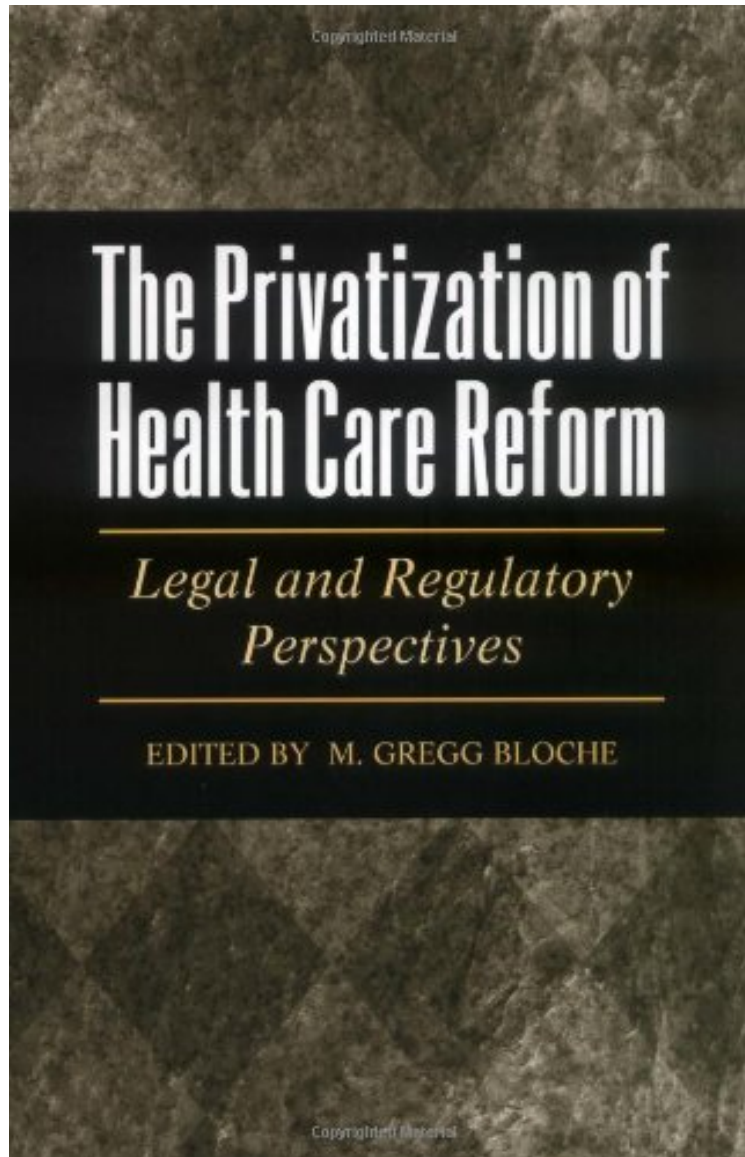


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The Privatization of Health Care Reform: Legal and Regulatory Perspectives

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From Oxford University Press : The Privatization of Health Care Reform: Legal and Regulatory Perspectives before purchasing it in order to gage whether or not it would be worth my time, and all praised The Privatization of Health Care Reform: Legal and Regulatory Perspectives:

Markets, not politics, are driving health care reform in America today. Inventive entrepreneurs have transformed medicine over the past ten years, and no end to this period of rapid change is in sight. Consumer anxieties over managed care are mounting, and medical costs are again soaring. Meanwhile, the federal government remains mostly on the health policy sidelines, as it has since the collapse of the Clinton administration's campaign for health care reform. This book addresses the changes that the market has wrought- and the challenges this transformation poses for courts and regulators. The law that governs the medical marketplace is an incomplete, overlapping patchwork, conceived mainly without medical care specifically in mind. The ensuing confusion and incoherence are a central theme of this book. Fragmentation of health care lawmaking has foreclosed coordinated, system-wide policy responses, and lack of national consensus on many of the central questions in health care policy has translated into legal contradiction and bitter controversy. Written by leading commentators on American health law and policy, this book examines the widely-perceived failings of managed care and the law's relationship to them. Some of the contributors treat law as a cause of trouble; others emphasize the law's potential and limits as a corrective tool when the market disappoints. The first two chapters present contrasting overviews of how the doctrines and decision-makers that constitute health law work together, for better or worse, to constrain the medical marketplace. The next six chapters address particular market developments and regulatory dilemmas. These include the power of state versus federal government in the health sphere, conflict between insurers and patients and providers over medical need, financial rewards to physicians for frugal practice, the role of antitrust law in the organization of health care provision and financing, the future of public hospitals, and the place of investor-owned versus non-profit institutions. Acknowledging the health sphere's complexities, the authors seek remedies that fit this country's legal, political, and cultural constraints and can contribute to reasoned regulatory governance. Within limits they believe a measure of rationality is possible.

