity likely will increase too. New technologies also will provide law enforcement with enhanced tools to detect and pursue fraud, waste, and abuse.

5. *Increase in Consumer Empowerment*

One of the ways in which the current administration is seeking to contain health care costs and federal expenditures is by enlisting consumers in their consumption decisions. It is widely believed that inadequate and imperfect information contributes substantially to why consumers of health care services are insulated from or unable to make informed consumption decisions. The current administration is seeking to address this deficiency by requiring greater disclosure of the cost of health care. For example, the U.S. Department of Health and Human Services is presently seeking to require pharmaceutical manufacturers to disclose the cost of their drugs in advertising and require hospitals to disclose payer-specific negotiated rates for select items and services. This is not a Republican-only objective. The Affordable Care Act, enacted by a House and Senate controlled by Democrats and signed by a Democratic President, likewise required hospitals to post charge information. We expect the trend of new transparency policies and technological advancements making disclosed information more comparable to continue over the next decade.

Health Law Industry Trends in the Next Ten Years

Increased Demand for Lower Cost Health Law Professionals

Anticipated Trends Over the Next Ten Years

1. Technology will continue to impact the types of health law services demanded by the health care industry.
2. The demand for some traditional health law services may decrease due to technology advancements.
3. The demand will continue for non-attorney health law professionals with more advanced and specialized capabilities.

With an evolving health law workforce, increased complexity in the health law industry, the expansion of efficient technology, and cost containment pressure, there will be an increased demand for lower cost but more qualified health law professionals.

The health law industry is currently in the midst of rapid change. As illustrated in Figure 4, we have seen significant growth in the in-house counsel model, continued consolidation of law firms, the introduction of non-law firm organizations providing traditional legal services, the expansion of on-demand legal insight that is consumed directly by all health law professionals, and the ongoing pressure on the traditional economic model for legal services, *i.e.*, the billable hour. In addition to these changes, advancements in technology will impact the health law industry.

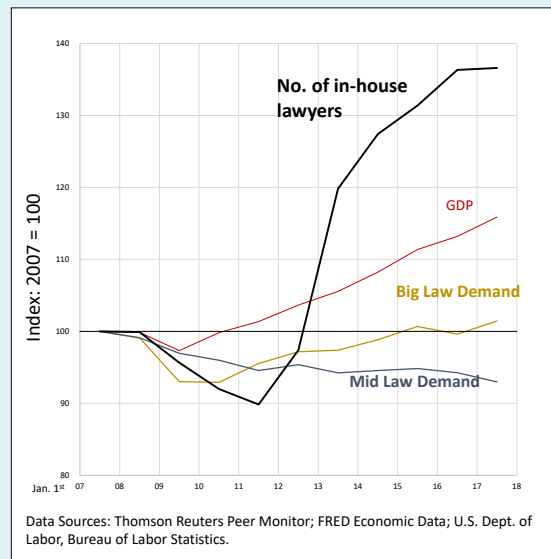


Figure 4. In-House Lawyer Growth and Law Firm Demand 2007-2017⁴²

Source: Thomson Reuters Peer Monitor. Copyright 2020 by Thomson Reuters. All Rights Reserved.

Expansion of Efficient Technology

Over the past few years, there have been numerous stories about large firms using IBM's Watson (AI) to assist lawyers. Most notably, the law firm of Baker Hostetler is using ROSS (a version of Watson) to assist with its bankruptcy practice.⁴³ ROSS can sort through thousands of documents and conduct legal research. However, AI is not limited to collecting data and conducting research; AI can also help analyze, defend, and argue cases. For example, a British teenager created an AI system to defend against parking tickets.⁴⁴ Over 215,000 have used DoNotPay (donotpay.com) in London, New York, and Seattle to successfully create arguments to defend against parking tickets.

There will be an increased demand for lower cost, but more qualified, health law professionals.

