Health Care Reform in New York: Looking Forward and Looking Back

By John Steen

Prior to being elected Governor, Eliot Spitzer served for eight years as New York State Attorney General, where he won national recognition for landmark cases protecting investors, consumers, the environment, and low-wage workers. Any doubt about his continued dedication to the public interest was removed on January 26th in a speech he delivered at the Rockefeller Institute of Government entitled, An Agenda to Fundamentally Reform New York’s Health Care System. In it, he defined reform as restoring to government its proper functions in protecting its citizens, and his judgment about the last 12 years in the State was pointed: “Government abdicated its responsibility to set standards, demand results and hold institutions receiving billions in state tax dollars accountable to the State and to the people those institutions serve.”

About the New York State Commission on Health Care Facilities in the 21st Century, he had this to say: “This was a process that should never have been necessary in the first place....Now we face dramatic instead of gradual change to rationalize a system in desperate need of reform.” He continued: “For too long, we have financed the health care system we have, not the health care system we need. So we're left pumping billions of dollars into a broken system with no deliverables and no accountability.”

He went on to insist that the State’s health care system must once again be made accountable to its people, that it must be patient-first, and that “no patient-first health care strategy can be complete without a comprehensive effort to address public health...that targets primary and preventive care - resources that will go to support programs that decrease obesity rates and increase healthy eating and physical exercise, prevent childhood lead poisoning, expand access to cervical cancer vaccines, prenatal and postpartum home visits, and public health education on the quality of mammograms and other important issues.”

Dr. David Axelrod, Health Commissioner Par Excellence

In hearing his speech, I was reminded of Dr. David Axelrod, whose innovative policies as New York State's Health Commissioner for 12 years (1979-91), motivated by his imperative of patient protection, became models for the nation in the 1980s and 90s until he suffered an incapacitating stroke in February 1991. In an editorial at the time, the New York Times wrote that, "In a job that all too often reflects the narrow interests of the medical profession and its institutions, Dr. Axelrod saw the state's whole population as his patient. He treated it with uncommon compassion, vision and courage."

His pioneering policies, which ranged from stringent regulation of doctors and hospitals to universal health insurance, anti-smoking legislation, and unbending protection of the confidentiality of AIDS patients and funding for AIDS research, were supported by then Governor Mario M. Cuomo. Cuomo’s active support enabled him to earn a reputation, unique among health commissioners, for taking on vested
interests in the State’s medical-industrial complex. In 1987, he used the State’s hospital rate-setting program to realign reimbursement toward the provision of primary care by community clinics.

The Pataki Era

In 1995, Governor George Pataki took office, and immediately began to dismantle the State Health Department’s resources and role in policy leadership. Also in that year, he captured the revenue stream that had been funding the state’s eight health systems agencies and constituting about half of their budgets since the cessation of federal funding in 1986, diverting it into the state’s general fund. Today only the ones in Rochester and Syracuse survive as smaller community-supported agencies. At the time, state officials’ explanation was that the growth of “free market forces” such as health maintenance organizations and managed-care plans had rendered much of the traditional review and approval process obsolete. Consumer and community groups saw their demise as the stifling of forums for their input, ensuring that provider initiatives would remain unknown and unchallenged. That was confirmed in 1996 when Pataki appointed 14 new members to the State Hospital Review and Planning Council, the state’s CON review body, to replace 16 whose terms had expired. Eight of those 16 were consumers, but just one of the new appointees was a consumer, and contrary to the Council’s authorizing legislation, none was an HSA representative. That was widely seen as payback for the Council’s rejection in 1995 of a series of hospital “regulatory reforms” proposed by the Pataki administration. Also in 1996, the administration got the legislature to eliminate the state’s hospital rate-setting program.

Health Care Reform and the Institutionalization of Civic Life

So Spitzer’s challenge will be to recreate a Health Department befitting the State’s history of leadership in public health, health planning, and health regulation. Dennis Whalen, who has been first deputy under a number of health commissioners, will be the deputy secretary for health, operating out of the Capitol, an arrangement that will provide his considerable experience and institutional memory in that effort.

