

Harry Nelson a Panelist in Corporate Virtual Healthcare Roundtable



[Corporate Livewire](#) selected co-founder and managing partner [Harry Nelson](#)

appear as a panelist in their [Healthcare Law 2015 Virtual Roundtable](#). Harry was one of five experts that discussed recent regulatory changes, interesting developments and key trends in their specific legal jurisdiction. The chosen experts outline how the healthcare market is composed including an analysis on the role of Medicaid and Obamacare in New York and California. Other highlights include a discussion on the complex issues surrounding rising costs in healthcare as well as topical concerns such as mental health and the Ebola virus.

Here are a few direct responses from Harry during this panel:

Question: How Is The Healthcare Market Composed In Your Jurisdiction?

Response: The U.S. system is a mixed public/private system in which the largest payor is the government, via the Medicare and Medicaid Programs, with a private third party payor insurance market, and a private consumer-focused component for non-insured services. Within the publicly funded and private third party payor systems, providers increasingly face a managed care environment that suppresses utilization of hospitals and forces lower level care settings to manage with every increasing level of acuity. Within the direct-to-consumer segment, healthcare product and service offerings face lower regulation in a market-driven environment.

Question: Have There Been Any Recent Legislation Changes Or Noteworthy Developments?

Response: The big media story this summer is likely to be the Supreme Court's decision in the Burwell case, which calls into question the right of the federal government to offer a healthcare insurance exchange in states that declined to operate one. The Court's decision would impact access to healthcare insurance dramatically. The most noteworthy legislation in California is SB 1000, the bill that would extend access to Medicaid to all Californians who qualify on an income basis, irrespective of their immigration status. There are many other interesting legislative developments on the horizon, including the Carers Act, which would limit federal enforcement of marijuana laws in states that have adopted medical marijuana programs.

Question: Have There Been Any Recent Trends Or Developments Within The Sector? What Affect Did This Have On The Field?

Response: As we enter the fifth year since the enactment of the Affordable Care Act, some of the broad trends have been an influx of newly insured patients via government marketplaces, subsidies, and Medicaid expansion, an ongoing trend of suppressing hospital utilization in favor of directing care to lower level care settings. Physicians continue to migrate into larger hospital-affiliated and managed care-oriented groups. Long-term care providers face new anti-fraud initiatives and the transition to Medicaid managed care. Corresponding to these trends, we see rising interest in, such as drug treatment centers, retail clinics, medical device makers, and developers of mobile medical apps, the last five years have been a time of significant growth and opportunity. In some instances, such as behavioral health, new insurance coverage opened up by the ACA and other laws (e.g. the Mental Health Parity and Addiction Equity Act), have fueled the growth. In other instances, such as retail clinics, urgent care centers,



concierge practices, patients have demonstrated new-found willingness to pay out-of-pocket for convenience.

As lawyers taking on client engagements one at a time, we have seen a striking contrast between these two groups of providers. Clients in the Medicare system ask for help with government investigations. They bring us fraud charges and False Claims Act cases to defend. They ask for help with reimbursement disputes and navigating a landscape fraught with risks, from anti-kickback concerns to privacy and data security breaches. Transactions tend to reflect consolidation.

On the other side of our practice, our clients who are innovating in healthcare growth sectors ask for help navigating investment opportunities and meeting regulatory requirements for new business models. The questions are challenging not because the government is upon them, but because they are often in uncharted regulatory territory: can we do this via a smartphone app? Doesn't the minimum essential coverage require insurers to pay for that?

These are only a snapshot, and our sample is purely anecdotal. Still, our impression is generally that it is a time of struggle for traditional healthcare and a time of opportunity for innovative, disruptive healthcare. We anticipate a convergence ahead. For example, we are working on a project in which a traditional "legacy" national health services organization known as a brick-and-mortar "safety net" provider is developing a series of (for now) cash-pay mobile apps. At first glance, it seems strange for such a traditional organization to venture into such cutting edge territory. On reflection, though, it is a sign of smart planning for the next generation of patients, as well as an effort to prepare for a changing world of service delivery. Eventually, the apps will be insurance-based, but it may take a few more years for that to happen.

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