

# MEDICAID WOES: EXPOSE IS NOT REFORM

Seldom since J. Edgar Hoover personally held a gun on John Dillinger have Americans been treated to such dramatic flair in the pursuit of public enemies. We refer to last summer's undercover adventures of United States Senator Frank Moss, who posed as a patient seeking care from several "Medicaid mills." Whereas Hoover stayed clear until after Dillinger had been disarmed, Moss put his body on the line. And he has the bruises—from unnecessary blood tests—to prove it.

Yet the senator need not have risked hepatitis for his nation. Superfluous too are the recent *mea culpae* of Medicaid-mill owners and practitioners. As are more wheelchair parades of nursing-home patients brought before investigative commissions to tell of neglect, abuse, and intimidation. As is more infighting between the city and the state as to who should fix up the mess. Indeed, we have reached the point where exposé per se has become

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part of the problem instead of step one toward its solution. In commuters' lounges, during coffee breaks, and at cocktail parties, citizens amaze each other—and experience catharsis: "Have you heard the latest? In Chicago a Medicaid lab declared a man pregnant." And another replies, "Well, did you hear about the man in New York who was practically choking on a cancer that several Medicaid doctors in a row didn't notice because—as one said—they weren't being paid to look in his mouth?"

News-media exposés and public hearings do serve to flag abuses. But we have been pointing a finger at basically the same abuses, and indeed often the same abusers, for more years than many of us realize. One of the tasks of the Moreland Act Commission, appointed in January, 1975, to investigate nursing-home scandals in New York, was to find out "what happened" to the Kaplan Report. The Kaplan investigation, which had conducted a similar inquiry some fifteen years earlier, named Bernard Bergman, who figured so notoriously in the 1975 scandals. Expecting to find that the Kaplan

Report had been "suppressed," the Moreland Commission found that the Kaplan investigation's findings were delivered to the proper public officials. Nothing "happened" to the Kaplan Report because it focused on an exposé of wrongdoing, not on mobilizing the forces of change.

It should be obvious by now that if exposing dirt were enough to do away with it, Medicaid would surely be among the cleanest programs in the nation. In 1971, a Ralph Nader study group exposed the many deficiencies of Medicare and Medicaid regulations (*Old Age: The Last Segregation*, by Claire Townsend), and in 1974 Mary Adelaide Mendelson's *Tender Loving Greed*, about nursing-home profiteering, became a near best-seller. Senator Moss's long-term-care subcommittee is no Johnny-come-lately; it has released fifteen special reports on nursing and boarding-care homes, chemical laboratories, and Medicaid mills over the years. We have had the Stein and Smith commissions, reports from the office of the welfare inspector general, audits by the state comptroller, HEW Region II, and the indefatigable GAO.

We must recognize that calling public attention to problems will not suffice to solve them. True, to take effective action politicians need the support of public opinion to counter the opposition of vested interests. Unfortunately, however, the public limelight provided by day-to-day exposés is too mercurial. It focuses on individuals and incidents instead of issues; its span is too short to serve as a reliable source of the necessary political energy. Nor is drafting new laws or regulations sufficient, because the laws may not be passed, and above all, if passed, not enforced. (This, by the way, was the fate of many of the most important Moss Committee recommendations.)

Laws and regulations attempting to cure the Medicaid mess are tools of the state. The state is not a benign being, acting on behalf of the public needs, expressed through the electoral process, as some civics textbooks would have it. The state responds to all inputs, including those of pressure groups, vested interests, not just voters. Indeed, confronted on the one side with a well-organized lobby and on the other with the unorganized public at large, the state will bend, most of the time, toward the former. It is only when the public (or segments of it) is organized to push the state continuously in the desired direction that its course leans away from the vested interest, toward the public interest. What is needed to provide such sustained political energy is institutionalized public involvement. To shepherd Medicaid reforms through enactment and implementation, the participation of such groups as older Americans' associations, labor unions on behalf of their retirees, religious-ethical organizations (e.g., the American Jewish Congress, Catholic Charities, etc.), and associations of relatives and patients is required.

The political problem of the Medicaid mills' patients, nursing-home residents, and other clients of Medicaid is that they have had no such means of political expression, while the owners and administrators are well organized. Hence, the need for relevant segments of the public to organize and act, not only on public officials during elections, but in between elections directly on the "private governments" of clinics, hospitals, and nursing homes which provide the services. These groups should be invited from the onset to participate in formulating the new laws, to secure their ongoing interest and support for them. In addition, the political energies of these groups should be mobilized through the creation of a permanent watchdog commission, composed of representatives of the three groups, with rights to visit all health-care facil-

ities reimbursed by public funds and to follow up complaints, and the duty to report annually about conditions in these facilities. In this way the public interest would be institutionalized, the political muscle behind the needed legislation increased, and enforcement made more likely to follow.

Once the question of where the political propellant is to come from is answered, the rest is relatively easy: Jail sentences of *at least* one year for all major abusers convicted of bilking the public and patients would deter many offenders. These are, after all, not hard-core criminals who weigh the risks of jail against the rewards of crime, but middle-class professionals who commit these crimes because they seem risk-free. For the same reason, owners and administrators of nursing homes and Medicaid clinics should be made *personally liable* for gross neglect of patients.

Second, Medicaid officials need to be able to disqualify unscrupulous providers from receiving further funds without being held up—as is now frequently the case—by lengthy court battles. When Medicaid contracts come up for renewal, the burden of proof should be on the providers to meet the Medicaid agency's requirements—not on the Medicaid agency to have to prove in court that the providers do not deserve a renewed contract.

Third, research is needed to determine whether or not it is appropriate that Medicaid clinics and nursing homes, unlike the majority of other human-service institutions, such as schools and hospitals, should be run on a for-profit basis. Actually, the mainstream of American business has long been wary about the wisdom or feasibility of for-profit involvement in human services, especially services to highly disadvantaged segments of the population. At issue are two principal points: (a) *Can* human services really generate a legitimate profit (i.e., without skimping on quality or quantity, without unnecessary services, without fraud)? and (b) Are the present nursing-home proprietors "normal" businessmen, seeking only a fair return on their investment, or are there "fast-buck" artists in their midst?

There are scores of other steps which might be taken. Frankly, none, and not even all taken together, provide a cure-all for the complex and entrenched problems we face in Medicaid (and similar programs—above all welfare). However, we know enough to significantly reduce abuses through the steps indicated. More exposés will do little but add to a false sense of progress. We have all heard about the abuses; let the next drama be that of reform. ■