Many fear that with rapid advancements in technology, we will see a decreased need for lawyers. In March 2016, Deloitte published a report stating that 39% of jobs in the legal sector will be automated through the use of technology in the next ten years.⁴⁵ It is not far-fetched to think that AI will one day be able to quickly draft and/or review a physician contract or research a compliance issue through a sophisticated program. In fact, Harty Springer recently publicized that it contracted with LegalSifter to provide “artificial intelligence legal solutions, to develop a new tool that will help providers quickly and easily review contracts like Business Associate Agreements.” The use of technology is not limited to big firms; mid-size and smaller firms can benefit too.

Impact of Technology on Associate Training

Advancements in technology are projected to impact how junior attorneys are utilized and trained. More specifically, the need for associates and paralegals may decrease with the ability of technology to perform certain tasks. For example, our review of several articles noted that associates often learn transactions by participating in the due diligence process. With AI able to complete due diligence tasks traditionally performed by associates, these opportunities for training associates will decrease.

Evolving Health Law Workforce

Professor F. Daniel Siciliano at Stanford Law School, argued “as law becomes more open-sourced and readily available to the general public, people will no longer need

attorneys to tell them what the law is.”⁴⁶ This philosophy is consistent with other thought leaders in the health law education industry.

The 2030 Task Force interviewed Asha Scielzo (American University Washington College of Law) and Lawrence E. Singer and Barbara J. Youngberg (Loyola University Chicago School of Law). They commented on the increasing pressure on health law students to be even better prepared with a practical focus. It is no longer enough to graduate law school; the students need to be “practice ready.” Skills such as project management, the use of technology/software applicable to their services, accounting, the basics of actuarial science for risk sharing arrangements, and understanding the “business of health law” were identified as necessary skills for the new health law professional.

The law review article *Lola v. Skadden and the Automation of the Legal Profession*⁴⁷ considers the long-term impact of the *Lola v. Skadden Arps* case, which endorsed the proposition that “tasks that could otherwise be performed entirely by a machine cannot be said to engage in the practice of law.”⁴⁸ The article predicts that mechanistic tasks that fall under the general umbrella of the practice of law, but that do not actually require a lawyer, will no longer be governed by the rules of professional responsibility. As a result, “to survive the rise of technology in the legal field, lawyers will need to adapt to a new ‘practice of law’ in which they will act as innovators, purveyors of judgment and wisdom, and guardians of fairness, impartiality, and accountability within the law.”⁴⁹

It has been estimated that 39% of legal sector jobs will be automated by technology in the near future.

Increased Complexity in the Health Law Industry and Cost Containment Pressures

With more information and tools available to the health care industry regarding the impact of health law, the health law professional's focus will evolve from performing traditionally basic tasks, such as contract drafting and due diligence reviews, to conducting more complex analysis. According to *The Future Ready Lawyer* study from Wolters Kluwer, the top five trends expected to have the biggest impact in the legal profession were: "coping with increased volume and complexity of information (72%), emphasis on improved efficiency and productivity (71%), understanding which legal technolo-

gies deliver the highest value (69%), meeting changing client and leader expectations (68%), and financial issues including greater price competition, alternative fee structures, and cost containment pressures (68%)."⁵⁰

Specific to health law and consistent with the anticipated growth in the health care industry and pending challenges, we expect increased demand for health law resources in the areas of/industries for life sciences, retail health, telehealth and mobile health, other health-focused technology, and behavioral health.

*It is no longer enough to graduate law school.
The student must be "practice ready."*



Increased Competition to Provide Health Law Services

Anticipated Trends Over the Next Ten Years

1. Continued growth of in-house legal departments.
2. With increased pressure on hourly rates and the use of technology to increase efficiency, we anticipate an increase in law firms being forced to transition to alternative fee arrangements to help manage margins for lawyers and reduce costs for health law providers. Those organizations that are already capable of fixed fee/alternative fee arrangements, such as consulting firms, will continue to succeed at capturing more of the health law business.
3. Organizations will increase their use of technology to make basic and repetitive health law tasks more efficient, such as e-discovery, due diligence document review, contract drafting and review, and legal research. In addition, we anticipate organizations using technology to assist in project management and harness intellectual capital so that it can be better leveraged.
4. The competition to provide health law services will continue to increase with a broader category of health law professionals capturing more of the market.
5. We anticipate a strong demand for new health law professionals to be substantively trained so that they can immediately provide services at a higher level than previously demanded.

