Courts, Ombudsman, and Health-Care Policy: An Exploratory Study of Israel’s National Health Care Insurance Act

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Introduction

In 1994, a revolutionary change took place in the legal regulation of health care in Israel. The National Health Care Insurance Act, which was legislated that year and implemented at the beginning of 1995, granted the legal right to health care on a universal basis for all residents, regardless of race, gender, or nationality. The law also included several assessment, supervision, and control mechanisms intended to ensure the law’s proper implementation and enforcement. One of these important mechanisms is the legal right of those insured by law to file a suit in the labor courts if they believe that their legal rights have been impaired or denied by the Health Maintenance Organizations providing health care services.

In this context, the labor courts are authorized to interpret the law, to define the extent of its effects, and to serve as a mechanism not only for its enforcement, but also for the control of the quality of medical services and treatments covered by the law. Thus, a study of the labor courts’ function as a supervisory mechanism is one way to increase our understanding of the place of the judicial system within the legal regulation of health care.

To date, despite the great interest aroused by the National Health Care Insurance Act and the heated public debate in Israel surrounding the issue of its success or failure, no empirical study has examined the extent to which the rulings of the District Labor Courts manage to reflect the intent of the law to secure the civil right to health care. The aim of this pilot study – the first of its kind in Israel – is to gain insight into the manner in which the right to health care is mirrored in the rulings of one of the District Labor Courts, to compare these findings with information available from the Israeli Ombudsman for the National Health Care Insurance Act, and to outline additional paths for further research and discussion.
Part 1: Israel’s National Health Care Insurance Act

The National Health Care Insurance Act of 1994

Similar to many other welfare states, the State of Israel has had to cope with the central dilemma regarding the provision of health care services to its citizens in the modern age. Namely, within a framework of limited resources, how can the State manage the demands and meet the high costs of health care without compromising the basic right to quality health care?

In 1949, the founders of the State of Israel made the decision to adopt a voluntary-based health care insurance system that would allow the various Health Maintenance Organizations (HMOs) to compete over membership recruitment, premium costs, and the types of services provided in their respective insurance packages (Shani, 1995). This voluntary arrangement remained in force until the mid-1990s, when the National Health Care Insurance Act totally changed the legal regulation of the right to health care.

As a result of the new legislation, the State became directly responsible on the national level for providing health care to all of its residents. It legally recognized the right to health care as a fundamental and universal right of all residents on an equal basis, regardless of labor union membership (Tabenkin, 1999; Ben-Nun & Kats, 2000). Essentially, the main principles cited in the new law include the following arrangements:

- The provision of universal medical insurance and medical services for all permanent residents through Health Maintenance Organizations (HMOs).
- The statutory detailing of a “basic basket of health care services and medications” provided on a universal basis under the national plan to all members and through all HMOs. This “basic basket of health care services” is supplemented by a formal, legal mechanism that allows this package to be updated, altered, and expanded.
- Secured funding for a national health care insurance plan through a progressive taxation scheme that pertains to all citizens, but allows for reductions and exemptions for certain, predefined poor segments of the population.
- Establishment of mandatory membership in an HMO, while maintaining individuals’ rights to choose their preferred HMO and specific service providers within that HMO.
- Collection of a health tax from the insured population by Israel’s National Insurance Institute (rather than by the HMOs themselves).
- Allocation of financial resources on a prorated basis, also allowing for per-capita differences in health service costs.