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**Chapter Fun at Chinese New Year's Celebration  
and the 53rd Joseph A. Levi Annual Institute (inside)**

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# Members Speak – What Do You Think?

*This is the first article in a new feature where we are looking for member reaction to a specific article. Your reactions will be published in the next Newscast. Please let us know if you are interested in having your response published. Deadlines for responses will be June 19, 2012.*

## SHOULD HEALTH CARE IN THE UNITED STATES BE CONSIDERED A PUBLIC UTILITY?

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The Federal and various state governments are continuing their concerted movement toward total and absolute regulation of the health care delivery system. Whether these controls take the form of price restrictions, such as Medicare, or funding and entitlement programs, such as Medicaid, the end result is control. Therefore, the question must be asked – Is Health Care a Public Utility?

The similarities between health care and the services provided by recognized public utilities are striking. Although the literature is not overburdened with clear definitions as to what a public utility actually is, it is generally agreed that a public utility is any business that has been declared as such by the *legislature* and not denied as such by the *courts*. A **public utility** usually provides a **service or commodity** in the public interest that can **neither be stored nor deferred** for any lengthy period of time by its consumer. Health care generally speaking is defined as the provision of those services or activities directed toward the preservation, enhancement or restoration of the physical and/or mental well being of people. It would appear that health care could be considered by some to be a service or commodity that can neither be stored nor deferred for a long period especially in an emergency or acute episode. Many today believe that health care is already a commodity that is bargained for by the payor (insurance company, government (Medicare or Medicaid), or a self-insured plan) with the provider of care. It appears that unlike all other recognized legitimate businesses health care sees its beneficiary merely as a conduit to the bargained for business transaction.

Once the Supreme Court decides if “mandated” coverage is constitutionally permissive we will know if none, some or all the other provisions of the Health Care Laws enacted in 2010 will survive. I think the battle will center on whether a mandate is a reasonable, necessary and proper power afforded to Congress or whether the historical notion of Government being able to prohibit individual actions trumps the mandate notion.

In order to highlight some of the more salient characteristics of public utilities and health care I present the following:

### PUBLIC UTILITY CHARACTERISTICS

- Provides a service necessary for the public welfare:
  - Its users are dependent by virtue of their
    - Need or
    - Choice of lifestyle
- Essential for future economic growth and development:
  - Transportation
  - Communication
  - Reliable energy sources
- Large user of capital resources vs. labor resources:
  - High degree of fixed costs
- Usually a monopoly as to major services provided
- Ownership can be private or public
- Highly regulated:
  - Federally and
  - Locally

### HEALTH CARE CHARACTERISTICS

- Multiple markets:
  - Emergency
  - Acute
  - Chronic
  - Long term
  - Home based
  - Preventive care dependent on:
    - Environment
    - Family income
    - Housing
    - Educational level
    - Nutritional habits
- Perceived as essential by society
- Large user of labor vs. capital resources
- Somewhat immune to normal economic factors:
  - Competition
  - Supply and demand

Were we to agree that, health care looked like a public utility, we would still want to investigate why a need exists for a utility's regulation. At the same time we note why health care is perceived as being in need of “over” regulation. What follows is that comparison:

### PUBLIC UTILITY REASONS FOR REGULATION

- Protection of consumers
- Control of monopoly
- Control of distribution of governmental funds

- Allocation of utility resources:
  - Economic
  - Social

### HEALTH CARE REASONS FOR REGULATION

- Protection of consumers
- Potential for control by:
  - Limited number of providers
  - Limited number of insurers
- Geographic limitations:
  - Rural setting
  - Sole community provider
- Government is major purchaser of services:
  - Medicare
  - Medicaid
- Allocation of resources:
  - Economic
  - Social
- Subsidy:
  - Type of care:
    - Renal dialysis
    - Group of people
      - Over 65
      - Dependents

If there is a need for regulation, are we regulated?  
Seemingly a rhetorical question, but many regulators see themselves as also promoting the well being of those they regulate.

### PUBLIC UTILITY REGULATORS

- Federal Communications Commission
- State Public Service Commissions:
  - Power
  - Water

### HEALTH CARE REGULATORS

- Medicare
- Medicaid
- State cost control legislation
- National health insurance?

Despite their efforts to safeguard the consumer the regulator has often found itself stirring ire in that same consumer. Consider the case a few years ago in New York State where they attempted to ban the sale of phosphates and at the same time mandated that the sale of baby pajamas be limited to those that were fire retardant. It was subsequently determined that the phosphates in the water served as a maintainer of the pajamas' retardant characteristic after the washing. Case closed. Therefore, utilities, no matter in what industry, are faced with certain challenges. What follows is a comparison of some of those challenges.

### PUBLIC UTILITY CHALLENGES

- Technology
  - Public opposition to nuclear power plants
- Environmental restrictions imposed by various governmental agencies:
  - Waste management
- Cost of financing:
  - Reliance on:
    - Bonds
      - Loss of investor confidence
      - defaults
    - Taxes
      - Sales
      - Sin
        - Tobacco
        - Liquor
      - User fees
- Potential for a national energy crises
  - Reliance on foreign supplies
- Curtailment of construction programs
  - Community resistance
  - Environmental concerns
- Bad luck
  - Blackouts
  - Three Mile island
  - Love Canal
  - Aviation

### HEALTH CARE CHALLENGES

- National concern
- Poor public image:
  - Doctor fees
  - Health maintenance organizations
    - Limited or no choice of physician
  - Pharmaceuticals
    - Costs
    - Experimental drugs
- High cost of technology
- Duplicative regulatory influences
- Reimbursement complexities for providers:
  - Administrative burden of forms and back office
- Dramatic increase in costs
- Reduction in coverage for health care by employers
- Growing number of uninsured and under-insured

The preceding only touches the surface of the interesting parallels of health care and a public utility. However, I believe the similarities are striking if not merely coincidental – what do you think?