And Dr. Axelrod’s principled refusal to have the state’s Medicaid administration within his health department will be honored through the new Office of Health Insurance Programs which will assume control of Medicaid and the state’s other insurance programs. He maintained the inherent conflict made it inappropriate. You can’t regulate an industry and at the same be a major supplier of its funds.

In remembering the Axelrod-Cuomo era, I was also reminded of the Health Department’s 1989-1992 proposal for UHI in the state, called UNY*Care, for Universal New York Health Care, modeled after Medicare, and as promising a state UHI program and national model as any introduced since that time. It was not pursued once Governor Cuomo decided not to enter the Democratic primary for president, but its promise was as unique and as strong as its foundation in the state’s history of fostering civic and community life through the institutions it created. In Spitzer’s words, I could hear a return to the political ethos of the last half century of the state’s governors and other elected officials, one founded on public life and an open public process. UNY*Care’s chief designer, Deputy Health Commissioner Dan E. Beauchamp, expressed this point succinctly: “The point of health care reform is precisely to strengthen the public and its power vis-à-vis the health care system—
to use policy to create a more populist and civic-centered system." Once created, that system can then give life in the public mind to the policies that inspired it. Daniel Patrick Moynihan, the late senator from New York, explained it this way, "The central conservative truth is that it is culture, not politics that determines the success of a society. The central liberal truth is that politics can change a culture and save it from itself."

Will this be the new governor’s agenda too? If so, he faces an uphill battle against the legislature, and he will have to count on the public support he may get by making an open public process out of his battle. The last reform governor who did that was Theodore Roosevelt in 1899, and he proved successful.

Spitzer acquired much experience doing that as attorney general, and he explained his approach in an interview with The New York Times on February 8th:

"A status quo does not want itself revealed, whether it’s to investors, shareholders or voters,” he said. "It pushes back in a strenuous way. My response every time is, let’s just get out the facts, what are we trying to do and why. And I have this very simple-minded belief that we will win by presenting those facts."

Meanwhile, he can find inspiration in how New York City Mayor Michael Bloomberg is supporting his great Health Commissioner, Dr. Thomas R. Frieden, in providing the most progressive current initiatives in public health to be found in any American city.

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2 For a description of its November 2006 Report, see my Policy Perspective column in the 4th Quarter 2006 Health Planning Today.

3 During the Reagan years, he often found himself a lone figure among physicians in his advocacy, and in 1989 he proposed his own plan, UNY*Care, that would have guaranteed basic health care to every resident of New York State.

4 In 1989, Stuart H. Altman, the dean of the Florence Heller Graduate School for Social Policy at Brandeis University, stated that "New York hospitals are by far the most tightly regulated and most effectively regulated in the United States."

5 Just three months after taking office, the Governor’s Office of Regulatory Reform announced "a 16-point plan to reduce onerous state regulations in the health-care field.” It included:

- DOH will seek legislation to eliminate the Public Health Council from CON activities.
- DOH will amend CON regulations to permit the waiver of review requirements which are not relevant to particular applications—HSA reviews, need determinations, financial feasibility findings, etc.
- DOH will begin a review of all other CON requirements to identify those which can be eliminated, amended or streamlined.
Not-for-profit hospitals are required by statute to file an annual report that reviews the hospital's mission statement, incorporates the views of the communities served by the hospital on the hospital's performance and service priorities and the hospital's commitment to meeting the needs of the community. We will work... for the repeal of this statute.

NYS regulations for emergency departments are more prescriptive than the federal requirements, particularly regarding staff education and experience. ... DOH will assess how the current requirements can be streamlined.

6 Health Care Reform and the Battle for the Body Politic (Temple University Press, 1996), p.41. Beauchamp wrote that in their preoccupation with the distance between American political values and the values of a reformed health care system, social scientists "miss the point of the capacity of national health plans as institutions to change values and politics." Ibid. He is saying here "that civic institutions such as national health plans – because of the patterns and ways of thinking they create in society – have a powerful way of creating their own politics, their own social reality." Ibid., p.47. One has only to consider the role that Medicare has played and now plays to appreciate the validity of this point. The distance between our profit-driven market approach and the solidarity of Europe's egalitarian system is accounted for primarily by their having long since institutionalized more definitive social insurance systems than ours.