There will be a substantial increase in the competition to provide health law services. The expansion of those providing health law services will not be limited to lawyers—use of technology/AI will increase, and barriers to the practice of law by non-lawyers may potentially be eliminated. This trend will be fueled by the growth in health law education programs not limited to lawyers; continued growth of consulting firms providing legal services; the increased availability of technology to perform lower level tasks; and the possible evolution of regulations governing the unauthorized practice of law.

Health Law Professionals Providing Health Law Services

The effects of a broad and expanding health law professional community—such as consulting firms that are performing traditional legal work—are already being felt throughout the health law industry. In 2015, *Business Insider* noted:

The Big Four are taking a more focused approach this time. Rather than building full-service firms, they are concentrating on areas of law that complement their existing services: immigration, which sits nicely with expatriate tax work; labor, which goes with human-resources consulting; compliance; commercial contracts; and due diligence.⁵¹

KPMG, a multinational professional services network and one of the Big Four accounting organizations, is conducting HIPAA, Stark, and cybersecurity audits for health systems and advising them on how to comply with the various legal requirements. In 2018, KPMG reportedly was looking to double the size of its legal services arm to more than 3,000 lawyers in the next few years.⁵² Other consulting firms are conducting compliance audits for health care systems, and health care consulting firms are providing advice on physician contracting, medical staff issues, and governance.

Another example of an expanding health professional community involves PwC, which recently launched Flexible Legal Resources, a legal temporary staffing service for in-house counsel⁵³ that “seeks to hire lawyers with experience in corporate law, data protection, risk

The growing health law professional community includes, for example, consultants and those with Masters of Law degrees.

and compliance, derivatives, and financial services regulations.” These consulting firms are not just focused on providing legal services but also *supporting* the legal industry. Deloitte, another one of the Big Four, created Deloitte Legal and launched a legal management consulting service to work directly with in-house counsel departments.⁵⁴

Competition to provide or support legal services in the health law industry is also coming from individuals who obtain a “Masters of Law,” but do not obtain the Juris Doctor degree. These Masters of Law programs are often called Master of Jurisprudence, Master of Legal Studies, Master of Studies in Law, or Juris Master, and they are proliferating across the United States with at least 40 law schools offering such programs. Law schools view these programs as an opportunity to tap into a new pool of students (and revenue); leverage existing space, resources, facilities, etc.; expand into an online platform; and raise their national profile. The majority of these programs offer specializations in health law and/or compliance. While these programs are still relatively new, they present a convenient, cost effective, and efficient alternative to law school for students, and they provide additional qualifications that will be valued in the marketplace as more classes graduate.

The impact of an ever-broadening community of health law professionals on the legal services industry will continue to accelerate into the future, and with proposed changes to the regulations governing the unauthorized practice of law, the impact of this change could spread beyond the large in-house department and big accounting firms.

Changes That May Allow Non-Lawyers to Practice Law or Invest in Law Practices

The California State Bar is considering permitting non-lawyers to practice law.⁵⁵ A task force created by the California State Bar made two significant recommendations in June 2019: (1) allow the use of technology-driven systems to engage in the authorized practice of law, and (2) allow non-lawyers to provide legal advice and services.

One goal of these recommendations is to increase “access to justice” by providing lower priced legal assistance to individuals of low to moderate means who are currently unable to afford a lawyer (*e.g.*, for landlord/tenant disputes and divorce cases). There are obviously concerns to be addressed regarding the quality of the services provided by non-lawyers, and whether current legal ethics rules would apply to protect clients, especially consumers. The proposals and the levels of consideration vary and some face strenuous opposition, but notably such recommendations are being considered in Illinois, Arizona, Utah, New Mexico, Washington, and California.⁵⁶

The California State Bar’s task force recommendations also open the door for non-lawyers to have a financial interest in a law firm. The debate on allowing non-lawyer ownership has been very active over the past several years, but the recent recommendation from California State Bar’s task force has placed a more direct spotlight on the issue. Some benefits touted for non-lawyer ownership include access to capital to help invest in innovation; better access to attorneys by lowering cost; and profit sharing that would allow other qualified professionals to partner with attorneys.⁵⁷



Expansion of In-House Legal Departments

The 2030 Task Force believes that the competition to provide legal services will continue to increase. Organizations that have broader access to capital to invest in technology and professionals will be able to provide more services at lower cost. This trend will put increased pressure on law firms to be more efficient and specialized in the services they render.