From *The New England Journal of Medicine* With the health care system in about as much turmoil as anyone can remember its being in, this hardly seems the time for a book that pays homage to the prowess of the private sector in health care reform. Indeed, the publication of *The Privatization of Health Care Reform* comes when costs are exploding, the number of uninsured persons is escalating as a result of unemployment, the cost of health insurance premiums is skyrocketing, the commitment of employers to workers and to continued insurance coverage for retirees is declining, and debt-riddled state governments are cutting back on outlays for public health care programs. If there were ever a time when government intervention was in order, this would be it. Sadly, however, at the moment, policymaking in America seems particularly incapable of rising to the task. Historically, the private sector has driven American health care policy. The notion of market players as a dominant force in health care policy is as old as the American health care system. As Paul Starr reminded us in his seminal history, *The Social Transformation of American Medicine* (New York: Basic Books, 1982), the health care market once consisted of innumerable, essentially unregulated microbusinesses that were driven by the profession itself and that vied for position and power while maintaining maximal control over customer selection and pricing. Today, the health care system has morphed into innumerable, essentially unregulated large businesses that continue to rely on deregulation and market dominance to get their way (and not an inconsiderable number of them are physician-owned). To be sure, the displacement of small businesses by "big box" health care corporations has had a profound effect on the medical profession. But to presume that only one recent generation has witnessed the advent of a new force in the nation's medical care landscape is to ignore that historically medical care in America has been a market good available predominantly to customers who could afford it. The story of this transformation from small to enormous is nonetheless fascinating, particularly because, at each stage, the potential to move further away from medicine's ethical roots undoubtedly intensifies. The transformation, and its aftermath, provide an opportunity to reflect on what has been gained by the shift. *The Privatization of Health Care Reform* offers important insights into the importance of this transformation. Professor Bloche, whose work has been widely recognized, has assembled important analyses that will be useful to both students and teachers of health care policy (the book is definitely not for beginners). This book covers many matters, from the laws that enabled the sea change to occur to the way in which the new system has been able to avoid regulation as successfully as its predecessor did. Chapters are devoted to the use of explicit financial incentives to shape health care practice; the role of not-for-profit institutions in the new world of managed care; the future of public, hospital-based teaching programs; and the role of antitrust principles in fostering transparency and competition in health care. One wishes that Professor Bloche had included a chapter on the deeper meaning of these changes for persons without health insurance and for patients whose health needs exceed the coverage norms available through health insurance plans. For example, the chapter on antitrust principles considers "any willing provider" laws (which require managed-care organizations to admit onto their panels any provider willing to accept their terms and conditions) to be anticompetitive interference that threatens the ability of the managed-care organizations to manage costs. In the eyes of policymakers concerned with the access to health care of very sick patients, an "any willing provider" statute could mean the difference between being insured and being uninsured for certain forms of specialty care that might otherwise be excluded from an insurer's network. The book also does not ponder whether, in the long run, the market

frenzy that characterized the American health care system in the 1990s ultimately contributed to the system's eventual crash and, with that crash, a return to double-digit inflation, the invention of new insurance "products" that merely erode coverage further, and another sizable upturn in the number of persons who are not insured. One hopes that Professor Bloche will explore these issues in a future effort. Sara Rosenbaum, J.D. Copyright 2003 Massachusetts Medical Society. All rights reserved. The New England Journal of Medicine is a registered trademark of the MMS. "Professor Bloche, whose work has been widely recognized, has assembled important analyses that will be useful to both students and teachers of health care policy. This book covers many matters, from the laws that enabled the sea change to occur to the way in which the new system has been able to avoid regulation as successfully as its predecessor did."--New England Journal of Medicine About the Author M. Gregg Bloche is at Georgetown University.