Legal consulting firm, Altman Weil, published its 2018 Chief Legal Officer survey with the following significant findings. While the Altman Weil report is not specific to health care, it does show trends that are relevant to the health care industry in-house legal department. These trends appear to be increased growth in the in-house legal department's workforce, continued demand for outside counsel, and increased focus on the use of technology to improve efficiency.

- ▶ 42% of Chief Legal Officers planned to increase their lawyer workforce in the next 12 months while only 7.5% planned to decrease their lawyer workforce.
- ▶ 53% of the law departments increased total spending from 2017-2018.

▶ For the first time, more of the in-house legal budget was spent internally versus external law firms (48% internal and 45% external).

▶ With that said, 41% of the law departments planned to increase their external legal spend in 2019.

▶ 62% of in-house departments received a price reduction from outside counsel in 2018.

▶ 47% of the in-house departments said they outsourced traditional law firm work to non-lawyer vendors.

▶ 66.7% of in-house departments said they used technology to improve efficiencies.

Some states are starting to consider tech-driven systems to practice law or allow non-lawyers to give legal advice.

Conclusion and Key Takeaways

As part of its research, AHLA's 2030 Task Force reviewed the results of a recent environmental scan of the association's members. Their responses reflected the same or similar predictions cited by other sources regarding the disruptions and changes that will continue to be experienced by the health care and health law industries. While such disruptions and changes can seem daunting and insurmountable, failure to adapt, innovate, and evolve will have long-lasting consequences that ultimately impact the very people that these industries are trying to serve: the health care consumer and the health care client.

For health care industry stakeholders, adaptation and innovation in the midst of ever-present financial pressures may require increasing investment in efficient technologies that will improve the delivery and quality of care; consolidating with others to increase market power; becoming smart users of patient data; and being open to using technology (*e.g.*, robots that can safely lift patients) to address workforce shortages among health care providers. In addition, remaining watchful of federal health policy "megatrends" will be critical, especially given some of the more profound and anticipated implications that likely will materialize as a result of these megatrends, *i.e.*, cost-cutting measures by industry stakeholders that affect purchasing patterns; increased transactional activity due to growing alignment and market consolidation; and an expanding need for the services of lower-cost health law professionals.

For those in the health law industry, adapting and innovating in the midst of increasing competition to provide services at lower cost will involve the expansion of non-attorney health law professionals with specialized health law expertise, *e.g.*, paralegals, compliance officers, accountants, and consultants. In addition, AI and other advanced technologies may replace more traditional health law services typically performed by health law attorneys (*e.g.*, e-discovery, due diligence document review, contract drafting and reviewing, legal research). However, the growth of in-house legal departments, an anticipated increase in commercial transactions due to market disruptions, and an increasingly complex and ever-changing regulatory environment will still require the services and expertise of an attorney. For both the health law professional and the health law attorney, investing in and evolving with current technologies that enable them to provide high quality, specialized services in the most cost- and time-efficient manner will be critical in meeting the future challenges of the industry.

Health Care Industry Key Takeaways

1. Embrace and invest in efficient technologies
2. Consider consolidation/alignment with others
3. Become smart users of patient data
4. Use technology to minimize workforce shortages
5. Consider the broader health law professional community

Health Law Industry Key Takeaways

1. Expand the team to include the health law professional
2. Shift focus to other areas of law practice that AI cannot fulfill
3. In-house legal departments will grow
4. Complex M&A transactions will require attorneys
5. Legislative, regulatory, and enforcement expertise will always be in demand

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Compliance

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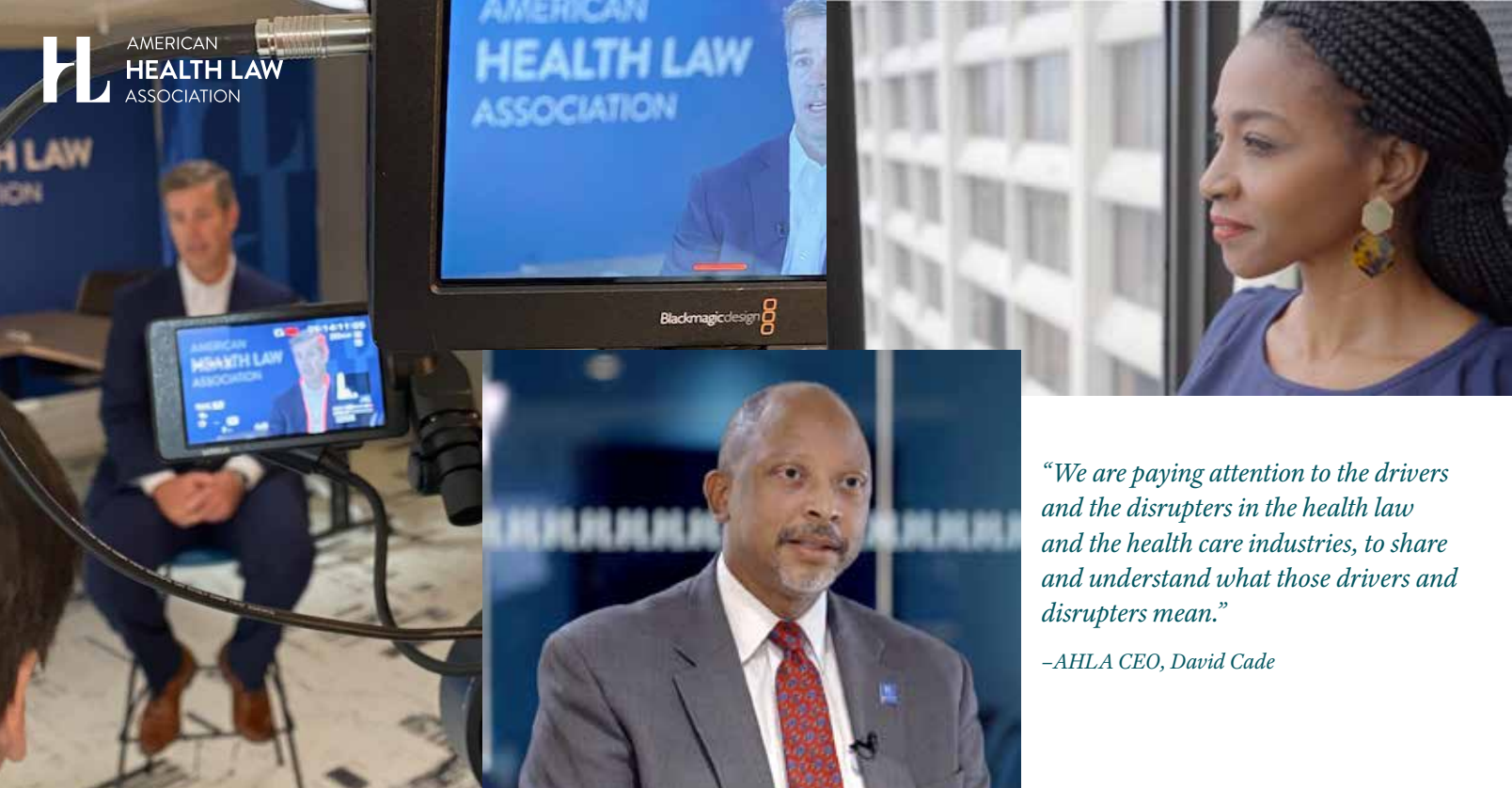
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“We are paying attention to the drivers and the disrupters in the health law and the health care industries, to share and understand what those drivers and disrupters mean.”

—AHLA CEO, David Cade

Navigating Health Law Disruption

The Health Law Disruption: 2030 and Beyond white paper became the framework for a supporting nine-episode video series that delves further into the pressures behind the industry trends and brings in voices from thought leaders who are helping to reshape both the health care and health law industries.



Watch the full series at:
www.americanhealthlaw.org/HealthLawDisruption

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